

MODIFICATION TO  
DEVELOPMENT CONSENT  
NO. 1478/2015



Section 4.55(2) for  
Construction of a Dual occupancy  
At  
5 Burton Avenue, Chester Hill



## Certification

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## PRE-AMBLE

The following documentation is provided in accordance with the outlined deliverables relating to the request for a Statement of Environmental Effects – Modification to development consent No.1478/2015 at 5 Burton Avenue, Chester Hill. The Statement has been provided with a focus on the existing planning controls and consideration for past, present, and future planning regimes.

### 1. PRELIMINARIES

Request for Statement of Environmental Effects	Rima Chouman
Site Street Address	5 Burton Avenue, Chester Hill
Legal Identifier	Lot 3 DP 31024
Total site area	571m <sup>2</sup>
Local Government Area	Canterbury-Bankstown Council
Zone	R2 Low Density Residential
Bushfire	No
Flood	No

### 2. EXECUTIVE SUMMARY

This modification statement has been prepared by CIVAC on behalf of Rima Chouman in relation to the proposed dual occupancy at 5 Burton Avenue, Chester Hill. This statement addresses the relevant Section 4.55 of the EP&A, planning controls, planning proposals and other relevant planning data. The statement also reviews impacts and opportunities relating to State and Local EPI's and Draft EPI's in addition to the relevant DCP information and guidance.

Additionally, relevant strategic documents have been reviewed and their potential impacts and opportunities have been analysed. Finally, relevant recent planning approvals in a reasonable proximity to the site have also been reviewed and their impacts on the subject site have been identified.

The bulk of this analysis has focused on the proposal and the resultant relationship with the surrounding residential land uses. The intent of this document is to support the proposed development of the subject site.

It is our professional opinion that the proposed works are generally consistent with the relevant plans and policies under Clause 4.16 of The Act.

## THE PROPOSAL IN DETAIL

### 3. THE PROPOSED MODIFICATION

The application seeks approval for the modification to development consent No.1478/2015 and subsequent modification No.1478/2015/A for the construction of a dual occupancy.

The modification seeks to amend approved plan pertaining to Condition 2 of latest modification (No.1478/2015/B):

*That condition 2 of Development Consent No. DA-1478/2015 be modified as follows (amendments in italics):*

*2) Development shall take place in accordance with Development Application No.DA-1478/2015, submitted by GEC Consulting, unless altered, amended or superseded by the Section 96(2) Amendment Application No. DA-1478/2015/1 lodged with Council on 21 July 2016, or Section 4.55(2) Amendment application No. DA-1478/2015/A, or Section 4.55(1A) modification application No. DA-1478/2015/B, accompanied by the following drawings affixed with Council's approval stamp, except where otherwise altered by the specific amendments listed hereunder and/or except where amended by the conditions contained in this approval:*

- Drawing No. DA1001 Rev F prepared by Virtual Y Designs dated 25.08.2021;
- Drawing No. DA2001 Rev F prepared by Virtual Y Designs dated 25.08.2021; and
- Drawing No. DA3001 Rev F prepared by Virtual Y Designs dated 25.08.2021;

The proposed modification comprises a minor increase to the building footprint which has resulted in marginally reduced side setbacks.

The side setbacks as approved are 900mm each side. Once the site was surveyed and slab poured the site setbacks resulted in a minor discrepancy of 10mm-20mm on each side resulting in setbacks of 890mm (eastern side) and 880mm (western side). This minor change has subsequently meant the floor area of the development has increased marginally.

This modification aims to rectify in retrospect, the minor discrepancy between what has been built and that approved. This method is explained by the Court in *Windy Dropdown Pty Ltd v Warringah Council* [2000] NSWLEC 240 (**Windy Dropdown**).

No significant trees or vegetation would be removed as a result of the minor modification.

## LOCALITY DESCRIPTION

### 4. THE SUBJECT SITE

The site is legally known as Lot 3 DP 31024 and commonly referred to as 5 Burton Avenue, Chester Hill. The site has an area of 569.1m<sup>2</sup> with a frontage of 15.24m wide and depth of 37.645m. The land has sloping topography and a rise of approximately 1.2m from the front of the property to the rear of the property. The site comprises of a newly constructed dual occupancy development.

