

22 October 2020

General Manager
Northern Beaches Council
PO Box 82
Manly NSW 1655

Dear Sir,

**Re: 5a Hilltop Crescent, Fairlight
Section 4.55(1A) modification of Development Consent DA2019/0308
Statement of Modifications and Environmental Effects**

Introduction

This Statement of Modifications and Environmental Effects relates to a proposal to modify Development Consent DA2019/0308 under Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979*.

Development Consent DA2019/0308 was issued on 4 October 2019 for "*Demolition works and construction of a dwelling house including swimming pool*". The development has been physically commenced.

The application seeks approval for the following modifications:

1. Relocation of approved solid-fuel fireplace on the upper floor level from the eastern side of the living room to the western side of the living room and construction of a flue.
2. Filling in of the void (1.0m x 2.4m) between the study and the music room on the ground floor level.
3. Changing the roof material from Colorbond Basalt to Colorbond Ultra Windspray.

Note that Items 2 and 3 above have already been constructed. With regards to Item 1, a support structure was constructed and subsequently removed and the fireplace and flue have not been constructed.

To effect these changes, it is necessary to add the following condition to the Development Consent:

1A - Modification of Consent - Approved Plans and supporting Documentation

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

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a) *Modification Approved Plans*

Architectural Plans – Endorsed with Council’s Stamp		
Drawing No.	Dated	Prepared By
DA02 Issue M	13.10.2020	Watershed Design
DA03 Issue M	13.10.2020	Watershed Design
DA04 Issue M	13.10.2020	Watershed Design
DA05 Issue M	13.10.2020	Watershed Design
DA08 Issue M	13.10.2020	Watershed Design
DA09 Issue M	13.10.2020	Watershed Design
DA10 Issue M	13.10.2020	Watershed Design
DA11 Issue M	13.10.2020	Watershed Design
DA12 Issue M	13.10.2020	Watershed Design
DA13 Issue M	13.10.2020	Watershed Design
DA20 Issue M	13.10.2020	Watershed Design

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

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

Requirements of Section 4.55(1A)

Section 4.55 of the *Environmental Planning and Assessment Act 1979* relevantly provides:

(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*

[Comment: For the reasons detailed in this Statement of Modifications and Environmental Effects the proposal is considered to be of minimal environmental impact.]

- (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*

[Comment: The proposal remains substantially the same, (ie: demolition works and construction of a dwelling house and swimming pool) when applying the principles as summarised by the Land and Environment

Court's planning principle in *Agricultural Equity Investments Pty Ltd v Westlime Pty Ltd (No 3)* [2015] NSWLEC 75, paragraph 173. The modifications do not change an element of the development that is essential to its characterisation or assessment.]

- (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*

[Comment: Council's Community Participation Plan does not require notification of applications made under section 4.55(1A) of the *Environmental Planning and Assessment Act 1979*.]

- (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.*

[Comment: None relevant.]

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

- (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.*

[Comment: See discussion below.]

- (4) *The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.*

[Comment: Noted.]

Relocation of fire place and construction of flue

The proposal is to relocate an approved solid-fuel fire place from the eastern side of the living room on the upper floor to the western side of the living room.

Relocating the fireplace will reduce impacts on neighbouring properties because it increases the setbacks to the nearest (eastern) side boundary from 3.0m to 7.7m.

The increased setback reduces impacts relating to visual amenity and access to sunlight.

The proposed fire place has identical impacts to the approved fire place with regards to potential odours. In this regard, the fire place is installed in accordance with the manufacturer's recommendations and has already been approved under Section 68 of the *Local Government Act 1993*.

The fire place was approved but the architectural plans submitted with the development application failed to identify the flue that is necessarily a part of the installation of the fire place. This has been corrected in the Issue M plans accompanying the modification application.

