

Statement of Modification under Section 4.55(2) of the Environmental Planning & Assessment Act. Proposed Modifications to DA2020/1393 at 7 Ruskin Rowe, Avalon Beach

This Statement has been prepared in support of a Section 4.55(2) Application under Part 4 of the Environmental Planning and Assessment Act 1979 (the Act) for an amendment to the approved plans under Condition 1 of Development Application DA2020/1393.

DA2020/1393 for demolition works and construction of a new dwelling, pool house and garage at 7 Ruskin Rowe, Avalon Beach was approved on 21 May 2021.

Proposed modifications under S4.55(2) are as detailed on the submitted Masterset plans and are as follows:

- External Colours - amend from 'Woodland Grey' to 'Dark and Recessive Colour'
- BASIX - amended BASIX Certificate to capture the changes to the windows (some new, some removed)
- Roof over Stair - amended to small pitched roof. Approved was a flat roof
- Garage Slab Level - raised 200mm to RL15.36
- Lower First Floor Level - raised 240mm to RL18.94. Mid First Floor raised 20mm
- Internal Layout near Laundry - reconfiguration
- Fireplace - Fireplaces FP1 and FP2 to convert to Solid Fuel (previously Gas). New Gas Fireplace FP3 in Lounge. Fireplace FP4 in Master Bedroom shifted to external side of wall.
- Master Bedroom Entry - minor reconfiguration
- External Cladding - removal of FC Sheet cladding. Replaced with Weatherboard
- Garage Door - instruction of Highlight Windows
- Solar panels to north western roof slope of pool house to comply with BASIX requirements

Assessment against the provisions of Section 4.55(2) of the Act is required for modifications to a development consent that involves minimal environmental impacts and provisions for Council to modify a consent in accordance with provisions:

- (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.*

Comment: The proposed modifications are substantially the same as the approved consent under DA2020/1393. *Tipalea Watson Pty v Ku-Ring-Gai Council* [2003] NSWLEC 253, sets out that, ‘*substantially the same development*’, means the ‘*essential characteristics*’ are the same as the development already approved. The modifications proposed do not change the essential characteristics of the approved consent for demolition works and construction of a new dwelling, pool house and garage under DA2020/1393. The modifications are therefore substantially the same and meet the provisions of S4.55(2) (a).

The S4.55(2) application has been submitted to Council, as the approval body in respect of modifying Condition 1 of DA2020/1393.

Formal notification of the S4.55(2) Modification application is a matter for Council to undertake as part of the proper process.

(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: The relevant environmental planning instruments (EPI's) and planning controls for consideration under Section 4.15(a) of the Act are:

State Environmental Planning Policy (BASIX) 2004
State Environmental Planning Policy (Resilience and Hazards) 2021
State Environmental Planning Policy 55 Remediation of Land (SEPP 55)
Pittwater Local Environmental Plan 2014
Pittwater Development Control Plan 2014

Section 4.55(2) modifications have been assessed having regard to the matters for consideration pursuant to Section 4.15 of the EP&A Act and to the extent Council can be satisfied of the following:

- The use (proposal) is permissible in the zone and consistent with the objectives of the zone, pursuant to the Pittwater LEP 2014 and does not give rise to any unacceptable non-compliance with EPIs or DCP controls, as discussed in Section 5 of the accompanying Statement of Environmental Effects and in accordance with Section 4.15 (1) (a) of the EP&A Act.
- The use will result in positive environmental, social and economic impacts in accordance with Section 4.15 (1) (b) of the EP&A Act as follows:
 - **Environmental Impact**
The proposed development will have a positive environmental impact, as demonstrated in Section 5 of the SEE. The proposed modifications do not give rise to any additional impacts on the Heritage Conservation Area or neighbouring amenity.
 - **Social Impact**
The proposed development will have a social benefit for the occupiers of the subject site and no harmful impact on neighbouring occupiers is anticipated as set out in Section 5 of the SEE.
 - **Economic Impact**
The proposed development will have a limited economic benefit during the construction phase.

- The site is suitable for the proposed development in accordance with Section 4.15 (1) (c) of the EP&A Act given that the proposed development is set within an existing low density residential environment, the design of the proposed is in keeping with and compatible with the current and likely future character of the area.
- Public interest is best met through the approval of this subject DA in accordance with Section 4.15 (1) (e) of the EP&A Act.