

## STATEMENT OF ENVIRONMENTAL EFFECTS

FOR SECTION 4.55 (1A) MODIFICATION APPLICATION

DA REFERENCE: **DA2016/0361** DATED 10/08/2016

**16 YEATS AVE, KILLARNEY HEIGHTS NSW 2087 (FORMALLY 14 YEATS AVE)**

Proposed	<b>MODIFICATION TO APPROVED – CONSTRUCTION OF DWELLING HOUSE WITH POOL AND SUBDIVISION (BOUNDARY ADJUSTMENT) INTO TWO (2) ALLOTMENTS</b>
Submitted to	<b>NORTHERN BEACHES COUNCIL</b>
On behalf of	<b>STORM PEAKS PTY LTD</b>

Prepared on      **DEC 2024**

# CONTENTS

1. INTRODUCTION .....	2
2. DESCRIPTION OF THE PROPOSED CHANGES .....	3
3. REASONS FOR THE CHANGES .....	4
4. ENVIRONMENTAL PLANNING ASSESSEMENT .....	7
5. STATUTORY PLANNING FRAMEWORK.....	11
6. ANALYSIS OF CONSENT .....	14
7. CONCLUSION .....	15

## 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 Storm Peaks Pty Ltd in support of amendments to Development Consent DA 2016/0361, which relates to the; Construction of dwelling house with pool and Subdivision (boundary adjustment) into two (2) allotments

Development Consent approval was granted by Northern Beaches Council on 10 August 2016 for the proposed development. A Construction Certificate was subsequently approved by Private Certifier on 11/11/2019, Boundary Adjustment was registered with the Lands and Titles office and work commenced on site. The boundary adjustment also involved the confirmation of the address to the proposed new dwelling being No. 16 Yeats Ave, Killarney Heights. The site which included to parcels of land was known as 14 Yeats Ave at the time of the original Development Application. Even though this application refers to the new address of No. 16, the proposed modifications still relate to the approved works of the proposed new home and are still relevant as such. The property was then sold CC Approved, and the new owners wish to make some modifications to the design to better suit their needs.

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 2016/0361, which granted consent for; "Construction of dwelling house with pool and Subdivision (boundary adjustment) into two (2) allotments" at 14 Yeats Ave, Killarney Heights, that after the approved boundary re-adjustment the site is known as 16 Yeats Ave, Killarney Heights.

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 August 2016.

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
Bushfire	Building Code and Bushfire Hazard Solutions

## 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 cosmetic and internal. Comparing to the approved DA 2016/0361, the changes involve interior modifications to address the needs of the new owners.

Proposed changes are listed below:

### **Garage Floor Plan:**

1. New screen design to balcony
2. Layout change to guest bed
3. Addition of bathroom
4. Large front door
5. New kitchen layout
6. Opening changes
7. New laundry layout
8. Opening changes
9. Facade, balustrade & screen changes
10. Ensuite added to bed 2
11. Bathroom/family plan changes
12. Screen/balustrade changes
13. Roof cut back to align with facade changes
14. Circular skylight added to outdoor dining area
15. Pool change - step detail added
16. Material changes

### 3. REASONS FOR THE CHANGES

The reasons for the minor changes are essentially due to the property being sold on to new owners with different tastes and personal needs. The property was sold DA and CC Approved and the new owners would like to make some modifications to the plans to better suit their requirements. With that, there also some changes to the façade and material palette that also stem from the new owners preferring a slightly different colour scheme and detail to some areas.

## 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:	16 Yeats Ave, Killarney Heights NSW 2087
Lot/DP:	Lot 2, DP 1229862
Site Area:	794 sqm
Zone:	R2: Low Density Residential
Max Height:	8.5 metres
FSR:	N/A
Heritage:	N/A
Acid Sulfate Soils:	N/A
Bushfire Prone Land:	Yes
Landslide Risk Land:	Area B

## COMPARISON OF CONTROLS

No changes to numerical controls.

## **ENVIRONMENTAL IMPACTS**

The impacts of the proposal are considered minor, and below is a breakdown against the key environmental considerations.

### **Floor Space / Bulk**

No change to floor space/building footprint.

### **Height**

No change to height.

### **Privacy/View Sharing**

No additional impacts to privacy and/or view sharing.

### **Overshadowing**

No additional impacts to overshadowing.

### **Setbacks**

No change to the approved setbacks.



## 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 DA/2021/0347 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 DA 2016/0361.
(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 2016/0361 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 with pool development, 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 quantitative 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 an 'alterations to existing single 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.

<b>Table 2 Section 4.15(1)(A) Considerations</b>	
<b>Section</b>	<b>Response</b>
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 proposal is consistent with the approved scheme in terms of scale, use, general layout and open space. For this reason, the proposal is considered acceptable. In addition to this, the design is a more successful approach in terms of amenity, design, use of daylight and its relationship to surrounding development. The proposal itself generally meets council's controls and has minimal environmental impacts.

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 is 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.

