

7th February 2023

The General Manager
Northern Beaches Council
PO Box 82
MANLY NSW 1655

Dear Sir/Madam

**SECTION 4.56 MODIFICATION - RESIDENTIAL FLAT BUILDING &
BASEMENT CARPARKING
30 FAIRLIGHT STREET, FAIRLIGHT
DA2021/2034**

I refer to the subject application and on behalf of the applicant, 30 Fairlight P/L, application is hereby made pursuant to Section 4.56 of the Environmental Planning & Assessment Act 1979, as amended, for the modification of the subject consent.

By way of background, it is advised that Land & Environment Court Appeal No. 2021/00356650 was approved on the 1st December 2022 and granted consent to DA2021/2034 for the *Demolition of existing dwelling house and construction of a residential flat building containing 5x3 bedroom dwellings and basement carpark* at 30 Fairlight Street, Fairlight, subject to a number of conditions.

This application is to be read in conjunction with the following documentation:

- Revised Architectural Plans prepared by DKO Architecture, Project No. 00012781 Drawing No. DA200 dated 9/1/23 & 221209_1 dated 9/12/2022.
- Letter from Varga Traffic Planning P/L, Ref. No. 21315 and dated 6/2/23.

Modifications Proposed by this Application

The application relates to Condition 72 of the Consent and seeks approval for the modification of the distribution of the proposed car parking spaces between residents and visitors on the site.

Condition 72 currently reads:

“The development is to maintain the following parking allocation for the life of the development:

- a. 8 x residential parking spaces, with a minimum of 1 space per unit, and inclusive of 1 disabled parking spaces*
- b. 2 x residential visitor spaces,*

All spaces must be line-marked and identified accordingly.

Manoeuvring areas must be kept clear of obstructions at all times. Vehicles must not be required to queue on public roads at any time.

Reason: To ensure the appropriate management of parking on site."

The proposal seeks to modify Condition 72 to reallocate the existing parking spaces to provide for 9 x residential parking spaces with a minimum of 1 space per unit and inclusive of 1 x disabled parking space, and to provide for only one (1) visitor car parking space.

The proposed revised Condition 72 would therefore read:

"The development is to maintain the following parking allocation for the life of the development:

- a. 9 x residential parking spaces, with a minimum of 1 space per unit, and inclusive of 1 disabled parking spaces*
- b. 1 x residential visitor spaces,*

All spaces must be line-marked and identified accordingly.

Manoeuvring areas must be kept clear of obstructions at all times. Vehicles must not be required to queue on public roads at any time.

Reason: To ensure the appropriate management of parking on site."

The proposed modification is considered to be justified on the basis that the proposal will result in provision of an additional two (2) on-street car parking spaces. It is submitted that one of these additional on-street car parking spaces would offset the loss of one (1) onsite visitor car parking spaces.

The application also seeks to modify Condition 1 to reflect the amended plans accompanying this application.

Impacts of the Proposal

It is my opinion that the proposed modifications sought by this application will not result in any detrimental impacts upon the streetscape of the locality, the character of the surrounding area or upon the amenity of adjoining property owners.

In forming this opinion, it is noted that the proposal will continue to provide for a development that is substantially the same as approved by the Court in that it will remain a three (3) storey residential flat building containing 5 x 3 bedroom units and 10 car spaces within a single level of basement carparking.

It is my opinion that the proposed re-distribution of the carparking spaces so as to provide for 9 x resident spaces and 1 x visitor space and the resultant shortfall in visitor parking by one (1) space will be offset by the provision of two (2) additional on street car parking spaces.

Section 4.56 – Modification by consent authorities of consents granted by the Court - Environmental Planning & Assessment Act 1979, as amended

Section 4.56 of the Environmental Planning & Assessment Act 1979, as amended, permits an applicant to seek approval for the modification of a development consent in the following circumstances:

(1) Modifications involving minimal environmental impact

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

- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (b) it has notified the application in accordance with:*
 - (i) the regulations, if the regulations so require, or*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and*
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

(1A) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

In response to the requirements of Section 4.56(1)(a) of the Act it is submitted that the proposal will remain substantially the same development for which consent was originally granted.

