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**Sent:** 12/11/2019 3:51:56 PM  
**Subject:** Mod2019/0499-10.2010.367.1  
**Attachments:** Section 455 1A conditions preview2.doc;

Dear Renee, We have attached our submission. We are unsure how to lodge it other than an attachment to you.

Would you please advise if we need to do it another way.

Thank you for your assistance.

Graham and Peta Butson

Northern Beaches Council  
Submission for Mod 2019/499 – 10.2010.367.1  
Lot CPSP 10040 46 Victoria Parade Manly

Attention: Ms Renee Ezzy, Ms Louise Kerr

Dear Council and Staff,

Our thoughts and objections on Section 4.55 1A 46 Victoria Parade

**WE OBJECT to the deletion of conditions 96, 97, 100 and 119 and the additional roller shutter door on East elevation, rear shutters Level 1 and 2 south facing balconies, new unapproved wall built to roof height from ‘open solar access balcony’ on Level 4 dividing champhored stairwell, and the new planter box south west elevation at RL7.45.**

The conditions were set in place by LEC and MIAP to protect the amenity of adjoining neighbours. If the Court conditions are not retained, any deletion opens up the opportunity to make future changes that could be to the further impact of amenity of adjoining residential properties and neighbours. There is no need to delete Court Conditions. The words can be amended to support the original intention of the Courts.

In both the Application and the Statement of Modification request is made to delete certain Conditions at \$0.00 cost. Yet the drawings clearly include amendments:

A. No reference is made in the Application or Statement of Modification to install “carpark security shutter door” as stated on the East/West 2424-A201 8 drawings. It was agreed by Manly Owners Group at NBLPP July 2019 that there would be no roof over the driveway and no roller shutter door on Dungowan Lane.

B. It was also agreed that there would be **no SHUTTERS across the balconies on the south elevation at Levels 1 and 2**, yet the West Elevation Drawing A2424-A203 8 again faintly shows these shutters extending from the balconies. **We again object to these shutters.** This drawing needs to be amended to meet the agreement of NBLPP July 2019.

C. **We also object to the NEW WALL** that has recently been built to approx. roof height on the western elevation.

**This new non-compliant wall now divides the ‘Open Balcony’ and the 33 degrees sloped stairwell roof on Level 4.**

This balcony was ruled by LEC and MIAP to be an open area to allow winter solar access to adjoining neighbours. Comparison of the approved roof and west elevation drawings between Design Cubicle and Arc clearly show that this open balcony has already been reduced by approx. 50%.

A wall dividing the open balcony and the stairwell area contradicts the conditions and completely overshadows the 2019 agreed drawing addition to slope the stairwell roof to 33 degrees.

**This “33 degrees fall to eave” is clearly shown completely to the north edge of the stairwell in the Approved Drawing Roof Plan 2424-A11A.**

**Therefore this new wall needs to be either removed or sloped to 33 degrees to match the stairwell.**

Further in July 2019, **Condition 101 was amended to support this need for solar access.**

CONDITIONS: IN THIS PROPOSAL:

*The Applicant states: “This consent established specific conditions relating to the maintenance of amenity through the rear setback of the building and roof design. Subsequent modifications to the original consent have been made and approved by Council.”*

*“The proposal is specifically relating to multiple conditions of consent that are no longer relevant as a result of recently approved modifications to the original consent.”*

These Conditions have flowed through all 6 applications that have been heard numerous times by the following panels, ie, LEC, MIAP and NBLPP.

At the 3 July last public meeting prior to being heard by the NBLPP the Applicant gave verbal assurance that all previous LEC and MIAP conditions would be retained. When the actual meeting started we were advised by the Chairman that this would be the case: **“All conditions are to remain and be honoured.”**

**Now the Applicant wants to delete or change 8 Conditions.**

**All of these Conditions (94 – 119) were put in place for a specific purpose by LEC 2011/2012 and MIAP in 2014.** (see for our comments below for 96, 100, 119 and 97)

We now refer to the Statement of Modification and the few drawings available to the public for this submission:

#### **Section 4.15 Matters for Consideration:**

##### **(e) The Public Interest**

*“The proposal is in the public interest as allows for a new educational establishment, and will not impact upon the built form of the proposal and will not result in detrimental amenity impacts to neighbours.”*

**We object to this statement as the proposal will impact our amenity.**

##### **Design and Layout**

*“The proposed modification does not alter the design or appearance of the*

*premises.”*

### **Amenity Impacts.**

*“In summary the deletion of the conditions of consent that are no longer relevant as a result of subsequent design modifications will not exhibit any significant environmental impacts and will not adversely impact on the amenity of any adjoining sites.*

*The proposal will preserve neighbouring amenity including with respect to privacy, overlook and views.”*

**We object to these statements because the deletion of the 1.6m glass wall, (Condition 100), at the west end of the rear balconies will affect the amenity of our apartment.**

In fact, **the 1.6m glass wall has now been replaced and built with a 1m wall of concrete**. However, we were not given the opportunity to see the plan approved on 12 July that presumably shows this non-highlighted change.

