

STATEMENT OF ENVIRONMENTAL EFFECTS

FOR SECTION 4.55 (1A) MODIFICATION APPLICATION

DA REFERENCE: DA2021/0412
DATED 10/11/2021

17 MARETIMO STREET, BALGOWLAH, NSW 2093

Proposed	MODIFICATION TO APPROVED – PROPOSED NEW DWELLING – MINOR AMENDMENTS
Submitted to	NORTHERN BEACHES COUNCIL
On behalf of	PAGLIARO

Prepared on **JULY 2025**

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1. INTRODUCTION

This modification application is made under Section 4.55 of the Environmental Planning and Assessment Act 1979 (EP&A Act) to Northern Beaches Council on behalf of Pagliaro in support of amendments to Development Consent DA 2021/0412, which relates to minor amendments to the approved new dwelling at 17 Maretimo Street, Balgowlah NSW 2093.

Development Consent approval was granted by Northern Beaches Council on 10 November 2021 for the proposed development.

This statement has been prepared in support of a Section 4.55 (1A) Application submitted to Northern Beaches Council which seeks to modify the development consent DA 2021/0412, which granted consent for; “Demolition works and Construction of a dwelling house on proposed Lot 1”

It is considered that the proposed modifications result in substantially the same development and do not result in adverse environmental impacts materially over and above that which were originally approved by the consent authority on 10 November 2021.

The purpose of this report is to:

- Describe the proposed changes to the development;
- Discuss the reasons for the changes;
- Analysis of council planning controls; and
- Whether changes to the conditions are required.

Accompanying Material:

Architectural Drawing:	Ursino Architects
BASIX Certificate	BASIX Certificate Centre
Stormwater	VD & D Engineers

2. DESCRIPTION OF THE PROPOSED CHANGES

Overall, the proposed design modification seeks to maintain as much of the approved dwelling as possible, with the majority of the changes being for the roof, gutters, and services. Comparing to the approved DA 2021/0412, the changes involved to suit conditions of consent, as well as modifications to the levels and roof based on advice from builders.

Proposed changes are listed below:

Conditions of consent:

1. Proposed pergola deleted as per condition 9
2. Operable bifold screens amended to sliding as per condition 9

Modifications:

1. Ground floor ceiling raised from RL 89.40 to RL 89.55
2. First floor slab raised from RL 89.70 to RL 90.00
3. First floor ceiling raised from RL 92.40 to RL 92.90
4. Ridge raised from RL 93.59 to RL 93.84
5. Face brick changed to render finish
6. Roof amended, sloped amended to change box gutter design to external gutters, solar panels added
7. Level outside Entry lowered 150mm to comply with NCC requirements
8. Front fence raised for privacy from street
9. Minor internal amendments – Linen to Laundry chute, Laundry and bathroom flipped in plan
10. First floor overhead windows deleted
11. Privacy screen on ground floor terrace moved to external edge for maintenance of planter box
12. Terrace Level raised, front edge of planter box amended
13. FSR and landscape calculations amended
14. Window schedule amended

3. REASONS FOR THE CHANGES

The reasons for the minor changes are essentially due to feedback from builders based on the approved plans. The amendments to the roof, gutters and changes to floor, ceiling and ridge levels come from advice from builders regarding service allocations and overall review of maintenance requirements and a buildability point of view. With that, there also some changes to the façade and material palette that also stem from the overall review.

4. ENVIRONMENTAL PLANNING ASSESSMENT

This section involves comparing the two proposals against council controls and guidelines.

Below is a breakdown of the subject site and then a breakdown of the controls.

Address:	17 Maretimo Street, Balgowlah NSW 2092
Lot/DP:	Lot 6, DP 18433
Site Area:	356.8 sqm
Zone:	R1: General Residential
Max Height:	8.5 metres
FSR:	0.5:1
Heritage:	N/A
Acid Sulfate Soils:	Class 5
Bushfire Prone Land:	N/A
Landslide Risk Land:	N/A

COMPARISON OF CONTROLS

Manly Local Environmental Plan 2013

Height:

While the building height has been raised compared to the DA due to the amendments to the levels and the roof drainage, the proposed modifications still ensure that the building will sit below the 8.5m development standard as indicated on the elevations and section drawings. The sectional drawings (DA401 & DA402) demonstrate compliance with the 8.5m height limit.

Floor Space Ratio:

The proposed FSR is calculated at 0.5:1 which represents a gross floor area of 178.4m² and is compliant with the development standard. As the proposal complies with the numerical standard it is also deemed to comply with the associated objectives.

