Sent:
 30/04/2019 1:47:45 PM

 Subject:
 Notice of proposed development - DA2019/0334 - Revised letter and attachment - Attn.: Kent Bull, Planner

 Attachments:
 The General Manager Arcedia

Attachments: The General Manager Arcadia - Revised letter with attachment.pdf;

Dear Mr Bull,

Please find attached letter as per your conversation with Mrs Lea Gattorna today.

Kind regards Jacqui Turner



Jacqui Turner // Administration Manager PO Box 666, Milsons Point NSW 1565, Australia Suite 7.01, 6A Glen Street, Milsons Point NSW 2061 t. +61 2 8920 2777 // gattornaalignment.com

1176 Barrenjoey Rd Palm Beach, NSW 2108 Mailing Address: P.O. Box 666 Milsons Point, NSW, 1565

1 May 2019

The General Manager, Northern Beaches Council P.O. Box 82 <u>Manly NSW 1655</u> E: <u>council@northernbeaches.nsw.gov.au</u>

Attn.: Kent Bull, Planner

Dear Sir/Madam,

Amended letter and attachment, dated 1 May 2019

Re:	Notice of proposed development
Application No.	DA2019/0334
Address:	Lot 1 DP 1084184, 1178 Barrenjoey Road, Palm Beach

We refer to the subject application for alterations and additions to an existing studio, and proposed change of use to a secondary dwelling.

For your background reference we would ask you to refer to **Development Consent N0266/05 at 1178 Barrenjoey Road, Palm Beach [Condition E]**, which clearly denotes that the structure is not to be used for separate residential purposes, nor is it ever to be modified so as to incorporate bathroom /toilet/cooking facilities (see attachment).

For purposes of responding to this application we visited the Northern Beaches Council chambers to view the plans and associated documentation.

As the immediate neighbour [1176 Barrenjoey Rd., Palm Beach] on the low side adjacent to the subject property, the <u>proposed change to 'secondary dwelling' status is of utmost concern</u>. In short, we argue that changing the status as proposed would have <u>unreasonable impact</u> on our cottage. We therefore wish to raise the following matters for consideration by Council:

 Our cottage [Arcadia] at 1176 Barrenjoey Road is located immediately adjacent to, and below the Wagner's existing studio. It was designed in 1994 by the eminent Australian architect, the late Professor Jennifer Taylor. Working around an early sandstone cottage ruin, she designed a striking small house which in 2004 was awarded a design citation by the Committee of Heads of Architecture Schools (CHASA). Significantly, the principal outdoor living area of the house is to its rear, and as Prof. Taylor wrote in explaining her design, its form and internal spaces are focused about this relationship with the rear garden and its terraces. Our kitchen, outdoor dining area and main bathroom all address the rear garden.

- 2. The scale and bulk of the existing studio is appreciably bigger than the original garage building that was modified to form it circa 2006, and in places it is even closer to our back boundary than the original garage. The current building projects out into the air at it's north west corner, and we have done our best to hide this ugly aspect with vegetation.
- As mentioned above, we feel the existing studio already imposes unreasonable impacts upon the amenity and setting of our cottage. The proposed change from its present use to the secondary dwelling status suggests an intensification of use that will impact even further upon us, and <u>makes the design and siting of the building doubly unreasonable</u>.
 NOISE/PRIVACY and additional TRAFFIC are our main concerns.
- 4. <u>The question arises</u>: is this site suitable for a secondary dwelling given it's location and proximity to our cottage, which has been in place since 1987? The current design of the proposed privacy screen is unclear, so we would like to have more details of the height, extent, and materials intended for this structure.
- 5. The other concern that we have about converting the existing studio to secondary dwelling status, is that <u>it could well then be leased out on a short-term basis, eg., AirBnB</u>, thus accentuating the **NOISE and PRIVACY** issues mentioned above, and added to this, increased **TRAFFIC noise** the driveway access to the studio is closely adjacent to the northern aspect of our cottage.
- 6. In conclusion, we have invested substantial funds in maintaining our cottage in the spirit of the original designer, with particular regard to the architectural and design qualities which makes it so unique and special. If the proposed development changes were to be implemented, we believe that it's amenity and character would be diminished, which would be truly regrettable, and we believe, negatively affect its resale value.

We invite Councillors and Officers to contact us in order to visit the site to observe the relative positions of the exiting studio and our cottage, and gauge for themselves the likely impacts of the proposed changes/development.

