

5 July 2019
17410

Ray Brownlee
Chief Executive Officer
Northern Beaches Council
1 Belgrave Street,
Manly, NSW 2095

Dear Mr Brownlee,

SECTION 4.55(1A) MODIFICATION APPLICATION – AMENDMENT OF ACCESS REPORT 9-15 LAWRENCE STREET, FRESHWATER

This application has been prepared by Ethos Urban on behalf of IPM Pty Ltd, pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to modify Development Consent DA2017/1294 relating to 9-15 Lawrence Street, Freshwater (the site).

The modification seeks to rectify the incorrect assertions in the DA Access Report approved under DA2017/1294 that state that adaptable units are required. The approved architectural plans do not comprise adaptable units and the Warringah Development Control Plan (WDCP) has no requirement for compliance with AS4299 and provision of adaptable units. Hence, the preparation of this modification application to correct the error in the Access Report and render it consistent with all the other documentation approved under DA2017/1294.

This application identifies the consent, describes the proposed modifications and provides an assessment of the relevant matters contained in section 4.55(1A) of the EP&A Act and should be read in conjunction with the amended Access Report prepared by Wall to Wall Design and Consulting (**Attachment A**).

1.0 Consent proposed to be modified

Development consent DA2017/1294 was granted by Northern Beaches Council on 26 June 2018 for:

'Demolition works and the construction of a shop top housing development'.

This is the first modification to the consent.

2.0 Proposed modifications to the consent

2.1 Modifications to the development

The proposed modification to the development consent comprises an amended Access Report, which corrects the error in the approved Access Report by acknowledging that adaptable units are not a requirement of the WDCP and making administrative changes to Condition 2 of DA2017/1294 to reflect this correction.

The proposed modification does not involve any physical works or changes, it solely comprises the correction of the error in the approved Access Report.

2.2 Modifications to conditions

The proposed modifications described above necessitate amendments to the consent conditions which are identified below. Words proposed to be deleted are shown in ~~bold strike through~~ and words to be inserted are shown in ***bold italics***.

2. Approved Plans and Supporting Documentation

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Approved Plans

Architectural Plans – Endorsed with Council’s stamp		
Drawing No.	Dated	Prepared By
10524_DA-001 Issue B	18 December 2017	Nettleton Tribe Partnership Pty Ltd
10524_DA-002 Issue B	18 December 2017	Nettleton Tribe Partnership Pty Ltd
10524_DA-101 Issue C	26 April 2018	Nettleton Tribe Partnership Pty Ltd
10524_DA-102 Issue B	18 December 2017	Nettleton Tribe Partnership Pty Ltd
10524_DA-103 Issue B	18 December 2017	Nettleton Tribe Partnership Pty Ltd
10524_DA-104 Issue B	18 December 2017	Nettleton Tribe Partnership Pty Ltd
10524_DA-201 Issue B	18 December 2017	Nettleton Tribe Partnership Pty Ltd
10524_DA-202 Issue C	26 April 2017	Nettleton Tribe Partnership Pty Ltd
10524_DA-203 Issue B	18 December 2017	Nettleton Tribe Partnership Pty Ltd
10524_DA-301 Issue B	18 December 2017	Nettleton Tribe Partnership Pty Ltd
2416 LP-01 Issue B	5 December 2017	John Lock & Associates Landscape Architecture
2416 LP-02 Issue B	5 December 2017	John Lock & Associates Landscape Architecture
2416 LP-03 Issue B	5 December 2017	John Lock & Associates Landscape Architecture

