

16 December 2021  
Our Ref 18-082

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

**Attention:** Planning Assessment Officer

**S4.55(1A) Modification – DA2021/1013**

**Address:** 176 – 180 Condamine Street, Balgowlah

**Proposal:** Alterations and additions to existing retail premises

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Dear Council Planning Officer,

This Statement of Environmental Effects (SEE) has been prepared by Knight Frank Town Planning Sydney on behalf of the land owners of 176-180 Condamine St, Balgowlah, pursuant to Section S4.55(1A) of the Environmental Planning and Assessment Act 1979 (EP&A Act) to make minor modifications to the approved Development Application (D2021/1013).

Development consent was granted on 16 November 2021 for alterations and additions to an existing Harvey Norman store. As part of the proposed works the existing car park is to be reconfigured to allow for the expansion of the lobby and otherwise improve the functionality of the car park.

Conditions of consent have been imposed by Council which require that 'disabled parking spaces' are provided in accordance with AS2890.6:2009. Whereas the design as submitted to Council detailed a shared space, servicing 2 x accessible parking spaces, which is slightly narrower in width than required by the Australian Standard.

In this instance consent is sought for a shared space which is compliant with the performance requirements of the Building Code of Australia (BCA), by way of a performance solution, being the principle legislative document for compliance rather than direct compliance with the Australian Standard referenced. The application is accompanied by a supporting statement prepared by Maccess Consulting Group Pty Ltd (**Attachment A**) which confirms support for the proposed design.

This application identifies the consent, describes the proposed modification and provides an assessment against relevant matters contained in Section 4.55(1A) of the EP&A Act.

The site is bounded by Condamine Street to the west and Roseberry Street to the east with access points from both frontages. The site is made up of multiple parcels of land, with a legal description as follows:

**Lot and DP**

Lot 22 DP 516006

Lot 101 DP 564655

Lot 7 Sec E DP 975160

Lot 8 Sec E DP 975160

Lot 21 Sec E DP 975160

Lot 25 Sec E DP 975160

Lot 26 Sec E DP 975160

Lot 23 DP 518721

**1. Consent Proposed to be Modified**

Development Consent DA/2021/1013 was granted by Northern Beaches Council on 16 November 2021. Approval was granted for: *Alterations and additions to existing retail premises*

## 2. Description of Proposed Modification

Approval is sought for the car parking and access arrangement as detailed in the architectural drawings prepared by Giles Tribe Architects as submitted to Council.

The approved works seek to replace 2 existing accessible parking spaces, which may have been designed to an earlier standard, with 4 new spaces that have been designed to comply with the current Australian Standard AS/NZS2890.6-2009.

The architectural drawings detail that a shared space is not strictly compliant with the numerical requirements of AS2890.6:2009. Rather, a performance solution is sought as allowed by the Building Code of Australia (BCA) to meet the performance requirements. In support of the modification application is a statement prepared by Maccess Consulting Group Pty Ltd (**Attachment A**) which confirms support of the alternative design:

*In this particular case the proposed DAPS are to be incorporated in an existing building and design is limited by the existing structural column setout and existing building conditions. The column setout does not permit a standard DAPS set out of 2400mm wide parking space and a 2400mm wide shared space between each pair as required by AS/NZS2890.6-2009. As a result Maccess has reviewed the proposed alternative design and supports it directly meeting the BCA performance requirement DP8 as documented in the appended performance solution report.*

The accessible parking spaces in question are constrained by the location of existing structural columns and would actually provide 1 accessible parking space required by the BCA for a building of this nature.

## 3. Modification of Conditions

The proposed modification requires the following amendments to condition 12 and 13 of the Consent, no other changes are required to the consent.

### 13. Disabled Parking Spaces

*Where accessible parking spaces are provided, they must be designed to comply with the performance requirements of the Building Code of Australia. Details are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.*

*Reason: To ensure accessible spaces are fit for purpose in accordance with BCA requirements*

### 14. Shared Zone Bollard

*A bollard is to be provided at the shared zone between the accessible parking spaces in accordance with the performance requirements of the Building Code of Australia. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.*

*Reason: To ensure accessible spaces are fit for purpose in accordance with BCA requirements*

## 4. Substantially the Same Development

Section 4.55(1A) of the EP&A Act states that a consent authority may modify a development consent if “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 that “it is satisfied that the proposed modification is of minimal environmental impact”.

