



Statement of Environmental Effects

Section 4.55 Modification of Consent N0067/16 for the approved Subdivision of Lot 99 into 28 allotments and associated civil works



June, 2018

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David Haskew (Partner)

A: Soper Chambers – Suite 10 / 118-120 Katoomba Street, Katoomba **P:** 0414 407 022 **E:** david@hdcplanning.com.au

Gilbert de Chalain (Partner)

A: Mezzanine Level - 50 Carrington Street, Sydney, NSW 2000 Australia **P:** 0417 253 416 **E:** gilbert@hdcplanning.com.au

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1 Introduction

This report has been prepared as a Statement of Environmental Effects in assessment of a Section 4.55 Application to Modify Development Consent N0067/16, approved by Northern Beaches Council on 11 August 2016. The approved development is for: 'Torrens title subdivision of a yet to be created lot (Lot 99 approved under Stage 2), into 28 allotments and associated civil works'.

This S4.55 Modification seeks amendment to:

1. With respect to Condition B31 and B33 – Modify the requirement for the OSD tanks to be located within the frontage of Lots 15, 16-21 and to be retained at the rear of the allotments as per the stamped approved plans.
2. With respect to Condition C11: the proposed modification relates to the content of the Section 88B instrument, which reproduces Conditions B31 and B33 and therefore requires amendment

This planning report is submitted in accordance with Section 4.55(1A) - Modifications involving minimal environmental impact, of the *Environmental Planning and Assessment Act 1979* ("the EP&A Act 1979") and Clause 115 - Application for modification of development consent, of the Environmental Planning and Assessment Regulation ("the EP&A Regulations 2000").

This planning report and overall planning assessment concludes that the minor amendments are not inconsistent with Pittwater LEP 2014 or the Pittwater DCP 21 for the locality and that this modification results in substantially the same development as that which was originally approved by Northern Beaches Council on 11 August 2016, and the updated plans approved on 2 March 2017 as part the deferred commencement conditions.

The site, development proposal and relevant development controls are discussed and, together with reference to Section 115 of the Environmental Planning and Assessment Act Regulations (2000) and Section 4.15 assessment of the proposal under the Act, forms the required 4.55(1A) Planning report.

Having regard to that assessment, the proposed modification is reasonable and appropriate.



David Haskew

Partner

Haskew de Chalain Planning

2 Background

2.1 SITE CONTEXT

The subject site is situated on north-western corner of Garden Street and Orchard Street Warriewood. The site's location is shown in **Error! Reference source not found.**



Figure 1: Site Location (Local Context)

2.2 SITE DESCRIPTION

The site has been partially subdivided as part of the Stage 1 and 2 Approval (N0379/14 – 30 July 2015) and is formally identified as Lot 200 DP 12124592 with a street address of 2A Orchard Street and 204 Garden Street. The six allotments subdivided as part of Stage 1 (2 and 2A Orchard Street) do not form part of this application.

The site is largely cleared with a west to east slope toward Garden Street.

The local character is defined by semi-rural land holdings however the locality is undergoing an evolution toward low and medium density subdivisions due to its location within the Warriewood Valley Release Area

The land adjoining the site to the west comprises large lot rural residential development. Land to the south, east and west comprises small lot low-density development.

2.3 APPROVAL HISTORY

The following table itemises the approvals and modifications history relating to the site:

DA Number or Modification number	Proposal	Approval date
N0379/14	<p><i>Two staged subdivision and associated civil works. Stage 1 provides for the Torrens Title subdivision of 6 Residential lots and a large residue [LOT 99], including the construction of detention basin and associated landscaping and civil works.</i></p> <p><i>Stage 2 provides the subdivision of the residue lot, including the construction and dedication of a public road, the construction of a detention basin and associated landscaping and civil works.</i></p>	30 July 2015
N0379/14/S96/1 - S96 Modification	<i>Modification to 0379/14 to remove construction of Detention Basin 'B' as part of Stage 2.</i>	25 January 2016
N0379/14/S96/2	<i>Modification to 0379/14 – deletion of detention basin on Lot 201</i>	11 May 2016
N0379/14/S96/3	<i>Modification to 0379/14 – remove the need for the retaining wall on the south eastern boundary of Lot</i>	22 May 2017