Manly Development Control Plan 2013

<u>Control</u>	<u>Requirement</u>	<u>Proposed</u>	<u>Compliance</u>
Sunlight Access and Overshadowing 3.4.1	<p>New development (including alterations and additions) must not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties from 9am to 3pm at the winter solstice (21 June) ; or</p> <p>Where there is no winter sunlight available to open space of adjacent properties from 9am to 3pm, the calculations for the purposes of sunlight will relate to the equinox in March and September from 9am to 3pm.</p>	<p>Shadow diagrams between 9am and 3pm have been prepared.</p> <p>Additional overshadowing will occur to the rear private open space areas of 2 and 4 Ethel Street.</p> <p>In principle we have taken into consideration the impacts discussed at the Development Application to neighbouring buildings and have been careful in proposing amendments that reflect this.</p> <p>While some additional impact is proposed, we feel it is negligible and needs to be appreciated in the context of several large trees that already cause overshadowing impacts.</p> <p>The amendments to the proposal have been addressed to provide adequate amenity to the subject dwelling while being mindful of impacts to neighbours.</p> <p>It is considered that the development's affect to the rear private open space of these adjoining properties and is acceptable based on the previous approval.</p> <p>In terms of additional impact below is a table indicating the additional shadow cast to the area of POS on No. 2 Ethel St.</p> <p>9AM – NO CHANGE 10AM – Additional 1% 11AM – Additional 0.9% 12PM – Additional 1.2% 1PM – Additional 1.6% 2PM – Additional 1% 3PM – Additional 2.9%</p> <p>As is evident in the list above, the additional impact is minimal and ranges from no change to a maximum of 2.9%. Despite the quantitative difference, there would be no qualitative impacts to the use of the POS.</p>	<p>Yes</p> <p>Acceptable on merit</p>

Open Space and Landscaping	55% Open Space	The required total open space, as per the DCP requirements, is calculated at 196.2m ² with a minimum landscaped area of 68.67m ² .	No
	35% Soft Landscaping		Acceptable on merit
	horizontal dimension of at least 3m in any direction;	The proposed total open space area is calculated at 28.3% (101.3m ²) and has a landscape area of 24% (47m ²). These calculations are based on the DCP requirements for determining total open space and landscape area.	No
	and		Acceptable on merit
	a minimum unbroken area of 12sqm.	If all open space and landscape areas, although not strictly compliant with the definition, are included it results in a total open space area of 53.8% (192.2m ²) and a landscape area of 40% of TOS (78.3m ²).	
	A variation to the minimum specifications in i) and ii) above may only be considered for Above Ground Open Space where it can be demonstrated that lesser dimensions or areas will better serve to minimise amenity impacts on neighbours. A lesser areas of above ground open space may be included or calculated under the minimum requirements in the circumstances of the case. In all other cases open space that does not comply with the minimum specification is not included or calculated under the minimum requirements for total open space.		
		While the proposal does not strictly comply with the numerical requirements, it was considered acceptable in the previous DA Application and therefore we are proposing it is considered in this S4.55. The reductions are minor and don't significantly impact the developments potential to provide meaningful landscaped areas.	

5. STATUTORY PLANNING FRAMEWORK

5.1 Environmental Planning and Assessment Act 1979

The EP&A Act is the principal planning and development legislation in New South Wales. The modifications sought to Development Consent DA2021/0412 warrants consideration of the provisions of Section 4.55 (1A) of the EP&A Act. The provisions of Section 4.55(1A) of the EP&A Act have been considered and addressed in Table 1.

Table – Section 4.55(1a) Assessment	
Clause	Response
<i>(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—</i>	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	The proposed modification will result in the same ultimate development outcome to that previously approved. As outlined in this statement all the modifications proposed are minor, generally occur within the approved footprint, are external façade elements or internal plan changes and cause minimal to no impact to neighbouring development.
(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	The proposed modification will result in the same ultimate development outcome to that previously approved. This statement demonstrates that the development as modified would result in substantially the same development as the development for which consent was granted under DA2021/0412.
(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	It is anticipated that the subject modification application will be appropriately notified to surrounding properties.
(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.	It is acknowledged that Council must consider any submissions received, concerning the proposed modifications. The applicant is willing to address any submissions should they be received by Council during the notification period.
(3) In determining an application for modification of a consent under this section, 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 consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.	The proposed modifications are consistent with the matters referred to in Section 4.15(1) of the EP&A Act. Refer to Section 5.1.2 of this statement.

5.1.1 Section 4.55(1A) – Substantially the same

The NSW Land and Environment Court has established several precedents as to what may be considered as being substantially the same development, and what should be factored into the consideration of this threshold test.

