

25 August 2025

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

Dear Sir,

**APPLICATION TO MODIFY DEVELOPMENT CONSENT,
SECTION 4.55 (2) ENVIRONMENTAL PLANNING & ASSESSMENT ACT**

Development Application No: DA2025/0055
Date of Determination: 20 May 2025
Premises: Lot 4 within DP 27133, No 4 Taminga Street, Bayview
Proposed Development: Alterations and additions to a dwelling house

On behalf of Watershed Architects, this submission has been prepared to assist Council in the consideration of an application pursuant to Section 4.55(2) of the Environmental Planning & Assessment Act 1979 to alter the development as approved by development consent DA2025/0055, determined 20 May 2025

BACKGROUND

An application for consent for “Alterations and additions to the dwelling house” was approved by Council by Notice of Determination of DA2025/0055, dated 20 May 2025.

The works that were the subject of Council’s consent have not commenced.

PROPOSED MODIFICATION

This submission under S4.55(2) of the EP& A Act seeks minor modifications to the form of the approved alterations and additions to the existing building, together with the removal of Condition 17 from the Notice of Determination. This issue is discussed further within this submission.

The proposed design amendments encompass the following changes to the approved design and are modest changes which will not have any introduce any significant change to the approved external form of the building.

The proposed modifications are detailed within the revised architectural plans prepared by Watershed Architects, Job No 4007, Drawings DA00 – DA21, with the amended sheets noted as Issue E.

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The proposed design amendments are noted within the following Sheets and individually comprise:

DA00 - MATERIAL SCHEDULE - CP TIMBER CLADDING PANEL AMENDED TO DARK STAIN

DA02 - EXISTING FL TO LOWER PORTION OF LEVEL 2 AMENDED TO SUIT SITE SURVEY FL 61,560

DA04 / DA07 - OPERABLE LOUVRE ROOF REMOVED - REPLACED WITH METAL ROOFING

DA06 / SECTIONS / ELEVATIONS - LOWER PORTION OF LEVEL 2 FLOOR LEVEL AMENDED TO FFL 61,630

DA06 - LEVEL 2 BALCONY FINISH CHANGED TO TIMBER DECKING

DA06 / ELEVATIONS - W2.07 RELOCATED

DA07 - LEVEL 3 BALCONY FINISH CHANGED TO TIMBER DECKING

DA07 / SECTION AA - LEVEL 3 BALCONY DECKING LEVEL AMENDED TO FL 65,180 TO ACHIEVE REQUIRED NCC THRESHOLD STEP DOWN & WATERPROOFING.

As noted above, minor corrections are included to the reference to the existing floor levels to correctly refer to the identified site survey levels.

Collectively, the proposed changes do not see any increase in the overall height of the building nor any change to the general bulk and scale as viewed by neighbouring properties. The extent of the built footprint remains consistent with the approval and there is no loss of landscaped area as a result of the proposed changes.

The proposed modifications also seek to delete Condition 17 within the Notice of Determination which required the preparation of a Construction Traffic Management Plan, which it is understood was included as it was considered there was potential for conflict during the construction works for other property seeking to utilise the existing driveway access to the site.

In this instance, the driveway entry to the subject site from the street serves only Numbers 4 Taminga Street (subject site) and 4A Taminga Street.

As indicated in Figures 1, 2 & 3 over, the other surrounding properties enjoy independent, single driveway access to the street.

The proponent/property owner will be leasing the adjacent property at 4A Taminga Street (aka 55 Kananook Avenue) for the duration of the construction works and a copy of the Lease Agreement is provided with the modification submission.

On the basis that there will be no external parties affected by the proposed construction works in terms of driveway access to the subject and adjacent neighbouring site, the requirements within Condition 17 appear to be unnecessary and this application seeks to delete Condition 17.

The works which are the subject of this Modification Application have not commenced.



Fig 1: View of the existing driveway access to the subject site, No 4 Taminga Street and serving only one other property, No 4A Taminga Street (aka 55 Kananook Avenue), looking west



Fig 2: View of the existing driveway access to the subject site (RHS of view), No 4 Taminga Street and serving only one other property, No 4A Taminga Street (aka 55 Kananook Avenue), together with the independent driveway access to No 5 Taminga Street (LHS of view)



Fig 3: View of the existing driveway accesses to the subject site (centre of view), No 4 Taminga Street and serving only one other property, No 4A Taminga Street (aka 55 Kananook Avenue), together with the independent driveway access to No 5 Taminga Street (LHS of view) and independent driveway access to No 3 Taminga Street (RHS of view)

JUSTIFICATION

The EP&A Act provides for the modification of a consent under Section 4.55(2) which notes:

(2) Other modifications

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 development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*
- b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- (c) it has notified the application in accordance with:*
 - (i) the regulations, if the regulations so require, or*
 - (ii) 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 the period prescribed by the regulations or provided by the development control plan, as the case may be.*

Subsections (1) and (1A) do not apply to such a modification.