	201	
N0067/16	<i>Stage 3 – Torrens Title subdivision of Lot 99 (created as part of Stage 1 & 2 approval) to create 28 allotments and associated civil works.</i>	11 August 2016
N0067/16 (deferred commencement as per Part A of the Consent)	<i>Lodgment of deferred commencement items as per Part A of 11 August 2016 approval. Revised operative date of consent to 2 March 2017, subject to Part B of the consent.</i>	2 March 2017
N0180/15 -	<i>The construction of a 33 unit residential flat building, 22 attached dwellings and 6 semi-detached dwellings, and associated civil works, landscaping and community title subdivision</i>	Refused – 29/9/2015
Current application C14.55 modification of consent application	<i>Modification to N0067/16 to amend Condition B31 (OSD tank locations), Condition B33 (OSD tank location lot 15), Condition C11 (ii) and (iv)</i>	TBC

2.4 APPROVED STAGE 3 DEVELOPMENT

Development Consent N0067/16 describes the approved development as:

'Stage 3 – Torrens Title subdivision of Lot 99 [created as part of Stage 1 & 2 approval] to create 28 allotments and associated civil works.'

Part A of the approval issued on 11 August 2016 contained deferred commencement conditions relating to water management (condition 1) and the provision of revised landscape plans (condition 2). The deferred commencement conditions were approved by Council on 2 March 2017 and the approved plans are listed below:

- *Proposed Site Works Plan, drawing no. 23132-DA-S3-101, issue B, prepared by Proust & Gardner Consulting Pty Limited, dated 6 February 2017;*
- *Stage 3 Landscape Plan, job drawing number 145.16(14)/499, prepared by iScale Landscape Architecture, dated December 2016;*

- *Stage 3 Garden Street Elevation, job drawing number 145.16(14)/500, prepared by iScape Landscape Architecture, dated December 2016;*
- *Alternative Stormwater Drainage Concept Plan (SDCP), prepared by Civil Certification Pty Ltd, dated 22 December 2016, and signed 9 February 2017;*
- *Alternative Stormwater Drainage Concept Plan (SDCP), prepared by Civil Certification Pty Ltd, dated 22 December 2016, and signed 16 February 2017;*

The above listed deferred commencement plans are therefore the subject of this application for modification.

3 Proposed Modification

This application seeks to amend three conditions within Part B - sections B and C of the Development Consent.

The subject conditions are outlined below:

Condition B31:

The OSD tanks and rainwater gardens on Lots 16-21 (inclusive) are to be located between any future dwelling and the northern front property boundary. The OSD tank is to be located wholly beneath the driveway serving the respective dwelling

Condition B33:

The OSD tanks and rainwater gardens on Lot 15 are to be between any future dwelling and the northern boundary. The OSD tank is to be located beneath the driveway serving the respective dwelling. The OSD tank and rainwater garden must not be located within the lowered garden setback areas fronting Garden Street, and are not permitted within the resultant 2m setback to Garden Street.

Condition C11 (ii) and (iv)

C11. The draft Section 88B Instrument annexed to this consent and marked "A" is to be amended, as follows;

i....

ii. The OSD tanks and rainwater gardens on Lots 16-21 (inclusive) are to be located between any future dwelling and the northern front property boundary. The OSD tank is to be located wholly beneath the driveway serving the respective dwelling.

iii.....

iv. The OSD tanks and rainwater gardens on Lot 15 are to be between any future dwelling and the northern boundary. The OSD tank is to be located beneath the driveway serving the respective dwelling. The OSD tank and rainwater garden must not be located within the lowered garden setback areas fronting Garden Street, and are not permitted within the resultant 2m setback to Garden Street.

Justification for amendment

This application seeks to amend the requirement for the placement of the Onsite Detention Tanks (OSD) and rainwater gardens in the front setback of Lots 15, 16-21. The approved plans show the intended location of the OSD tanks within the rear yards of the subject allotments.

The OSD tanks have been located within the rear of the lots due to the fall of the land towards the south. Installation of the tanks within the front setback would involve deep and invasive earthworks to drain all storm water to the front portions of these lots.

The original application for Stage 3 included a Water Management report dated August 2014. A second report was also prepared and submitted at development application stage dated 18 May 2015 and titled '*2/2A Orchard St & 204 Garden Street, Warriewood (part of Sector 9) – Water Management Report Addendum #2 – Lot 200/Stage 2*'.

