

28 November 2023
OUR REF: 2003
Your Ref: DA2022/1471

The General Manager
Northern Beaches Council
1 Belgrave Street Manly
NSW 2905

Att: Alex Keller

Dear Sir,

**RE: DA2022/1471 – 8B BEATTY STREET BALGOWLAH (LOT 2 DP 558244) –
ALTERATIONS AND ADDITIONS TO EXISTING RESIDENCE**

SECTION 4.55(1A) APPLICATION TO MODIFY DEVELOPMENT CONSENT

1. Introduction

Please find enclosed for your consideration and determination an application made under Section 4.55(1A) of the Environmental Planning and Assessment Act 1979, to modify the development consent granted to DA2022/1471 on 26 July 2023 to carry out alterations and additions to a dwelling house including a swimming pool and spa.

Metroplan Services has been engaged by Caroline and Justin Fengels (owners) to prepare the supporting information for the Section 4.55(1A) application. The proposed modifications as detailed in this submission are of minimal environmental impact and will result in substantially the same development as that approved by the consent.

The Section 4.55(1A) application seeks approval to:

Amend condition 1 - Approved Plans and Supporting Documentation ;

2. Amendments to Condition 1

Condition 1 is currently set out as follows:

1 Approved Plans and Supporting Information

The development must be carried out in compliance with the endorsed stamped plans and documentation listed below, except as amended by any other condition of consent:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
S.01 B Site Plan	14.4.2023	Third Wave Design
1.01 A Gym / Boat Store	10.7.2022	Third Wave Design
1.02 A Lower Level and Pool	10.7.2022	Third Wave Design
1.03 A Bedrooms Level 1	10.7.2022	Third Wave Design
1.04 A Living Rooms Level 2	10.7.2022	Third Wave Design
1.05 B Entry Level 3	14.4.2023	Third Wave Design
1.06 A Roof Plan	10.7.2022	Third Wave Design
2.01 B Section A	14.4.2023	Third Wave Design
3.01 B North East Elevation	14.4.2023	Third Wave Design
3.02 B South East Elevation	14.4.2023	Third Wave Design
3.03 B North West Elevation	14.4.2023	Third Wave Design
3.04 A South West Elevation	10.7.2022	Third Wave Design
3.05 A Beach Elevation	10.7.2022	Third Wave Design
S.08 A Material & Finishes	10.7.2022	Third Wave Design

Engineering Plans		
Drawing No.	Dated	Prepared By
C00.01 General Notes	22.2.2023	Engineering Studio
C01.01 Sediment and Erosion Control Plan	22.2.2023	Engineering Studio
C01.02 Sediment and Erosion Control Details	22.2.2023	Engineering Studio
C02.01 Stormwater Drainage Plan	22.2.2023	Engineering Studio
C02.02 Stormwater Details Sheet	22.2.2023	Engineering Studio
C02.03 Stormwater Details Sheet 2	22.2.2023	Engineering Studio

Reports / Documentation – All recommendations and requirements contained within:

Report No. / Page No. / Section No.	Dated	Prepared By
BASIX certificate A464926	10.7.2022	The House Energy Rating Company
Geotechnical Investigation J4291	10.8.2022	White Geotechnical Group
Arboricultural Impact Assessment Report	20.1.2023	Margot Blues Arborist

<i>Flora and Fauna Assessment Report</i>	<i>22.8.2022</i>	<i>GIS Environmental Consultants</i>
<i>Bushfire Assessment Report 221166</i>	<i>24.8.2022</i>	<i>Building Code and Bushfire Hazard Solutions</i>

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

c) The development is to be undertaken generally in accordance with the following:

Landscape Plans		
Drawing No.	Dated	Prepared By
<i>Landscape Plan - Issue C</i>	<i>2.3.2023</i>	<i>Michael Wayman Landscape Architect</i>
<i>Landscape Schedule - Issue C</i>	<i>2.3.2023</i>	<i>Michael Wayman Landscape Architect</i>

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
<i>S.10 Site Waste Management Plan</i>	<i>10.7.2022</i>	<i>Third Wave Design</i>
<i>S.11 Erosion and Sediment Control - Extension of Erosion Barriers</i>	<i>10.7.2022</i>	<i>Third Wave Design</i>
<i>Waste Management Plan</i>	<i>11.8.2022</i>	<i>Third Wave Design</i>

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

Proposed Modification

Condition 1 is proposed to be deleted and replaced with the following condition (amendments in bold):

1 Approved Plans and Supporting Information

The development must be carried out in compliance with the endorsed stamped plans and documentation listed below, except as amended by any other condition of consent:

b) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
<i>S.01 B Site Plan</i>	<i>14.4.2023</i>	<i>Third Wave Design</i>

