



6 May 2025

218981

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

Attn: Adam Croft (Senior Planner)

DA/2022/2152
Statement of Environmental Effects
Section 4.55(1A) Modification Application

This application has been prepared by Ethos Urban on behalf of 57 The Avenue Pty Ltd (the Applicant), pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to modify Development Consent D/2022/2152 relating to properties located at 55-57 The avenue, and 122, 122A, 124 and 126 Crescent Road, Newport (the site).

This modification application seeks approval for minor modifications to condition wording, pertaining primarily to the staging and timing of information required to be provided to Council (Condition 95 and 119). An amendment is also proposed to remove Condition 120, relating to the timing of the requirements of activities to be undertaken. A minor modification to the physical configuration of the internal driveway passing bay is also proposed in this application.

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. Revised Architectural Plans are provided at **Attachment A**, that are sought to replace the existing approved plans.

1.0 Consent proposed to be modified

Development Consent D/2022/2152

Development Consent DA/2022/2152 was granted on 6 December 2022 by the Northern Beaches Local Planning Panel for *Demolition works and subdivision of land into 8 lots including tree removal and infrastructure work*

More specifically, the approved development involves the consolidation of six (6) lots and the subdivision into eight (8) torrens title residential lots. The approved development also includes consent for the following associated physical works:

- Demolition of all existing residential and commercial structures within the site;
- Construction of an internal access driveway;
- Road widening/upgrade works within The Avenue to facilitate adequate vehicular access;
- Provision of sewer, stormwater, gas and communications services;
- Undergrounding of existing power lines over the site; and
- Tree removal

This modification application represents the eleventh modification to Development Consent D/2020/1071.

2.0 Background to Proposed Modification

2.1 Consideration of Existing Commercial Marina

As part of the Assessment Report to the DA, Council's Strategic Planning team considered that the retention of the commercial marina land use that was subject to Additional Permitted Use provisions on the site, should not preclude the proposed residential subdivision and change of use and conversion of the water-based marina facilities to residential use. Similarly, Council did not foresee any fundamental concern regarding the future redevelopment of the marina for residential purposes.

However, given the nature of the existing consent for commercial marina, and demolition of the land-based marina facilities (as part of the subject development application), Council sought to impose a specific condition on the consent requiring approval for residential use of the marina, and carrying out of the associated physical works, prior to the release of the Subdivision Certificate.

Ensuring coordination between the land and water components of the development is important for the site, and the subsequent water side development for water recreation structures associated with the residential development has been progressed. However, for the reasons set out in the modification application, the timing of the satisfaction of the condition is sought to be amended, whilst still achieving the same outcome.

3.0 Proposed Modification to the Consent

3.1 Condition 1 – Approved Plans (Internal Driveway/Passing Bay)

As part of this modification application a minor amendment is proposed to the design and extent of the passing bay at the centre of the site. This change is sought following design development and to create a revised design to allow more functional vehicle to manoeuvring in this location for vehicle and smaller utility vehicles.

The extent of the proposed amendment is shown in the diagram below and drafting of a conditions to replace the existing approved plans is provided in **Section 4**.