Accordingly, for the Council to approve the S4.55 Modification Application, the Council must be satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted.

Substantially the same

To assist in the consideration of whether a development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted, Justice Bignold established the following test in the *Moto Projects (No 2) Pty Ltd v North Sydney Council (1999) 106 LGERA 289 (Moto)* where His Honours states:

[54] The relevant satisfaction required by s96(2)(a) to be found to exist in order that the modification power be available involves an ultimate finding of fact based upon the primary facts found. I must be satisfied that the modified development is substantially the same as the originally approved development.

[55] The requisite factual finding obviously requires a comparison between the development, as currently 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 (currently) approved development.

[56] The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, 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).

In my opinion, in terms of both a qualitative and quantitative comparison, the modified development remains substantially the same as that which was originally approved by DA2025/0055.

The works continue to provide for the construction of alterations and additions to an existing dwelling house with no substantial change to the impact arising from the development compared to that already approved. The proposed modifications retain the general form, height, footprint and siting of the approved development.

When viewed from the public domain or from neighbouring properties, the development will largely present the same visual impact and appearance to that originally approved.

In my view, this application is substantially the same as the original application when considered in the context of the Bignold J determination in *Moto*.

Section 4.55(3) of the EP&A Act requires the consideration of such matters referred to in Section 4.15(1) of the EP&A Act. The matters are considered below.

The provisions of any environmental planning instrument

The provisions of PLEP 2014, SEPP (Resilience and Hazards) and SEPP (BASIX) have been considered with respect to the modifications proposed.

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 draft instruments applying to the land.

Any development control plan

The development has been designed to comply with the outcomes of P21 DCP. The proposed modifications do not result in any new or intensified areas of non-compliance with the provisions of this policy.

Any 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

No matters of relevance are raised in regard to the proposed development.

The regulations (to the extent that they prescribe matters for the purposes of this paragraph),

No matters of relevance are raised in regard to the proposed development.

The likely impacts of that development, including environmental impacts on both the natural and built environments, and the social and economic impacts in the locality.

The proposed modifications will not result in any unreasonable impacts upon the natural or built environment, or the amenity of adjoining properties, beyond that which is reasonably anticipated under the provisions of PLEP 2014 and P21 DCP.

It is considered that the resultant development is compatible with and will complement the residential character of the area.

The suitability of the site for the development

The subject land is currently C4 Environmental Living under the provisions of PLEP 2014 and is considered suitable for the proposed development.

The subject site does not pose any significant constraint to the proposed development, noting that all hazards/affectations are appropriately managed.

Any submissions made in accordance with this Act or the regulations

This is a matter for Council in the consideration of this proposal.

The public interest

The proposal will not unreasonably impact upon the environment, the character of the locality or upon the amenity of adjoining properties and is therefore considered not to be contrary to the public interest.

Conclusion

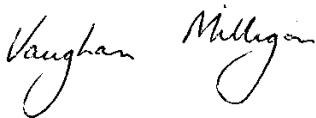
The test established in Moto requires both a quantitative and a qualitative assessment.

In terms of the quantitative extent of the changes to the originally approved development, the works which are the subject of the application are minor and do not inherently alter the nature and form of the alterations and additions to the dwelling as originally approved by Council.

The proposal also satisfies the qualitative assessment required by the Moto test. The modifications will result in a development which remains generally the same as that approved, for the same purpose and with no significant or adverse changes to the physical appearance of the approved development.

Consistent with the Court decision in Moto, Council can be satisfied that the development as modified will remain essentially or materially the same as the approved development, consistent with the provisions of section 4.55(2) of the EP&A Act.

Council's support of the proposed modifications is sought in this instance. Please contact me on 9999 4922 or 0412 448 088 should you wish to discuss these proposed amendments.

A handwritten signature in black ink, reading 'Vaughan Milligan'. The signature is written in a cursive, flowing style.

VAUGHAN MILLIGAN

Town Planner

Grad. Dip. Urban and Regional Planning (UNE)