

Mr Hayden Clarke
Waverton Avenue Pty Ltd
Level 1, 600 Darling Street
ROZELLE NSW 2039

D100/19
KRR (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 100/19/5 - APPROVAL**

Development Consent Number: 100/19

Land to which this applies: 11-13 Waverton Avenue, Waverton
Lot Nos.: 1 and 2, DP: 8688

Applicant: Hayden Clarke

Proposal: Section 4.55(1A) modifications to DA100/19 for alterations to a multi-dwelling development

Pursuant to Section 4.55 of the Act notice is hereby given of the determination by the consent authority of your request for a modification to Development Consent No. **100/19** and registered in Council's records as Application No. **100/19/5** relating to the land described as **11-13 Waverton Avenue, Waverton**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **4 December 2019**, has been determined in the following manner:

- To modify the development consent Conditions A1, C29, D1 and I3 of DA100/19 as follows:***

The development being carried out in accordance with the Plans

Plan No.	Issue	Dated	Drawn by	Received
A1001 Site Location Plan	DA03	26 September 2019	Ess lifestyle Pty Ltd	29 October 2019
A1002 Site Analysis Plan	DA03	26 September 2019	Ess lifestyle Pty Ltd	29 October 2019
A1050 Demolition	DA03	26 September 2019	Ess lifestyle Pty Ltd	29 October 2019
A2201 General Arrangement Ground-2	DA03	26 September 2019	Ess lifestyle Pty Ltd	29 October 2019
A2202 General Arrangement Ground-1	DA03	26 September 2019	Ess lifestyle Pty Ltd	29 October 2019
A2203 General Arrangement Ground	DA03	26 September 2019	Ess lifestyle Pty Ltd	29 October 2019
A2204 General Arrangement Level 1	DA03	26 September 2019	Ess lifestyle Pty Ltd	29 October 2019
A2205 General Arrangement Roof	DA03	26 September 2019	Ess lifestyle Pty Ltd	29 October 2019
A3101 Elevation West (Waverton Avenue)	DA03	26 September 2019	Ess lifestyle Pty Ltd	29 October 2019
A3102 Elevation West 2	DA03	26 September 2019	Ess lifestyle Pty Ltd	29 October 2019
A3103 Elevation East 1	DA03	26 September 2019	Ess lifestyle Pty Ltd	29 October 2019
A3104 Elevation East 2	DA03	26 September 2019	Ess lifestyle Pty Ltd	29 October 2019

A3105 Elevation East 3	DA03	26 September 2019	Ess lifestyle Pty Ltd	29 October 2019
A3106 Elevation North	DA03	26 September 2019	Ess lifestyle Pty Ltd	29 October 2019
A3107 Elevation South	DA03	26 September 2019	Ess lifestyle Pty Ltd	29 October 2019
A3201 Section A & B	DA03	26 September 2019	Ess lifestyle Pty Ltd	29 October 2019
A8201 Finishes Materiality	DA03	26 September 2019	Ess lifestyle Pty Ltd	29 October 2019
412_DA_01 Cover Page	D	23 October 2019	Myles Baldwin Design	29 October 2019
412_DA_10 Landscape Plan Ground Level	D	23 October 2019	Myles Baldwin Design	29 October 2019
412_DA_11 Landscape Plan Level 1	D	23 October 2019	Myles Baldwin Design	29 October 2019
412_DA_12 Landscape Plan Level 2	D	23 October 2019	Myles Baldwin Design	29 October 2019

As amended by the following plans and conditions (DA100/19/4 Plan references):

Plan No.	Issue	Dated	Drawn by	Received
Plan: Ground -2 A2201	S4.55	3.02.21	Ess lifestyle Pty Ltd	18.03.2021
Plan: Ground -1 A2202	S4.55	3.02.21	Ess lifestyle Pty Ltd	18.03.2021
Plan: Ground A2203	S4.55	3.02.21	Ess lifestyle Pty Ltd	18.03.2021
Plan: Level 01 A2204	S4.55	3.02.21	Ess lifestyle Pty Ltd	18.03.2021
Elevation: Waverton Avenue (West) A3101	S4.55	3.02.21	Ess lifestyle Pty Ltd	18.03.2021
Elevation: West 02 A3102	S4.55	3.02.21	Ess lifestyle Pty Ltd	18.03.2021
Elevation: East 01 A3104	S4.55	3.02.21	Ess lifestyle Pty Ltd	18.03.2021
Elevation: East 02 a3105	S4.55	3.02.21	Ess lifestyle Pty Ltd	18.03.2021
Elevation: North a3106	S4.55	3.02.21	Ess lifestyle Pty Ltd	18.03.2021

As amended by the following plans and conditions (DA100/19/5 Plan references):

Plan No.	Issue	Dated	Drawn by	Received
PLAN: General arrangement ground 2 A2201	S4.55_3	30/09/2021	Ess lifestyle Pty Ltd	1/11/.2021
PLAN: General arrangement ground 1 A2202	S4.55_3	30/09/2021	Ess lifestyle Pty Ltd	1/11/.2021
PLAN: General arrangement ground A2203	S4.55_3	30/09/2021	Ess lifestyle Pty Ltd	1/11/.2021
PLAN: General arrangement ground 01 A2204	S4.55_3	30/09/2021	Ess lifestyle Pty Ltd	1/11/.2021
ELEVATION: Waverton Avenue West 01 A3101	S4.55_3	30/09/2021	Ess lifestyle Pty Ltd	1/11/.2021
ELEVATION: Waverton Avenue (West) A3150	S4.55_3	30/09/2021	Ess lifestyle Pty Ltd	1/11/.2021

BASIX Certificate

C29. Under clause 97A(3) of the *Environmental Planning and Assessment Regulation 2000*, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. **1004965M_03** for the development are fulfilled. Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure the proposed development will meet the Government's requirements for sustainability and statutory requirements)

Protection of Trees

- D1. All trees that are specifically nominated to be retained by notation on plans or by condition as a requirement of this consent must be maintained and protected during demolition, excavation and construction on the site in accordance with AS4970-2009 (Protection of trees on development sites). A report containing recommendations, and methods of tree protection prepared by an appropriately qualified person must be provided to the Certifying Authority for approval by an appropriately qualified person prior to commencement of any works on the site. Any recommendations must be undertaken for the duration of works on the site.

