

31 January 2020

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; and
4. A copy of a Traffic Assessment Statement.

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 the provision of new fire rated complete cover over the driveway roof to meet Ausgrid's statutory requirements within proximity of the adjacent Ausgrid substation.

The application follows a meeting with Council officers on 14 January 2020 to discuss the proposed modifications and their potential impact. The proposed modification is proposed namely for the following:

- The provision of new fire rated cover over the remainder of the car park ramp to meet with Ausgrid's statutory requirements complying with NS113 Clause 9.6.8 Ventilation Segregation.

NS113 is Ausgrid's Network standard for Site Selection and Construction Design Requirements for Chamber Substations (Network Standard); and

- Relocation of the car park vehicular entry door from the bottom section of the ramp to the top section immediately fronting Dungowan Lane (access arrangements including remote control access for entering vehicles is outlined in the traffic report by Inroads).

The proposed modification is of minimal environmental impact having regard to the minimal visual and amenity impacts the proposed modification will result in. There will be no change to the use of the site as a result of this proposal. The proposed modification will not result in any changes to the proposed use of the land, the number of residential apartments, the pedestrian entry and egress locations, the height and the overall appearance of the development. If development consent for the proposal as modified is granted, the development will remain 'substantially the same development' as the development for which consent was originally granted.

The proposed modification has been assessed having regard to the jurisdictional prerequisites to the granting of consent for modification applications involving minimal environment impact pursuant to section 4.55(1) of the *Environmental Planning and Assessment Act 1979*. Based on this assessment, 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 as follows:

- On 21 August 2014 Modification 1 was approved, permitting modifications to the Original Consent. In summary the modifications approved under Modification 1 included:
  - Change to roof design and profile and modification to floor levels.
- On 15 July 2019, Modification 2 was approved, permitting further modifications to the Original Consent as modified by Modification 1. In summary the modifications approved under Modification 2 included:
  - The reduction of the rear setback of the building with some additional facade and roof changes.
  - Modify balcony sizes and apartment configurations reducing the total numbers of units from 13 to 11.

Amongst other things, Modification 2 sought to amend the Consent to enable the enclosure of the car park ramp which abuts an existing substation behind 46 Victoria Parade. However, following subsequent discussions with Northern Beaches Council and neighbours of the subject site, the proposal for the full covering over the car park ramp was withdrawn due to concerns raised with respect to the potential impacts the covering was perceived to have on the neighbours visual amenity.

### 3. Proposed Modifications

This Section 4.55(1A) Application seeks the following modifications to the originally approved consent:

- The provision of new fire rated complete cover over the driveway roof to meet Ausgrid's statutory requirements within proximity of the adjacent Ausgrid substation.
- Fire rated boundary wall to Ausgrid blast loading requirement.
- Relocation of car park vehicle entry door.

The proposed modifications are identified on the plans at **Appendix A. No other modification other than those listed above to the approved proposal are proposed as a result of this application.**

### 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 relevant provisions of Section 4.55(1A) of the Act have been considered below:

*(1A) 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 is of minimal environmental impact and will remain substantially the same as the development for which the consent was originally granted and before that original consent was modified. The proposed modification will not result in any changes to the proposed use of the land, the number of residential apartments, the entry and egress locations, the height and the overall appearance of the development. The proposal will therefore largely reflect the original consent, as the proposal as

modified is to remain 'substantially the same development' as the development for which consent was originally granted.

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 4.55(3) of the *Environmental Planning and Assessment Act 1979*, in determining a modification application made under Section 4.55 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(1) of the *Environmental Planning and Assessment Act 1979* are addressed as follows:

