



Ms Jenni Baird  
174B Kurraba Road  
KURRABA POINT NSW 2089

D55/22  
AB7 (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 MODIFICATION 55/22/2 - APPROVAL**

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**Development Consent Number:** 55/22

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**Land to which this applies:** 174B Kurraba Road, Kurraba Point  
Lot No.: B, DP: 412459

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**Applicant:** Jenni Baird

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**Proposal:** Modify consent to amend specified conditions and to amend or demonstrate satisfaction of specified deferred commencement conditions

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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. **55/22** and registered in Council's records as Application No. **55/22/2** relating to the land described as **174B Kurraba Road, Kurraba Point**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **6 July 2022**, has been determined in the following manner:

- Conditions AA1, AA2, AA3, and AA4 are deleted.**
- Condition A1 is amended as follows:**

**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:

No.	Title	Drawn by	Date	Received
ADA-03	Basement Floor Plan	Architelle	18/10/2022	27/10/2022
ADA-04	Ground Floor Plan	Architelle	18/10/2022	27/10/2022
ADA-05	First Floor Plan	Architelle	18/10/2022	27/10/2022
ADA-06	North Elevation	Architelle	18/10/2022	27/10/2022
ADA-07	West Elevation - Section A	Architelle	18/10/2022	27/10/2022

ADA-08	South Elevation	Architelle	18/10/2022	27/10/2022
ADA-09	East Elevation	Architelle	18/10/2022	27/10/2022
ADA-10	North Elevation - Fence	Architelle	18/10/2022	27/10/2022
ADA-11	West Elevation - Fence	Architelle	18/10/2022	27/10/2022
ADA-12	Section B	Architelle	18/10/2022	27/10/2022
-	Schedule of Materials and Colours	Architelle	18/10/2022	27/10/2022

except as amended by the following conditions and this consent.

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

**3. Condition A4 is amended as follows:**

**External Finishes and Materials**

A4. External finishes and materials must be in accordance with the submitted schedule dated 18 October 2022, prepared by Architelle, and received by Council on 27 October 2022, unless otherwise modified by Council in writing.

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

**4. Condition C2 is amended as follows:**

**Dilapidation Survey Private Property (Neighbouring Buildings)**

C2. A photographic survey and dilapidation report of adjoining property Nos. **174A and 174C Kurraba Road, Kurraba Point**, detailing the physical condition of those properties, and is limited to the following: -

- a) **174A:** Driveway and parking area paving, letterboxes, fences, garden beds, external ground floor walls and carport adjacent to the boundary of 174B, limited to areas to the north and east sides of the main apartment building;
- b) **174C:** Driveway, including letter box, fences, and garden beds within the right of way, and the garage internally and externally.

SHALL BE submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The survey and report are to be prepared by an appropriately qualified person agreed to by both the applicant and the owner of the adjoining property. A copy of the report is to be provided to Council, if Council is not the Certifying Authority, prior to the issue of any Construction Certificate.

All costs incurred in achieving compliance with this condition shall be borne by the person entitled to act on this Consent.

In the event that access for undertaking the photographic survey and dilapidation report is denied by an adjoining owner, the applicant MUST DEMONSTRATE, in writing, to the satisfaction of Council that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed. Written concurrence must be obtained from Council in such circumstances.

Note: This documentation is for record keeping purposes only and may be used by an applicant or affected property owner to assist in any action required to resolve any dispute over damage to adjoining properties arising from the works. It is in the applicant's and adjoining owner's interest for it to be as full and detailed as possible.

(Reason: Proper management of records)

**5. Condition C10 is amended as follows:**

**Tree Protection Measures**

C10. Plans and specifications showing the following tree protection measures must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The tree protection measures shall be shown clearly on the Construction Certificate drawings.

To ensure the protection of all trees to be retained, the following measures are to be undertaken:

- a) All documentation for the Construction Certificate application must show the site trees to be retained, and retention of the adjoining trees, with their positions and diameters of trunks and crowns (canopies) to be clearly and accurately shown in relation to all levels of the proposed development.
- b) All site and neighbouring trees and vegetation (except *Murraya paniculata* adjacent to existing site garage) shall be protected in accordance with AS4970, trunk and branch protection or tree protection fencing shall be installed as required. This includes but is not specific to all shared driveway planting, particularly *Jacaranda mimosifolia* on the northern boundary line between 174A and 174B Kurraba Road. No tree canopy pruning shall be permitted.
- c) Any work within the TPZ of any protected tree shall be carried out using sensitive construction techniques including hand excavation, pier and beam construction, and flexible location of piers/beams, and shall be carried out under the supervision of an AQ5 qualified arborist. No roots greater than 30mm shall be cut.
- d) Sensitive construction techniques including hand excavation, pier and beam construction and flexible location of piers/footings shall be carried out within the TPZ of any protected tree. No roots greater than 30mm shall be cut, no canopy pruning shall be permitted. No vehicle or heavy equipment shall be permitted within the TPZ of any protected tree, except for upon the existing concrete hardstand and driveway.
- e) The existing concrete driveway shall be removed using sensitive construction techniques, new paving shall be laid on a permeable base (no concrete slab) at or above grade. The levels of existing raised sections of driveway around base of *Jacaranda mimosifolia* shall be retained (no roots shall be cut) with suitable fall to drainage as required.

