

JILL MORRISON

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28 November 2023

By upload to NSW Planning portal

To whom it may concern
Northern Beaches Council
Attention: Planning and Assessment

Application for a S4.55 Modification - Replace Condition 8 in DA2020/1761, Determined May 2021

This is a request to modify the above development consent, through a section 4.55 process.

I consulted with Council's Uma Shanmugalingam, Development Engineer,
Development Engineering & Certification, who advised me to write directly to you.

Ms Shanmugalingam facilitated what appears to be a council established precedent for this change. Based on my neighbour Graham Davis's Modification2021/0266, determined 18/05/2021. For which your Kent Bull, Development Assessment, undertook this Mod to approval. The Mod successfully deleted a condition for a Traffic Management and Control Plan (TMCP).

The reasons for which are explained in the email, dated 13 May 2021, from Mr Bull to my neighbour Graham Davis, 291 Hudson Pde, copied to Uma Shanmugalingam. That implied it was council oversight on the initial DA assessment including the TMCP in the first place. Because compliance with a Right of Carriageway on the private road access takes precedence. Council acknowledged this by waiving the Mod assessment fee.

Both the Mod2021/0266 18/05/2021 and email dated 13 May 2021 are attached in References.

This is the precedent on which my request for a modification is based. Reasons for which are detailed as follows.

APPLICATION DETAILS

Applicant:	Jill Patricia Morrison Churchill
Land to be developed (Address)	Lot28 DP 228119, 287 Hudson Parade Clareville NSW 2107
Proposed Development	Modification of a development consent DA2020/1761, determined 4 June 2021, granted for alterations and additions to a dwelling house

A. Delete Condition No. 8 under heading CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE, that reads as follows:

Traffic Management and Control

The applicant is to submit an application for Traffic Management Plan to Council for approval prior to the issue of the Construction Certificate. The Traffic Management Plan shall be prepared to RMS standards by an appropriately certified person.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process.

B. If required - Modify with replacement text to read as follows:

Right of Carriageway

Construction vehicles and material are not to impede access for the properties that benefit from the Right of Carriageway throughout the construction phase.

The applicant must provide neighbours who use the private road right of way with details of the contractor in the event that access to the Right of Carriageway is blocked, without prior notice.

Reason: To ensure access is available to all property owners who benefit from the Right of Carriageway during the construction phase.

C. Precedents for this modification, acknowledging the legal requirement governing the Right of Carriageway is as follows:

- 1) **Mod2021/0266, determined 18/05/2021 by applicant Mr Graham Davis for 281 Hudson Parade, under consent DA2020/1478 Determined 23/03/2021** for this same modification.

Refer to *Council Memo – Environment* for Mod2021/0266t, dated 18 May 2021, from Council's Kent Bull, Planner, to Rodney Piggott, Development Assessment Manager. Relevant excerpt is attached in References.

Graham Davis, a friend and neighbour of 35 years, is to the west of my property. We share the same private roadway Right of Carriageway and the same typography of our properties. Our development consents were coincidentally aligned in time, budget and scope.

Our houses are in the middle of the private road, consisting of 22 properties, stretching from Georgia Lee Place to the north and the intersection of Hansford and Hudson parades to the south.

These houses are **only** accessed from the private road driveway. Given our Hudson Pde address is separated from our front doors by an inaccessible bushy escarpment 70 metres below. There is NO public road access, nor any accessible interface with one.

Mr Davis's successful Mod2021/0266 establishes a precedent for the over-arching, legal compliance under the Right of Carriageway Act, for construction phase of development on this private road. And equally highlights irrelevance of a public road Traffic Management Control/ Plan.

2) Other private roadway precedents – my neighbours to the east, on same Right of Carriageway, with DAs at similar time and similar scope **did not have a Traffic Management Control or Plan** condition in their DAs. Illustrating that some planning assessors recognise Right of Carriageway, and public road traffic control condition is not relevant on our private road. The Applicants are:

- Peter Kidner, **283 Hudson Pde – DA2021/1104**, Determined 22/10/2021, and
- Martin Standing, **279 Hudson Pde - DA2020/1031**, Determined 23/3/2021

Which further supports this modification request.