It is noted that the plan within the 'Figures' section of the May 2015 report (titled Alternative Storm water Drainage Concept Plan – Stage 3 – 2.11.15) locates the OSD tanks and rainwater gardens within the front setbacks of lots 15-21. However, the actual plans submitted with the development application for N0067/16 were altered to locate the OSD tanks in the rear yards due to the issues identified above relating to the fall of the land.

That being the case, the discrepancy between the concept plan within the May 2015 report and the actual development application plans does not alter the outcome for the management of on site detention.

An inter allotment drainage line along the southern boundary connects all individual OSD tanks and joins with a site discharge pit within the public road reserve on Garden Street. The proposed OSD tanks are also compliant with the controls and guidelines contained within Pittwater DCP21 - Section B5.7 – Storm water Management – Onsite detention and the Warriewood Valley Urban Land Release Water Management Specification February 2001.

The amendment to Conditions B31 and B33 to permit rear placement of the OSD tanks will not alter the capacity or functioning of the on site storm water management system for each site or on the subdivision as a whole.

The proposal seeks no amendment to the development description or to any remaining conditions of consent.

4 The Regulations

Clause 115 of the Environmental Planning and Assessment Regulations ("the EP&A Regulations 2000") enables a consent authority to modify a development consent upon application being sought by the applicant or any other person entitled to the act on the consent, provided that the consent authority as part of the assessment process take into consideration the following matters:

Clause 115 What are the requirements for an application for modification of a development consent?

(1) *An application for modification of a development consent under section 96 (1), (1A) or (2) or 96AA (1) of the Act must contain the following information:*

(a) *the name and address of the applicant,*

Specified on the Application Form

(b) *a description of the development to be carried out under the consent (as previously modified),*

The approved development is described in the Development Consent as: 'Torrens title subdivision of a yet to be created lot (Lot 99 approved under Stage 2), into 28 allotments and associated civil works'.

(c) *the address, and formal particulars of title, of the land on which the development is to be carried out,*

Lot 200 DP 12124592 with a street address of 2A Orchard Street and 204 Garden Street

(d) *a description of the proposed modification to the development consent,*

The modification proposes to amend the requirement for the OSD tanks and rainwater gardens to be located within the frontage of lots 15-21 and permit their placement to the rear of the allotments

(e) *a statement that indicates either:*

(i) *that the modification is merely intended to correct a minor error, misdescription or miscalculation, or*

(ii) *that the modification is intended to have some other effect, as specified in the statement*

The modification is intended to have some other effect, namely the ability to locate the OSD tanks in the rear yards of Lots 15-21.

(f) a description of the expected impacts of the modification,

The proposed modification will result not result in any impacts to the storm water drainage system on the site or in the locality. The requirement to locate the OSD tanks in the front yards would require extensive and deep excavation into order to provide drainage pipes that drain to the front of the site. The land naturally falls toward the rear of the site therefore to locate the OSD tanks in the front yards creates a construction challenge to the site. The modification provides an improved outcome for the site by reducing the depth of earthworks and thus minimising risks associated with soil erosion, land subsidence and acid sulfate soils.

(g) an undertaking to the effect that the development (as to be modified) will remain substantially the same as the development that was originally approved,

The proposed modification results in no change to the essence or substance of the approved development. The development as modified will remain substantially the same as the development that was originally approved. The onsite detention capacity is to remain the same. The combined drainage channel will still drain to Garden Street and the OSD tanks will be easily accessible for maintenance or repairs via the side boundaries of each site.

(h) if the applicant is not the owner of the land, a statement signed by the owner of the land to the effect that the owner consents to the making of the application (except where the application for the consent the subject of the modification was made, or could have been made, without the consent of the owner),

Owner's consent has been provided with the Application documentation.

(i) a statement as to whether the application is being made to the Court (under section 96) or to the consent authority (under section 96AA), and, if the consent authority so requires, must be in the form approved by that authority.

The development application had not been determined by the Court.

