

5 August 2019

The General Manager  
Northern Beaches Council  
PO Box 882  
MONA VALE NSW 1660

Dear Sir,

**APPLICATION TO MODIFY DEVELOPMENT CONSENT  
SECTION 4.55 (1) ENVIRONMENTAL PLANNING & ASSESSMENT ACT**

<b>Development Application No:</b>	<b>DA 2019/0083 (as modified 1 August 2019 under MOD2019/0361))</b>
<b>Date of Determination:</b>	<b>17 July 2019 (subsequently modified 1 August 2019)</b>
<b>Premises:</b>	<b>Lot 1 DP 76807 No. 29-33 Pittwater Road, Manly</b>
<b>Proposed Development:</b>	<b>Alterations and additions to an existing mixed use development</b>

On behalf of JSALT Pty Ltd, this submission has been prepared to assist Council in the consideration of an application pursuant to Section 4.55(1) of the Environmental Planning & Assessment Act 1979 to alter the development as approved by Development Consent DA 2019/0083.

The application will seek to modify Condition No 21 within the revised Notice of Determination issued 1 August 2019.

**BACKGROUND**

An application for consent for *"Alterations and additions to an existing mixed use development"* was approved by Council by Notice of Determination dated 17 July 2019, following a Development Determination Panel meeting held on the 10 July 2019.

The consent was subsequently modified under MOD2019/0361, with a revised Notice of Determination issued 1 August 2019.

This application will seek to modify the wording of Condition 21, which we believe introduces proposed minor amendments to the requirements of the conditions to resolve any ambiguity in the consideration of a future Construction Certificate application

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The works that are the subject of the consent have not commenced.

## **PROPOSED MODIFICATION**

Specifically, we propose the amendments address the following conditions:

**Condition 21**, which read:

### **21. No Boundary Encroachment**

*No portion of the proposed building or works are to encroach upon any other land, with the exception of the awnings approved on the northern and eastern elevations of the development. Details demonstrating compliance with this condition are to be provided to the satisfaction of the Certifying Authority prior to the issue of the Occupation Certificate.*

*Reason: To ensure structures are contained within the site.*

**Proposed Condition to replace current version:**

### **21. No Boundary Encroachment**

*No portion of the proposed building or works are to encroach upon any other land, with the exception of the approved works on the northern and eastern elevations of the development. Details demonstrating compliance with this condition are to be provided to the satisfaction of the Certifying Authority prior to the issue of the Occupation Certificate.*

*Reason: To ensure structures are contained within the site.*

The wording of the condition as issued has the effect of precluding any other approved encroachment upon any other land, with the exception of the proposed awnings along Pittwater Road & Denison Street.

The approved proposal includes the 100mm projection on the northern windows (for the external railing detail and the head box for an external shading device) which is detailed and described on the stamped approved Drawing PR0-038. As issued, the Condition 21 expressly prevents the inclusion of these approved design elements.

We believe the wording of this condition needs to be clarified to be less specific regarding the northern and eastern elevations. We have no issue with the consent restricting any further encroachment over the southern neighboring property.

## **JUSTIFICATION**

The Environmental Planning & Assessment Act 1979 provides for the modification of a consent under Section 4.55(1) to correct a “*minor error, misdescription or miscalculation*” and which notes:

*1) Modifications involving minor error, misdescription or miscalculation*

*A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the*

*regulations, modify a development consent granted by it to correct a minor error, misdescription or miscalculation. Subsections (1A), (2), (3), (5) and (6) and Part 8 do not apply to such a modification.*

*Note.*

*Section 380AA of the Mining Act 1992 provides that an application for modification of development consent to mine for coal can only be made by or with the consent of the holder of an authority under that Act in respect of coal and the land concerned.*

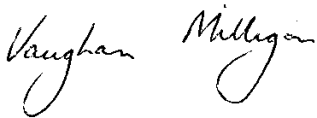
*Subsections (1) and (1A) do not apply to such a modification.*

In our view, the wording of Condition No 21 within the revised Notice of Determination was issued in error as it does not permit the full extent of the approved works to the northern and eastern elevations.

We believe it is appropriate for Council to consider our request under S4.55(1) of the EPA Act 1979 to rectify the error and modify the consent as sought.

Please contact me on 9999 4922 or 0412 448 088 should you wish to discuss these proposed amendments.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Vaughan Milligan'. The signature is written in a cursive, flowing style.

**VAUGHAN MILLIGAN**