As stated above, it was agreed in July 2019 to remove shutters covering the balconies on Levels 1 and 2 yet the East/West Drawing 2424-A203 8 submitted for this application shows faintly the shutters in place on the south.

The addition of shutters at the rear of Level 1 and 2 balconies and not highlighted on the drawings will impact our “overlook and further reduce our open view”.

**The following CONDITIONS 96, 100, 119 and 97 are STILL RELEVANT and impact our amenity.**

**Any change, other than wording, would not “reflect the original consents”. They have been maintained since in 2014 despite previous requests by the current Applicant/Owners for removal.**

### **Condition 96**

MIAP 2014: Access to the planter area adjacent to the lift lobby, stair and Bedroom 2 at Level 4 is to be for service and maintenance purposes only. The access doors must be locked at all other times. The keys are to be held by maintenance staff and the Owners' Corporation executive only.

*Reason:* To reduce impacts on the amenity of adjoining residential properties.

*The Applicant states: “The Level 4 apartment in question in relation to the condition has changed and there is no longer a Bedroom 2 abutting the feature balcony on level 4. The balcony can now be accessed via the common lobby on level 4. As the balcony has common area access, it will be easily accessed and maintained by the building manager.*

*The condition is no longer relevant and is satisfied and should be deleted.”*

IT NOT SUBSTANTIALLY THE SAME as the Unit configuration has changed and the Stairs have been moved since 2018.

Access to the balcony has always been from the lobby for Service and Maintenance only.

**We request the Condition 96 be retained with the Removal of the Words “stair and Bedroom 2” only.**

**The deletion of the words “stair and Bedroom 2” would honour and keep the intention and purpose of the 2014 MIAP Condition 96 and that access to the balcony be for service and maintenance purposes only.**

### **Condition 100**

MIAP 2014: The obscure glass screens to the west end of the rear balconies shall each be 1.6 metres high above each finished balcony floor level.

*Reason: To reduce impacts on the amenity of adjoining residential properties.*

*The Applicant states: “The recently modified consent (Mod2019/0029) has approved glass balustrades to 1m to the rear balconies.*

*The current approved modification provides for an improved outcome.*

*The condition is no longer relevant and should be deleted.”*

**Condition 100 only refers to the west end of the rear balconies.**

It does not refer to the balconies facing to the South.

**The fact is: “the 1.6m approved obscure glass” has now been replaced by a 1m CONCRETE WALL built at the west end of the rear balcony at Level 1 opposite our living room.**

We disagree with Consent 100 being deleted as it is NOT an improved outcome. The Applicant refers to the glass balconies on the SOUTH not the West as per the Condition 100.

The wording needs to be changed to Condition 100 to accommodate this new CONCRETE addition.

**We would request that at least 0.6m obscure glass be added to the concrete wall at the west end of the rear balcony on Levels 1 and 2 to honour and retain Condition 100.**

### **Condition 119**

MIAP 2014: The solid balustrade on western elevation of Level 4 at RL17.265 which is related to the lobby area of Units 12 & 13 is to be replaced with a clear glass

balustrade so as to remove the proposed planter.

Reason: To protect the amenity of neighbours.

The Applicant states: "*The balustrade on western elevation of Level 4 is now a glass balustrade as recently modified (Mod2019/0029).*"

Please note: This condition was put in place by MIAP in 2014 to allow solar access to Units 1, 5 and 9 during winter.

**Therefore, Condition 119 is NOT REDUNDANT and NEEDS SLIGHT VARIATION IN THE WORDING as the unit configuration has changed and the RL at Level 4 has been increased in height to RL 17.73.**

**Condition 119 should be retained with the following wording:**

**The balustrade on western elevation outside lobby area at Level 4 is to be clear glass so as to remove the proposed planter.**

In Addition, a NEW Solid Concrete Wall which has been built to almost roof height. It divides the open 'cut-out' balcony and the stairwell sloped at 33 degrees needs to be either removed or sloped at 33 degrees to match the new stairwell roof line and allow solar access to adjoining neighbours as per the intention of 2 LEC 2011/2012 hearings and MIAP in 2014. (see Roof comments below in changes and Additions)

### **Condition 97**

MIAP 2014: The level at the top of the headlight cut-off wall adjoining the driveway shall be RL7.450. Plans being suitably notated prior to the issue of the CC.

