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19 August 2021

Northern Beaches Council
PO Box 1336
Dee Why NSW 2099

Property: Capricorn 37-38 East Esplanade, Manly
Re: REV 2021/0029 – Return of S8.3 Review Application

This letter supports the resubmission of a Section 8.3 Review of Determination relating to the proposed alterations and additions to the existing mixed-use building under DA2020/0951 refused on 9 December 2020.

The proposal has been amended for submission as part of a Section 8.3 Review of Determination Application. The amended plans propose the use of existing roof area as a rooftop deck, with metal balustrading. This letter addresses the matters raised by Council in the return of the Section 8.3 application letter dated 30 July 2021, and reasons for refusal of the original development application DA2020/0951.

This letter is supported by the following documentation:

- *Amended Statement of Environmental Effects dated 19 August 2021 prepared by Chapman Planning Pty Ltd;*
- *Amended Clause 4.6 Variation – Height of Buildings dated 22 July 2021 prepared by Chapman Planning Pty Ltd;*
- *Architectural Plans dated 27 June 2021 prepared by Cadenza Architecture.*

Amended Proposal

This Section 8.3 Review of Determination application is accompanied by amended plans. The amended proposal is for alterations and additions to the existing mixed use building involving the addition of new stairs at Levels 7 & 8 of the building accessing a new rooftop deck with an area of 41m² above an existing rooftop terrace area.

The proposed works are summarised as follows:

- Level 8: New rooftop deck and metal balustrading accessed via existing fire stair, and new storage area adjacent to existing lift shaft.

The maximum height of the proposed rooftop deck and metal balustrade has a height of 1.2m above existing rooftop terrace – Level 7, noting the existing building has a maximum height of 25.18m. The proposal – new building elements have a maximum height of 22.82m. Accordingly a Clause 4.6 variation to the Height of Buildings development standard accompanies this application.

Return of Application Letter

The following addresses the issues raised by Council in its return of application letter dated 30 July 2021:

1. Statement of Review of Determinations

The submitted Statement of Review does not adequately address Section 8.3 of the EP&A Act 1979, in that it does not demonstrate that the revised development is substantially the same development as that originally considered.

The relevant provisions of Section 8.3 of the EPA Act 1979 are addressed as follows:

8.3 Application for and conduct of review	Comment
<i>(1) An applicant for development consent may request a consent authority to review a determination or decision made by the consent authority. The consent authority is to review the determination or decision if duly requested to do so under this Division.</i>	The application is for the review of Council's Determination relating to the proposed alterations and additions to the existing mixed-use building under DA2020/0951 refused on 9 December 2020.
<i>(2) A determination or decision cannot be reviewed under this Division— (a) after the period within which any appeal may be made to the Court has expired if no appeal was made, or (b) after the Court has disposed of an appeal against the determination or decision.</i>	N/A – The application is not subject to a Court appeal.
<i>(3) In requesting a review, the applicant may amend the proposed development the subject of the original application for development consent or for modification of development consent. The consent authority may review the matter having regard to the amended development, but only if it is</i>	The proposal has been amended to delete the previously proposed communal room. The amended plans seek approval for a rooftop deck above an existing rooftop terrace area. The proposal is substantially the same development relating to the provision of a

<i>satisfied that it is substantially the same development.</i>	rooftop deck area above the existing mixed use building on the site. The amended proposal seeks the deletion of the previously proposed communal room, with the rooftop deck now to be located above an existing terrace area. As such, the proposal is substantially the same development as the refused application being for a rooftop deck above the existing mixed-use building. The amended proposal does not seek a different use of the rooftop area as that previously proposed, but rather has reduced the overall height of the rooftop deck through the deletion of the communal room.
<i>(5) The review of a determination or decision made by a local planning panel is also to be conducted by the panel.</i>	N/A
<i>(6) The review of a determination or decision made by a council is to be conducted by the council and not by a delegate of the council.</i>	The review is to be conducted by Council.

2. Master Set of Architectural Plans

The set of architectural plans does not include a site plan or all of the elevations of the development and of the building, as was provided with the original development application.

An amended set of architectural plans is submitted to Council including a site plan and elevations of the building.

3. BASIX Certificate

The BASIX Certificate submitted with the Review Application is expired, as it is more than 3 months old. Please revise the BASIX Certificate or indicate that a BASIX Certificate is no longer required for the revised development.

A BASIX Certificate is not required to be submitted to Council noting no change is proposed to habitable components of the existing mixed use development. The amended proposal being for the use of an existing area as a roof deck will not alter the energy performance of the development and does not include any additional floor area.

Reasons for Refusal – DA2020/0951

The reasons for refusal detailed in Council's determination of Development Application DA2020/0951 have been addressed by the amended plans, with the previously proposed

communal room deleted from the proposal. The application now seeks approval for a rooftop deck component and metal balustrade. An assessment of the application against the reasons for refusal is addressed below:

Reasons for Refusal:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.3 Height of Buildings of the Manly Local Environmental Plan 2013.

2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.6 Exceptions to Development Standards of the Manly Local Environmental Plan 2013.

The application has been amended with the previously proposed communal room deleted. The variation to height proposed by the amended plans is a result of metal balustrading being 1.2m above the existing building's height. The application is accompanied by an amended Clause 4.6 variation justification statement which addresses the relevant provisions of Clause 4.6 of the Manly LEP 2013.

3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.4.1 Sunlight Access and Overshadowing of the Manly Development Control Plan .

The amended proposal will not result in any significant overshadowing noting the additional building elements – balustrading upon an existing privacy screen is unlikely to reduce solar access of surrounding residential apartments.

4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.4.2 Privacy and Security of the Manly Development Control Plan .

The proposed rooftop deck above an existing roof terrace will not contravene the provisions of Clause 3.4.2 of the Manly DCP. The amended proposal – rooftop deck will have an outlook upon the roofs of adjoining buildings and will not have direct sightlines into adjoining residential dwellings.

The proposed roof terrace is considered acceptable for the subject site having regard to the surrounding development context, which contains a number of rooftop terraces within the vicinity of the site. As the proposal does not seek any additional residential dwellings it is considered the proposal would not intensify the use of the communal areas and will instead improve communal amenity for the existing dwellings within the building.

Conclusion

In conclusion it is considered that the amended plans have addressed the reasons for refusal of DA 2020/0951, and the submitted review of determination application pursuant to Section 8.3 of the EP&A Act 1979 can be approved. The proposed rooftop deck will not result in any significant amenity impacts upon adjoining properties and the variation to height is minor being the result of balustrading ancillary to the use of this area as a rooftop deck.

If you require clarification of the issues addressed in this letter please contact Tim Cooper on 9560 1718 or tim@chapmanplanning.com.au.

Regards,

A handwritten signature in black ink, appearing to read 'T Cooper', is positioned above the printed name.

Tim Cooper
[Chapman Planning Pty Ltd](#)
Member Planning Institute of Australia