

MODIFIED STATEMENT OF ENVIRONMENTAL EFFECTS

For

SECTION 4.55(2) MODIFICATION APPLICATION TO DEVELOPMENT CONSENT NO. DA 2020/1032

At

15 Greycliffe Street, Queenscliff

Prepared by:

TONY MOODY
BTP (UNSW), LL.B (UTS)(Hons.), MPIA

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1.0 INTRODUCTION



On 5 February 2021, Northern Beaches Council (Council) issued Development Consent No. DA 2020/1032 for “*Demolition works and construction of a dwelling house including spa pool*” on a property known as 15 Greycliffe Street, Queenscliff (subject site).

For the purposes of this Modified Statement of Environmental Effects (Modified SEE), I describe the above Development Consent No. DA 2020/1032 as the “*Parent Consent*”.

Under this current Section 4.55(2) Modification Application, the Applicant now seeks approval of Council for minor modifications to the above approved development. This Modification Application seeks approval for modifications to the approved plans under the above Parent Consent.

I was requested by the Applicant to assess the proposed modifications in order to determine whether I professionally support the proposed modifications.

I confirm that I have again inspected the subject site and adjoining locality and assessed the proposed modifications against the relevant Planning Controls of Council.

I consider that the proposed modifications do not create unreasonable adverse impacts on adjoining properties or the public domain.

I consider that the proposed modifications are worthy of approval for the reasons referred to in this Modified SEE.

As previously advised, I consider that the proposed modified works are of a “*minor*” nature with no unreasonable adverse impacts and a number of positive outcomes. Given my opinion that the proposed works are of a minor nature with no unreasonable adverse impacts and positive outcomes, I consider that the proposed modifications could be assessed and determined under Section 4.55(1A), being works of a “*minimal environmental impact*”. For abundant caution, I have decided to assess the proposed modifications under Section 4.55(2) entitled “*other modifications*”.

Prior to providing my reasons in support of the current Section 4.55(2) Modification Application, I wish to advise Council of my qualifications and experience. I am a Consultant Planner with 15 years’ experience in 3 Local Government Councils, including 9 years as a Senior Development Control Planner. I hold a Bachelor of Town Planning Degree from the University of NSW and a Bachelor of Laws Degree (Hons) from the University of Technology, including a High Distinction in Environmental Studies.

I have appeared as an Expert Planning Witness for 9 Local Government Councils in the Land and Environment Court (Court) and also appeared as a Court Appointed Expert.

2.0 PROPOSED MODIFICATIONS

This Section 4.55 (2) Modification Application seeks to modify the following approved plans contained under Condition 1. entitled “*Approved Plans and Supporting Documentation*” of the Parent Consent:

Condition 1.a) and c) currently states as follows:

1. *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:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA01 - F - Site Plan	07/08/2020	Chen Chow Pty Ltd
DA02 - Demolition Plan	07/08/2020	Chen Chow Pty Ltd
DA03 - Excavation and Fill Plan	07/08/2020	Chen Chow Pty Ltd
DA-100- Basement Floor Plan	07/08/2020	Chen Chow Pty Ltd
DA-101- Ground Floor Plan	07/08/2020	Chen Chow Pty Ltd
DA-102- First Floor Plan	07/08/2020	Chen Chow Pty Ltd
DA-103- Roof Plan	07/08/2020	Chen Chow Pty Ltd
DA-200- South & East Elevation	07/08/2020	Chen Chow Pty Ltd
DA-201- North & West	07/08/2020	Chen Chow Pty Ltd
DA-300- Sections	07/08/2020	Chen Chow Pty Ltd
DA-405- Schedule of External Finishes	07/08/2020	Chen Chow Pty Ltd

Engineering Plans		
Drawing No.	Dated	Prepared By
SWDA 1.2-1.6 - Stormwater Plans	June 2020	Partridge
CDA1.1-1.3 - Public Domain Civil Works	July 2020	Partridge

Reports / Documentation – All recommendations and requirements contained

<i>within:</i>		
<i>Report No. / Page No. / Section No.</i>	<i>Dated</i>	<i>Prepared By</i>
<i>AUSGRID Letter</i>	<i>30/09/2020</i>	<i>AUSGRID</i>

c) The development is to be undertaken generally in accordance with the following:

<i>Landscape Plans</i>		
<i>Drawing No.</i>	<i>Dated</i>	<i>Prepared By</i>
<i>Tree Protection and Removal Plan</i>	<i>4.08.20</i>	<i>360</i>
<i>Key Plan</i>	<i>4.08.20</i>	<i>360</i>
<i>Landscape Plan 1 – Front Garden</i>	<i>4.08.20</i>	<i>360</i>
<i>Landscape Plan 2 – Rear Garden</i>	<i>4.08.20</i>	<i>360</i>
<i>Elevation Plan 1 – Front Garden</i>	<i>4.08.20</i>	<i>360</i>
<i>Elevations Plan 2 – Rear Garden</i>	<i>4.08.20</i>	<i>360</i>
<i>Waste Management Plan</i>		
<i>Drawing No/Title.</i>	<i>Dated</i>	<i>Prepared By</i>
<i>Waste Management Plan</i>	<i>03/08/20</i>	<i>Melanie Koeman</i>

This Section 4.55(2) Modification Application seeks to modify Conditions 1 a) and c), “Approved Plans” in order to incorporate the proposed modifications depicted in the following Architectural Plans prepared by Chenchow Pty Ltd, Architects, the Stormwater Plans prepared by Partridge Hydraulic Services, and the Landscape Plans prepared by 360.

<i>Drawing No.</i>	<i>Dated</i>	<i>Prepared By</i>
<i>A-000 – Cover Page Issue C</i>	<i>August 2021</i>	<i>Chenchow Pty Ltd</i>
<i>A-100 – Basement Floor Plan Issue C</i>	<i>August 2021</i>	<i>Chenchow Pty Ltd</i>
<i>A-101 – Ground Floor Plan Issue C</i>	<i>August 2021</i>	<i>Chenchow Pty Ltd</i>
<i>A-102 – First Floor Plan Issue C</i>	<i>August 2021</i>	<i>Chenchow Pty Ltd</i>
<i>A-103 – Roof Plan Issue C</i>	<i>August 2021</i>	<i>Chenchow Pty Ltd</i>
<i>A-200 – South Elevation Issue C</i>	<i>August 2021</i>	<i>Chenchow Pty Ltd</i>
<i>A-201 – East Elevation Issue C</i>	<i>August 2021</i>	<i>Chenchow Pty Ltd</i>
<i>A-202 – North Elevation Issue C</i>	<i>August 2021</i>	<i>Chenchow Pty Ltd</i>

<i>A-203 – West Elevation Issue C</i>	<i>August 2021</i>	<i>Chen Chow Pty Ltd</i>
<i>A-300 – Sections Issue C</i>	<i>August 2021</i>	<i>Chen Chow Pty Ltd</i>

Engineering Plans		
Drawing No.	Dated	Prepared By
<i>SWT 1.1 – Notes and Drawing Legend Revision T1</i>	<i>October 2021</i>	<i>Partridge</i>
<i>SWT 1.2 – Roof and Level 1 Floor Layouts Revision T2</i>	<i>October 2021</i>	<i>Partridge</i>
<i>SWT 1.3 – Ground and Basement Floor Layouts Revision T2</i>	<i>October 2021</i>	<i>Partridge</i>
<i>SWT 1.4 – Details Sheet Revision T1</i>	<i>October 2021</i>	<i>Partridge</i>
<i>SWT 1.5 – Erosion and Sediment Control Plan and Details Revision T1</i>	<i>October 2021</i>	<i>Partridge</i>

Drawing No.	Dated	Prepared By
<i>L-DA-00-Cover Page & Drawing Schedule Revision F</i>	<i>19.10.21</i>	<i>360</i>
<i>L-DA-01- Landscape Schedules & Notes Revision F</i>	<i>19.10.21</i>	<i>360</i>
<i>L-DA-02-Landscape Diagrams Revision G</i>	<i>19.10.21</i>	<i>360</i>
<i>L-DA-03-Tree Removal Plan Revision F</i>	<i>19.10.2021</i>	<i>360</i>
<i>L-DA-04-Key Plan Revision I</i>	<i>19.10.21</i>	<i>360</i>
<i>L-DA-05-Landscape Plan 1 – Front Garden Revision I</i>	<i>19.10.21</i>	<i>360</i>
<i>L-DA-06-Landscape Plan 2 – Rear Garden Revision I</i>	<i>19.10.21</i>	<i>360</i>
<i>L-DA-07-Landscape Elevation 1 – Front Garden Revision F</i>	<i>19.10.21</i>	<i>360</i>
<i>L-DA-08-Landscape Elevation 2 – Rear Garden Revision F</i>	<i>19.10.21</i>	<i>360</i>