3) There has been – and continues to be - **no traffic flow issues** with construction work at 291, 283 (ongoing) and 279. Compared with those 3, my property has more off-road space with parking for 6 cars. Adequate for materials delivery, storage as well as parking.

With my property in the middle of the private road there is adequate turning circle space on adjacent properties, in the event the road is unexpectedly blocked.

All residents understand the constraints of our private road driveway. And participate in effective email or text exchange, giving advanced notice of any blockages for deliveries of any kind, not exclusively construction. This allows residents to make other entry and exit arrangements in advance.

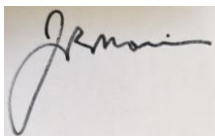
D. Recommendation is for DA2020/1761, Condition 8 to be modified. On the basis of council established precedent by Mod2021/0266, for my #291 neighbour's property. Since we share the same private road, governed by the same Right of Carriageway, with similar scope and value of work.

That a) acknowledges the overarching legal requirement for the Right of Carriageway access, and b) grants the modification to delete the current Condition 8.

References attached:

- DA2020/1761 – my property 28 Hudson Pde
- Mod2021/0266, determined 18 May 2021 – neighbour Graham Davis 291 Hudson Pde
- Email from Kent Bull to Graham Davis, dated 13 May 2021

Yours Sincerely



Jill P Morrison

References:

DA2020/1761 Determination 4 June 2021, property owner Jill Morrison, 287 Hudson Pde

Council Notice of Determination – Notice of Determination & Cover letter 4 June 2021 from Lashta Haidari, Acting Development Assessment Manager

4 June 2021

Jill Patricia Morrison-Churchill
C/- Vaughan Milligan Development Consulting Pty Ltd Po Box 49
NEWPORT NSW 2106

Dear Sir/Madam

Application Number: DA2020/1761
Address: Lot 28 DP 228119 , 287 Hudson Parade, CLAREVILLE NSW 2107
Proposed Development: Alterations and additions to a dwelling house

Please find attached the Notice of Determination for the above mentioned Application.

Please be advised that a copy of the Assessment Report associated with the application is available on Council's website at www.northernbeaches.nsw.gov.au

Please read your Notice of Determination carefully and the assessment report in the first instance.

If you have any further questions regarding this matter please contact the undersigned on 1300 434 434 or via email quoting the application number, address and description of works to council@northernbeaches.nsw.gov.au

Regards,



Lashta Haidari, Acting Development Assessment Manager



NOTICE OF DETERMINATION

Application Number:	DA2020/1761
Determination Type:	Development Application

APPLICATION DETAILS

Applicant:	Jill Patricia Morrison-Churchill
Land to be developed (Address):	Lot 28 DP 228119 , 287 Hudson Parade CLAREVILLE NSW 2107
Proposed Development:	Alterations and additions to a dwelling house

DETERMINATION - APPROVED

Made on (Date)	26/05/2021
Consent to operate from (Date):	26/05/2021
Consent to lapse on (Date):	26/05/2026

Council established precedent – S4.55 modification - replace DA condition with requirements governing Right of Carriageway on a private road driveway. 18 May 2021

Application Number
Mod2021/0266

re DA2020/1478 Determined 23/03/2021, property owner Graham Davis, 291 Hudson Pde

Description: Section 4.55 (1) Misdescription - Modification of Development Consent DA2020/1478 granted for alterations and additions to a dwelling house

Application Type: Section 455 Modifications

Status: **Approved**

Submitted: 17/05/2021



Determined: 18/05/2021

Determination Level: Council Staff

Cost of Work: \$ 0

Officer: Kent Bull

Submissions: [➔ Make a submission](#)

Location	People	Events	Documents	Show All
	Notice of Determination			18/05/2021
	Assessment Report			18/05/2021



Memo

Environment

To:	Rodney Piggott , Development Assessment Manager
From:	Kent Bull, Planner
Date:	18 May 2021
Application Number:	Mod2021/0266
Address:	Lot 30 DP 228119 , 291 Hudson Parade CLAREVILLE NSW 2107
Proposed Modification:	Modification of Development Consent DA2020/1478 granted for alterations and additions to a dwelling house

Background

The abovementioned development consent was granted by Council on 24 March 2021 for "Alterations and additions to a dwelling house";

Details of Modification Application

Under Section 4.55(1) of the EPA Act 1979, a consent containing an error or mis-description may be amended. The Northern Beaches Community Participation Plan does not require the notification of Section 4.55(1) modification applications as they are considered to be of minimal environmental impact.