The Certifying Authority must ensure the construction plans and specifications submitted, referenced on, and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure the protection of significant trees, and that appropriate tree protection measures are shown on construction drawings)

6. **Condition C14 is amended as follows:**

**BASIX Certificate**

C14. Under clause 75 of the Environmental Planning and Assessment Regulation 2021, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. **A444859\_02** 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. **Condition C16 is added as follows:**

**Heritage Requirements**

C16. The following heritage requirements are to be met:

- a) New sandstone is to be rock and/or split faced.
- b) Existing unpainted brickwork on the dwelling is not to be painted.
- c) The proposed new doorway between the Ground Level Guest Room and Foyer is to be located within its original opening and the original joinery restored and retained in situ.

The Certifying Authority must ensure that the building plans and specifications submitted fully satisfy the requirements of this condition prior to the release of the Construction Certificate.

(Reason: To retain the heritage significance of the dwelling and character of the conservation area)

8. **Condition D2 is amended as follows:**

**Temporary Fences and Tree Protection**

D2. All protected trees on-site that are specifically nominated as per **Condition C10** to be retained by notation on plans or by condition as a requirement of this consent must be tagged with luminous tape or the like for purposes of identification prior to demolition, excavation or construction works and must remain so for the duration of works on the site. No materials or builder's waste are to be stored in the vicinity of the nominated tree/trees at any time.

All protected trees shall be protected in accordance with AS4970, sensitive construction techniques including hand excavation, pier and beam, flexible location of piers/footings shall be carried out within the TPZ of any protected tree.

Appropriate fencing or barricades in accordance with AS4970-2009 (Protection of trees on development sites), must be installed to the satisfaction of the Certifying Authority prior to demolition or commencement of any works and must be maintained for the duration of the works.

(Reason: To protect the trees to be retained on the site during construction works)

9. Condition D4 is deleted.

10. Condition E1 is amended as follows:

**No Obstruction to the Right-of-way**

E1. The right-of-way access handle driveway shared between the lots of 174A, 174B and 174C Kurraba Road must be maintained in some form and must not be obstructed during construction by any vehicle and/or machinery/equipment associated with the proposed development, to ensure unrestricted access to the adjoining property serviced by this right-of-way. Any temporary obstruction or interruption of access within this right of way shall be undertaken with reasonable notice given to the owners of 174A and/or 174C Kurraba Road to ensure that access is managed before, during, and after construction.

(Reason: To ensure access to the adjoining properties)

11. Condition F8 is deleted.

12. Condition G4 is deleted.

13. Condition G6 is amended as follows:

**Certification of Tree Condition**

G6. Prior to the issue of an Occupation Certificate, a report prepared by an appropriately qualified person (being an arborist or the like) must be submitted to the Certifying Authority, describing the health of the trees protected under **Condition C10** of this consent.

The report must detail the condition and health of the nominated trees upon completion of the works and shall certify that the trees have not been significantly damaged during the works on the site and have reasonable prospects for survival.

(Reason: To ensure compliance with the terms of this consent)

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**Reasons for Approval:**

The proposed modifications satisfy the provisions of Section 4.55(2) in that the proposed development remains substantially the same as what was approved by DA 55/22. The proposed modifications will not alter the use of the development as approved and will effectively satisfy the majority of the deferred commencement conditions of DA55/22. The proposed modifications are considered to be sympathetic to the design of the original dwelling, and the amenity impacts remain acceptable and unchanged, particularly in regard to privacy, views, and solar access.

The proposed modifications would not significantly change the level of compliance with the relevant development standards and controls as contained in NSLEP 2013 and NSDCP 2013. The proposed levels of landscaped area and unbuilt-upon area will be improved.

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The proposed works will provide residential amenity without negatively impacting the neighbourhood character, and the Kurraba Point South Neighbourhood. The proposal also remains broadly consistent with the objectives of the R2 Low Density Residential zone and the original reasons for granting consent.

While the alterations to the driveway will alter the half of the driveway shared with 174C Kurraba Road to the east of the site and likely temporary impact upon access for this adjoining property, it is considered that the modifications to half of the driveway will improve the overall appearance of the driveway, and continued access and any disruptions during construction can be appropriately managed by recommended conditions in a manner that is not likely to significantly impact upon the amenity of residents.

The proposal was found to be acceptable in the site circumstances and is recommended that the subject Section 4.55(2) application be **approved**. Accordingly, the development consent DA 55/22 is operable from the date of this consent, namely **9 February 2023**. In accordance with the provisions relating to Section 4.53 of *the Environmental Planning and Assessment Act 1979*, the consent shall lapse on **9 February 2028**.

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

The subject application was notified to adjoining properties and the Neutral Precinct Committee seeking comment, and one submission was received. Nevertheless, it is considered that the proposed modifications would not substantially alter the acceptable impacts of what has already been approved under the original consent and would not cause any unreasonable impacts to the streetscape and/or adjoining properties.

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The conditions attached to the original consent for Development Application No. **55/22** by endorsed date of **6 July 2022** still apply unless amended by this consent.

**ADVISINGS**

- (a) Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact **Andrew Beveridge**. 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.

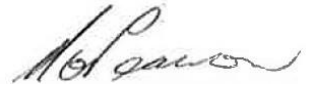
- (b) Pursuant to Section 8.2, an applicant is able to request Council to review its determination. An application for a review under Section 8.2 of the Act must be made no later than 28 days after the date on which the application for the modification of the development consent was determined.
- (c) 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**

**9 February 2023**

DATE



Signature on behalf of consent authority  
ROBYN PEARSON  
**TEAM LEADER (ASSESSMENTS)**