

4 December 2018

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

Dear Sir/Madam,

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

Development Application No:	DA 150/2017
Date of Determination:	9 October 2017
Premises:	Lot 31B DP 360383, No. 60 Grandview Parade, Mona Vale
Proposed Development:	Demolition of existing dwelling, construction of a new dwelling, swimming pool and access driveway from Grandview Parade

On behalf of Madeleine and Craig Parker, 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 DA N0 150/2017.

The application will seek to modify the form of the approved new dwelling. The changes are discussed in further detail below.

BACKGROUND

An application for consent for the demolition of existing dwelling and the construction of a new dwelling and a swimming pool was approved by Council by Notice of Determination on 9 October 2017.

The construction of the approved works has not been commenced.

PROPOSED MODIFICATION

The proposed revisions to the plans have been detailed in the amended details prepared by Darren Campbell Architect, Revision A, A0.01, A1.01-A1.06, A2.01-A2.05, A3.01-A3.03, A4.01-A4.02, A5.01, A6.01, A7.01, A8.01-A8.06, A9.01, A9.02, dated 4 December 2018.

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This submission under S4.55(2) seeks to modify the approved development to reflect the following changes, which are highlighted in a coloured legend on the revised architectural plans:

Lower Floor

- Re-configured entry and internal stair access layout
- Revised storage layout and provision for pool equipment and storage space to the north-western side of the garage underground
- Reduced external retaining wall length
- Rainwater tank to be provided within front yard.

Ground Floor

- Ground floor balcony extended to provide for regular shape, with reduced living room length (increased front setback to living room) to improve function of front balcony. Louvre screening to north-western elevation of balcony to maintain neighbour privacy.
- Privacy screen added to north-western side of the dwelling (living room windows)
- Reduced building length through rear living room being reduced in length by 1m, with corresponding reduction in length of approved pergola
- Remove approved rear stairs
- New rear retaining wall

First Floor

- Roof extended at the front of the dwelling to provide additional cover to the ground floor level balcony
- Front balcony extended
- Floor area added to retreat and bedroom
- Awning roof above balcony added
- Sun control awning added to the sides of dwelling to provide protection to ground floor level windows

Roof

- New awnings on the front and sides of the dwelling
- 2KW Solar Power system
- Roof to be constructed of metal on steel with timber framing, with the approved maximum height (RL 39.323) being unchanged.

As the approved roof parapet height is unchanged and the dwelling remains consistent with the general height and scale of the approved, there will not be any significant change in the views enjoyed by the surrounding properties, which are generally significantly higher than the subject site.

The development indices for the site are largely unchanged, with a minor increase in landscaped area as a result of the reduced building length:

Site Area	659.6m ²
Required Landscaped Area	60% or 395.76m ²
Approved Landscape Area	59.7% 393.98m ²
Proposed Landscape Area	60% 395.76m ²

JUSTIFICATION

The Environmental Planning & Assessment Act 1979 provides for the modification of a consent under S4.55(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 5) 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, 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 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.

LEGAL TESTS

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 where His Honours states:

[54] The relevant satisfaction required by s4.55(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 a “qualitative comparison”, the Modification Application is substantially the same development as that which was approved.

The works seek to provide for minor alterations to the approved form of the new dwelling development and which do not substantially alter the building’s bulk and scale.

The proposal will see retain the approved maximum height of RL 39.323, which will ensure that the outlook for the uphill properties, which together with the retention of suitable solar access to No 62 Grandview Parade were fundamental considerations in the assessment of DA 150/2017, will be largely unchanged.

The proposal provides for solar panels to the primary roof form which are sited above the roof, however and will not be prominently viewed within the public domain and will see the buildings appropriate height for the locality maintained.

The changes do not introduce any significant issues for the neighbouring properties in terms of view loss or privacy.

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

Similarly, the application is substantially the same development when subjected to a “quantitative comparison”, as the works will continue to provide for “*demolition of existing dwelling and the construction of a new dwelling and a swimming pool*” in a location and to a form which is consistent with the consent.

In my view, this application is substantially the same as the original application when considered in the context of the Bignold J determination and the application can be reasonably assessed by Council under S4.55 of the Act.

Conclusion

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

In terms of the quantitative extent of the proposed amendments to the approved design for the new dwelling, the modest nature of the changes ensures that the design remains consistent with the approved form.

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

The proposed modification is justified on the basis that:

- The proposed works are generally consistent with the application as approved and will not comprise the amenity of the subject or neighbouring properties.
- The proposal is “substantially” the same development, as defined by the Environmental Planning & Assessment Act 1979.

Council’s support of the modification to the form of the proposed development is sought in this instance.

Please contact me on 9999 4922 or 0412 448 088 should you wish to discuss these proposed amendments.

Yours faithfully,

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

VAUGHAN MILLIGAN