<i>L-DA-09-Planting Palette Revision F</i>	<i>19.10.21</i>	<i>360</i>
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The proposed modifications depicted in the above set of Architectural Plans are itemised in the “S4.55 *Schedule of Changes*”, which has been prepared by the Architects and are described below:

ITEM	DESCRIPTION
V1	Garage door opening relocated.
V2	Front entry door relocated.
V3	Reconfigure bathroom layout to suit revised wall locations.
V4	Size of Surfboard Room and Laundry reduced.
V5	Add Store Room and Comms Room.
V6	Reconfigure Terrace to suit new location of walls.
V7	External screens deleted southern façade.
V8	Courtyard space reconfigured to suit new location of walls.
V9	External Screens deleted northern façade.
V10	Bedroom 1 wardrobes slightly modified.
V11	Master Ensuite layout reconfigured.
V12	Window W2.01, W2.02, W2.03 slightly modified to louvre window with hit and miss brick work.
V13	Amended sliding door into Master Bedroom.
V14	Southern façade walls relocated.
V15	Delete eastern façade window.
V16	Northern façade walls relocated.
V17	Delete western façade window.
V18	Fireplace slightly relocated.
V19	Decrease extent of roof perimeter southern façade.
V20	Decrease extent of roof perimeter northern façade.
V21	Add opening to northern façade.
V22	Add opening to southern façade.
V23	Add opening to western façade.
V24	Ceiling configuration amended.
V25	Raise ground floor by 20mm.

V26	Window W2.04, W2.05, W2.06 slightly modified to louvre window with hit and miss brick work.
V27	Skylight added.
V28	Gutter added.
V29	PV location slightly amended.
V30	Landscaping slightly amended.
V31	Louvre window W1.01 added to Bathroom.

I support the proposed modifications referred to in the above modified Architectural Plans, Stormwater Plans and Landscape Plans for the reasons outlined in this Modified SEE.

This Modified SEE outlines my grounds in support of the current Section 4.55(2) Modification Application.

3.0 SECTION 4.55(2) MODIFICATION APPLICATION

As previously advised, I consider that the proposed modifications under this Section 4.55(2) Modification Application could be reasonably considered under Section 4.55(1A) entitled *“Modifications involving minimal environmental impact.”*

For abundant caution, the proposed modifications have been considered under Section 4.55(2) of the Environmental Planning & Assessment Act 1979 (the Act) entitled *“Other modifications.”*

Section 4.55(2) of the Act states as follows:

“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 4.8) 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.”

I consider the proposed modifications satisfy the relevant provisions of Section 4.55(2) of the Act for the following reasons:

3.1 Statutory Test

A recent decision of Commissioner Bish of the Court in *Gill v Waverley Council* [2020] NSWLEC 1552 (*Gill*) provides a very useful expose of the statutory test. Other previous Court judgements also assist in understanding the statutory test.

I note the following principles of the statutory test referred to in *Gill* and previous Court judgements:

- The power contained under Section 4.55(2) is to “*modify the consent*”. The power was originally restricted to modifying the details of the consent. In 1985, the power was enlarged.
- As stated by his Honour, Mason J in *North Sydney Council v Michael Standley & Associates Pty Ltd* (1998) 43 NSWLR 468 at 475 (*Michael Standley*), the modification power is beneficial and facultative, and Parliament has “*chosen to facilitate the modification of consents, conscious that such modifications may involve beneficial cost savings and/or improvements to amenity*”.
- As observed by his Honour, Stein J in *Vacik Pty Ltd v Penrith City Council* [1992] NSWLEC 8 (*Vacik*), the Applicant for modification bears the onus of establishing that the proposed development, as modified, will be substantially the same as the development originally consented to.
- The term “*substantially*” means “*essentially or materially having the same essence*” (*Vacik*, endorsed in *Michael Standley* at 440). The term “*modify*” means “*to alter without radical transformation*” (*Sydney City Council v Ilenace Pty Ltd* [1984] 3 NSWLR 414, *Michael Standley* at 474).

