

Statement of Environmental Effects

Section 4.55 (1A) Modification Application to DA-472/2022
for supplementary design changes-
Demolition of existing structures and construction of a new two
storey dwelling house and inground pool
at 40 Thomas Street,
Picnic Point NSW 2213

Lot 7 in DP 29657

Approved under Notice of Determination no. DA-472/2022
dated 3 April 2023

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1. Introduction

Council on 3 April 2024 by way of Notice of Determination No. DA-472/2022 approved the demolition of all existing structures and construction of a new two storey dwelling house and inground pool at No. 40 Thomas Street, Picnic Point NSW 2213.

Following on from this approval and to finalise the construction certificate phase, the landowners have decided to change some aspects of the initial design concept as part of a formal Modification Application.

This Modification Application (to be known as Modification A) is to permit architectural changes to the original DA and consent is sought to modify the approved building design concept which is unpacked as follows:

1. Amended stair entry and landing.
2. Amended entry door.
3. Wall construction amended to be of double brick and concrete construction.
4. Inground pool shape redesigned (capacity to remain the same, 22,000 L).
5. Reduction of skylights to roof and changes to location.
6. Amended door configuration to the alfresco.
7. Amended finishes.

The revised proposal remains permissible.

The main body of this report will review the key planning considerations for a consent authority under the heads of consideration of Section 4.15 of the Environmental Planning and Assessment Act 1979.

2. Modification Proposal

This Section 4.55 (1A) Modification Application is to permit supplementary architectural design changes to the original DA and consent is sought to modify the approved dwelling house as follows:

1. Amended stair entry and landing.
2. Amended entry door.
3. Wall construction amended to be of double brick and concrete construction.
4. Inground pool shape redesigned (capacity to remain the same, 22,000 L).
5. Reduction of skylights to roof and changes to location.
6. Amended door configuration to the alfresco.
7. Amended finishes.

The relevant architectural plans, and other supporting documents accompany the Modification Application and the changes themselves have been highlighted in red notation.

3. Threshold Test

In our view, we believe the development as proposed to be modified is substantially the same as that originally approved.

In considering whether the development is substantially the same, the applicant bears the onus of satisfying the consent authority that the modified development is substantially the same as the original development (*Vacik Pty Ltd v Penrith City Council*, unreported, 24 February 1992).

In this judgement, Stein J states that it is not appropriate to simply say that the nature of the development, in this case the use of the site as a residential flat building, as amended would be the same use and therefore substantially the same development.

Stein J goes on to say that it is necessary to consider whether the proposed modified development would be essentially or materially or having the same essence as that which had been originally approved. These comments are reiterated in *Trinivass Pty Ltd v The Council of the City of Sydney* [2018] NSWLEC 77.

Bignold J in his decision in *Moto Projects No 2 Pty Limited v North Sydney Council* [1999] 106 LGERA 298, states that:

“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.

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).”

As such, an assessment of the proposed modified development to determine if substantially the same as the original development requires an assessment of the quantitative and qualitative impacts of the modified proposal.

Quantitative Assessment

We note that there is no increased floor space.

The modified proposal will not amend the height of approved height of building control approved and the building remains below the maximum control of 9 metres.

The redesigned stairs and landing to the relocated entry point is not part of the building line considerations and is generally permitted forward of the building line as these contribute to the landscaping embellishment strategy for the property and provide better legibility to the entrance point and front yard interface.

The proposal does not change the front, side or rear setbacks of the dwelling’s footprint.

The private open space, deep soil and landscape areas are compliant.

Car parking is compliant with more than 2 car spaces available for the dwelling house.

Qualitative Assessment

The additional visual impacts of the internal and external changes are within acceptable limits for the following reasons:

- The roof plan of the dwelling, and the setbacks are consistent with the original approval.
- The geometry of the dwelling’s external walls, and roofline remains similar.

- The overall appearance, massing, use of revised materials and openings are consistent with that of a 2-storey dwelling house.
- The façade and articulation of the 2-storey dwelling remains visually consistent with the original design concept.
- No additional privacy concerns are raised by the changes as the openings are not overly sized glazing elements. Minimal glazing was incorporated into the design.
- The consolidation of skylights provides for a cleaner roofline.
- There are no acoustic concerns since setbacks remain unchanged.
- The changes to the materials are acceptable and of a modern appearance and is not out of character with the locality.

