

MODIFIED STATEMENT OF ENVIRONMENTAL EFFECTS

For

**SECTION 4.55(1A) MODIFICATION APPLICATION
TO DEVELOPMENT CONSENT NO. DA2023/0185**

At

**APPROVED LOT 102 IN SUBDIVISION OF LOT 7 DP 14040
AND LOT 10 DP 1257419, 23-25 LOCH STREET,
FRESHWATER**

Prepared by:

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Reference 21011TM

1.0 INTRODUCTION



Figure 1: Subject Site

A brief history of the approved developments on 23 and 25 Loch Street are as follows:

- There are 2 existing dwellings on each of the properties at 23 and 25 Loch Street, comprising Lot 7 DP 14040 and Lot 10 DP 1257419.
- On 23 March 2022, under Development Consent No.2021/1469, Northern Beaches Council (Council) approved a Subdivision, being a Boundary Realignment, of 23 and 25 Loch Street. This approved Plan of Subdivision allowed 23 Loch Street to be expanded by including a rear portion of 25 Loch Street. The approved Plan of Subdivision created approved Lots 101 and 102. Lot 101 is shown on Figure 1 above. Lot 102 is also shown on Figure 1 above, comprising the yellow and green areas.
- The approved Lot 101 reduces the existing area of 25 Loch Street and retains the existing dwelling on the reduced smaller area of 25 Loch Street. Please refer to Figure 1 above relating to approved Lot 101.
- This current Section 4.55(1A) Modification Application relates to approved Lot 102 (subject site).

- The approved Lot 102 (comprising the yellow and green areas) has been the subject of a number of approvals on the property known as 23 Loch Street and includes the following:
 - Development Consent No. DA2021/1469
 - Modification Application Approval No. Mod2022/0574.
 - Modification Application Approval No. Mod2023/0036.
 - Development Consent No. DA2023/0185. There are 2 “Deferred Commencements Conditions” under the above approval. Deferred Commencement Condition 2 entitled “Registration of Land Title”, is the subject of this Section 4.55(1A) Modification Application.
- There are also 2 current applications lodged with Council, which have not yet been determined by Council.
- The above Development Consent No. DA2021/1469 and the subsequent Modification Application Approvals relate to the demolition and erection of a new dwelling house (yellow area on Figure 1).
- The above Development Consent No. DA2023/0185 relates to the demolition and erection of a swimming pool and ancillary structures which form part of the approved Lot 102 (green area on Figure 1). This current Section 4.55(1A) Modification Application seeks modifications to Deferred Commencement Condition 2 of Development Consent No. DA2023/0185.

Development Consent No. DA 2023/0185 is described as the “*Parent Consent*” for the purposes of this Modified Statement of Environmental Effects (Modified SEE).

This Modified SEE has been prepared in support of this current Section 4.55(1A) Modification Application for the following proposed modifications to Deferred Commencement Condition 2 of the Parent Consent:

“To remove Deferred Commencement Condition 2 and to impose 2 new Conditions of Consent in the “General Conditions”, which will state the following:

- ***The Applicant must obtain a Pre-allocated plan number (PPN) prior to the issue of the Construction Certificate.***
- ***The Applicant must register the Proposed Lots 101 and 102 in the approved plan of proposed subdivision of Lot 7 DP 14040 and Lot 10 DP***

1257419, with the NSW Land Registry Services (Land Titles Office) to legally create the land prior to the issue of the Occupation Certificate. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate”.

Prior to providing my reasons in support of the current Section 4.55(1A) 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 in numerous Appeals as a Court Appointed Expert.

2.0 SUBJECT SITE AND ADJOINING LOCALITY

As previously advised, the subject site comprises the approved Lot 102, comprising the yellow and green areas on Figure 1. Please refer to page 3.

The Assessment Report of Council for the Parent Consent contains the following description of not only the approved Lot 102, but also the adjoining approved Lot 101:

“The subject proposal involves two (2) allotments and two (2) dwelling houses on the eastern side of Loch Street, being No.23 and No.25 Loch Street near the intersection with Wyadra Avenue and Batho Street.

The property of No.23 Loch Street contains a split level detached dwelling (to be demolished with this proposal), swimming pool, outbuilding, garage and garden areas. The land falls steeply to the east toward the rear of the house and has extensive stairs, paths and terraced areas. The exiting lot is identified as Lot 7 DP 14040 having a maximum width of 12.575m, length of 50.34m and an area of 633 square metres (sqm).

The property of No.25 Loch Street contains a detached dwelling (to be retained with this proposal), outbuilding, off street parking and garden areas. The land falls steeply to the east at the rear half of the site with two high stone terraces. The exiting lot is identified as Lot 10 DP 1257419 having a maximum width of 15.2m, length of 50.34m and an area of 750.5sqm. A concrete driveway borders the northern boundary, approved for access to No.2 Wyadra Avenue.