- In *Moto Projects (No. 2) Pty Limited v North Sydney Council* (1999) 106 LGERA 298 (*Moto*), his Honour, Bignold J of the Court described the consideration of the previous Section 96(2), which is in the same terms as the current Section 4.55(2).

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).

- Although the test in *Moto* arose in the context of the previous Section 96(2), it is also applicable to Section 4.55(2). In *Gill*, Bish C applied the *Moto* test in order to consider a Section 4.55(2) Modification Application.
- It is clear from the *Moto* judgment that there are 2 “limbs” to be satisfied. Both the qualitative and quantitative limbs under *Moto* must be satisfied before it can be said that the proposed modified development is substantially the same as that which was originally approved. A quantitative evaluation, absent any qualitative assessment, will be “legally flawed” (*Moto* at [52]).
- As stated in *Scrap Reality Pty Ltd v Botany Bay City Council* [2008] NSWLEC 333 at [19], questions of fact and degree, which reasonably admit of different conclusions, will influence whether the consent authority is satisfied that the statutory test is fulfilled.

3.2 Assessment of Proposed Modifications under Qualitative and Quantitative Limbs under *Moto*.

(i) ***Qualitative Limb under Moto***

I consider that the proposed modified development has the same qualitative nature as the original approved development under the Parent Consent.

The original approved development under the Parent Consent relates to a “*Dwelling House*”. The proposed modified development also relates to the same Dwelling House.

Accordingly, I consider that the proposed modified development satisfies the qualitative limb under *Moto*.

(ii) ***Quantitative Limb under Moto***

The assessment under the second limb of *Moto* requires an assessment on the quantitative modifications between that which is proposed under this Section 4.55(2) Modification Application when compared to that which was approved under the Parent Consent.

In quantitative terms, I consider that the proposed modified development is essentially or substantially the same as the approved development under the Parent Consent in terms of the quantitative limb under *Moto* for the following reasons:

- The proposed modifications to the front and rear facades involve changes to design elements and materials, from pre-cast concrete paneling to a brick arched opening design, and will not result in substantial modifications to the existing approved development. The proposed modifications in design and materials will not result in substantial changes to the approved height, bulk and scale of the approved development. Furthermore, the approved Deep Soil Landscaped Area and front, side and rear setbacks will be maintained, notwithstanding the minor modifications to the front and rear façade footprint.

- As previously advised, the proposed modifications are of a minor nature, and include changes to the external facade design and materials. These minor modifications will not result in any significant increase to the approved height, bulk and scale of the approved dwelling under the Parent Consent. In fact, the modifications are minor.
- In terms of the proposed modifications listed at V12 and V26, on the document entitled “*S4.55 Schedule of Changes*”, these modifications are very minor and relate to “*slightly modified*” windows on the eastern and western facades. The location of these windows will remain as approved under the Parent Consent.
- The proposed minor changes to the location of the *Garage Door* and *Entry Door*, identified on the “*S4.55 Schedule of Changes*” as V1 and V2, will not result in any increase in floor area.
- Furthermore, there will be no change to the approved carparking and access arrangements.
- The proposed minor relocation to the northern and southern façade walls will result in minor reconfigurations to the northern courtyard and the southern terrace, as well as the approved Landscape Design.
- According to the “*S4.55 Landscape Documentation*” that accompanies this Modification Application, the approved Deep Soil Landscaped Area will remain as approved under the Parent Consent.
- I consider that the proposed minor modifications to the footprint of the front and rear façades will not create any unreasonable adverse impacts to adjoining properties and the public domain in terms of View Loss, Overlooking, Overshadowing or Visual and Acoustic Privacy or any other impact.
- The proposed addition of the proposed Store Room and Comms Room at Basement Level will not result in any addition to the height, bulk and scale of the approved development.
- The proposed re-location of the approved Fireplace and associated flue will result in a miniscule increase in the height of the approved flue. On this point, I note that, according to the Dictionary under Warringah Local Environmental Plan 2011, a “*flue*” is an excluded element from the calculation under the Height of Buildings Standard.