The development, as proposed to be modified is of minimal environmental impact and substantially the same development as that originally approved as:

- the proposal maintains alterations and additions to the existing specialised retail premises;
- the proposal maintains the access and car parking arrangement as submitted to Council;
- will result in safe and functional accessible parking spaces; and
- the proposed modifications do not result in any adverse environmental impacts in relation to waste, noise or any other matter.

## 5. Planning Assessment

Section 4.55(1A) of the EP&A Act states that a consent authority may modify a development consent if it is considered to be “substantially the same development as the development”. Under Section 4.55(3) the consent Authority must also take into consideration the relevant matters to the application referred to in Section 4.15 of the EP&A Act. This is considered below and in a checklist at **Section 6** of the SEE.

The following assessment considers the relevant matters under Section 4.15 and demonstrates that the development, as proposed to be modified, will be of “minimal environmental impact”.

### 5.1 Manly Local Environmental Plan 2013

As noted above, the proposal seeks to satisfy the performance requirements of the BCA through the use of a performance solution. The 2 x accessible parking spaces in question are constrained by the design of the existing car park, specifically the location of structural columns which is unreasonable and unnecessary to modify.

### 5.2 Manly Development Control Plan 2011

Other than the retention of the accessible parking spaces and layout as per the submitted plans, the proposed modification makes no change to the approved development and remains consistent with the provisions of the DCP that were assessed and endorsed as being acceptable in the original DA.

### 5.3 Environmental and Amenity Impacts

The proposed modification will have no material or perceivable environmental, operational or amenity impacts. The accessible parking spaces as proposed are functional and fit for purpose. That the performance requirements of the BCA are met through the application of a performance solution as detailed within the supporting letter prepared by Maccess Consulting Group Pty Ltd (**Attachment A**).

To require full compliance with the Australian Standard is unreasonable and unnecessary in this circumstance given the constraints of the existing design being the location of structural columns; and that the quantity of accessible parking spaces to be provided is in excess of the requirements of the BCA.

## 6. Section 4.15 Assessment Summary

Section 4.15 – Matters for Consideration – General (EPA&A Act)		
Cl.	Clause	Response
4.15 (1)	In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:	
(a)(i)	The provision of: Any environmental planning instrument, and	Consideration and assessment of the relevant EPI's have been addressed in <b>Section 5.1</b> of this SEE.
(a)(ii)	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	N/A
(a)(iii)	Any development control plan, and	The modification does not result in any changes to the approved development by way of land use or operational details. As set out in <b>Section 5.2</b> , the proposed modifications do no impact the approved development's consistency with the DCP
(a)(iiia)	Any planning agreement that has been entered into under Section 93F, or any draft planning agreement that a developer has offered to enter into under Section 93F, and	N/A
(a)(iv)	The regulations (to the extent that they prescribe matters for the purposes of this paragraph), and	There are no prescribed matters in the Environmental Planning and Assessment Regulation 2000 that apply to this modification.
(b)	The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality	As set out in <b>Section 5.3</b> , the proposed modification will not give rise to any additional impacts, include those set out in this subclause. That the accessible parking spaces are functional and fit for purpose as designed. That the proposal meets the performance requirements of the BCA as per the performance solution outlined in <b>Attachment A</b> .
(c)	The suitability of the site for the development,	The proposal does not seek approval for any amendments to the approved land use or operational details. Compliance with the Building Code of Australia will be achieved which expressly allows for performance solutions where compliance with the deemed to satisfy provisions cannot be achieved.
(d)	Any submissions made in accordance with this Act or the regulations,	Given the extent of the proposal, and in line with Council's Notification policy, the modification does not require public notification/exhibition.

(e)	The public interest.	The proposed modification to the approval remains in the public interest
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## 7. Conclusion

This SEE has been prepared in support of a modification pursuant to Section 4.55(1A) of the EP&A Act. The statement describes the proposal, its lack of impacts, and includes an assessment against the relevant heads of consideration and other relevant clauses as set out in the EP&A Act.

The proposed modifications to the development consent are substantially the same development as that which was originally approved and will have no differing environmental or amenity impacts that those considered as part of the approved development application.

The modification will ensure that compliance with the Building Code of Australia (BCA) is achieved through the use of a performance solution. Accessible parking spaces are proposed in excess of the numerical requirements of the BCA and will improve the equitability of access to the premises for persons with a disability.

In accordance with section 4.55(1A) of the EP&A Act, Council may modify the consent as:

- the proposed modification is of minimal environmental impact; and
- substantially the same development as development for which the consent was granted.

We trust that this information is sufficient to enable a prompt assessment of the proposed modification request.

Yours sincerely,



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