Recently No.23 and No.25 Loch Street (which are under the same ownership) received development consent DA2021/1469 for demolition and construction of a new dwelling on No.25 Loch Street with a subdivision to enlarge that property by transferring the lower area of No.23 Loch Street. Therefore No.23 Loch Street is now 883sqm and No.25 Loch Street is reduced to 500sqm. The new boundary line follows a steep escarpment feature near the lower area of the site.

Surrounding development consists predominantly of detached dwelling houses on the eastern side of Loch Street. Directly opposite the site on the western side of Loch Street is a 3 storey residential flat building (No.28 Loch Street), which contains twelve (12) apartments.

The subject site has an easterly aspect with broad coastal views. The surrounding topography is characterised by a natural sandstone escarpment area above Curl Curl foreshore area and therefore the rear of the site descends steeply with natural drainage toward Ellen Street.

The site has a cross fall of up to 10m with shallow soils and sandstone rock outcrops / bedrock visible in parts of the site. A mature Norfolk Island Pine is located on the southeastern corner No.23 Loch Street with no other large canopy trees on either property. The land is identified as within "Area B" for geotechnical classification, however parts of the land exceed 18 degrees due to retained slope areas."

3.0 PROPOSED MODIFICATIONS

As previously advised, Parent Consent No. DA2023/0185 relates to the demolition and erection of a swimming pool and ancillary structures which form part of the approved Lot 102 (green area on Figure 1).

I reiterate my previous advice that this current Section 4.55(1A) Modification Application seeks the following proposed modifications to Deferred Commencement Condition 2 of Development Consent No. DA2023/0185.

4.0 STATUTORY PLANNING

For the reasons referred to in this Modified SEE, I consider that the proposed modifications can be described as of “*minimal impact*” and can therefore be assessed under Section 4.55(1A) of the Environmental Planning Assessment Act.

Section 4.55(1A) of the Act entitled “*Modifications involving minimal environmental impact*” is described in the following terms:

“(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*
- (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*
- (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), (2) and (5) do not apply to such a modification.”

I consider that the proposed modified development satisfies the relevant provisions of Section 4.55(1A) for the following reasons:

- (a) I strongly consider that the proposed modifications are of “*minimal environmental impact*”. The proposed modifications exhibit the following features in support of my above opinion: -
- i. Simply put, the proposed modifications do not alter or modify the approved development in terms of its height, bulk and scale or any other element of the proposed approved development. The proposed modifications merely change the point at which registration must take place.
 - ii. The proposed modifications do not generate any adverse impacts on adjoining properties and the public domain compared to the approved development.
 - iii. The proposed modifications do not alter the height, bulk and scale or any other element of the approved development.
- (b) Section 4.55(1A)(a) requires that the Consent Authority be satisfied that the proposed modifications are “*substantially the same development as the original approved development*”. I consider that the proposed modifications do not change the qualitative nor quantitative nature of the approved development under the Parent Consent based on *Moto Projects (No. 2) Pty Limited v North Sydney Council (1999) LGERA 298 (Moto)*.

In *Moto*, his Honour, Bignold J of the Court described the consideration of the previous Section 96, which is in the same terms of the current Section 4.55, as follows:

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).*

It is clear from the *Moto* judgment that there are 2 “limbs” to be satisfied. There are to be qualitative and quantitative limbs to be assessed and satisfied to determine whether the proposed modified development would be one that is substantially the same development as the original approved development under the Parent Consent.

I consider that the proposed modifications will result in the same development as the original approved development under the Parent Consent and will thus satisfy both the qualitative and quantitative limbs under *Moto* for the following reasons.

Qualitative Limb under Moto

The proposed modifications will not alter the qualitative nature of the original approved development.

The proposed modifications merely change the point at which registration must take place.

Thus, the proposed modifications will not alter the qualitative nature of the approved development under *Moto*.

Quantative Limb under Moto

The proposed modifications will not alter the quantitative nature of the approved development.

No quantitative feature of the approved development will be altered by reason of the proposed modifications.

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

5.0 REASONS IN SUPPORT OF PROPOSED MODIFICATIONS

Planning Reasons In Support of the Proposed Modifications:-

Briefly, the Council approvals over 23 and 25 Loch Street comprise the following:

1. Approved Subdivision/Boundary Readjustment of the consolidated area of 23 and 25 Loch Street into approved Lots 101 and 102. Please refer to Figure 1 on page 3.
2. Retention of existing Dwelling at 25 Loch Street on approved Lot 101.
3. Approved Cabana and Swimming Pool at the rear of approved Lot 102.
4. Approved Alterations and Additions to the existing Dwelling at the front of approved Lot 102, adjoining Loch Street.

