

14 October 2019

The General Manager
Northern Beaches Council
PO Box 82,
Manly
NSW 1655

Dear Sir/Madam,

SECTION 4.55 (1A) MODIFICATION TO DEVELOPMENT CONSENT DA – 367/2010

46 Victoria Parade, Manly NSW (SP10040)

1. Introduction

In support of this Section 4.55 (1A) application please find enclosed:

1. Completed S4.55 Application Form;
2. Section 4.55(1A) assessment fee;
3. A copy of this letter-form Statement of Environmental Effects.

This application letter for a Section 4.55(1A) has been prepared by Mod Urban Pty Ltd on behalf of Manly Owners Group Pty Ltd, the owners for the site. It supports a S4.55 (1A) application to Northern Beaches Council to the approved DA 367/2010 as modified, specifically relating to multiple conditions of consent that are no longer relevant as a result of recently approved modifications to the original consent.

The proposed modification does not present any significant environmental impacts and will remain substantially the same as that approved under the modified application. There will be no change to the use of the site or no change to the external scale and bulk of the building or roof form on the subject site as a result of this proposal. The proposal will therefore largely reflect the original consent.

Development Consent under Section 4.55(1A) of the *Environmental Planning and Assessment Act, 1979* states:

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 consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and
 - (b) 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
 - (c) 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
 - (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
- Subsections (1), (2) and (5) do not apply to such a modification.

The proposed modification does not present any significant environmental impacts and will remain substantially the same as that approved under the modified application. The proposal is specifically relating to multiple conditions of consent that are no longer relevant as a result of recently approved modifications to the original consent.

Accordingly, it is considered that Section 4.55(1A) is the most appropriate mechanism for the proposed modifications to the consent.

2. Background

The original consent was issued by the NSW Land and Environment Court on 23 December 2011 for a residential flat building containing thirteen (13) apartments with basement parking for eighteen (18) cars. This consent established specific conditions relating to the maintenance of amenity through the rear setback of the building and roof design.

Subsequent modifications to the original consent have been made and approved by Council.

3. Proposed Modifications

This Section 4.55(1A) Application seeks to **delete** the following conditions to the approved development consent 367/2010 as modified, as they are no longer relevant as a result of subsequent modifications to the originally approved consent:

Condition No.	Condition	Explanation/Reason for Deletion
94	<p>The privacy screens separating terraces of Units 3 & 4 at Level 1, terraces of Units 5 & 6 at level 2, and terraces of Units 9 & 10 at Level 3 are to be a maximum 1.0 metre high for the first 1.0 metre from the front edge of the balconies. Plans are to be suitably amended/detailed prior to the issue of the Construction Certificate (CC).</p> <p><i>Reason</i></p> <p>To reduce impacts on the amenity of the adjoining residential properties and reduce the visual bulk and scale of the building.</p>	<p>The approved Level 1 apartment (1A) replaces previously approved units 3 and 4. Therefore as Unit 1A has its own balcony that is not shared with any other apartments, then the requirement for privacy screening is no longer required.</p> <p>The recently modified (Mod2019/0029) Level 2 and Level 3 apartments incorporate privacy screening where there are shared balcony arrangements.</p> <p>The condition is satisfied and should be deleted.</p>
96	<p>Access to the planter area adjacent to the lift lobby, stair and Bedroom 2 at Level 4 is to be for service and maintenance purposes only. The access doors must be locked at all other times. The keys are to be held by maintenance staff and the Owners' Corporation executive only.</p> <p><i>Reason</i></p> <p>To reduce impacts on the amenity of adjoining residential properties.</p>	<p>The Level 4 apartment in question in relation to the condition has changed and there is no longer a Bedroom 2 abutting the feature balcony on level 4.</p> <p>The balcony can now be accessed via the common lobby on level 4. As the balcony has common area access, it will be easily accessed and maintained by the building manager.</p> <p>The condition is no longer relevant and is satisfied and should be deleted.</p>
97	<p>The level at the top of the headlight cut-off wall adjoining the driveway shall be RL7.450. Plans being suitably notated prior to the issue of the CC.</p> <p><i>Reason</i></p> <p>To reduce impacts on the amenity of adjoining residential properties.</p>	<p>The RL of the structural wall is consistent with this approved condition, and was designed to accommodate this requirement. The condition currently provided for by the modified plans as approved, satisfied this condition.</p> <p>As the structure covers this part of the ramp, the condition needs to be deleted, and replaced with wording to the effect of 'The structural wall to a height of RL7.450 as shown on the approved plan 2424-A103 rev A shall be maintained to minimise impacts from headlight glare to the adjoining residential properties.</p> <p>There is sufficient detail on the stamped plans that demonstrate this condition is now achieved.</p>