Tree identified in DA100/19 as Tree 19 is exempted from this requirement as per the letter prepared by Jacksons Nature Works, re 11-13 Waverton Avenue, Waverton, DA100/19, and dated 26 February 2021, is exempted from retention requirements.

(Reason: To ensure compliance with the requirement to retain significant planting on the site)

Maintenance of Approved Landscaping

13. The owner of the land or, in the case of Strata subdivision the Owners Corporation, is to maintain the landscaping approved in accordance with Drawings Numbered 412_DA_01, 412_DA_10, 412_DA_11, 412_DA_12 Drawn by Myles Baldwin Design Revision D dated 23 October 2019 and received by Council on 29 October 2019 of this consent or as required by Condition G16 of this consent notice.

Any replacement plants required shall be advanced in growth and be selected to maintain the anticipated mature height, canopy density and nature of those plant species as originally approved.

Should it be desired to substitute plants which are not of the same mature height, canopy density and nature (particularly flowering for non-flowering, native for exotic, deciduous for non-deciduous or the reverse of any these) a modification to this consent will be required.

(Reason: To ensure maintenance of the amenity, solar access and views of adjoining properties)

- 2. Condition C19, Splay Corners, is deleted from the consent**

- 2. To insert the following new condition G16 Into the Consent**

Planting of New Trees

- G16. 3 x *Allocasuarina littoralis* with a minimum pot size of 100 litres shall be planted along the Eastern boundary of the subject site. An (AQ5) arborist shall supervise this planting and provide and supervise a 12-month maintenance program for these 3 x trees. The trees are to be planted prior to the issue of an Occupation Certificate for the development.

(Reason: To ensure the replacement of advanced planting on the site to replace former trees to be retained)

Reasons for Approval:

The proposed modifications satisfy Section 4.55(1A) in that the proposal is considered to be substantially the same development as that which was originally approved by Council.

The proposed modifications would not result in significant changes to the form, bulk and scale of the approved development. The proposed modifications to dwelling would not cause adverse material amenity impacts on the adjoining properties in terms of visual privacy/amenity loss, overshadowing or view loss. The proposal will remain substantially the same as originally approved.

The application was notified for a period of fourteen (14) days to adjoining properties. The application resulted in one (1) submission. The proposal does not result in significant amenity impacts to adjoining properties and therefore can be granted consent.

In summary, the proposal was found to be acceptable in the site circumstances and is recommended that the subject Section 4.55(1a) application be approved with modifications to the relevant conditions.

How community views were taken into account:

The development application was notified pursuant to the North Sydney Community Participation Program 2019. The notification of the application went from the 19 November 2021 to 3 December 2021 and resulted in **one (1)** submission received from the Precinct noting the application. Submissions received are addressed in the assessment below.

The conditions attached to the original consent for Development Application No. **100/19** by endorsed date of **4 December 2019** still apply.

ADVISINGS

- (a) Council is always prepared to discuss its decisions and in this regard, please do not hesitate to contact **Mr Kim Rothe**. However, if you wish to pursue your rights of appeal in the Land and Environmental Court pursuant to Section 8.7 of *the Environmental Planning and Assessment Act 1979* (as amended), you are advised that Council generally seeks resolution of such appeals through a Section 34 Conference, instead of a full Court hearing, subject to any further advice to the contrary from Council's Solicitors and senior staff. Such an approach is less adversarial, it achieves a quicker decision than would be the case through a Court hearing and it can give rise to considerable cost and time savings for all parties involved.
- (b) Pursuant to Section 8.2, an applicant is able to request Council to review its determination. An application for a review under Section 8.2 of the Act must be made no later than 28 days after the date on which the application for the modification of the development consent was determined.
- (c) Prior to commencing any building, subdivision or associated constructions works, the following provisions of *the Environmental Planning and Assessment Act 1979* (the 'Act') are to be complied with:
 - (i) A Construction Certificate is to be obtained in accordance with Section 6.3 of the Act.

- (ii) A Principal Certifier is to be appointed and Council is to be notified of the appointment in accordance with Section 6.6 of the Act.
- (iii) Council is to be notified at least two (2) days of the intention to commence building works, in accordance with Section 6.6(2)(a) of the Act.
- (d) You are advised that changes to the external configuration of the building, changes to the site layout, density and unit configuration internal changes to the proposed building or any changes to the proposed operation of a use **MAY** require the submission of a further modification under Section 4.55 of *the Environmental Planning and Assessment Act, 1979* (as amended).

Council staff would be pleased to assist in identifying such changes which may require the submission of a modification of a Development Application under Section 4.55 of *the Environmental Planning and Assessment Act*.

Endorsed for and on behalf of North Sydney Council

1 June 2022

DATE

Signature on behalf of consent authority
DAVID HOY
TEAM LEADER - ASSESSMENTS