- There is a proposed additional gutter at Roof Level. I note that amended Stormwater Plans accompany this Modification Application, which are proposed to be included in the proposed amended Condition 1. “*Approved Plans*” a) and c).
- The approved front, side and rear setbacks will be maintained.
- A number of the proposed modifications are related to internal works, which will not result in any increase to the approved height, bulk and scale under the Parent Consent.

Based on the above assessment, I consider that the proposed modified development also satisfies the quantitative limb under *Moto*.

4.0 SECTION 4.15 ASSESSMENT

Assessment of the current Section 4.55(2) Modification Application also requires consideration under relevant matters under Section 4.15 of the Environmental Planning and Assessment Act (the Act).

I consider that the proposed modified development is very reasonable based on relevant matters under Section 4.15 of the Act for the following reasons:

- The proposed modifications are associated with a “*Dwelling House*”, which is a permissible development within the current R2 Low Density Residential zone.
- The proposed modifications are minor in nature compared to the totality of the original approved development and do not create unreasonable impacts on adjoining properties or the public domain. On this point, the proposed modifications will not change the height, bulk and scale of the approved development to a significant degree. In fact, the proposed modifications are minor.
- There will not be a loss of views from the public domain due to the fact that the proposed modifications will not result in any significant change to the height, bulk and scale of the approved development.
- Furthermore, there will be no loss of any important views or vistas from the public domain when assessed against the Court’s Planning Principle entitled “*Impact on public domain views*” in the Court’s judgement of *Rose Bay Marina Pty Ltd v Woollahra Council*. I note that I was the Planning Consultant for Woollahra Council in its successful opposition to the proposed Rose Bay Marina extension.
- There will be no unreasonable change to overshadowing onto adjoining properties due to the fact that the proposed modifications, comprising minor changes listed in Section 2.0 of this Modified SEE, will only result in minor changes to the height, bulk and scale of the approved development.
- There will be no increase to overlooking onto the adjoining properties as a result of the proposed modifications.

- The proposed re-location of the approved Fireplace and associated flue will result in a miniscule increase in the height of the approved flue. On this point, I note that, according to the Dictionary under Warringah Local Environmental Plan 2011, a “*flue*” is an excluded element from the calculation under the Height of Buildings Standard.
- There is a proposed additional gutter at Roof Level. The proposed gutter will be connected to Council’s stormwater system and will not result in any adverse impacts to adjoining properties and the public domain. I note that modified Stormwater Plans accompany this Modification Application, which are proposed to be included in the proposed amended Condition 1. “*Approved Plans*” a) and c).
- There will be no increase in the approved floor space arising from the proposed modifications.
- The proposed modifications will not result in a change in the approved number of car parking spaces.
- There will be no change to the approved access arrangements.
- There will be no change in the approved deep soil Landscaped Area throughout the subject site as a result of the proposed modification.

Overall, I consider that the proposed modified development satisfies all relevant Section 4.15 matters under the Act and will not generate unreasonable adverse impacts on the public domain or adjoining properties.

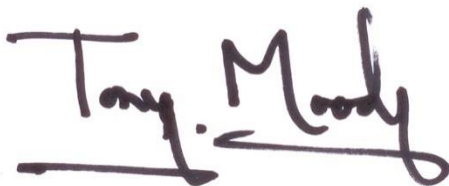
5.0 CONCLUSION

For the reasons outlined in this Modified SEE, I fully support the current Section 4.55(1A) Modification Application.

I consider that the proposed modifications will have no unreasonable adverse impacts on adjoining properties or on the public domain and adjoining properties.

I further consider that the proposed modifications are minor in nature and satisfy both the qualitative and quantitative limbs in *Moto*.

I commend the proposed modified changes to Council for its approval.

A handwritten signature in dark ink, reading "Tony Moody". The signature is written in a cursive style with a horizontal line underneath the name.

TONY MOODY
BTP (UNSW), LL.B (UTS)(Hons.), MPIA

Dated: 29 October, 2021.