Condition No.	Condition	Explanation/Reason for Deletion
		The original condition is no longer relevant and the purpose of the condition is achieved.
98	<p>The Level 3 obscure glass balcony divider shall be 1.8 metres above finished balcony floor level.</p> <p><i>Reason</i></p> <p>To reduce impacts on the amenity of adjoining residential properties.</p>	<p>The recently modified (Mod2019/0029) Level Level 3 apartments no longer have a shared balcony arrangement so the need to incorporate privacy screening where there are shared balcony arrangements is redundant.</p> <p>The condition should be deleted as it is no longer required and redundant given the recent modifications approved for the development.</p>
99	<p>The northern balcony obscure glass divider on Level 3 if supported by framing shall be no more than 75mm in overall plan width.</p> <p><i>Reason</i></p> <p>To reduce impacts on the amenity of adjoining residential properties.</p>	<p>The recently modified consent (Mod2019/0029) Level 3 apartments no longer have a shared balcony arrangement so the need to incorporate privacy screening where there are shared balcony arrangements is redundant.</p> <p>The condition should be deleted as it is no longer required and redundant given the recent modifications approved for the development.</p>
100	<p>The obscure glass screens to the west end of the rear balconies shall each be 1.6 metres high above each finished balcony floor level.</p> <p><i>Reason</i></p> <p>To reduce impacts on the amenity of adjoining residential properties.</p>	<p>The recently modified consent (Mod2019/0029) has approved glass balustrades to 1m to the rear balconies.</p> <p>The current approved modification provides for an improved outcome.</p> <p>The condition is no longer relevant and should be deleted.</p>
103	<p>The proposed privacy screen separating the terraces of Units 9 & 10 at Level 3 is to terminate at the same point as the Level 4 terrace/planter above.</p> <p><i>Reason</i></p> <p>To reduce impacts on the amenity of adjoining residential properties.</p>	<p>The recently modified (Mod2019/0029) Level Level 3 apartments no longer have a shared balcony arrangement so the need to incorporate privacy screening where there are shared balcony arrangements is redundant.</p> <p>The condition should be deleted as it is now redundant given the recent modifications approved for the development.</p>
119	<p>The solid balustrade on western elevation of Level 4 at RL17.265 which is related to the lobby area of Units 12 & 13 is to be replaced with a clear glass balustrade so as to remove the proposed planter.</p> <p><i>Reason</i></p> <p>To protect the amenity of neighbours.</p>	<p>The balustrade on western elevation of Level 4 is now a glass balustrade as recently modified (Mod2019/0029).</p>

4. Legislative Framework

Environmental Planning & Assessment Act 1979

Section 4.55(1A) of the *Environmental Planning & Assessment Act 1979* makes provision to modify a Development Application that has been made pursuant to Part 4 of the *Environmental Planning & Assessment Act 1979*.

The proposal as submitted to Northern Beaches Council is considered to satisfy the provisions of Section 4.55(1A) of the Act in that the changes proposed will result in minimal environmental impact and will result in the development being substantially the same as that for which consent was originally granted.

The key provisions of Section 4.55(1A) of the Act have been considered below:

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 consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) 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*
- (c) 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*
- (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*

Subsections (1), (2) and (5) do not apply to such a modification.

