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Northern Beaches Council  
725 Pittwater Road  
Dee Why, NSW, 2099

**Attention: Nicholas England**

**RE: SECTION 4.55(1) APPLICATION TO MODIFY DEVELOPMENT CONSENT DA2020/0433**

**4 CROSS STREET, BROOKVALE**

Dear Nicholas,

This Section 4.55(1) Modification Application is submitted to Northern Beaches Council (Council) on behalf of Motaland Pty Ltd (the Applicant) in support of modifications to development consent **DA2020/0433** granted on 17 September 2020 for:

*Construction of building for use as a storage premises*

Development consent DA2020/0433 and this application relates to the property located at 4 Cross Street, Brookvale (the Site).

This Section 4.55(1) Modification Application seeks to correct a minor error in **Condition 38** of development consent DA2020/0433. This condition relates to the timing to provide the Principle Certifying Authority the certificate of title demonstrating the creation of a positive covenant and restriction as to user (Condition 38).

This application is made pursuant to Section 4.55(1) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) as the modification sought relates specifically to a minor error in the development consent.

Section 4.55(1) of the EP&A Act provides that:

*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.*

From discussions with Council, it is understood that the conditions of consent in question represent a minor error and should be corrected. Accordingly, Section 4.55(1) of the EP&A Act is the appropriate mechanism to modify Condition 38 of DA2020/0433. It has also been advised by Council that a Section 4.55(1) application would be accepted for this modification.

The following modifications to these Conditions 38 are proposed as part of the application:

**38. Positive Covenant, Restriction as to User and Registration of Encumbrances for Stormwater Treatment Measures**

*A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the stormwater treatment measures in accordance with the standard requirements of Council, the manufacturer and as required by the Stormwater Treatment Measures Operation and Maintenance Plan.*

*A restriction as to user shall be created on the title over the stormwater treatment measures, restricting any alteration to the measures.*

*The terms of the positive covenant and restriction as to user are to be prepared to Council's standard requirements (available from Council) at the applicant's expense and endorsed by the Northern Beaches Council's delegate prior to lodgement with the Department of Lands. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.*

*A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user is to be submitted to the Principal Certifying Authority prior to the issue of ~~any interim / final~~ final/whole Occupation Certificate.*

*Reason: To identify encumbrances on land, ensure ongoing maintenance, and ensure modification to the stormwater treatment measures is not carried out without Council's approval.*

The proposed modification to DA2020/0433 would not result in any changes to ultimate development outcome as approved and would not affect the procedural or certification requirements of the development as approved.

In light of the above, the modification proposed to development consent DA2020/0433 is considered worthy of support by the Northern Beaches Council pursuant to Section 4.55(1) of the EP&A Act.

Should you require additional information, please do not hesitate to contact the undersigned.

Yours Faithfully,



Thomas Cook  
Director  
Willowtree Planning Pty Ltd  
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