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Arboricultural Impact Assessment and Tree Management Plan (ref:2911)	3 November 2017 (amended)	Redgum Horticultural
BCA Assessment Report – Rev. 01 (170401)	5 December 2017	Concise Certification
BASIX Certificate No. 881423M	11 December 2017	Eco Certificates Pty Ltd
DA Access Report	8 May 2019 18 December 2017	Wall to Wall Design and Consulting Pty Ltd
Electromagnetic Field Survey	27 November 2017	EMR Surveys Pty Ltd
Stage 1 Preliminary Environmental Site Assessment (Ref:E30969Krpt)	16 November 2017	EIS (Environmental Investigation Services)
Geotechnical Investigation (Ref:22337SYrpt5)	9 November 2017	JK Geotechnics
NatHERS Certificate No. 0002271760	11 December 2017	Eco Certificates Pty Ltd
Assessment of Traffic, Transport and Parking Implications – Rev E (REf: 17067)	December 2017	Transport and Traffic Planning Associates

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

c) The development is to be undertaken generally in accordance with the following:

Waste Management Plan		
Report Title	Dated	Prepared By
Operational Waste Management Plan Revision C	5 December 2017	Elephants Foot Recycling Solutions

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

3.0 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)*”.

The development, as proposed to be modified, is substantially the same development as that originally approved in that it:

- Solely corrects errors in the wording of the Access Report to reflect the approved architectural plans and approved development;
- Does not involve any physical changes to the development, nor to the function or design of the approved development; and
- Will result in minimal environmental impact.

4.0 Environmental assessment

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 proposed modification is of minimal environmental impact*”. 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(1) of the EP&A Act and the reasons given by the consent authority for the grant of the original consent.

The following assessment considers the relevant matters under section 4.15(1) and demonstrates that the development, as proposed to be modified, will be of minimal environmental impact.

4.1 Warringah Local Environmental Plan 2011

The proposed modification is merely administrative in nature, correcting an error in the approved Access Report and will continue to provide the same land use. Therefore, the approved shop-top housing development will continue to be permissible with consent in the B2 Local Centre zone and be consistent with the B2 zone objectives.

4.2 Access

The approved architectural plans do not comprise adaptable units and the WDCP has no requirement for compliance with AS4299 and provision of adaptable units. Furthermore, the Apartment Design Guide (ADG) does not comprise any ‘design criteria’ asserting a requirement to include adaptable or universal design features. Therefore, there are no statutory requirements to do so in the ADG, as only the ‘design criteria’ of the ADG are statutory requirements.

Whilst the ADG does not comprise ‘design criteria’ pertaining to adaptable units, it comprises an objective stating ‘universal design features are included in apartment design to promote flexible housing for all community members’. It also contains a further non-statutory ‘design guidance’ principle asserting ‘developments are to achieve a benchmark of 20% of the total apartments incorporating the Liveable Housing Guideline’s silver level universal design features’. Whilst this is not a statutory requirement, as set out in Council’s assessment report for DA2017/1294, the proposed development is consistent with this ‘design guidance’ principle as ‘more than 20% of the total apartments proposed incorporate silver level universal design features identified in the Liveable Housing Guideline’.

Furthermore, Objective 4Q-2 of the ADG contains a ‘design guidance’ principle asserting that ‘Adaptable housing should be provided in accordance with the relevant council policy’. However, Council does not comprise a policy requiring the provision of adaptable units, therefore negating any need for the provision of adaptable units.

4.3 Reasons given for granting consent

Section 4.55(3) requires that the consent authority takes into consideration the original reasons given for granting the consent that is sought to be modified. Council gave the following reasons for the decision:

- The development is a permissible use and the development is consistent with the B2 Local Centre zone objectives;
- The development fully complies with the requirements of the relevant planning instruments.
- The development is suitably defined as a shop-top housing development;
- The development is compatible with the height and scale of other surrounding developments and will not cause unacceptable visual impact; and
- The quality of the architecture will improve the streetscape.

5.0 Conclusion

The proposed modification seeks to amend the Access Report that accompanied DA2017/1294 as it had incorrect wording. Specifically, it seeks to amend sections of the Access Report that incorrectly state adaptable units are required.

The provision of an amended Access Report, which accompanies this Application, will correct the errors in the approved Access Report, and thereby render it consistent with the architectural plans and all the other approved documentation that accompanied DA2017/1294.

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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