1.01 C Gym / Boat Store	15.11.2023	Third Wave Design
1.02 B Ground Level and Pool	15.11.2023	Third Wave Design
1.03 B Bedrooms Level 1	15.11.2023	Third Wave Design
1.04 B Living Rooms Level 2	15.11.2023	Third Wave Design
1.05 C Entry Level 3	15.11.2023	Third Wave Design
1.06 A Roof Plan	10.7.2022	Third Wave Design
2.01 C Section A	15.11.2023	Third Wave Design
3.01 C North East Elevation	15.11.2023	Third Wave Design
3.02 C South East Elevation	15.11.2023	Third Wave Design
3.03 C North West Elevation	15.11.2023	Third Wave Design
3.04 B South West Elevation	15.11.2023	Third Wave Design
3.05 B Beach Elevation	15.11.2023	Third Wave Design
S.08 A Material & Finishes	10.7.2022	Third Wave Design

Engineering Plans		
Drawing No.	Dated	Prepared By
C00.01 General Notes	22.2.2023	Engineering Studio
C01.01 Sediment and Erosion Control Plan	22.2.2023	Engineering Studio
C01.02 Sediment and Erosion Control Details	22.2.2023	Engineering Studio
C02.01 Stormwater Drainage Plan	22.2.2023	Engineering Studio
C02.02 Stormwater Details Sheet	22.2.2023	Engineering Studio
C02.03 Stormwater Details Sheet 2	22.2.2023	Engineering Studio

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Flora and Fauna Assessment Report	22.8.2022	GIS Environmental Consultants
Bushfire Assessment Report 221166	24.8.2022	Building Code and Bushfire Hazard Solutions

d) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

e) The development is to be undertaken generally in accordance with the following:

Landscape Plans		
Drawing No.	Dated	Prepared By
Landscape Plan - Issue C	2.3.2023	Michael Wayman Landscape Architect
Landscape Schedule - Issue C	2.3.2023	Michael Wayman Landscape Architect

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
S.10 Site Waste Management Plan	10.7.2022	Third Wave Design
S.11 Erosion and Sediment Control - Extension of Erosion Barriers	10.7.2022	Third Wave Design
Waste Management Plan	11.8.2022	Third Wave Design

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

3. Discussion

The proposed amendments are documented in Table 1 below:

Table 1 Proposed Amendments

Drawing Number	Modification scope of works
1.01 C Gym / Boat Store	Marine Store RL 4.330 Reconfigure stair layout to Gym level; New Retaining walls to path to Marine Store; Add stair into path to Marine Store; Delete windows to Marine Store. Gym Level RL. 6.500 Lower gym level from FFL 7.280 to FFL 6.500; Delete Sauna; Reconfigure Bathroom & Joinery;

	Additional stair risers to stair to pool level Amend doors to NE and SE façade.
1.02 B Ground Level and Pool	Reconfigure bathroom & Guest Bed Entry; Change sliding doors between TV Room & Alfresco to wall; Adjust wall location at bottom of internal stairs; Reconfigure comms/electrical room; Delete stair to Door 16; Adjust stair location from alfresco to pool deck; Change timber deck to stone.
1.03 B Bedrooms Level 1	Adjust door location to Ensuite 2; Adjust ensuite 2 layout; Amend balcony plan off bedroom 2.
1.04 B Living Rooms Level 2	Delete door to Study; Amend pond shape & add planter to Nth West; Pond equipment under pond; Delete timber deck to south of pond for planter; Amend window 13 shape to Guest WC; Amend Guest WC layout; Delete door between Pantry & Laundry; Change Door 09 to fixed window; Extend deck to SE Boundary. Add a 700mm upstand to Windows 14 & 15 in the family room to reduce glazing component.
1.05 C Entry Level 3	Changing louvre window to fixed glass; Amend main robe layout; Relocate garage door into entry; Amend Entry layout, stair location & void; New corner window 34 to Entry facing South East; Increase height of window 04 to suit new floor level; Create opening in roof to area outside kitchen below; New vehicle turntable.

The proposed modifications are of a minor nature and relate to improving the internal amenity and useability of the residence. Reconfiguring stairs at the gym/boat store level and replacing existing retaining walls will improve access and safety around the lower levels of the site.

At Bedroom Level 1, the minor infill of the existing balcony off bedroom 2 on the south-eastern side will delete an existing unsafe stair. It should be noted that the neighbouring dwelling on the south-eastern side is located above the site and close to Beatty Street. The dwelling is oriented towards Forty Baskets Beach, with a number of terraces leading

down towards the beach in the area where the minor balcony extension is proposed. The change to the balcony will not alter existing levels of privacy.

Similarly, at Living Room Level 2, the minor extension of the deck will also not affect the privacy of the adjoining dwelling on the south-eastern side.