5 Section 4.55 of the EP&A Act 1979

Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 ("the EP&A Act 1979"), enables a consent authority, in this case Northern Beaches Council, to modify a development consent upon application being sought by the applicant or any other person entitled to the act upon the consent provided that the consent authority as part of the assessment process take into consideration the following matters:

1. *it is satisfied that the proposed modification is of minimal environmental impact*

Comment: The proposed modification relates to the conditions identified in Section 3 of this report. This planning assessment demonstrates that the proposed modification will not result in unreasonable environmental impacts to the approved development and are minor. In this regard, the modifications would have minimal construction modifications, minimal environmental impact and therefore is substantially the same to that determined as approved pursuant to Development Consent DA N0067/16.

2. *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)*

Comment: As stated above, the modifications proposed are minor and reflect the intended location of the OSD tanks on Lots 15-21. The modification provides a superior development outcome due to following the natural fall of the land and not requiring extensive earthworks to locate the tanks and associated pipework against the fall of the land. The modifications are of minimal environmental impact and therefore the development is substantially the same to that determined as approved pursuant to Development Consent DAN0067/16.

3. *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?

Comment: It is anticipated that given the modifications proposed, and perceived minimal planning and environmental impacts proposed, that the submission will not be required to be notified in accordance with Council's notification Policy.

- 4. *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: This planning report outlines the considerations under Section 79C of the Environmental Planning & Assessment Act 1979 and concludes that the heads of consideration haven been satisfied, and as noted above that the submission will not be required to be notified in accordance with Council's notification Policy.

6 Assessment of Environmental Effects

In determining the environmental effects of a development proposal the consent authority, in this case Northern Beaches Council, is required to consider those matters relevant as listed in Section 4.15 of the Environmental Planning and Assessment Act, 1979. These matters are listed below with commentary where required.

6.1 ENVIRONMENTAL PLANNING INSTRUMENTS - SECTION 4.15(1)(A)(I)

The relevant environmental planning instruments have been identified and are listed below. The provisions of all relevant environmental planning instruments subject to this modification, have been satisfactorily addressed within this report.

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- Pittwater Local Environmental Plan 2014 (PLEP 2014);

6.2 DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS - SECTION 4.15(1)(II)

At the time of preparing this S4.55 Planning modification there were no draft planning instruments which would affect this proposal.

6.3 DEVELOPMENT CONTROL PLANS - SECTION 4.15(1)(III)

The Pittwater Development Control Plan 21 applies to the site. The following sections are of relevance and are discussed below: applies to this proposal and it is argued that the proposal is consistent with the aims and objectives of the DCP and generally compliant with the specific controls applicable to the site and the type of development proposed. This proposed minor amendment to the conditions of consent and subdivision plan will have insignificant impact on consistency with the DCP.

Pittwater DCP21 - Section B5.7 – Storm water Management – Onsite detention

The following OSD facilities are permissible on the site as:

- Underground OSD storage facility,
- Landscaped OSD storage facility
- Driveway and OSD car park facility

The relocation of the OSD tanks underground is permissible in accordance with the provisions of the DCP. There is no requirement for location of tanks or form them to be specifically located in front yards or within driveway areas.

The Warriewood Valley Urban Land Release Water Management Specification February 2001 is also a document relied upon by Council in the assessment of new development within the Warriewood Valley Release area. The modification will not be inconsistent with the guidelines within the Water Management Specification. The OSD tank specifications are not being altered and the relocation will not affect the flow rates or capacity of the tanks

6.4 ANY PLANNING AGREEMENT - SECTION 4.15(1)(IIIA)

No planning agreement is proposed.

6.5 THE REGULATIONS (TO THE EXTENT THAT THEY PRESCRIBE MATTERS FOR THE PURPOSES OF THIS PARAGRAPH) - SECTION 4.15(1)(IV)

Clause 92(1) of the Environmental Planning and Assessment Regulation 2000 is not applicable to the consideration of this modification.

6.6 ENVIRONMENTAL AND SOCIAL IMPACTS - SECTION 4.15(1)(B)

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 proposed modifications are minor in their environmental impacts and will not have a detrimental social impact in the locality. The proposed modification will not have a detrimental economic impact on the locality. The proposed modification will facilitate desirable housing development and encourage a beneficial economic impact.

6.6.1 *Impacts on the natural environment*

The site is located within an evolving urban area and this proposal will have no significant impact on the natural environment. The environmental impacts of the proposed development on the natural environment were considered in detail with the original submission and this proposal changes nothing in relation to impacts on the natural environment.

