



Mrs Hema Patel  
13 Bay Street  
GREENWICH NSW 2065

D71/20  
MR3 (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 MODIFICATION 71/20/2 - APPROVAL**

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**Development Consent Number:** 71/20

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**Land to which this applies:** 11 Balls Head Road, Waverton  
Lot No.: 8; SEC: 8; DP: 6894

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**Applicant:** Hema Patel

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**Proposal:** To modify conditions A1, A3, C35, G12, I2 of consent DA71/20 to reflect changes to the approved architectural and landscape plans arising from detailed design development

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Pursuant to Section 4.55 of the Act notice is hereby given of the determination by the consent authority of your request for a modification to Development Consent No. **71/20** and registered in Council's records as Application No. **71/20/2** relating to the land described as **11 Balls Head Road, Waverton**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **8 September 2020**, has been determined in the following manner:

**1. To amend Condition A1 of the consent so as to read as follows:**

**Conditions that Identify Approved Plans**

**Development in Accordance with Plans/Documentation**

A1. The development must be carried out in accordance with the following drawings and documentation and endorsed with Council's approval stamp, except where amended by the following conditions of this consent.

Plan No.	Issue	Description	Prepared by	Dated
A1300	-	Site and Roof Plan	Robert Mann Design	20/09/2022
A2001	-	Floor Plans - Lower Ground Floor and Basement Floor	Robert Mann Design	20/09/2022
A2000	-	Floor Plans - Upper Ground Floor and First Floor	Robert Mann Design	20/09/2022

A3000	-	Sections	Robert Mann Design	20/09/2022
A4000	-	Elevations	Robert Mann Design	20/09/2022
A4001	-	Privacy Detailing	Robert Mann Design	20/09/2022
A8000	-	Materials Schedule	Robert Mann Design	20/09/2022
A8001	-	Materials Schedule	Robert Mann Design	20/09/2022
Sheets 1-2 of 2	-	Landscape Plans	Fluid Design	20/06/22

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information)

**2. To amend Condition A3 of the consent so as to read as follows:**

**Landscape Plan**

A3. Landscaping must be in accordance with the submitted plans and schedule dated 20 June 2022, prepared by Fluid Design Sheets 1 of 2 and 2 of 2 unless otherwise modified by Council in writing and as modified below:

- Any plant species chosen for the approved planter beds/perimeter garden spaces surrounding the pool must be of a species that is non-climbable. These planter beds/perimeter garden spaces must be designed and built to ensure that the entire pool area complies with relevant pool safety standards and provisions under the *Swimming Pools Act 1992*.

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information)

**3. To add Condition A4 as follows:**

**Provision of Solid Wall/Balustrade to Windows W204A and W205A**

A4. The combined solid wall and balustrade across the entire southern elevation of the window in the lounge room (window reference: W205A) that are immediately adjoining the opaque window spandels must be designed and maintained with a completely solid form and materiality to match the primary building façade material on the southern elevation. Any portion of the wall/balustrade protruding beyond 1m above the finished floor level of the lounge room must comprise of metal cladding of the same design, form and colouration as identified in the approved drawings as "ECV CPF."

The solid wall across the entire southern elevation of the window in the dining room (window reference: W204A) that is immediately adjoining the opaque window spandels must be designed and maintained with a completely solid form and materiality to match the primary building façade material on the southern elevation. Any portion of the wall protruding beyond 1m above the finished floor level of the dining room must comprise of metal cladding of the same design, form and colouration as identified in the approved drawings as "ECV CPF."

(Reason: To ensure consistency with the approved deferred commencement Condition AA3, to enable outlook from living areas within the dwelling but manage visual and acoustic privacy as well as to manage expectations that unobstructed views will be retained over adjoining properties)

**4. To add Condition A5 as follows:**

**Privacy Screens to W204A and 205A**

A5. The proposed 1.4m high privacy screens for windows W204A and W205A must be designed to cover the entire extent of the windows and that obscure any views towards neighbouring properties including downward views to No.9 Balls Head Road, Waverton. The privacy screens must be of lightweight design, comprise materiality and finish that complements the building, and must have a maximum protrusion from the external southern façade of the building of 100 mm.

(Reason: To minimise visual and acoustic privacy impacts)

**5. To add Condition A6 as follows:**

**Open Pergolas above Garden Beds**

A6. The open pergolas above the garden areas immediately adjoining the rear (east) portion of the dwelling must be maintained in perpetuity as completely open and unroofed structures.

(Reason: To maintain and minimise the approved bulk and scale of the development to the rear and the provide an appropriate balance of constructed and landscaped elements within the site)

**6. To amend Condition C35 of the consent so as to read as follows:**

**BASIX Certificate**

C35. Under clause 97A(3) of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. 987808S\_06 for the development are fulfilled. Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure the proposed development will meet the Government's requirements for sustainability and statutory requirements)

**7. To add Condition C36 in the consent as follows:**

**Privacy Screening - Pool Area**

C36. Vertical timber privacy louvres must be installed along the entire extent of the southern opening to the pool on the upper ground floor as shown clouded in red. The louvre screen must be designed to cover the entire opening, with a minimum louvre width of 100 mm and must ensure that the pool area complies with relevant pool safety standards and provisions under the *Swimming Pools Act 1992*.

