

14 January 2020

Our Reference: 20031

Mr A Cappi
59 Waterloo Street
NARRABEEN NSW 2101

SUBJECT: Clause 93, 94 and 94A Assessment
PROPERTY: 65 Waterloo Street, NARRABEEN NSW 2101

It is understood Northern Beaches Council has requested the development application for the proposed change of planning use to be assessed against the provisions of Clause 93, 94 and 94A of the Environmental Planning and Assessment Regulation 2000 ("the Regs").

Davis Group has been engaged by Alessandro Cappi to review the proposed development application against the provisions of Clause 93, 94 and 94A of the Regs. The following assessment is intended to accompany the development application to Northern Beaches Council for the proposed change of planning use at 65 Waterloo Street, Narrabeen.

PROPOSED DEVELOPMENT

Based on advice from the client, the existing building was being used for the purpose of a shoe shop. The development application proposes a change of planning use from a shoe shop to a cake shop with no building works.

MATTERS FOR CONSIDERATION

Section 4.15(1)(a)(iv) of the Environmental Planning and Assessment Act 1979 ("the Act") states that when considering a development application, a consent authority is to take into consideration the matters which are relevant to the development. This includes the provisions of Clause 93, 94 and 94A of the Regs (to the extent that they are prescribed matters). These provisions generally relate to egress, fire protection and structural capacity of the building.

BUILDING CLASSIFICATION

NSW A6.6 of the Building Code of Australia 2019 Volume One ("BCA") defines a Class 6 building to mean *a shop or other building for the sale of goods by retail or the supply of services direct to the public*. For the purposes of the BCA, the existing use (shoe shop) is a Class 6 building and the proposed use (cake shop) is a Class 6 building.

CLAUSE 93 ASSESSMENT

Clause 93(1) of the Regs states *this clause applies to a development application for a **change of building use** for an existing building where the applicant does not seek the rebuilding, alteration, enlargement or extension of a building*.

Section 1.4 of the Act defines the term "*change of building use*" to mean *a change of use of a building from a use that the Building Code of Australia recognises as appropriate to one class of building to a use that the Building Code of Australia recognises as appropriate to a different class of building*.

The proposed development application does not result in a change of building use as defined in the Act as the building classification for the purpose of the BCA is to remain the same (Class 6). Therefore, the

provisions of this Clause 93 do not apply to the proposed development application.

CLAUSE 94 ASSESSMENT

Clause 94(1) of the Regs states *this clause applies to a development application for development involving the rebuilding, alteration, enlargement or extension of an existing building.*

Based on advice from the client, the proposed development application does not involve the rebuilding, alteration, enlargement or extension to any part of the existing building. Therefore, the provisions of Clause 94 do not apply to the proposed development application.

CLAUSE 94A ASSESSMENT

Clause 94A(1) of the Regs states *this clause applies to a development application for the erection of a temporary structure.*

Based on advice from the client, the proposed development application does not involve the erection of a temporary structure. Therefore, the provisions of Clause 94A do not apply to the proposed development application.

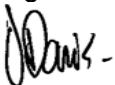
CONCLUSION

The requirements of Clause 93, 94 and 94A of the Regs do not apply to the proposed development application as a change of building use (building classification for the purposes of the BCA), rebuilding, alteration, enlargement or extension of the existing building or the erection of a temporary structure is not proposed.

Based on the above assessment, the consent authority can be satisfied they have taken into consideration the provisions of Clause 93, 94 and 94A of the Regs, as to the extent they are relevant to the development subject of the development application for the purposes of Section 4.15(1)(a)(iv) of the Act when determining the application.

Should you have any further enquiries, please do not hesitate to contact me on 0431 818 442 or jdavis@davisgroup.com.au.

Regards,



Jad Davis

Director, for and on behalf of Davis Group Pty Ltd
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