The application seeks to delete condition No. 9, which reads as follows:

9. Traffic Management and Control

The Applicant is to submit an application for Traffic Management Plan to Council for approval prior to issue of the Construction Certificate. The Traffic Management Plan shall be prepared to RMS standards by an appropriately certified person.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process.

NB: The request to delete Condition 9 leads to direct implications for the compliance of Condition 14 that relates to traffic control during road works. Condition 14 reads as follows:

14. Traffic Control During Road Works

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual (<http://www.rms.nsw.gov.au/businessindustry/partners-suppliers/documents/technical-manuals/tcws-version-4/tcwsv4i2.pdf>) and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Consideration of error or mis-description

Condition 9 was originally placed on the development consent on recommendation by Council's Development Engineer. Following the determination, the Applicant questioned the necessity for a Traffic Management Plan to RMS standards, given the scale/extent of the development and that a replacement of this condition would be more appropriate to ensure that the Right of Carriageway is not impeded. Council Development Engineer confirmed on 18/05/21 that the deletion of Condition 9, as well as Condition 14 that directly relates, would be supported on the basis that it be replaced by the following during works condition:

Right of carriageway

Construction vehicles and material are not to impede access for the properties that benefit from the right of carriageway throughout the construction phase. The applicant must provide neighbours who use the right of way with contact details of the contractor in the event that access to the right of way is blocked.

Reason: To ensure access is available to all property owners who benefit from the right of carriageway during the construction phase.

It has been considered that the imposition of this condition would be more appropriate to ensure that the right of carriageway is not impeded over the construction phase, and as such a recommendation is made for Condition 9 to be deleted and Condition 14 to be modified in lieu.

Conclusion

It is considered that the modification is minor in nature and consistent with the provisions of section 4.55(1) of the EPA Act 1979 and is therefore recommended for approval.

Recommendation

A. Delete Condition No. 9 under heading CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE that reads as follows:

Traffic Management and Control

The Applicant is to submit an application for Traffic Management Plan to Council for approval prior to issue of the Construction Certificate. The Traffic Management Plan shall be prepared to RMS standards by an appropriately certified person.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process.

B. Modify Condition No. 14 under heading CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK to read as follows:

Right of carriageway

Construction vehicles and material are not to impede access for the properties that benefit from the right of carriageway throughout the construction phase. The applicant must provide neighbours who use the right of way with contact details of the contractor in the event that access to the right of way is blocked.

Reason: To ensure access is available to all property owners who benefit from the right of carriageway during the construction phase.

In signing this report, I declare that I do not have a Conflict of Interest.

Signed



Kent Bull, Planner

The application is determined on 18/05/2021, under the delegated authority of:



Rodney Piggott, Manager Development Assessments

From: Kent Bull [mailto:Kent.Bull@northernbeaches.nsw.gov.au] **Sent:** Thur, 13 May 2021 3:37 PM

To: Graham Davis **Cc:** Uma Shanmugalingam; Tim West THW Architects

Subject: RE: DA2020/1478 - DA Condition 9

Hi Graham,

Thank you for your email. I have discussed this matter with Uma and DA Management and feel like we can resolve this to satisfy both your request and Council's obligations.

I have reached an agreement with Uma, that should Condition 9 be deleted, that a **replacement condition be placed to ensure that access to the right of carriageway is not impeded**. The condition would apply during the course of the construction phase and read as follows:

Right of carriageway

Construction vehicles and material are not to impede access for the properties that benefit from the right of carriageway throughout the construction phase. The applicant must provide neighbours who use the right of way with contact details of the contractor in the event that access to the right of way is blocked.

Reason: To ensure access is available to all property owners who benefit from the right of carriageway during the construction phase.

In order for Condition 9 to be removed, you will need to lodge a S4.55(1) modification application. This would be lodged through the NSW Planning Portal. I have also reached **an agreement with management for Council to not charge any fees for this assessment**. Once lodged, feel welcome to contact me directly and I will see if I can have it assessed/determined within a few days.

If you have any questions, feel welcome to contact directly.

Kind regards,

Kent Bull, Planner , Development Assessment

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