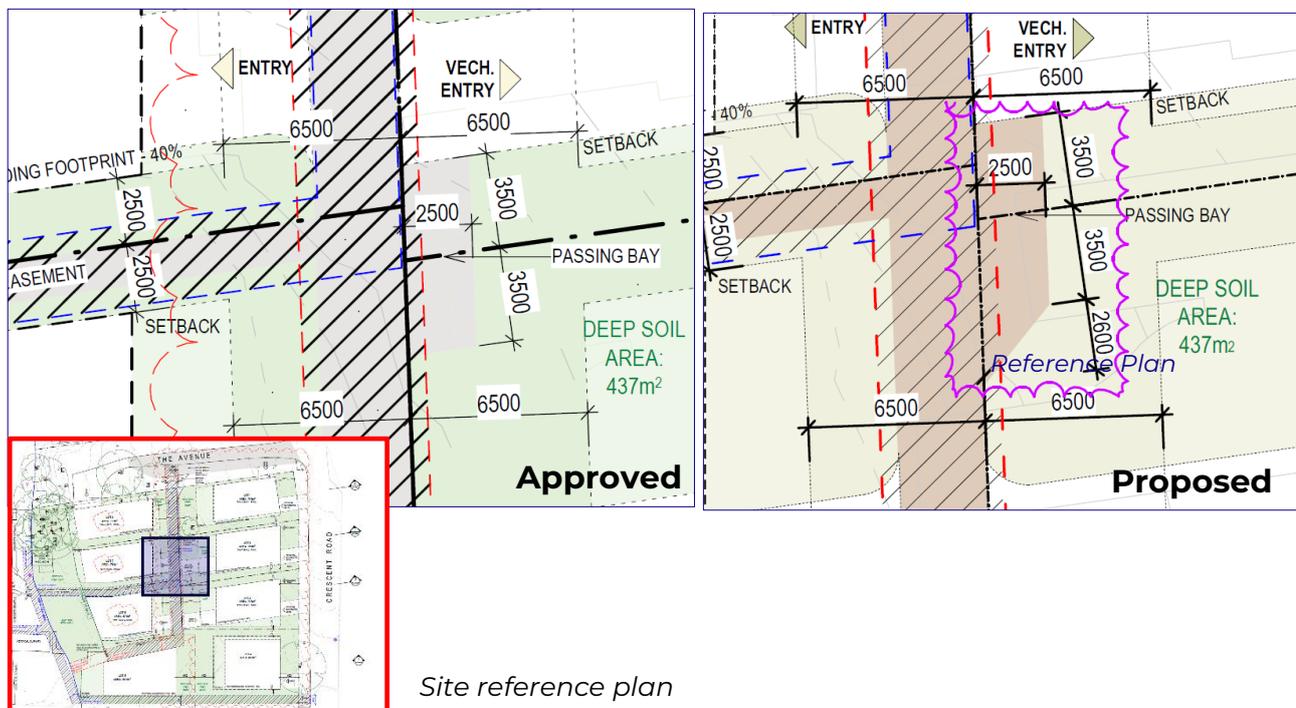


Figure 1 Architectural Envelope Plan – Proposed Passing Bay Amendments

Source: Scott Carver + Ethos Urban

3.2 Condition 95 - Positive Covenant for Council and Contractor Indemnity

Condition 95 of the consent requires a positive covenant pertaining to Council and contractor amenity, regarding ongoing access to and servicing of waste facilities. The way the condition is currently worded, the requisite positive covenant is required to be registered and placed on the current title, prior to release of the subdivision certificate.

The wording of this condition (along with Condition 119) is sought to be amended to allow the requisite restrictions to be included *at the same time* as the final subdivision plan and associated 88B instrument, not *prior to*, as currently worded. Council has control over these items through the involvement in the subdivision certificate review and sign off process, to ensure they are created concurrent with the revised subdivision.

In the current configuration, this condition requires additional dealings/plans, along with requisite 88B Instrument to be registered *prior to* the subdivision plan, incurring additional unnecessary cost and process.

In this scenario, the relevant covenants and restrictions would also be placed over the existing lot layout, which would be superseded by the final subdivision layout in the subdivision certificate). The intention of this condition (and Condition 119) is to create the positive covenant and the and Restrictions on the final lots.

3.3 Condition 119 – Restriction of Building Footprints

Condition 119 of the consent requires that a restriction is to be placed on the title of each lot limiting the future building footprint to that illustrated on approved plan, to be registered on the title of each lot under S88B of the Conveyancing Act *prior to* release of the Subdivision Certificate.

As with Condition 95 above, the wording of this condition is sought to be amended to allow the requisite restrictions to be included *at the same time* as the final subdivision plan/certification and associated 88B instrument, not *prior to*, as currently worded. As with Condition 95, Council has control over ensuring these items occur through the involvement in the subdivision certificate review and sign off process.

3.4 Condition 120 – Marina Use and Works

Given the nature of the existing consent for commercial marina, and demolition of the land-based marina facilities (as part of the subject development application), Council sought to impose Condition 120 on the consent, which required approval for residential use of the marina, and carrying out of the associated physical works, prior to the release of the Subdivision Certificate. This modification seeks to remove this condition from the consent for the reasons set out below.

Council have advised that the reasons for the inclusion of this condition initially, as discussed in the DA2022/2152 assessment report was to ensure that the marina and waterway area is subject to a valid and relevant development consent, noting that the commercial use of the land has been/will be abandoned; and to ensure that the waterway and foreshore area is restored/rehabilitated prior to the issue of a subdivision certificate and subsequent commencement of the residential use of the land.

From discussions with Council at the time of determination and post the issue of the development consent by the LPP, we understand that Council's preferred position was for both the land and water-based components of the overall development to be assessed and determined together (or as one).

We understand that the inclusion of Condition 120 was included as a means of ensuring that one component could not be completed independently of the other, given the nature of the interface. It is also understood that the timing of condition relating to the release of the Subdivision Certificate, reflected the conclusion of the relevant DA scope (not otherwise having a Construction Certificate of Occupation Certificate for the future dwellings).

Given the nature of the site and the development process, the progression of the Subdivision Certificate along with the creation and sale of the lots, is an important aspect to facilitating this delivery of the waterside components of the proposal.

As set out in the concurrent Development Application D/2024/1409, the applicant is current seeking development consent for the waterside development works. These works also form part of the relevant lease documents in place with Crown Land with the and the draft contracts for sale being prepared for the future sale of the proposed lots. Collectively, these require that the marina use and works are sought and carried out, to

coincide with the future occupancy of the residential and, to meet relevant lease obligations. As such, the relationship between the land and waterside components is inherently linked.

The approved DA (D/2022/2152) provides only for the registration of a restriction on the titles to prescribe building envelopes but does not extend to the granting of consent for the dwellings themselves or their occupation.