In forming this opinion, it is submitted that:

- The proposal will remain a residential flat building with basement carpark having an identical building envelope to that previously approved by the Court.
- The proposal will still provide for 10 carparking spaces to be constructed on-site with only the allocation to those spaces being modified.
- The proposed modification will not result in a change to the built form or height of the approved development.
- Other residential amenity considerations such as private open space, landscaping and overshadowing will remain the same as approved by the Court.

Section 4.15(1) of the Environmental Planning & Assessment Act 1979

The following assessment is provided against the requirements of Section 4.15(1) of the Act.

Environmental Planning Instruments – Section 4.15(1)(a)(i)

The proposed development remains permissible with the consent of the Council under the provisions of the Manly LEP 2013.

The maximum Building Height & Floor Space Ratio in this application is identical to that approved by the Land & Environment Court of NSW.

In addition to the above it is submitted that the proposal is acceptable on the following planning grounds:

- The proposal will continue to provide for development which is consistent with the applicable objectives of the R1 - General Residential zone in that:
 - The proposal will continue to provide for a residential flat building with a basement carpark.

- The proposed modifications will not reduce the approved high level of amenity provided to each of the units and which is consistent with development anticipated for a general residential environment.

The proposal is considered to remain consistent with the approval of DA2021/2034 and therefore should be supported by Council.

Draft Environmental Planning Instruments – Section 4.15(1)(a)(ii)

There are no Draft Environmental Planning Instruments that applies to the proposal.

Development Control Plans – Section 4.15(1)(a)(iii)

The proposal seeks to vary the requirements of the Council's DCP in relation to the provision of visitor carparking.

The proposal seeks to modify Condition 72 to reallocate the existing parking spaces to provide for 9 x residential parking spaces with a minimum of 1 space per unit and inclusive of 1 x disabled parking space, and to provide for only one (1) visitor car parking space.

It is my opinion that the proposed re-distribution of the carparking spaces so as to provide for 9 x resident spaces and 1 x visitor space and the resultant shortfall in visitor parking by one (1) space will be offset by the provision of two (2) additional on street car parking spaces.

Impacts of the Development – Section 4.15(1)(b)

It is my opinion based upon the findings of this report and the accompanying documentation that there will not be any unreasonable impacts resulting from the proposal.

It is my opinion that the proposed re-distribution of the carparking spaces so as to provide for 9 x resident spaces and 1 x visitor space and the resultant shortfall in visitor parking by one (1) space will be offset by the provision of two (2) additional on street car parking spaces.

Suitability of the Site – Section 4.15(1)(c)

It is my opinion that the suitability of the site for this form of development has previously been demonstrated through the granting of the original consent.

It is therefore considered that in the absence of any unreasonable impacts attributable to the proposal that the site is suitable for the modified development as proposed by this application.

Public Interest – Section 4.15(1)(e)

It is not considered that the proposed modifications will result in any adverse impacts upon adjoining properties or the locality. The proposal relates to the re-allocation of the 10 on-site parking spaces to provide for 9 x residential spaces and 1 x visitor spaces within the approved basement carpark.

It is my opinion that the proposed re-distribution of the carparking spaces so as to provide for 9 x resident spaces and 1 x visitor space and the resultant shortfall in visitor parking by one (1) space will be offset by the provision of two (2) additional on street car parking spaces.

Summary

In summary, it is my opinion that the modification proposed by this application will result in development substantially the same as that previously approved by the Court and will not result in any unreasonable impacts.

Accordingly, it is considered that the proposed modification of the approved development as detailed within this submission at 30 Fairlight Street, Fairlight is worthy of the support of the Council.

It is requested that should you have any queries regarding this matter that you do not hesitate to contact me to discuss.

Andrew Minto
DIRECTOR
MINTO PLANNING SERVICES PTY LTD
Graduate Diploma (Urban & Regional Planning), Associate Diploma (Health & Building Surveying). MPIA.