Thanking you for your consideration in this matter,

Yours sincerely,

per persone Lee Southome

John & Lea Gattorna E: <u>john@gattornaalignment.com</u> or 0419-245663 E: <u>lea@gattornaalignment.com</u> or 0412-147336



www.pittwaterlga.com.au e-mail: pittwater_council@pittwater.nsw.gov.au

Mandy McKay, Development Compliance Officer 8am to 5:30pm Mon - Thurs, 8am to 5pm Fri Phone 9970 1184 Mobile 0409 533 435 9970 1184



JL & LM Gattorna 141 High Street NORTH SYDNEY NSW 2000

Dear Sir/Madam

Re: Development Consent N0266/05 at 1178 Barrenjoey Road, Palm Beach

Reference is made to a conversation with Lee Gattorna on 20 June 2007, regarding 1178 Barrenjoey Road, Palm Beach. Please be advised that the following has been undertaken with respect to this matter.

Further to your enquiry on 25 January 2007, Council's Development Compliance Officer carried out an inspection of the property. The inspection revealed that the concrete slab and retaining wall was unauthorised building works, therefore Council served the owners a Notice of Proposed Order to demolish the unauthorised works.

The owners submitted a Building Certificate Application for Council's Planning and Assessment Department to assess, in order to regularise the unauthorised works. The Building Certificate was subsequently granted, therefore the works are now considered authorised and no further action is to be taken with respect to this matter.

Please note that prior to any further works occurring onsite, a Construction Certificate and a Notice of Commencement is required.

In relation to your concerns of the habitable studio being used as a separate occupancy, Council's Planning and Assessment Department have granted Modification of Development Consent N0266/05 dated 12 June 2007.

Condition E4 of the above Modification of Development Consent requires a covenant to be created on the title of the land prior to issue of the Occupation Certificate, the terms of which clearly denote that the structure is not to be used for separate residential purposes, nor is it ever to be modified so as to incorporate bathroom/toilet/cooking facilities.

It is anticipated that the above information will be of assistance to you. If you have any further enquiries please contact the undersigned officer.

Yours faithfully

Mandy McKay DEVELOPMENT COMPLIANCE OFFICER

Mona Vale Customer Service Centre Village Park 1 Park Street, Mona Vale

Avalon Customer Service Centre 59A Old Barrenjoey Road, Avalon

Support Services Units 11, 12, 13 & 16/5 Vuko Place, Warriewood

Boondah Depot 1 Boondah Road, Warriewood

MODIFICATION OF DEVELOPMENT CONSENT NO: N0266/05

ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979

NOTICE TO APPLICANT OF DETERMINATION

OF A DEVELOPMENT APPLICATION

Applicant's Name and Address:

JAN WAGNER PO BOX 51 PALM BEACH NSW 2108

Being the applicant in respect of Development Application No N0266/05

Pursuant to section 81 of the Act, notice is hereby given of the determination by Pittwater Council, as the consent authority, of this Development Application for: -

Modification of Development Consent N0266/05 for demolition of existing garage and construction of a studio in its place

At:-

Part Lot 5 DP 6746, Lot 1 DP 105986, Part Lot 4 DP 6746

1178 BARRENJOEY ROAD PALM BEACH NSW 2108

Decision:

The Development Application has been determined by the granting of consent subject to the conditions detailed below.

The Development Application has been determined by the granting of consent based on information provided by the applicant in support of the application, including the Statement of Environmental Effects, and in accordance with Sheet 1 of 5, Sheet 2 of 5 and Sheet 3 of 5, dated April 2005, Sheet 4 of 5 and Sheet 5 of 5 dated March 2005, prepared by Planart; Geotechnical report ref: VQ 22638A dated 16th May 2005 prepared by Jack Hodgson Consultants Pty Ltd as amended in red (shown clouded) or as modified by any conditions of this consent.

The reason for the imposition of these conditions is to ensure that the development consented to is carried out in such a manner as to achieve the objectives of the Environmental Planning and Assessment Act, pursuant to section 5(a) of the Act, having regard to the relevant matters for consideration contained in section 79C of the Act and the Environmental Planning Instruments applying to the land, as well as section 80A of the Act which authorises the imposing of the consent conditions.

Note: For ease of reference, all of the previous conditions have been re-listed. Those conditions amended or deleted have been highlighted.