Topographically, the site is generally level with no significant geographical features and there are no known easements or restrictions that burden the site. Vehicle and pedestrian entry is gained via the site frontage on Burton Avenue, Chester Hill.

#### 4.1 Site Surrounds

A review of the surrounds and site visit indicates that the predominant developments within the vicinity are various styles and types of residential uses including single, two storey dwellings divided up by a generally consistent subdivision pattern, with some irregular corner allotments.

### 5. SITE HISTORY

A review of Council records indicates the following development approvals pertaining to the site:

#### DA-1478/2015

Development Application - Demolition of existing structures and construction of an attached dual occupancy, front fence and torrens title subdivision

Lodged : 11/12/2015

Status : Approved

Determined : Approved 17/03/2016

#### DA-1478/2015/1

Development Application - Demolition of existing structures and construction of an attached dual occupancy, front fence and torrens title subdivision S96(2) Amendment: Internal layout modifications including provision of external laundry, changes to window locations, extend bedroom 1 and eliminate side balcony element, increase basement storage and changes to roof.

Lodged : 21/07/2016

Status : Approved

Determined : Approved 17/11/2016

DA-1478/2015/A

Development Application - Demolition of existing structures and construction of an attached dual occupancy, front fence and Torrens title subdivision Section 4.55(2) Modification: Change from a hipped roof to flat roof with skylights; changes to windows in east and west elevations, removal of study window and increase in size of kitchen splash back window at ground floor level, and additional window to bedroom 3 at first floor level; modify front balconies to ground and first floor levels; minor internal layout modifications; and modifications to front fence, pathway and dwelling entry stairs

Lodged : 10/12/2019

Status : Approved

Determined : Approved 03/04/2020

DA-1478/2015/B

Development Application - Demolition of existing structures and construction of an attached dual occupancy, front fence and Torrens title subdivision PROPOSED MODIFICATION: Change from concrete roof to metal roof with exposed gutters, increase window size to the first floor side elevations and remove condition 2(a) [Section 4.55(1A)]

Lodged : 30/07/2021

Status : Approved

Determined : Approved 23/09/2021

## THE ASSESSMENT

### 6. CLAUSE 4.15 THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

#### 6.1 The Provisions of any Environmental Planning Instrument (EPI)

##### 6.1.1 State Environmental Planning Policy (Resilience and Hazard)

#### Chapter 4 Remediation of Land

The aim of Chapter 4 within this policy is to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment. Part 4.6 requires that consent not be granted until Council has considered whether the land is contaminated. No evidence of contamination was observed during inspection of the site. Thus, no further assessment is required in this regard.

##### 6.1.2 State Environmental Planning Policy (Biodiversity and Conservation) 2021

#### Chapter 2 Vegetation in Non-rural Areas

Chapter 2 of the Biodiversity and Conservation SEPP aims to ensure that the value of trees and other vegetation in non-rural area are protected. In accordance with the objectives of the chapter the clearing of native vegetation requires approval.

The proposed development does not require the removal of any significant trees. No further assessment is required in this regard.

#### Chapter 6 Bushland in urban areas

Chapter 6 of the Biodiversity and Conservation SEPP aims to ensure that bushland is preserved within urban area. No significant bushland species or remanent plant communities are located on the site and property does not fall within the Biodiversity Value map area. Therefore, no further assessment is required in this regard.

### 6.2 CLAUSE 4.55 THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

The proposal constitutes an amendment under Section 4.55(2) of the *Environmental Planning and Assessment Act 1979* involving other modifications. Pursuant to this Section, Council may consider an application to amend development consent provided that, inter alia:

- 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.*

With regard to (a), it is considered that the modification would result in negligible environmental or amenity impact as it would only relate to minor increase to the building footprint and reduced setback that would not be noticeable within the streetscape. The increase to the floor area is considered insignificant with a total increase of 1m<sup>2</sup>.

With regard to (b), the application was not required to be notified to any public authority or approval body.

With regard (c) and (d), the application has been considered against the relevant sections of the DCP and still complies with the relevant controls, aside for side setbacks. The original application was notified to the public.

### 6.3 Bankstown Local Environmental Plan 2015

The following elements of the LEP are applicable to the proposal:

The proposed modification would not alter the developments compliance with the development standards applicable to the site.