Reason: To reduce impacts on the amenity of adjoining residential properties.

The applicant states: "*The RL of the structural wall is consistent with this approved condition, and was designed to accommodate this requirement. The condition currently provided for by the modified plans as approved, satisfied this condition. As the structure covers this part of the ramp, the condition needs to be deleted, and replaced with wording to the effect of 'The structural wall to a height of RL7.450 as shown on the approved plan 2424-A103 rev A shall be maintained to minimise impacts from headlight glare to the adjoining residential properties. There is sufficient detail on the stamped plans that demonstrate this condition is now achieved.'*"

We object to the proposed deletion of Condition 97 as it affects our amenity.

It should be retained because the **NEW drawing 2424-A203 8 West elevation supplied with this application now shows there is to be a planter box put on top of this RL7.45 which is not in the Condition.**

**The Applicant references Drawing 242-A103 A which only has a planter box in the extreme far south west corner at RL5.50 and no planter at RL7.45. Any additional height to this RL7.45 is in complete view of our apartment and creates more visual bulk and blocks airflow to our apartment and the apartment below.**

(Please see below for our views on this additional planter box.)

## **CHANGES AND ADDITIONS TO DRAWINGS**

As you know we are not experts in reading drawings however we do note the following from the drawings available to us on Council's site:

### **BASEMENT PLAN: 2424-A099 B**

*Amendment: No 7. AS2890.1 Compliant Ramp.*

WHAT IS THIS? We assume by the positioning of the No. 7 that this will be a hump that will create noise to adjoining residents by incoming and exiting cars.

This extra noise from cars beside our living and bedrooms will affect the amenity of our apartment.

### **ROOF PLAN: 2424-A111 B**

The comparison of the drawings approved by MIAP in 2014 and NBLPP in 2019 clearly show a huge reduction in size of the open "cut-out" balcony down to Level 4. There is no roof covering over this area. However the new plans have moved the stairwell to the western boundary. This resulted in 2019 that the roof of the stairwell be sloped to 33 degrees.

We note the position of "No. 1. Chamfered RC Roof to Level 4 Outline" We presume this refers to the 14 degrees.

- **No indication or mention is made of the 33 degree slope of roof over the stairwell** that has been extended to the west beside the open balcony. This extra 33 degree slope was agreed and shown in previous Drawings submitted in July.

It was a condition set by the LEC that an open balcony 'cut out' be placed on Level 4 to allow for sunlight to be angled into our apartment. A comparison of the Design Cubicle and the ARC drawings for the Roof and West Elevation clearly show that this cutout has been greatly reduced. In fact it has been reduced because the fire stairs have been moved to the western edge of the building.

The building has been built with the concrete roof sloped at 33 degrees over the stairwell – HOWEVER THERE IS A VERTICAL WALL BESIDE THE STAIR WELL ON THE NORTH SIDE WHICH EXTENDS ABOVE TO THE ROOF LEVEL.

THIS VERTICAL WALL DIVIDES THE OPEN 'CUT-OUT' BALCONY AND THE STAIRWELL.

IT DOES NOT COMPLY WITH APPROVED ROOF DRAWINGS AND WILL NOT ALLOW THE SOLAR ACCESS TO LOWER REAR APARTMENTS OF ADJOINING NEIGHBOURS.

THEREFORE IT CERTAINLY DOES NOT COMPLY WITH THE LEC AND MIAP 2014 CONDITIONS THAT THESE UNITS MAINTAIN THEIR SOLAR ACCESS.

**WEST ELEVATION: 2424-A203 8**

**1: There appears to be shutters extending past the rear SOUTH balconies into the already reduced setback on Levels 1 and 2.**

As requested by the Chairman of the NBLPP in the July meeting it was suggested that we have consultations with the Applicants before the modification was heard by the Panel. The Applicants agreed with us and they consequently made representations to the Committee that **there would no shutters either internal or external for the rear balconies.**

We note that Ms Ezzy illustrated to the Panel in her submission that there seems to be a discrepancy of .5m reduction in the approved setback. The Applicant took their measurement 6.7m from the 'dogleg' wall that was built behind the substation for maintenance purposes only.

The Plan Survey submitted in July did not give a measurement for this 'dogleg wall' and it was agreed that the setback for the substation from 43 Ashburner Street was 6.2m as shown on the Plan Survey.

So technically the Applicant appears to have built the building 0.5m longer than approved by LEC in 2012 and MIAP in 2014 and thus not complied with the setback. This has added more visual bulk from our living room. We note the applicant has reduced the rear south west balcony by 0.5m to stay within the setback set in 2012.