The proposed modification does not present any significant environmental impacts and will remain substantially the same as that approved under the modified application. The proposal is specifically relating to multiple conditions of consent that are no longer relevant as a result of recently approved modifications to the original consent.

Accordingly, it is considered that Section 4.55(1A) is the most appropriate mechanism for the proposed modifications to the consent.

Section 4.15 Assessment

In accordance with Section 4.56 of the Environmental Planning and Assessment Act 1979, in determining a modification application made under Section 96 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 relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 Matters for Consideration	Comment
(a) <i>the provisions of:</i> (i) <i>any environmental planning instrument, and</i>	See relevant sections of this report.
(ii) <i>any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and</i>	Nil
(iii) <i>any development control plan, and</i>	The proposal generally satisfies the objectives and controls of the Manly DCP.
(iiia) <i>any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and</i>	Not applicable
(iv) <i>the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and</i>	The relevant clauses of the Regulations have been satisfied.
(b) <i>the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,</i>	The environmental impacts of the proposed development on the natural and built environment have been addressed in this report. The proposal will not result in detrimental social or economic impacts on the locality.
(c) <i>the suitability of the site for the development,</i>	The proposed development is suitable for the site.
(d) <i>any submissions made in accordance with this Act or the regulations,</i>	No submissions have been raised at this stage.
(e) <i>the public interest.</i>	The proposal is in the public interest as allows for a new educational establishment, and will not impact upon the built form

Section 4.15 Matters for Consideration	Comment
	of the proposal and will not result in detrimental amenity impacts to neighbours.

Manly Local Environmental Plan 2013 (MLEP 2013)

The proposal does not alter the use of the site as a residential flat building and the proposal remains permissible under development consent 367/2010 and subsequent modifications for use as a residential flat building, and complies with the relevant provisions of the MLEP 2013.

The proposed modification is for administrative purposes to remove conditions of consent that no longer apply, and does not result in any modifications to the built form as approved.

Manly Development Control Plan 2013 (MDCP 2013)

The proposed modifications to the development through deletion of the above-mentioned conditions of consent do not require any further assessment of the proposal against the relevant requirements of MDCP 2013.

5. Key Matters for Consideration

The key matters for consideration as they relate to the modified proposal are addressed below.

Land Use

No change of use is proposed. The proposal use is consistent with DA 367/2010 as modified as modified.

Design and Layout

The proposed modification does not alter the design or appearance of the premises.

Amenity Impacts.

In summary the deletion of the conditions of consent that are no longer relevant as a result of subsequent design modifications will not exhibit any significant environmental impacts and will not adversely impact on the amenity of any adjoining sites.

The proposal will preserve neighbouring amenity including with respect to privacy, overlook and views.

Other Matters for Consideration

All other matters for consideration have been previously assessed as part of DA 367/2010 as modified and remain unaffected by the proposed modifications.

Likely Impacts of Development

The likely impacts of development in accordance with the requirements of Section 4.15 have been considered above. No environmental, social and economic impacts are likely as a result of the modification, and it is not expected any impacts will occur to the built environment.

Suitability of Site for Development

The site is considered suitable for the development, as established in the approval of DA 367/2010.

Conclusion

The subject S4.55 (1A) modification application seeks consent for modifications to the approved consent in relation to the deletion of conditions of consent that are no longer relevant to the proposal as a result of modifications previously approved and will not result in any unacceptable environmental impacts on the subject site or surrounding environment.

The proposal has been assessed against the matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979* including relevant provisions of *Manly Local Environmental Plan 2013*.

Accordingly, it is requested that Manly Council support the application which only seeks minor administrative changes to the consent.

Should you require further information, please contact the undersigned.

Yours Sincerely,

A handwritten signature in blue ink, appearing to read 'M O'Donnell', with a stylized flourish at the end.

Matthew O'Donnell

Director

Mod Urban Pty Ltd