The following relevant objectives are met by the proposal:

### PART 4 – PRINCIPAL DEVELOPMENT STANDARDS

Control	Required	Provided	Comment
Building Height	9m	9m (unchanged)	COMPLIES
Floor Space Ratio	0.5:1	0.498:1	COMPLIES

Despite the minor increase to the floor area the proposed development still complies with the floor space ratio under the LEP.

### 6.4 The provisions of any Draft Environmental Planning Instrument (EPI)

The Draft Consolidated Local Environmental Plan seeks to produce a single set of planning rules for Canterbury Bankstown. The Draft LEP will replace Bankstown LEP 2015 and Canterbury LEP 2012 and will apply to development applications lodged on or after the date that the NSW Department of Planning, Industry and Environment approves the Draft LEP. As it stands, the consolidated LEP has not come into effect, therefore, no further assessment is required in this regard.

#### 6.5 The provisions of any Development Control Plan (DCP)

#### 6.6 Bankstown Development Control Plan (DCP) 2015

There are no changes to the subject site in terms of its general appearance as the changes are not discernible within the streetscape.

#### Section 4 – Dual Occupancies

CONTROL	REQUIRED	PROVIDED	COMMENT
Site Coverage	50%	44%	COMPLIES
Landscape area	45% front setback	>45%	COMPLIES
Building Height	2 Storey	2 storey	COMPLIES
Front Setback	5.5m-6.5m	9m	COMPLIES
Side Setback	900mm	890mm	See discussion
Side Setback	900mm	890mm	See discussion

#### Side Setbacks:

The side setback of 890mm on the eastern elevation is considered minor when considering the 10mm variation to the setback requirement. The further encroachment of 10mm is not perceivable to the human eye and would result in no amenity impacts.

The western side setback noncompliance of 20mm is also considered to be negligible given the variation is only 20mm. the modification does not include any changes to windows or the use of each room, as such the first-floor level only includes non-habitable room, resulting in negligible privacy impacts as a result of the minor encroachment.

#### 6.7 Planning agreements or draft planning agreements

There are no planning agreements or draft planning agreements submitted under Section 7.4.

#### 6.8 The Likely Impacts

##### Environmental

The assessment has shown that any environmental impacts resulting from the modified proposal will be negligible. Regard is shown for the natural environment in terms of on-site management of stormwater and drainage, with appropriate measures incorporated into the overall design that operate in concert with the areas of landscaping provided. The proposal satisfies the requirements of both the natural and built environments.

##### Social

The modified proposal adds to the opportunities for an appropriate land use, allowing for a mix of residential typology within the R2 Zone. The proposal allows for greater usability and functionality of the site. The proposal is consistent with the social requirements in these regards.

##### Economic

The provisions of the opportunity within this appropriately zoned locality, will allow a contribution to the increased longevity of the property and use by homeowners whilst showing regard for the requirements and objectives within the R2 Zone.

#### 6.9 Site Suitability

The site suitability is indicated by the appropriate land use being located within the appropriate R2 Zone. The modified proposal has demonstrated compliance with the standards and controls together with a consistency of all underlying objectives of both State and Local policies. The application is considered acceptable with regards to suitability of the site.



#### 6.10 Submissions

There have been no submissions received from any public person, private or Government Authorities at the time of the preparation of this report.

#### 6.11 The Public Interest

The public interest is served by the provision of the appropriate land use that is consistent with Local and State planning objectives. The land use responds at a strategic level to desired planning outcomes together with increased value of the property within the region and the Canterbury Bankstown LGA specifically. The proposal is consistent with the underlying objectives of the EP&A Act in that it is an appropriate and economical use of the available resource.

### CONCLUSION

#### 7. CONCLUSION

This modification application has provided an assessment of the proposed works against the relevant provisions of the Canterbury Local Environmental Plan (CLEP), the subject site is located within the zone thus the proposal is considered to satisfy the zone objectives at a strategic level.

The project, located within suburban Chester Hill offers an opportunity for the upgrading of the site which will provide for and contribute to the residential diversity in this precinct. The modified proposal has demonstrated consistency with the underlying objectives of the controls and compliance with the numerical standards contained within both State and Local policies. We submit that the proposal is consistent with Councils expectations and there is no planning reason why this proposal should not be approved.