The LEC/MIAP approval required a **glass balcony railing only** for all rear balconies.

Shutters are not necessary for privacy from the Sebel Hotel Holiday apartments in Ashburner Street. The setback from 46 Victoria Parade building and the Sebel back tower is approximately 20 metres.

We believe The Sebel has made no formal objections since 2010/11. The Sebel apartments are visible from our living room windows and the apartments are rarely occupied.

**We request that all shutters be removed from the rear south balconies on Levels 1 and 2 as was agreed prior to and confirmed by the Applicant at 3 July meeting.**



**2: The drawings also do not illustrate the 1m concrete wall which has been built at the western end of the rear balcony on Level 1** and Level 2 opposite our adjoining property.

Condition 100 states this should be “1.6m obscure glass at the west end of the rear balcony to reduce impacts on the amenity of adjoining residential properties.”

The approved Design Cubicle western elevation drawing clearly shows this 1.6m obscure glass and not concrete.

We note that the Applicant wants this Condition 100 removed however by doing so, it will affect the amenity of our property. **Please see our requests under Condition 100 above to add .6m obscure glass to the concrete wall on the west elevation rear balcony to maintain the integrity of the Applicant.**

**3: The drawings also show a NEW planter box on the west elevation at RL7.450.**

**Condition 97 states “the top of the headlight cut-off wall adjoining the property shall be RL7.450.”**

We OBJECT to a planter box at this level along the western wall because it will restrict light and air access to our apartment. It also cannot easily be accessed for maintenance by the building manager or body corporate.

4: We note that the building of a “Structural Transfer Slab and Beam” provides a a ROOF over the DRIVEWAY RAMP and thus does not comply with the side SETBACKS as set out in the Manly DCP/LEP 2013. This slab/roof extends along the length of the western elevation from the protruding side stairwell beside the lobby and goes to the north wall of the substation on the southern boundary following the curve of the driveway.

The only setback remaining on this south western corner is a small corner garden at RL5.50. This garden area includes extensively Wide corner foundation footings at ground level and built in 2015.

We notice the applicant continuously refers to the MDCP/MLEP guidelines

**Technically, because of this new Slab/Roof over the side Driveway Ramp, there is no side setback on the western elevation beside our east-facing apartment and does not meet the ADG or MLEP/MDCP Guidelines., and has been shown historically throughout this development. The MIAP refused the initial development on 22 counts.**

**The drawings available to the public do not show this Transition Beam and slab. We were advised that this would only be a “Transition Beam” and Not additional slabs resulting in a driveway roof cover and the complete removal of the setback. It was agreed there would be no driveway roof.**

**EAST ELEVATION: 2424-A203 8**

## 1. Carpark Security Roller Shutter.

The construction so far shows two rows of steel protruding from the Level 1 balcony floor along the southern edge of the building. In addition the steel work is also exposed along the top of the 'blast' wall. We have been advised by consultants that it would appear this is to make it easy to create a roof over the driveway from Level 1 to the boundary of the north wall of the substation. **It was agreed prior to and at the 3 July NBLPP meeting that there would be no driveway roof over the rear of the ramp and no security roller door on Dungowan Lane.**

It is our recollection that when we mentioned our objection to the roof and roller door in the rear setback, the Chairman advised us that there would be no roof and roller door as agreed by the Applicant in our prior meetings as well as at the 3<sup>rd</sup> July meeting.

Any roller door should be placed at the underground entrance to the basement carpark so as to avoid congestion at the top of the ramp.

Dungowan Lane is already blocked several times a day with service vehicles for the Sebel. Consideration could be given to change the traffic direction of the Lane.

2. It is also **considered that the BLAST Wall is dangerous** for traffic movement. Cars exiting the ramp will have to move into Dungowan Lane to be able to see traffic coming from the right.

It is also a potential danger to surrounding residents. If a Blast Wall is necessary for the protection of residents in 46 Victoria Parade, why has Council not insisted that the residents of 42 Victoria Parade and residents of the Dungowan and both Sebel buildings be protected as well.

By allowing a blast wall to be built only on part of the North Wall of the substation in the rear of 46 Victoria Parade, surely it has created a situation where if there is a possible 'blow-up' of the sub-station, then any other surrounding residents who incur damage will be able to initiate legal action against Council and Ausgrid for failing to protect their premises as well because of the added impacts from this Blast Wall.

We put these ideas about our objections to the NBLPP Committee and believe that all Conditions should remain intact in order to reduce impacts on amenity of adjoining residential properties, retain solar access and maintain the visual amenity of our unit.

Yours sincerely

Graham and Peta Butson

Unit 5, 42-44 Victoria Parade Manly 2095