At Entry Level 3 the proposed new corner window on the south-eastern side is designed to capture views and allow more light into the entry area. Views will be south-east towards the harbour and National Park. Given its location and orientation, it is not anticipated that the window will affect the privacy of the adjoining dwelling.

4. Relevant Provisions of Section 4.55

Section 4.55 of the Environmental Planning and Assessment Act, 1979 states as follows:

“(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:

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (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*
- (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*
- (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.*

Subsections (1), (2) and (5) do not apply to such a modification.”

In relation to 4.55(1A)(a) and (b), the Council can be satisfied that the requested modifications will have minimal environmental impacts and that the development as proposed to be modified will still be substantially the same development as that approved under the Consent, for the following reasons:

- The appearance and physical form of the approved residence will be similar to that which has already been approved. There will be no increase in approved height or floorspace.
- There will be no additional impacts on the amenity of adjoining properties. The neighbouring dwelling on the south-eastern side is located above the site and close to Beatty Street. The dwelling is oriented towards Forty Baskets Beach, with a number of terraces leading down towards the beach in the area where the minor balcony extensions and new window is proposed.

Section 4.55(3) further states as follows:

“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.”

Section 4.15(1)(a) – Statutory Planning Considerations

Section 4.15 (1) (a) requires the consent authority to take into consideration of:

“(a) the provisions of:

- (i) any environmental planning instrument, and*
- (ii) any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and*
- (iii) any development control plan, and*
- (iiia) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and*
- (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates,”*

The proposed development in its modified form will continue to be permitted in the current C3 Environmental Management zone, pursuant to Manly Local Environmental Plan (LEP) 2013 and consistent with the requirements of Manly Development Control Plan 2013.

There are no draft instruments or planning agreements which would affect the proposed modification.

Section 4.15(1)(b) – Environmental, Social and Economic Impacts

Section 4.15(1) (b) requires the consent authority to consider:

“(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality.”

The relevant matters are addressed above.

Impacts on the Natural Environment

There will be no additional issues relating to stormwater and flooding (including coastal hazards and sea level rise), erosion and sediment or flora and fauna from the modification.

Impacts on the Built Environment

There will be no additional impacts on the existing built environment as a result of the modification.

Social and Economic Impacts

There will be no additional social or economic impacts as a result of the modification.

Section 4.15(1)(c) – The Suitability of the Site

Section 4.15(1)(c) requires the consent authority to consider:

“(c) the suitability of the site for the development.”

The site has already been approved for development, and is able to accommodate the proposed modification.

Section 4.15(1)(d) – Submissions

Section 4.15(1)(d) requires the consent authority to consider:

“(d) any submissions made in accordance with this Act or the regulations”.

Any relevant representations will need to be considered by the Council.

Section 4.15(1)(e) – Public Interest

Section 4.15(1)(e) requires the consent authority to consider:

“(e) the public interest”.

The public interest is best served by the orderly and economic use of land for purposes permissible under the relevant planning regime and predominantly in accordance with the prevailing planning controls. The modification is a permissible form of development and is therefore considered to be in the public interest.

5. Supporting Documentation

This letter forms part of the Section 4.55(1A) Application. Accompanying this letter are the additional supporting documents outlined below. All supporting documentation has been attached to this letter for ease of reference and comprises the following:

- A completed Section 4.55(1A) application form;
- Drawings prepared by Third Wave Design - **Attachment 1**;

6. Payment

With respect to the application payment, please contact Caroline and Justin Fengels on 0412 352 366 or justin@universalcandy.com.au.

7. Conclusion

This Section 4.55(1A) application seeks approval to modify condition 1 of the development consent granted to DA2022/1471 on 26 July 2023 to carry out alterations and additions to a dwelling house including a swimming pool and spa.

In relation to S4.55(1A)(a), the Council can be satisfied that the requested modifications will have minimal environmental impacts and that the development as proposed to be modified will still be substantially the same development as that approved under the Consent for the reasons set out above.

In relation to S4.55(1A)(b), the development will remain substantially the same as that approved under DA2022/1471 and the modifications for which consent is now sought do not alter the original findings made in relation to DA2022/1471 regarding the

reasonableness and appropriateness of the proposal when considered in the light of the matters listed in Section 4.15 of the Environmental Planning and Assessment Act, 1979.

The Council is therefore respectfully requested to approve the requested modifications.

Should you require any further details, please do not hesitate to contact the undersigned. We trust that you will find the application acceptable and look forward to your favourable determination.

Yours sincerely



Andrew Biller
DIRECTOR METROPLAN SERVICES

Attachments

1. Architectural Drawings prepared by Third Wave Design;
2. Updated Basix Certificate.

ATTACHMENT 1

Architectural Drawings prepared by Third Wave Design

ATTACHMENT 2

Updated Basix Certificate