I also note the approved Cabana and Swimming Pool in the **green** area on Figure 1 on page 3.

As advised by the Builder for my Clients, construction of the approved Cabana and Swimming Pool is necessary to be built first as it is at the rear of a steep downward sloping site with limited construction access from the street.

Following construction of the approved Swimming Pool and Cabana, the Builder will then proceed with the construction of the approved Alterations and Additions to the existing Dwelling at the front of the approved Lot 102.

I wish to firstly say that I strongly support the sequence of firstly constructing the approved Swimming Pool and Cabana at the rear of Lot 102, and then constructing the approved Alterations and Additions to the existing Dwelling at the front of the approved Lot 102.

The problem that arises is how best to firstly build the approved Cabana and Swimming Pool followed by the approved Alterations and Additions.

In support of the proposed modifications, I wish to attach detailed advice from the Architects for the proposed development which explains in greater detail the critical problem faced by my Clients.

The problem facing my Clients in achieving the above desirable sequence is as follows:

1. The attached Deferred Commencement Condition 2 for the approved Cabana and Swimming Pool (DA2023/0185) requires registration of the approved Subdivision.
2. But my Clients cannot register the approved Subdivision until such time as building works are undertaken to ensure each of the approved Lots 101 and 102 have the required services.
3. The required building works to provide the required services **cannot** be undertaken until a Construction Certificate is issued.
4. A Construction Certificate **cannot** be issued until registration of the approved Subdivision.

In other words, registration cannot be achieved until the building works are undertaken, but my Clients cannot undertake the building works until a Construction Certificate is issued, but a Construction Certificate cannot be issued until registration is achieved.

I am sure that Council can appreciate the above conundrum faced by my Clients.

My Clients wish to proceed with the Council approved Cabana and Swimming Pool and then the approved Alterations and Additions, but cannot proceed if registration of the Plan of Subdivision must take place first.

In accordance with the attached advice from the Architects, I earnestly request Council to remove Deferred Commencement Condition 2 and to impose 2 new Conditions of Consent in the "General Conditions", which will state the following:

- ***“The Applicant must obtain a Pre-allocated plan number (PPN) prior to the issue of the Construction Certificate***
- ***The Applicant must register the Proposed Lots 101 and 102 in the approved plan of proposed subdivision of Lot 7 DP 14040 and Lot 10 DP 1257419, with the NSW Land Registry Services (Land Titles office) to legally create the land prior to the issue of the Occupation Certificate. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate”***

As I see it, the 2 new Conditions of Consent have the following advantages to my Clients **and** Council: -

1. The Deferred Development Consents granted by Council for the approved Cabana and Swimming Pool and approved Alterations and Additions will be able to be achieved. I stress that I am not seeking modifications to any element of the approved development, merely changing the point at which registration must take place.
2. Council will achieve the construction of the elements of the approved development which Council obviously considered are meritorious and worthy of approval.
3. The sequencing of construction of the approved developments will reflect the “orderly and economic use and development of land”, as required under Section 1.3(c) of the Environmental Planning and Assessment Act 1979.
4. Council will have certainty that registration will take place before occupation of the constructed approved development.

On this point, I confirm that the proposed Modified Conditions of Consent in **bold** above do not change any elements of the approved development but rather merely change the point at which registration must take place.

Furthermore, there will be no adverse impacts on any adjoining property or the public domain arising from the proposed Modified Conditions of Consent.

Reasons Raised by Architects In Support of the Proposed Modifications

Please refer to attached advice by Bruce Stafford and Amit Angane of Stafford Architects.

6.0 SECTION 4.15 ASSESSMENT UNDER ENVIRONMENTAL PLANNING AND ASSESSMENT ACT (THE ACT)

Assessment of the current Section 4.55(1A) Modification Application also requires consideration under relevant matters under Section 4.15 of the Act.

I consider that the proposed modifications are very reasonable based on my consideration of the relevant matters under Section 4.15 of the Act for the following reasons:

- The proposed modifications do not modify the nature of the approved development, they merely change the point at which registration must take place.
- The proposed modifications do not create any impacts on adjoining properties or the public domain.
- There will be no additional overshadowing impact arising from the proposed modifications compared to the approved development due to the fact that the height, bulk, and scale of the approved development will not be altered by the proposed modifications. Accordingly, the proposed modified development is the same as the approved development under the Parent Consent for the reasons previously referred to in this Modified SEE.
- There will be no additional loss of views arising from the proposed modifications from any other adjoining property or the public domain due to the fact that the height, bulk, and scale of the proposed modified development is the same as the approved development under the Parent Consent for the reasons referred to in this Modified SEE.
- There will be no additional visual impact arising from the proposed modifications compared to the approved development.
- There will be no increase in parking demand arising from the proposed modifications.
- The approved parking and access arrangements will be the same as the approved parking and access arrangements.