4. Matters of Consideration

4.1. Section 4.15(1)(A)(I) – any environmental planning instruments

Bankstown Local Environmental Plan 2015

Principal Development Standards

Development Standard	Assessment	Previous DA Approval	Proposed MA
Clause 4.3 Height of buildings	The Height of Buildings Map prescribes a maximum building height of 9m for the site.	Yes 8.9m proposed (lowest point).	No change
Clause 4.4 Floor space ratio	The Floor Space Ratio Map prescribes a maximum floor of 0.5:1.	Yes FSR maximum of 313sq.m.	No change

		Existing FSR of 200sq.m. Proposed FSR of 284.1sq.m or 0.454:1.	
Clause 5.1 Relevant Acquisition Authority	N/A	N/A	N/A
Clause 5.10 Heritage	Does the site contain any item of Environmental Heritage as identified in Schedule 5?	No	No change
Clause 5.11 Bushfire Mapping	The Rural Fires Act 1997 also makes provision relating to the carrying out of development on bush fire prone land. Shown as affected by Vegetation mapping. Refer to Bushfire Assessment Report.	Yes	Yes, the proposal would remain consistent with the Planning for Bushfire Guidelines 2019.
Clause 5.21 Flood Planning	The site is not identified on this map.	N/A	N/A

Clause 6.1 Acid sulfate soils	<p>The site is identified as containing Class 5 Acid Sulphate Soil.</p> <p>An Acid Sulphate Soils Management Plan is not required to be prepared.</p>	Yes	Yes
Clause 6.2 Earthworks	<p>Earthworks are of an ancillary nature to allow the foundation levels to be established for the dwelling footprint.</p> <p>Excavation does not exceed the depth of the pool structure.</p> <p>The proposed earthworks are satisfactory.</p>	Yes	Yes
Clause 6.4 Biodiversity	The site is not identified on this map.	N/A	N/A
Bushfire Mapping	<p>Shown as affected by Vegetation mapping.</p> <p>Refer to Bushfire Assessment Report.</p>	Yes	Yes

4.2. Section 4.15(1)(A)(ii) – any draft environmental planning instrument(s)

There are no known draft environmental planning instruments which affect the revised project.

4.3. Section 4.15(1)(A)(iii) – any development control plan(s)

The following table reviews the revised development against the requirements outlined within Bankstown Development Control Plan 2015.

Compliance Analysis

Part B1 Residential development

Clause	Previous DA Approval	Proposed MA	Consistency Aims/Objectives
Section 1- Introduction	Yes	No change.	Yes
Desired Character			
Section 2- Dwelling Houses			
Subdivision	N/A	N/A	Yes
Storey limit (not including basements)	No basement proposed.	No change.	Yes
The storey limit for dwelling houses is 2 storeys.	The maximum number of storeys is limited to 2 storeys.	No change.	Yes
The siting of dwelling houses and landscaping works must be compatible with the existing slope and contours of the allotment and any adjoining property.	The siting and location of the dwelling's footprint is satisfactory.	No change.	Yes
Any reconstituted ground level on the allotment must not exceed a height of 600mm above the ground level (existing) of an adjoining property.	The ground levels are within acceptable limits.	No change.	Yes
Setback restrictions The erection of dwelling houses is prohibited within 9 metres of an existing animal boarding or training establishment.	N/A	N/A	N/A
Setbacks to the primary and secondary road frontages	The ground floor front setback is shown to be 5.5 metres.	No change.	Yes

The minimum setback for a building wall to the primary road frontage is: (a) 5.5 metres for the first storey (i.e. the ground floor); and (b) 6.5 metres for the second storey.	The first-floor setback is shown to be 6.5 metres.	No change.	Yes
Setbacks to the side boundary			
For the portion of the building wall that has a wall height less than or equal to 7 metres, the minimum setback to the side boundary of the allotment is 0.9 metre.	The side setbacks are shown to be 0.9 metres or more.	No change.	Yes
For the portion of the building wall that has a wall height greater than 7 metres, the minimum setback to the side boundary of the allotment is 1.5 metres. Council may vary this requirement where a second storey addition to an existing dwelling house demonstrates it must use the ground floor walls for structural support.	Walls do not exceed this.	No change.	Yes
Private open space			
Dwelling houses must provide a minimum 80m ² of private open space behind the front building line. This may be in the form of a single area or a sum of areas provided the minimum width of each area is 5 metres throughout	More than 80sq.m is available.	No change.	Yes
Access to sunlight			
At least one living area must receive a minimum 3 hours of sunlight between 8.00am and 4.00pm at the mid-winter solstice. Council may allow light wells and skylights to supplement this access to sunlight provided these building	Site is constrained where the allotment faces north to the public road.	No change.	Yes