Endorsement of date of consent 4/11/2005 (Modified 7/12/2005)

Mark Ferguson GENERAL MANAGER

Per:

PART 1

THE COMMENCEMENT OF THIS CONSENT IS DEFERRED UNTIL THE CONSENT AUTHORITY IS SATISFIED AS TO COMPLIANCE WITH THE FOLLOWING CONDITION/S:

- 1. Submission of Form 1 in accordance with the requirements of the Interim Geotechnical Risk Management Policy indicating the correct extent of the proposal.
- Note: Form 1 accompanying the risk assessments states that the application is for "minor development". As the work is estimated to cost \$100,000 and there are identified hazards on the site that pose an "unacceptable" risk that require remedial works form 1 must be amended to reflect the actual proposal.

Upon receipt of evidence within 12 months from the date of this consent satisfying the above, the consent will become operative, subject to the conditions listed in Part 2 below.

The consent will lapse if evidence satisfying the above conditions is not received within the prescribed time period.

PART 2

Conditions of Approval

This consent is not an approval to commence building work. The works associated with this consent can only commence following the issue of the Construction Certificate.

A. Prescribed Conditions:

- 1. All works are to be carried out in accordance with the requirements of the Building Code of Australia.
- 2. In the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, there is to be such a contract in force.
- 3. Critical stage inspections are to be carried out in accordance with clause 162A of the Environmental Planning & Assessment Regulation 2000. To allow a Principal Certifying Authority or another certifying authority time to carry out critical stage inspections required by the Principal Certifying Authority, the principal contractor for the building site, or the owner-builder must notify the Principal Certifying Authority at least 48 hours before building work is commenced and prior to further work being undertaken.
- 4. A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

a. showing the name, address and telephone number of the Principal Certifying Authority for the work, and

b. showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working house, and

c. stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

5. Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

a. in the case of work for which a principal contractor is required to be appointed:

i. the name and licence number of the principal contractor, and

ii. the name of the insurer by which the work is insured under Part 6 of that Act.

b. in the case of work to be done by an owner-builder:

i. the name of the owner-builder, and

ii. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

- 6. If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (2) becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- Conditions A8 and A9 do not apply in relation to Crown building work that is certified, in accordance with Section 116G of the Act, to comply with the technical provisions of the States building laws.
- 8. The hours of construction are restricted to between the hours of 7.00am and 5.00pm Monday - Friday and 7.00am to 1.00pm on Saturdays. No works are to be carried out on Sundays or Public Holidays. Internal building work may be carried out at any time outside these hours, subject to noise emissions from the building or works not being audible at any adjoining boundary.

B. Matters to be incorporated into the development and maintained over the life of the development:

- 1. The recommendation of the risk assessment required to manage the hazards as identified in Geotechnical Report prepared by Jack Hodgson Consultants Pty Ltd ref VQ22638A dated 16 May 2005 are to be incorporated into the construction plans.
- 2. The recommendations of the approved Geotechnical Report prepared by Jack Hodgson Consultants Pty Ltd ref VQ22638A dated 16 May 2005 as it requires on-going maintenance / inspections to ensure that the development achieves the *acceptable level of risk* criteria over the life of the development are to be implemented.
- 3. All natural landscape features, including natural rock outcrops, natural vegetation, soil and watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

4. In accordance with Pittwater Council's Tree Preservation and Management Order, all existing trees as indicated on Survey Plan Prepared by Paul Keen & Company Reference No 3105 dated 4/4/2005 shall be retained except where Council's prior written consent has been obtained, or where after approval of the relevant Construction Certificate Application/s, trees stand within the envelope of approved buildings or within the alignment of approved permanent paved vehicular access roads and parking areas.

5. The windows on the western elevation are to be "highlight". The sill level must be 1.7m above the floor level of the studio.

- 6. Water conservation devices with an AAA rating must be installed and maintained, including tap flow regulators, shower head roses and dual flush toilets. All new hot water systems are to have a minimum rating of 3.5 stars.
- 7. No water pollution shall result from the operation of any plant or equipment or acitivity carried out.
- 8. The external colours of the proposed studio are to be in accordance with section D12.3 "Building colours, materials and construction" of Pittwater 21 Development Control Plan.
- 9. Over the life of the development all declared noxious weeds under are to be managed / removed in accordance with the Noxious Weeds Act 1993. Environmental weeds are to be removed and/or controlled.
- 10. No environmental weeds are to be planted on the site.
- 11. Two locally native canopy trees are to planted on the site. Canopy tree species are to be from the vegetation community(s) on the site as per the lists in the Pittwater Book Native Plants for Your Garden book available from Council and on the Pittwater Web Site. All native trees are to be retained for the life of the development, or for their safe natural life. Trees that die or are removed must be replaced with another locally native canopy tree.