It is noted that flues are specifically excluded from the definition of building height in *Manly Local Environmental Plan 2013*, and that the proposal does not result in a breach of clause 4.3 of MLEP 2013:

building height (or height of building) means—

- (a) *in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
- (b) *in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,*

*including plant and lift overruns, but **excluding** communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, **flues** and the like.*

Infilling of void between music room and study

The approved proposal included a void measuring 1.0m x 2.4m between the music room and study on the ground floor level. The proposal is to infill this void area.

The proposal will add 2.4m² to the gross floor area of the building, resulting in a total gross floor area of 342.4m² and a floor space ratio of 0.59:1. This complies with the maximum floor space ratio of 0.6:1 permitted under clause 4.4(2) of MLEP 2013.

The proposed infilling of the void has no impacts in terms of building bulk, privacy, overshadowing or views because the works are internal to the approved building.

The proposal continues to satisfy the objectives of the floor space ratio control as specified in clause 4.4(1) of MLEP 2013:

- (a) *to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*

[Comment: The infilling of the void is not visible from outside of the building or from the street and has no impact with regards to the bulk and scale of the building or the streetscape character of the area.]

- (b) *to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*

[Comment: The infilling of the void is not visible from outside of the building and has no impact on the perceived bulk of the building and does not obscure any views around the building. The proposal does not increase the number of dwellings on site or the number of bedrooms so the density of development is unchanged.]

- (c) *to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*

[Comment: The infilling of the void is not visible from outside of the building or from the street and has no impact with regards to the visual relationship with the existing character and landscape of the area.]

- (d) *to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*

[Comment: The infilling of the void is not visible from outside of the building and has no impact on the use or enjoyment of adjoining land or the public domain.]

- (e) *to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

[Comment: Not relevant.]

Modification of roofing material and colour

The proposal is to change the roofing material from Colorbond to Colorbond Ultra. This will reduce ongoing maintenance of the roof and ensure that the appearance of the building is maintained for a longer period of time by providing better corrosion protection, recognising the site's proximity to the harbour.

The change in colour from Basalt to Windspray has minimal environmental impacts. Windspray is a neutral grey colour, similar to basalt. It is not a reflective colour and will not result in glare.



Modification of consent where works already constructed

In *Windy Dropdown Pty Ltd v Warringah Council* [2000] NSWLEC 240 Talbot J undertakes a detailed analysis of caselaw regarding the provisions of the *Environmental Planning and Assessment Act 1979* with regards to works that have already been constructed and the ability to approve an application under section 96 (now section 4.55) of the Act to modify a development consent to encompass those works.

Cases that are reviewed by Talbot J include *Longa v Blacktown City Council* (1985) 54 LGRA 422, *Lirimo Pty Ltd v Sydney City Council* (1981) 66 LGRA 47, *Steelbond (Sydney) Pty Ltd v Marrickville Municipal Council* (1994) 82 LGRA 192, *Connell v Armidale City Council* (Pearlman J, NSWLEC, 25 September 1996 and *Herbert v Warringah Council* (1997) 98 LGRA 270.

Having reviewed these cases, Talbot J at paragraph 33 concluded:

33. *It follows from the foregoing analysis and reasoning that in my view an application that relates to development which has been already carried out can be made pursuant to s 96.*

The current application to modify Development Consent DA2019/0308 is submitted on this basis.

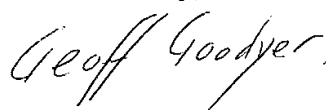
Conclusion

This Statement of Modifications and Environmental Effects has examined a proposal to modify Development Consent DA2019/0308 and concludes:

1. The application can be considered pursuant to Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979*;
2. The modification is of minimal environmental impact;
3. The proposal satisfies the relevant criteria for assessment pursuant to Section 4.15(1) of the *Environmental Planning and Assessment Act 1979*; and
4. The application is suitable for approval.

If you have any questions or require any additional information please feel free to contact me.

Yours sincerely,



Geoff Goodyer
Symons Goodyer Pty Ltd