<p>elements are not the primary source of sunlight to the living areas.</p> <p>At least one living area of a dwelling on an adjoining allotment must receive a minimum 3 hours of sunlight between 8.00am and 4.00pm at the mid–winter solstice. Where this requirement cannot be met, the development must not result with additional overshadowing on the affected living areas of the dwelling.</p> <p>A minimum 50% of the private open space required for the dwelling house and a minimum 50% of the private open space of a dwelling on an adjoining allotment must receive at least 3 hours of sunlight between 9.00am and 5.00pm at the equinox. Where this requirement cannot be met for a dwelling on an adjoining allotment, the development must not result with additional overshadowing on the affected private open space.</p> <p>Development should avoid overshadowing any existing solar hot water system, photovoltaic panel or other solar collector on the allotment and neighbouring properties.</p>	<p>Sufficient daylight access will be obtained to the living areas.</p> <p>Adequate daylight access for adjoining properties is to be afforded.</p> <p>Open space faces south. Solar access is available as shown and meets the controls. The adjoining properties to 38A and 42 Thomas Street properties contain solar collectors.</p> <p>These properties</p>	<p>No change.</p> <p>No change.</p> <p>No change.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
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	are not affected as the proposed building would not be higher.		
Visual privacy			
Where development proposes a window that directly looks into the living area or bedroom window of an existing dwelling, the development must: (a) offset the windows between dwellings to minimise overlooking; or (b) provide the window with a minimum sill height of 1.5 metres above floor level; or (c) ensure the window cannot open and has obscure glazing to a minimum height of 1.5 metres above floor level; or (d) use another form of screening to the satisfaction of Council.	Habitable rooms suitably position and along with openings. Setbacks are adequate to mitigate such concerns.	No change. No change.	Yes Yes
Building design			
The maximum roof pitch for dwelling houses is 35 degrees.	Roof pitch is below 35 degrees.	No change.	Yes
Council may allow dwelling houses to have an attic.	No attic is proposed.	No change.	Yes
Development in the foreshore protection area (refer to map in Appendix 1) must use non-reflective materials that are compatible with the natural characteristics and colours of the area (such as olive green, grey and dark brown)	Not affected by such mapping.	No change.	Yes
Building design (car parking)			
Where development proposes a	Adequately	No change.	Yes

garage with up to two car parking spaces facing the street, Council must ensure the garage architecturally integrates with the development and does not dominate the street facade.	designed and integrated with the dwelling house.		
Landscaping Development must retain and protect any significant trees on the allotment and adjoining allotments. To achieve this clause, the development may require a design alteration or a reduction in the size of the dwelling house.	Refer to landscaping details.	No change.	Yes
Section 14- Ancillary Development			
Front fences	1m high.	No change.	N/A
Dividing fences Dividing fences require development consent where the average fence height exceeds 1.8 metres	No change. As existing.	No change. No change.	Yes
Retaining walls Retaining walls are not permitted along the riverbank or where the foreshore is in its natural state except in exceptional circumstances as determined by Council.	N/A	N/A	N/A
Swimming pools and spas Swimming pools and spas must locate behind the front building line. The minimum setback between the waterline of swimming pools / spas and the allotment boundary is 1 metre.	Located behind the rear building line. Setback is shown to be >1 metre.	No change. No change.	Yes Yes

Where Council allows swimming pools / spas within 30 metres of the high water mark of the Georges River and its tributaries: (a) the maximum height of the swimming pool / spa is 300mm measured above the ground level (existing); and (b) the swimming pool / spa fence must be an open style fence	N/A	N/A	N/A
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4.4. Section 4.15(1)(A)(iiia) – any planning agreement or draft planning agreement

There are no related matters for consideration in terms of a planning agreement or draft planning agreement which affects proposal.

4.5. Section 4.15(1)(A)(iv) – the regulations

The proposal is viewed sufficient to enable a proper evaluation to be carried out by Council under the planning regulations and under Section 4.55 of the EP & A Act 1979.

4.6. Section 4.15(1)(B) – the likely impacts of the development

The environmental impacts of the modified development on the natural and built environment have been addressed in this Report and are within acceptable levels.

4.7. Section 4.15(1)(C) – the suitability of the site

The changes to the dwellings do not raise any adverse amenity concerns.

Therefore, the site is considered suitable for the proposed development.

4.8. Section 4.15(1)(D) – any submission made

Council will review any submissions made during the exhibition process and we welcome the opportunity to comment on any such submissions.

4.9. Section 4.15(1)(e) – the public interest

The modified development is not contrary to the public interest.

5. Conclusion and Recommendation

The main body of this report reviewed key planning considerations for a consent authority under the matters of consideration in Section 4.15 of the Environmental Planning and Assessment Act 1979.

The modified development meets the desired outcomes of the former DCP and LEP (which is preserved by a sunset clause) and is considered acceptable.

On this basis, it is recommended that the development proposal be approved subject to revised conditions as Council sees fit, and namely condition 1.1 to reflect the revised plans and documentation filed.

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