

4 March 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 amended plans.

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 extension to the glass balustrade at Level 3.

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.

Currently two other modifications are currently being assessed by Northern Beaches Council.

## 3. Proposed Modifications

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

- The demolition of part of the existing raised planter at Level 3 north western corner, and replacement with a glazed balustrade to match the remainder of the balcony.

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>
<i>(a) the provisions of:</i>  <i>(i) any environmental planning instrument, and</i>	The relevant provisions of Manly Local Environmental Plan 2013 (MLEP 2013) have been considered.  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.

Section 4.15(1) Matters for Consideration	Comment
	<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>
<i>(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</i>	Nil.
<i>(iii) any development control plan, and</i>	<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 balustrade glazing will not create any additional overshadowing.. 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 changes the treatment of the balcony edges at level 3 only.</p>
<i>(iiia) any planning agreement that has been entered into under section 7.4, or any draft planning</i>	Not applicable.

<b>Section 4.15(1) Matters for Consideration</b>	<b>Comment</b>
<i>agreement that a developer has offered to enter into under section 7.4, and</i>	
<i>(iv) 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.
<i>(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,</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.
<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 it will not impact upon the built form of the proposal and will not result in detrimental impacts to the amenity of neighbours.

## 5. 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 an extension to the glazing on the balcony at Level 3 in the north western corner of the building. The new glazing as opposed to the concrete planter will minimise the buildings overall bulk and massing.

The proposed modification to include reduction of the approved planter box will allow access from the northern balcony around to the western balcony, in order to tend all the planter boxes and maintain that balcony. These planter boxes were put there to improve the amenity of the neighbours.

### **Amenity Impacts.**

The development as currently approved results in there now being a complete lack of privacy between Level 3 balcony and all the north eastern balconies of 44 Victoria Parade, and as approved there is a complete lack of access to the western balcony for maintenance purposes. The modification will allow access from the northern balcony around to the western balcony.

The modifications will result in the western rail of the balcony being closer to the neighbours, however the change allows for more privacy the occupiers of level 3 can locate a pot plant to assist in screening. The proposal improves the outlook for the apartment at Level 3 and will allow additional light into the apartment.

In summary the proposed modification does not obstruct views of adjoining occupiers. The new balcony glazing and removal of part of the planter box will not create any additional overshadowing as demonstrated in the shadow diagrams provided with this modification.

The proposed modification will protect the general amenity of adjoining and nearby properties.

### **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 Level 3 balcony 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 Northern Beaches 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,



**Matthew O'Donnell**

**Director**

**Mod Urban Pty Ltd**