C. Matters to be satisfied prior to the issue of the Construction Certificate:

Note: The issue of partial or limited Construction Certificates is not permissible under the terms of this consent unless otherwise specifically stated. All outstanding matters referred to in this section are to be submitted to the accredited certifier together. Incomplete Construction Certificate applications / details cannot be accepted.

 Prior to issue of the Construction Certificate, details are to be submitted to the Principal Certifying Authority that include, but are not limited to, all of the recommended conditions in the Geotechnical Report prepared by Jack Hodgson Consultants Pty Ltd ref VQ22638A dated 16 May 2005.

Form 2 of the *Geotechnical Risk Management Policy for Pittwater* is to be completed and submitted with the above details before issue of the Construction Certificate.

- 2. A certificate is to be provided to the Accredited Certifier or Council with the Construction Certificate application by a qualified Civil Engineer/Surveyor that the existing stormwater system performs satisfactorily and is capable of servicing the proposed additions
- 3. Submission of construction plans and specifications and documentation which are consistent with the approved Development Consent plans, the requirements of Building Code of Australia and satisfy all conditions shown in Part B above are to be submitted to the Principal Certifying Authority.
- The Accredited Certifier or Council must be provided with a copy of plans that a Quick Check agent/Sydney Water has stamped the plans before the issue of any Construction Certificate.
- 5. Any proposed demolition works shall be carried out in accordance with the requirements of AS2601-1991 *The Demolition of Structures*.
- 6. Structural Engineering details relating to the development are to be submitted to the Accredited Certifier or Council prior to release of the Construction Certificate. Each plan/sheet is to be signed by a qualified practising Structural Engineer with corporate membership of the Institute of Engineers Australia (M.I.E), or who is eligible to become a corporate member and has appropriate experience and competence in the related field.

7. The kitchen and laundry component of the application do not form part of the consent and must be deleted off the plans prior to issue of Construction Certificate.

D. Matters to be satisfied prior to the commencement of works and maintained during the works:

Note: It is an offence to commence works prior to issue of a Construction Certificate.

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- Temporary sedimentation and erosion controls are to be constructed prior to commencement of any work to eliminate the discharge of sediment from the site.
- 2. Sedimentation and erosion controls are to be effectively maintained at all times during the course of construction and shall not be removed until the site has been stabilised or landscaped to the Principal Certifying Authoritys satisfaction.
- 3. Adequate measures shall be undertaken to remove clay from vehicles leaving the site so as to maintain public roads in a clean condition.

4. A clearly legible *Site Management Sign* is to be erected and maintained throughout the course of the works. The sign is to be centrally located on the main street frontage of the site and is to clearly state in legible lettering the following: -

The builders name, builders telephone contact number both during work hours and after hours.

That no works are to be carried out in Councils Road Reserve without the written approval of the Council.

That a Road Opening Permit issued by Council must be obtained for any road openings or excavation within Councils Road Reserve associated with development of the site, including stormwater drainage, water, sewer, electricity, gas and communication connections. During the course of the road opening works the Road Opening Permit must be visibly displayed at the site.

That no skip bins or materials are to be stored on Councils Road Reserve.

That the contact number for Pittwater Council for permits is 9970 1111.

- 5. A stamped copy of the approved plans is to be kept on the site at all times, during construction.
- Toilet facilities are to be provided in a location which will not detrimentally affect the amenity of any adjoining residents at or in the vicinity of the work site during the duration of the development.

E. Matters to be satisfied prior to the issue of Occupation Certificate:

Note: The issue of interim or partial Occupation Certificates is not permissible within the terms of this consent unless otherwise specifically stated. Prior to the issue of an Occupation Certificate the principal certifying authority is to ensure that Council's assets, including road, kerb and gutter and drainage facilities adjacent or near to the site have not been damaged as a result of the works. Where such damage has occurred, it is to be repaired to Council's written satisfaction prior to the issue of an Occupation Certificate or suitable arrangements put in place to effect those repairs at a future date to Council's written satisfaction. Should this process not be followed, Council will pursue action against the principal accredited certifier in relation to the recovery of costs to effect such works.

Note: It is an offence to occupy the building or part thereof to which this consent relates prior to the issue of an Occupation Certificate.