- There will be no increase in likely traffic volumes arising from the proposed modifications.
- There will be no change in the approved excavation arising from the proposed modification.

Overall, I consider that the proposed modification will not generate any adverse impacts on the public domain or adjoining properties.

7.0 CONCLUSION

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

I consider the proposed modifications do not alter the approved development under the Parent Consent, thus complying with the qualitative and quantitative limbs under *Moto*.

Furthermore, I consider that the proposed modifications do not generate any impact on the public domain and adjoining properties.

Simply put, the proposed modifications do not alter or modify the approved development in terms of its height, bulk and scale or any other element of the approved development.

The proposed modifications merely change the point at which registration must take place.

I commend this Section 4.55(1A) Modification Application 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 first name.

TONY MOODY

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

Dated: 26 July 2024.

We have a concern regarding the deferred commencement conditions of DA2023/0185 and require Council's urgent assistance as it is critical for our construction timeline. We have already engaged a builder - Bradstreet Building Services and are on track for a Construction Certificate (CC) by mid-August to commence on site with the demolishers booked in for early September.

SUBDIVISION AND REGISTRATION ON LAND TITLE

To provide context, we have previously secured approval for two separate DAs on the site – DA2021/1469 for the Main House and DA2023/0185 for the New Pool and Pool Cabana. Please refer to both DA consents attached.

The subdivision for the proposed lots 101 and 102 was approved under DA2021/1469 without any deferred commencement conditions related to subdivision of lots and registration of Land titles. All conditions relating to the subdivision were included in the general consent as **Conditions 18, 19, 20 and 21** under subheading 'Conditions to be satisfied prior to the issue of the Subdivision Works Certificate' and Conditions 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56 and 57 under subheading 'Conditions that must be complied with prior to the issue of any strata subdivision or Subdivision certificate'

However, the approval for the Pool DA2023/0185, included a Deferred commencement condition as follows :

2. Registration of Land Title

Proposed Lot 101 and proposed Lot 102 in the approved plan of proposed subdivision of Lot 7 DP 14040 and Lot 10 DP 1257419, as per development consent No.DA2021/1469, must be registered with the NSW Land Registry Services (Land Titles Office) in order to legally create the land to which this consent applies.

This will require the applicant to submit the applicable Subdivision Certificate Application to Council, which is to include a completed Subdivision Certificate form and checklist, a final plan of subdivision prepared in accordance with the requirements of the Conveyancing Act 1919.

four copies of the final plan of subdivision and all relevant documents including electronic copies. Easements, rights of carriageway, positive covenants and restrictions as to user are to be shown.

This documentation is to be submitted to Council prior to the issue of the Subdivision Certificate. All plans of survey are to show connections to at least two Survey Co-ordination Permanent Marks. The fee payable is to be in accordance with Council's fees and charges.

Reason: Statutory requirement.

We are working with our surveyor to comply with this deferred commencement condition. We understand that our Subdivision Certificate Application to Council, must demonstrate that each Lot will be serviced independently by water, electricity, gas, stormwater drainage and sewer services. Our surveyor can demonstrate that all services will be independent except for the sewer inspection chamber, as this is currently located within 25 Loch Street (before subdivision but after the boundary re-arrangement will end up being located within the new boundary of 23 Loch Street (Lot 102).

To extend the sewer line further into the new boundary of 25 Loch Street (Lot 101) and reinstate the inspection chamber, we have also lodged a Section 73 application with Sydney Water, scope of which includes : removal of the existing SGW sewer pipe and replacement with PVC pipe concrete encased and extension of the sewer line well within the new boundary of 25 Loch Street (Lot 101) - Refer to *Proposed Sewer Deviation Plan* attached. This application ensures that the sewer line can be independently maintained from within the new boundary of 25 Loch Street (Lot 101)

The Sydney Water works are intertwined with the construction of the new house and pool and are scheduled to be undertaken after demolition and excavation in November. Although we can commence the construction of the house (as per DA consent DA2021/1469 which does not carry a deferred commencement condition relating to 'Registration of Land Title'), the construction methodology requires the Pool to be constructed before the house due to the steep slope of the site and street access from Loch Street.

The 'Registration on Land Title' deferred commencement condition does not allow us to commence building work and to carry out the proposed Sewer extension without being able to obtain a Construction Certificate. We request Council to amend the consent conditions as follows :

1. The applicant must obtain a Pre-allocated plan number (PPN) prior to the issue of the Construction Certificate
2. The applicant must register the Proposed lots 101 and 102 in the approved plan of proposed subdivision of Lot 7 DP 14040 and Lot 10 DP 1257419, as per development consent DA2021/1469 with the NSW Land Registry Services (Land Titles office) to legally create the land prior to the issue of the Occupation Certificate. Details

demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate

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