(Reason: To minimise potential privacy and acoustic impacts from the use of the pool area)

**8. To add Condition C37 in the consent as follows:**

**Deletion of Roof Garden Safety Rail**

C37. Any references and annotations indicating a roof garden safety rail must be deleted completely on all relevant architectural plans, landscape plans and all other construction certificate documentation. This component is not supported and is to be excluded as part of this consent.

The entire roof garden (except the approved roof terrace) must be shown and annotated as a non-trafficable area in all construction certificate documentation.

(Reason: To ensure that the roof garden remains a non-trafficable area and to reflect the intended purpose of Conditions I4 and I5 of this consent)

**9. To amend Condition G12 of the consent so as to read as follows:**

**Landscaping**

G12. The landscaping shown in the approved landscape plans, numbered Sheets 1 of 2 and 2 of 2, prepared by Fluid Design, dated 20 June 2022 (as per Condition A3 of this consent) must be completed prior to the issue of any Occupation Certificate.

(Reason: To ensure compliance)

**10. To amend Condition I2 of the consent so as to read as follows:**

**Maintenance of Approved Landscaping**

I2. The owner of the premises at 11 Balls Head Road, Waverton is to maintain the landscaping approved by this consent generally in accordance with the approved landscape plans, numbered Sheets 1 of 2 and 2 of 2, prepared by Fluid Design, dated 20 June 2022 (as per Conditions A3 and G12 of this consent), including any amendments as a result of compliance with the deferred commencement requirements. Rooftop garden species are not to exceed 600mm height above the roof level.

Any replacement plants required shall be advanced in growth and be selected to maintain the anticipated mature height, canopy density and nature of those plant species as originally approved.

(Reason: To ensure maintenance of the amenity, solar access and views of adjoining properties)

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**Reasons for Approval:**

The proposal (as modified) involves a number of changes to the approved layout of the dwelling house and ancillary structures. The proposed modification will result in development that is substantially and materially the same as approved by DA71/20 (as demonstrated in the above considerations under Clause 4.55 of the *Environmental Planning and Assessment Act 1979*).

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The merits of the proposed modification and an assessment of this modification against relevant provisions and controls under environmental planning instruments (including the NSLEP 2013) have been described and detailed throughout this report. In summary, the proposed modification is considered acceptable and supportable, satisfying the above requirements and the provisions under Section 4.55 of the *Environmental Planning and Assessment Act 1979*.

Accordingly, it is recommended that the following conditions are amended in the consent:

- Amend Condition A1 to include amended plans reflecting the proposed changes.
- Amend Condition A3 to include amended landscape plans reflecting the proposed changes.
- Add Condition A4 to provide solid wall/ balustrade for windows W204A and W205A.
- Add Condition A5 to provide and maintain appropriately designed privacy screens for windows W204A and W205A.
- Add Condition A6 to maintain open form pergolas for the rear garden beds.
- Amend Condition C35 to reflect revised BASIX certificate.
- Add Condition C36 to install vertical timber privacy screening along entire extent of southern opening of the pool on the upper ground floor.
- Add Condition 37 to remove all references and annotations indicating a roof garden safety rail and inclusion of annotations on all relevant architectural plans, landscape plans and all other construction certificate documentation showing the roof garden as a non-trafficable area.
- Amend Condition G12 to reference the amended landscape plans.
- Amend Condition I2 to reference the amended landscape plans.

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**How community views were taken into account:**

The proposal as modified is considered to be in the public interest for the reasons stated throughout this report.

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The conditions attached to the original consent for Development Application No. **71/20** by endorsed date of **8 September 2020** still apply.

**ADVISINGS**

- (a) Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact **Miguel Rivera** However, if you wish to pursue your rights of appeal in the Land and Environmental Court pursuant to Section 8.7 of the *Environmental Planning and Assessment Act 1979* (as amended), you are advised that Council generally seeks resolution of such appeals through a Section 34 Conference, instead of a full Court hearing, subject to any further advice to the contrary from Council's Solicitors and senior staff. Such an approach is less adversarial, it achieves a quicker decision than would be the case through a Court hearing and it can give rise to considerable cost and time savings for all parties involved.

- (b) Pursuant to Section 8.2, an applicant is able to request Council to review its determination. An application for a review under Section 8.2 of the Act must be made no later than 28 days after the date on which the application for the modification of the development consent was determined.
- (c) Prior to commencing any building, subdivision or associated constructions works, the following provisions of *the Environmental Planning and Assessment Act 1979* (the 'Act') are to be complied with:
- (i) A Construction Certificate is to be obtained in accordance with Section 6.3 of the Act.
  - (ii) A Principal Certifier is to be appointed and Council is to be notified of the appointment in accordance with Section 6.6 of the Act.
  - (iii) Council is to be notified at least two (2) days of the intention to commence building works, in accordance with Section 6.6(2)(a) of the Act.
- (d) You are advised that changes to the external configuration of the building, changes to the site layout, density and unit configuration internal changes to the proposed building or any changes to the proposed operation of a use **MAY** require the submission of a further modification under Section 4.55 of *the Environmental Planning and Assessment Act, 1979* (as amended).

Council staff would be pleased to assist in identifying such changes which may require the submission of a modification of a Development Application under Section 4.55 of *the Environmental Planning and Assessment Act*.

**Endorsed for and on behalf of North Sydney Council**

**21 October 2022**

DATE



Signature on behalf of consent authority  
MIGUEL RIVERA  
**SENIOR ASSESSMENT OFFICER**