- 1. Prior to issue of the Occupation Certificate, Form 3 of the *Geotechnical Risk Management Policy* is to be completed and submitted to the Principal Certifying Authority.
- 2. A positive covenant/ restriction on the use of land is to be created prior to the issue of the Occupation Certificate where the recommendations of the approved Geotechnical Report prepared by Jack Hodgson Consultants Pty Ltd ref VQ22638A dated 16 May 2005 requires on-going maintenance / inspections to ensure that the development achieves the *acceptable level of risk* criteria over the life of the development, the terms of which are to require the landowner to comply with the recommendations contained in that report.
- 3. An Occupation Certificate application stating that the development complies with the Development Consent, the requirements of the Building Code of Australia and that a Construction Certificate has been issued must be obtained before the building is occupied or on completion of the construction work approved by this Development Consent.
- 4. Prior to issue of the Occupation Certificate, a covenant is to be created on the title of the land, at the applicants expense, the terms of which clearly denote that the (describe structure) is not to be used for separate residential purposes, nor is it ever to be modified so as to incorporate cooking or laundry facilities.

Terms of Covenant

1. In this covenant *the detached habitable studio building* shall mean *the detached habitable studio building* referred to on Drawing Sheets 1 of 5, Sheet 2 of 5 and Sheet 3 of 5, dated April 2005, Sheet 4 of 5 and Sheet 5 of 5 dated March 2005, prepared by Planart.

2. The registered proprietor will not use the detached habitable studio building as a separate residence nor will the registered proprietor install cooking facilities within the detached habitable studio building.

3. The term *registered proprietor* shall include the registered proprietors of the land from time to time and all their heirs, executors, assigns and successors in title to the land and where there are two or more registered proprietors of the land the terms of the covenant shall bind all those registered proprietors jointly and severally.

With regard to item 1 of the *Terms of Positive Covenant* the portion in bold will require a reference to an updated survey which must detail an accurate description of the building in question. Councils suggested description would contain *habitable studio building* within the survey sketch notation to ensure a clear reference is made. Proof of the creation of the covenant is to be provided to the Private Certifying Authority with the Occupation Certificate application.

- 5. All external face brick walls are to be properly cleaned down following completion of the wall and prior to occupation.
- 6. Where planting is required in areas outside approved landscape zones species are to be the same as native plants growing on site and / or selected from the list pertaining to site from the Pittwater Book *Native Plants for Your Garden* available from Council and on the Pittwater Web Site.

F. Matters to be satisfied prior to the issue of Subdivision Certificate:

NIL

G. Advice:

- Failure to comply with the relevant provisions of the Environmental Planning and Assessment Act, 1979 (as amended) and/or the conditions of this Development Consent may result in the serving of penalty notices (on-the-spot fines) under the summary offences provisions of the above legislation or legal action through the Land and Environment Court, again pursuant to the above legislation.
- The applicant is also advised to contact the various supply and utility authorities, ie Sydney Water, Sydney Electricity, Telstra etc. to enquire whether there are any underground utility services within the proposed excavation area.
- 3. It is the Project Manager's responsibility to ensure that all of the Component Certificates/certification issued during the course of the project are lodged with the Principal Certifying Authority. Failure to comply with the conditions of approval or lodge the Component Certificates/certification will prevent the Principal Certifying Authority issuing an Occupation Certificate.

4. In accordance with Section 80A(1)(d) and (e) of the Act, any consent given shall be void if the development to which it refers is not commenced within two (2) years after the date of approval, provided that Council may, if good cause be shown, grant an extension of renewal of such consent beyond such period.

NOTE: Council may be prepared to consider an extension of this Consent period for a further 12 months, however, the request for extension would have to be received during the initial 2 year period.

- 5. To ascertain the date upon which the determination becomes effective, refer to Section 83 of the Environmental Planning and Assessment Act, 1979 (as amended).
- 6. Should any of the determination not be acceptable, you are entitled to request reconsideration under Section 82A of the Environmental Planning and Assessment Act, 1979. Such request to Council must be made in writing together with a \$500 fee, within 1 year from the date of determination.
- 7. If you are dissatisfied with this decision, Section 97 of the Environmental Planning and Assessment Act, 1979, gives you a right of appeal to the Land and Environment Court within 12 months of the date of endorsement of this Consent.
- 8. The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. The approved plans will be appropriately stamped. For Quick Check agent details please refer to "Your Business" section of Sydney Water's web site at <u>www.sydneywater.com.au</u> then see Building & Renovating under the heading Building & Developing, or telephone 13 20 92.







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