<b>Section 4.15(1) Matters for Consideration</b>	<b>Comment</b>
<p>(a) <i>the provisions of:</i></p> <p>(i) <i>any environmental planning instrument, and</i></p>	<p>The relevant provisions of Manly Local Environmental Plan 2013 (MLEP 2013) have been considered.</p> <p>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.</p> <p>The proposed modification will not result in any changes to the following key development standards specified under MLEP 2014:</p> <ul style="list-style-type: none"> <li>▪ the land use approved under the original consent;</li> <li>▪ the height of the development;</li> <li>▪ the floor space ratio of the development.</li> </ul> <p>The proposed modification is consistent with the aims set out under clause 1.2 of the MLEP 2013.</p> <p>The SEPP (Infrastructure) 2007 also applies to the proposed modification and is addressed in this report further below.</p>
<p>(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></p>	<p>Nil.</p>
<p>(iii) <i>any development control plan, and</i></p>	<p>The proposal generally satisfies the objectives and controls of the Manly Development Control Plan 2013 (MDCP 2013).</p> <p>The proposal complies with Section 3.4 of the MDCP 2013 and does not obstruct views of adjoining neighbours. The new roof structure is flat and will not create any additional overshadowing. The new roof structure will assist in minimizing noise impacts and</p>

Section 4.15(1) Matters for Consideration	Comment
	<p>glare from headlights from vehicle movements. The proposed modification will protect the general amenity of neighbours who live in adjoining and nearby properties.</p> <p>The proposal is consistent with the residential development controls set out under part 4.1 of the MDCP 2013, including objective 3 which seeks to ensure that <i>“building form, including alterations and additions, does not degrade the amenity of surrounding residences, the existing environmental quality of the environment or the aesthetic quality of the former Manly Council area”</i>.</p> <p>As noted elsewhere in this report, the proposal will not degrade the amenity of surrounding residences, the environmental quality of the site and its surrounds, nor the aesthetic quality of the wider local area.</p> <p>In relation to Section 4.1.4 of the MDCP 2013 that considers setbacks of buildings, the proposal does not alter the building setbacks as approved, and simply encloses through the provision of a roof the existing car park ramp.</p> <p>The proposal is also consistent with the objectives of the MDCP 2013 to be met with respect to Parking, Vehicular Access and Loading set out under Part 4.1.6 of MDCP 2013. In particular the proposal seeks to ensure objective 3 may be satisfied, which aims to <i>“ensure that the location and design of driveways, parking spaces and other <b>vehicular access areas</b> are efficient, <b>safe</b>, convenient and are <b>integrated into the design of the development to minimise their visual impact in the streetscape</b>”</i>.</p> <p>Noting that the proposal is in accordance with Ausgrid's requirements for development of the type and in the location proposed and that the proposed roof is to be integrated into the design of the development, the proposed modification is consistent with the objectives of MDCP 2013.</p>
(iii)a) 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	Not applicable.
(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and	The relevant clauses of the Regulations have been satisfied.
(b) the likely impacts of that development, including environmental impacts on both	The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.

<b>Section 4.15(1) Matters for Consideration</b>	<b>Comment</b>
<i>the natural and built environments, and social and economic impacts in the locality,</i>	The proposal will not result in detrimental social or economic impacts on the locality.
<i>(c) the suitability of the site for the development,</i>	The proposed development is suitable for the site.
<i>(d) any submissions made in accordance with this Act or the regulations,</i>	No submissions have been raised at this stage.
<i>(e) the public interest.</i>	The proposal is in the public interest as allows for compliance with the requirements of Ausgrid, and will not impact upon the built form of the proposal and will not result in detrimental impacts to the amenity of neighbours.

## **5. SEPP (Infrastructure) 2007 (the SEPP)**

Clause 45 of the SEPP applies to the proposal and provides as follows:

### **45 Determination of development applications—other development**

*(1) This clause applies to a development application (or an application for modification of a consent) for development comprising or involving any of the following:*

*(a) the penetration of ground within 2m of an underground electricity power line or an electricity distribution pole or within 10m of any part of an electricity tower,*

*(b) development carried out:*

*(i) within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists), or*

*(ii) immediately adjacent to an electricity substation, or*

*(iii) within 5m of an exposed overhead electricity power line,*

*(c) installation of a swimming pool any part of which is:*

*(i) within 30m of a structure supporting an overhead electricity transmission line, measured horizontally from the top of the pool to the bottom of the structure at ground level, or*

*(ii) within 5m of an overhead electricity power line, measured vertically upwards from the top of the pool,*

*(d) development involving or requiring the placement of power lines underground, unless an agreement with respect to the placement underground of power lines is in force between the electricity supply authority and the council for the land concerned.*

*(2) Before determining a development application (or an application for modification of a consent) for development to which this clause applies, the consent authority must:*

*(a) give written notice to the electricity supply authority for the area in which the development is to be carried out, inviting comments about potential safety risks, and*

*(b) take into consideration any response to the notice that is received within 21 days after the notice is given*

**Comment:** Clause 45 of the SEPP applies by virtue of the development site's proximity to an existing electricity substation which it is located immediately adjacent to.