The modification also presents an improved environmental outcome as the extent of excavation and earthworks required for the installation of the OSD tanks will be less compared to the requirement for the tanks to be placed in the front setbacks.

6.6.2 *Impacts on the built environment*

As outlined above, the modification will permit the construction of the OSD and rainwater gardens in the rear of lots 15 -21. The fall of the land toward the south ensures that stormwater run-off naturally drains towards the southern boundaries of these allotments. The requirement to locate the OSD tanks within the front yards would require deep and invasive excavation to place the tanks and associated pipework to a depth where gravity feed will channel water further down hill to the northern frontages of these lots. The modification presents an improved outcome on the built environment.

The OSD tanks will be accessible via side walkways to undertaken any maintenance works required in the future.

6.6.3 *Social and economic impacts*

The proposed amendments will have no social and economic impacts on the locality. That is, this proposal will continue to encourage the efficient economic use of the land, introduce good quality and well located residential opportunities to the locality

6.7 SUBMISSIONS - SECTION 4.15(1)(D)

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

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

As noted above, given the minor environmental impacts of the proposed modifications, it is anticipated that the proposal will not be publicly notified. However, if Council was to notify and submissions were to be received, the applicant would appreciate the opportunity to respond to submissions.

6.8 PUBLIC INTEREST - SECTION 4.15(1)(E)

Section 79C(e) requires the consent authority to consider:

“(e)the public interest”.

It is argued that the public interest is best achieved by the orderly and economic use of land for permissible purposes that do not impact unreasonably on development and/or enjoyment of surrounding land. In this case, it is argued that this proposed modification represents an efficient, orderly and economic use of land.

6.9 DEVELOPMENT CONTROL PLANS- SECTION 4.15(3A)

Section 4.15(3A) of the Act the Environmental Planning and Assessment Act, 1979 requires Councils to be flexible in applying any development control provisions that apply to a proposal and allow reasonable alternative solutions that achieve the objects of those standards with respect to that aspect of the development. This proposed amendment has no significant impact on consistency with Pittwater DCP 21

7 Conclusion

This 4.55 planning report has been prepared as an amended planning assessment of an approved development

This planning report is submitted in accordance with Clause 4.55(1A) modifications involving minimal environmental impact, of the *Environmental Planning and Assessment Act 1979* ("the EP&A Act 1979") and Clause 115 application for modification of development consent, of the *Environmental Planning and Assessment Regulation* ("the EP&A Regulations 2000").

The proposed amendment seeks to amend conditions B31 and 33 and C11 (ii) and (iv) to permit the placement of the OSD tanks to the rear of the future dwelling houses rather than in the front setback of the subject allotments hence the development conditions should be modified to say:

Condition B31:

The OSD tanks and rainwater gardens on Lots 16-21 (inclusive) are to be located ~~between~~ to the rear of any future dwelling and the ~~northern front~~ southern rear property boundary. ~~The OSD tank is to be located wholly beneath the driveway serving the respective dwelling~~

Condition B33:

The OSD tanks and rainwater gardens on Lot 15 are to be ~~between~~ to the rear of any future dwelling and the ~~northern~~ southern boundary. ~~The OSD tank is to be located beneath the driveway serving the respective dwelling.~~ The OSD tank and rainwater garden must not be located within the lowered garden setback areas fronting Garden Street and are not permitted within the resultant 2m setback to Garden Street.

Condition C11 (ii) and (iv)

C11. The draft Section 88B Instrument annexed to this consent and marked "A" is to be amended, as follows;

i....

ii. The OSD tanks and rainwater gardens on Lots 16-21 (inclusive) are to be located ~~between~~ to the rear of any future dwelling and the ~~northern front~~ southern rear property boundary. ~~The OSD tank is to be located wholly beneath the driveway serving the respective dwelling~~

iii.....

iv. The OSD tanks and rainwater gardens on Lot 15 are to be ~~between~~ to the rear of any future dwelling and the northern southern boundary. ~~The OSD tank is to be located beneath the driveway serving the respective dwelling.~~ The OSD tank and rainwater garden must not be located within the lowered garden setback areas fronting Garden Street, and are not permitted within the resultant 2m setback to Garden Street.

The proposed development as amended is deserving a positive determination from the Council.