The scope of a maximum modification of a consent without constituting assessment as a standalone application can be analysed through the ambit of *Michael Standley & Associates Pty Ltd v North Sydney Council* [2005] NSWLEC 358, whereupon Commissioner Mason P. found in relation to modification of development consents that the word “modify” was given the ordinary meaning of “to alter without radical transformation”. Therefore, the extent to which a consent may be modified is that to which the consent, as modified, is as approved without radical transformation or alteration.

The development, as modified, is substantially the same development and will not result in a radical transformation of DA DA2021/0412 for the following reasons:

- The modification remains the approved primary land use as a single dwelling house and proposes no substantial change to this fundamental element of the approval. The proposed modification remains as a new dwelling with the same proposal and scope, so there is no change in the main description of the application
- There are no substantial quantitative changes proposed to the approved building bulk or scale. It is noted that the development will remain of a scale and volume not unreasonably alerted by way of the modifications. Furthermore, the proposed modifications are not anticipated to result in any adverse visual or amenity impacts across the subject site and or surrounding properties outside of what is deemed appropriate for the development taking into account the zoning, prescribed standards and general controls.
- The function, form, operations and importantly, public perception of the subject site, as a ‘construction of dwelling house, remains largely unchanged, with the reconfigurations retaining the original intent of the development as approved.

In light of the above, the proposal as amended, is not considered to result in a “radical transformation” of the consent, as currently approved, satisfying the radical transformation test pursuant to *Michael Standley & Associates Pty Ltd v North Sydney Council* [2005] NSWLEC 358.

Whilst the proposal seeks to modify the design of the approved development, the modifications are not considered to be material or essential elements of the approved development which would constitute a radical change to the ultimate development outcome of the subject site. This is further analysed in *Moto Projects (No 2) Pty Ltd v North Sydney Council* [1999] NSWLEC 280 which applies a quantitate and qualitative test to determine what qualifies a development as being “substantially the same”.

Moto Projects (No 2) Pty Ltd v North Sydney Council [1999] NSWLEC 280 provides that a comparison of the development as approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is “essentially or materially” the same as the approved development. The comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted). Whilst it is acknowledged that the proposal does include some quantitative changes to the approved development, these are not considered to be substantial or comprise a critical element of the development. Further, from a qualitative perspective, the development retains its identity as a ‘proposed new dwelling’ development.

Therefore, the proposal, as amended, will be substantially the same development as approved, and satisfies the requirements for the application to be assessed and approved pursuant to Section 4.55(1a) of the EP&A Act.

5.1.2 Section 4.15 – Reasons given by the consent authority for the grant of the consent

Section 4.15(1) of the EP&A Act specifies the matters which a consent authority must consider when determining a development application. The relevant matters for consideration under Section 4.15(1) of the EP&A Act are provided in Table 2 below.

Table 2 Section 4.15(1)(A) Considerations	
Section	Response
Section 4.15(1) (a)(i) any environmental planning instrument, and	The proposal as amended is deemed to be wholly consistent with the provisions of the relevant planning instruments.
Section 4.15(1) (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 Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and	There are no applicable draft instruments for consideration.
Section 4.15(1) (a)(iii) any development control plan	There are no issues in relation to development control plans.
Section 4.15 (1)(a)(iiia) and 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	There are no applicable planning agreements relevant for consideration.
Section 4.15 (1)(a)(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),	There are no matters prescribed by the regulation that are relevant to the proposal.
Section 4.15 (1)(b)-(c) (e)	Refer to Section 4 of this Statement.

6. ANALYSIS OF CONSENT

This section involves outlining any conditions of the original consent that require attention.

- Nil

7. CONCLUSION

The proposed modifications are largely consistent with the approved scheme in with minor amendments to the height, roof pitch and drainage. The proposal itself generally meets council's controls and has minimal environmental impacts. For these reasons, the proposal is considered acceptable.

The proposal is permissible with consent under Council's LEP and complies with the relevant standards and objectives of the LEP, and DCP. Where any non-compliance has occurred, reasons have been given for any slight departure from the standard.

The design and external appearance of the proposal are considered to be complementary to the development's character. The proposal has been designed as far as practicable to minimise privacy and solar access impacts. The proposed development will have no significant impact on the topography, micro-climate, air or water quality of the locality.

The proposed development is consistent with the zone objectives for the site and locality. The site is suitable for the proposed form of residential development and will generally have minimal environmental, social or economic impacts on the immediate area.

Accordingly, the proposal is considered to be in the public interest and worthy of Council's support.