

20 October 2022

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

Dear Sir/Madam,

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

Development Application No:	DA2022/0566
Date of Determination:	25 August 2022
Premises:	20 Karloo Parade, Newport, 232 Barrenjoey Road, Newport, 232A Barrenjoey Road, Newport & 230 Barrenjoey Road, Newport
Proposed Development:	Subdivision of land including boundary adjustment and lot consolidation, and driveway works

On behalf of Furracabad Holdings 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 No DA2022/0566, as determined 25 August 2022.

The application will seek to modify the conditions of consent within the Notice of Determination and in particular, delete Condition 3, which read:

3. Restriction on Use of Land

A Restriction on Use of Land is to be created, burdening Lot 21, restricting future building within Lot 21 to the building area shown on Plan of Proposed Subdivision of Lots 1 & 2 in D.P.1167665 & Lot 10 in D.P.1188089 & Lot 4 in D.P.12994 Page 1 of 2 prepared by Adam Clerke Consulting dated 22 August 2022. Full details in this regard are to be submitted to Council on the final plan of Subdivision and an accompanying Section 88B instrument. The creation of the Restriction on Use of Land is achieved through registration of the Plan of Subdivision.

Reason: To ensure building on the approved lot is constructed safe of hazards.

It is understood that this condition was included with the intention to provide for a building envelope within proposed Lot 20 (noted in error as Lot 21) and should have referred to the details prepared by Adam Clerke Consulting dated to 2 August 2022 (noted in error as 22 August 2022).

...1/3

An examination of the existing S88B Instrument accompanying the Certificate of Title for Lots 1 & 2 in D.P.1167665 notes that a building envelope currently exists on the titles of both Lot 1 & Lot 2 within DP 1167665 and therefore, Condition 3 appears to be unnecessary.

Given that the s88B Instrument currently contains an appropriate restriction by way of a building envelope and which is detailed in the information provided by Adam Clerke Surveyors Pty Ltd which accompanies this application, we request that Condition 3 be deleted as it will provide a complication in arranging the new title information to address the revised lot layout approved under DA2022/0566.

Similarly, we ask that Council include a Condition of consent which would allow for the removal of the existing building envelope restriction within proposed Lot 21 (formerly Lot 1 within DP 1167665, as this lot currently contains an existing dwelling and by virtue of the C4 Environmental Living Zone, a separate dwelling would not be a permissible use within the land and therefore an additional building envelope restriction is unnecessary.

JUSTIFICATION

The Environmental Planning & Assessment Act 1979 provides for the modification of a consent under S4.55(1) 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.

Clause 4.55(1) is considered to be an appropriate method of proposing the deletion of Condition 3 and also including a notation that the existing building envelope within Lot 1 within DP 1167665 can be extinguished as it is no longer necessary given the consolidation of the allotments to form proposed Lot 21.

The modification to the Notice of Determination will result in a development which remains as approved, for the same purpose and with no significant modification to the physical appearance of the approved subdivision of the land and including boundary adjustment and lot consolidation.

The proposed modification is justified on the basis that:

- The proposed works are generally consistent with the application as approved and will not comprise the amenity of the subject or neighbouring properties.
- The proposal is “substantially” the same development, as defined by the Environmental Planning & Assessment Act 1979.

Council's support of the proposed deletion of Condition 3 from the Notice of Determination and the recognition within the determination of the approval to extinguish the existing building envelope restriction from the title of Lot 1 within DP 1167665 is sought in this instance.

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

Yours faithfully,

A handwritten signature in black ink, reading "Vaughan Milligan". The signature is written in a cursive style with a large, stylized 'V' and 'M'.

VAUGHAN MILLIGAN