To remove condition 120 from the consent would, in our view, remove a practical impediment to facilitate the creation of lots and provide the appropriate delivery capital of the waterside components of the proposal, whilst not inferring any acceptance of future development applications (and associated CCs and OCs) for housing on the site.

4.0 Proposed 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**.

Table 1 *Proposed modifications to conditions within Development Consent D/2022/2152*

#	Condition	Proposed Modification
1	Design Amendments	<i>[Replace approved plans with amended plans as provided at Attachment A and B].</i>
95	Positive Covenant for Council and Contractor Indemnity	<i>A positive covenant shall be created on the title of the land prior to the issue of a as part of the Subdivision Certificate requiring the proprietor of the land to provide access to the waste storage facilities. The terms of the positive covenant are to be prepared to Council's requirements, (Appendix E of the Waste Management Guidelines), at the applicant's expense and endorsed by Council prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.</i> <i>Reason: To ensure ongoing access for servicing of waste facilities.</i>
119	Restriction on Building Footprints	<i>A Restriction is to be placed on the title of each lot limiting the future building footprint to that illustrated on approved plan No. AD-DA903, Rev 5 dated 24/10/2023, as amended by the conditions of this consent including condition 17. The above restrictions are to be registered on the title of each lot under S88B of the Conveyancing Act prior to release as part of the of the Subdivision Certificate. Council as the consent authority has the power to vary the terms of the restriction.</i> <i>Reason: To ensure that future development is consistent with the intent of this approval.</i>
120	Marina Use and Works	<i>Prior to the release of the Subdivision Certificate an Occupation Certificate for the occupation of dwellings on the site, development consent for the use of the existing marina structures located within the waterway for residential purposes shall be obtained and any associated physical works carried out. Evidence confirming satisfaction of the above matters shall be provided to the Certifying Authority.</i> <i>Reason: To ensure that the existing waterway structures are subject to a valid development consent and to facilitate the orderly development of land.</i>

5.0 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:

- Does not give rise to any new or different environmental impacts compared to the approved development in terms of relevant matters for consideration at section 4.15 of the EP&A Act .
- Retains the same land-use as the approved development.
- Does not alter the approved development’s level of compliance with the applicable environmental planning instruments and policies.

The consent authority may therefore be satisfied that the development, as proposed to be modified, will remain substantially the same as the original development consent. The proposed modification may therefore be lawfully approved under section 4.55(1A) of the EP&A Act.

6.0 Assessment of Planning Issues

6.1 No Change in Environmental Impact

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 for the following reasons:

- The proposed amendment to the wording of conditions do not result in any additional impacts from the proposal.
- The proposed modifications do not alter the requisite compliance requirements of the development.
- No changes are proposed to the operation of the development.

The following is our assessment of the environmental effects of the proposed development. The assessment includes only those matters under section 4.15(1) of the EP&A Act that are relevant to the proposal.

6.2 Environmental Planning Instruments and Development Control Plans

The proposed amendments to the approved development do not give rise to the reconsideration of any of the applicable Environmental Planning Instruments or applicable Development Control Plans.

6.3 Consideration of the reasons given for granting consent

The proposal remains consistent with the reasons for the granting of consent by the North Beaches Local Planning Panel and as set out by Council in the Assessment Report of the DA. As set out elsewhere in this application, the amendment themselves do not seek to depart from the outcomes of the approved development (or the condition themselves), but rather, seek amendments to condition facilitate the orderly and economic development of the DA and associated development of the water based recreation structures.

6.4 Site Suitability and Public Interest

The development, as proposed to be modified, remains suitable and appropriate for the site, and will be in the public interest to facilitate the delivery of the works on both the land and water side components of the development overall. In particular, the proposed modifications remain to be in the public interest as they facilitate the intended outcome by the proponent and Council, whilst having no change to the scope of the approval(s), or exposure to the outcome of the dee

The proposed modifications will not give rise to any additional amenity, traffic, public domain environmental impacts, but relates directly to the timing of a small number of conditions. For these reasons, the proposed development (as amended) remains suitable for the site and in the public interest.

Conclusion

This Section 4.55(1A) modification application seeks to modify Development Consent D/2022/2152 relating to 82 relating to properties located at 55-57 The avenue, and 122, 122A, 124 and 126 Crescent Road, Newport.

This modification application seeks approval for minor modifications to condition wording, pertaining primarily to the staging and timing of information required to be provided to Council (Condition 95 and 119). An amendment is also proposed to Condition 120, relating to the timing of the requirements of activities to be undertaken.

In accordance with Section 4.55(1A) of the EP&A Act, the Council may modify the consent as the development as proposed to be modified:

- The proposed modification is of minimal environmental impact, particularly with regard to heritage and built form overshadowing and visual impacts.
- The proposed amendments are minor, appropriate for the facilitation of the project delivery and will not result in any additional adverse environmental impacts.
- The development, as proposed to be modified, is 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,

Stephen Gouge

Director

sgouge@ethosurban.com