Ausgrid are the relevant electricity supply authority that Council is required to refer the modification application to for comments in accordance with clause 45(2) of the Infrastructure SEPP.

Ausgrid has been contacted with respect to the proposed modification and are supportive of the proposed modification due to this being consistent with Ausgrid's requirements and standards.

## **6. Key Matters for Consideration**

The key matters for consideration as they relate to the proposed modification are addressed below.

### **Land Use**

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

### **Design and Layout**

The proposed modification does not significantly alter the design or appearance of the premises. The proposal will not add any additional scale or bulk to the building, and seeks simply to give provision of a roof over a car park area to ensure compliance with Ausgrid's statutory requirements, given the proximity of the adjoining substation.

The roof will be finished with decorative pebbles to ensure a good outlook to the rooftop area is provided for surrounding residents. The roof will not be trafficable and will only be accessed for maintenance purposes on an as need basis.

### **Amenity Impacts.**

In summary the proposed modification does not obstruct views of adjoining occupiers. The new roof structure is flat and will not create any additional overshadowing. The new roof structure will contribute to minimizing noise and glare from vehicle movements. The proposed modification will protect the general amenity of adjoining and nearby properties.

The roof structure will only be accessible for maintenance purposes, and no outdoor parties or use of the roof for outdoor amenity is permitted.

### **Traffic Impacts**

A Traffic Statement has been prepared by InRoads Group to review the implications of the proposed minor modifications to the design from a traffic perspective. The Traffic Statement concludes the following:

*The proposed amendments are considered to be acceptable from a traffic engineering perspective, on the following grounds:*

- *The proposed cover / roller shutter will maintain minimum 2200mm height clearance at the access to the development and along the ramp to the basement, which meets the minimum height clearance required under the provisions of AS2890.1;*
- *Vehicle manoeuvring to/from the ramp has been assessed for a B99 passenger vehicle (i.e. a large car), and the tracking diagrams included as Attachment 3 demonstrate satisfactory manoeuvring between Dungowan Lane and the ramp to the basement, allowing for the structure and mechanisms required to accommodate the roller shutter and ramp cover; and*
- *Remote control access to the basement car park is proposed so residents can open the roller shutter in advance of the access onto Dungowan Lane, which will minimise any impact upon through traffic on the laneway.*

*All other key traffic elements of the approved development scheme, including the on-site car parking provision, traffic signal system to manage entering / exiting traffic, the ramp design and grading profile, car park layout and design, mechanical parking installation, and the traffic impact of the proposed development (i.e. the forecast site traffic generation) will remain unchanged under the amended proposal.*



## **Other Matters for Consideration**

The proposed minor modifications provide a number of positive outcomes for residents of the site and the neighbouring premises including:

- The modifications provides for a greater sense of security from Dungowan Lane for residents parking their vehicles;
- Security & cleanliness - the development is close to bars, restaurants and high foot traffic. Open driveways will enable people to enter the subject site without permission, attract litter and other debris. The closed driveway will improve this situation;
- There will be an impost on the owners of 46 Victoria Parade for the cost and inconvenience of monitoring and cleaning up after intruders have entered;
- Noise & Lights - covering the driveway greatly reduces car light and noise pollution and thus benefits all residents eg headlights will shine straight into the neighbours flats on entering and exiting the carpark without the proposed roof cover; and
- Visually improves the condition of Dungowan Lane as it "cleans up" an otherwise visually unappealing opening that only further derogates the condition of Dungowan Lane for Manly residents.

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 car park access ramp as a result of Ausgrid's design requirements 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 changes to the existing development 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**