

Original signed by Miguel Rivera on 29/06/2022

Jack Chen
Unit 9, 44 Type Street
RICHMOND VIC 3121

D20/21
MR3 (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 20/21/2 - APPROVAL**

Development Consent Number: 20/21

Land to which this applies: 15 Waiwera Street, Lavender Bay
Lot No.: 0, DP: 33029

Applicant: Jack Chen

Proposal: Modification of DA 20/2021 to amend approved development, including internal changes to the ground floor, inclusion of an additional skylight and an upper-level winter garden, and to modify certain conditions

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. **20/21** and registered in Council's records as Application No. **20/21/2** relating to the land described as **15 Waiwera Street, Lavender Bay**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 2 June 2021 has been determined in the following manner:

1. To amend condition A1 of the consent so as to read as follows:

Development in Accordance with Plans/Documentation

A1. The development must be carried out in accordance with the following drawings and documentation and endorsed with Council's approval stamp, except where amended by the following conditions of this consent.

Plan No.	Issue	Dated	Title	Drawn by	Received
DA0.02	A	18.11.2020	Site Plan	Tsai Design	19.01.2021
DA1.01	B	31.07.2021	Plan - House - Proposed Ground Level	Tsai Design	21.12.2021
DA1.03	A	18.11.2020	Plan - House - Proposed Level 1	Tsai Design	19.01.2021
DA1.05	B	31.07.2021	Plan - House - Proposed Level 2	Tsai Design	21.12.2021
DA1.07	A	18.11.2020	Plan - House - Proposed Roof	Tsai Design	19.01.2021
DA1.09	A	18.11.2020	Plan - House - Proposed Basement	Tsai Design	19.01.2021

Plan No.	Issue	Dated	Title	Drawn by	Received
DA2.01	A	18.11.2020	Plan - Garage and Studio - Proposed Ground Level	Tsai Design	19.01.2021
DA2.03	B	31.07.2021	Plan - Garage and Studio - Proposed Roof	Tsai Design	21.12.2021
DA2.04	A	18.11.2020	Plan - Garage and Studio - Proposed Pit	Tsai Design	19.01.2021
DA3.01	A	18.11.2020	Elevation - House - Proposed Streetscape	Tsai Design	19.01.2021
DA3.03	B	31.07.2021	Elevation - House - Proposed North	Tsai Design	21.12.2021
DA3.05	A	18.11.2020	Elevation - House - Proposed East	Tsai Design	19.01.2021
DA3.07	B	31.07.2021	Elevation - House - Proposed South	Tsai Design	21.12.2021
DA3.09	A	18.11.2020	Elevation - House - Proposed West	Tsai Design	19.01.2021
DA4.01	B	31.07.2021	Elevation - Garage and Studio - Proposed North	Tsai Design	21.12.2021
DA4.03	B	31.07.2021	Elevation - Garage and Studio - Proposed South	Tsai Design	21.12.2021
DA4.05	B	31.07.2021	Elevation - Garage and Studio - Proposed West and East	Tsai Design	21.12.2021
DA5.01	A	18.11.2020	Section - Site - Proposed	Tsai Design	19.01.2021
DA7.00	A	18.11.2020	Proposed Materiality	Tsai Design	19.01.2021

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information)

2. To amend condition C1 of the consent so as to read as follows:

Heritage Design Amendments

C1. The following heritage design amendments are to be included below:

- That the proposal shall not demolish any extra fabric at the ground floor level pertaining to the original building such that all new work shall be limited to the areas where alterations have already occurred.
- That the proposed glazed enclosure of the roof terrace area facing the harbour shall be inset 100 mm from the existing window sill.
- That details relating to how the stepped approach and landing in the foreground of the western elevation of the existing building, including the associated architectural and landscaping elements within this zone shall be protected and retained during the excavation and construction of the proposed cellar and sunken garden are to be submitted to the satisfaction of Council's conservation planner and prior to the issue of any CC.

(Reason: To protect the significance of the heritage item and the character of McMahons Point North Conservation Area)

3. To amend condition C2 of the consent so as to read as follows:

Wintergarden (Level 2 - second floor) is to be deleted

C2. The entire proposed wintergarden on Level 2 (second floor) must be deleted completely from the proposal.

Except for works pertaining to the new northern skylight and the removal of an existing skylight and in-fill and make good of the existing skylight with roof tiles to match existing roof, both existing south western and north easting facing roof planes are to remain intact. No consent is granted for further alterations to the existing roof form (except for works described above).

Architectural plans satisfying the requirements of this condition and must be submitted to the Council for assessment and approval, prior to the issue of any Construction Certificate.

(Reason: To mitigate visual privacy impacts and retain heritage fabric)

4. To amend condition C23 of the consent so as to read as follows:

BASIX Certificate

C23. 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. **1152264S_02** - (Single Dwelling) and **A398462_02** - (Main House) 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)

The proposal involves the minor changes to the approved layout of the ground floor of the detached dwelling, reinstatement of the northern skylight (deleted by Condition C1) and amendments to Conditions A1, C1 and C2 in consent to reflect the proposed modification. The proposed modification will result development that is substantially and materially the same as approved by DA20/21.

The merits of the proposed modification and an assessment of this modification against relevant provisions and controls under environmental planning instruments (including the NSLEP 2013) have described and detailed throughout this report. In summary, the proposed modification is considered acceptable and supportable, satisfying the above requirements and the provisions under Section 4.55 of the *Environmental Planning and Assessment Act 1979*.

Reasons for Approval:

Accordingly, it is recommended that the following conditions are amended in the consent:

- Amend Condition A1 to include amended plans reflecting the proposed changes to the layout and addition of northern skylight;
- Amend Condition C1 to remove the third point relating to the proposed metal roofing over the garage and replacement of this roofing with terracotta roof tiles. This point is superfluous as the amended drawings have addressed this point.
- Amend Condition C2 to delete reference to the proposed skylight and roof form changes and retain reference to the rooftop garden and associated elements.
- Amend Condition C23 to include the amended BASIX Certificates for the main house and single dwelling.

How community views were taken into account:

In accordance with the provisions of Council's Community Participation Plan, the subject application was notified from 21 January to 4 February 2022. No submissions were received during this period.

The conditions attached to the original consent for Development Application No. [File No] by endorsed date of 2 June 2021 still apply.

ADVISINGS

- (a) Council is always prepared to discuss its decisions and in this regard, please do not hesitate to contact **Miguel Rivera**. 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

29 June 2022

DATE

Signature on behalf of consent authority
MIGUEL RIVERA
SENIOR ASSESSMENT OFFICER (PLANNING)