

Alex Phegan
24/13-29 Nichols Street
SURRY HILLS NSW 2010

D130/19
MR3 (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 130/19/2 - APPROVAL**

Development Consent Number: 130/19/2

Land to which this applies: 11 Holbrook Avenue, Kirribilli
Lot No.: 1, DP: 1040689

Applicant: Alex Phegan

Proposal: Modification of DA130/19 for substantial alterations and additions to the existing heritage-listed dwelling including the addition of car stackers, construction of new swimming pool and landscaping works.

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. **130/19** and registered in Council's records as Application No. **130/19/3** relating to the land described as **11 Holbrook Avenue, Kirribilli**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 8 October 2019, has been determined in the following manner:

1. To amend condition A1 of the consent 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.	Revision	Dated	Title	Drawn by	Received
S455.05	01	13/08/21	Existing Demolition Plan - Ground Floor and Landscape	ESS Lifestyle	11/07/22
S455.06	01	13/08/21	Existing and Demolition Plan - First Floor	ESS Lifestyle	11/07/22
S455.10	01	13/08/21	Site Plan/Roof Plan	ESS Lifestyle	11/07/22
S455.11	01	13/08/21	First Floor Plan	ESS Lifestyle	11/07/22
S455.012	01	13/08/21	Ground Floor Plan	ESS Lifestyle	11/07/22

S455.013	01	13/08/21	Basement Floor Plan	ESS Lifestyle	11/07/22
S455.20	01	13/08/21	East Elevation	ESS Lifestyle	11/07/22
S455.21	01	13/08/21	North East Elevation	ESS Lifestyle	11/07/22
S455.22	01	13/08/21	South Elevation	ESS Lifestyle	11/07/22
S455.30	01	13/08/21	Sections	ESS Lifestyle	11/07/22
S455.31	01	13/08/21	Sections	ESS Lifestyle	11/07/22
S455.32	01	13/08/21	Sections	ESS Lifestyle	11/07/22
S455.34	01	13/08/21	Detailed Sections	ESS Lifestyle	11/07/22
S455.38	01	13/08/21	Fenestration Elevations	ESS Lifestyle	11/07/22
S455.39	01	13/08/21	Detailed Plans	ESS Lifestyle	11/07/22
DA.35	B	19/07/19	Colonade and Arbour	ESS Lifestyle	-
DA.36	B	19/07/19	Colonade and Arbour	ESS Lifestyle	-
DA.37	A	19/07/19	Driveway Details	ESS Lifestyle	-
DA.90	B	19/07/19	Materials and Finishes	ESS Lifestyle	-
S455.91	01	13/08/21	DA Coloured Elements Plan	ESS Lifestyle	11/07/22
S455.92	01	13/08/21	Basement Area Comparison	ESS Lifestyle	11/07/22
1 of 4	CP-5	09/09/21	Landscape Plan - Ground Floor	Paul Bangay	08/10/21
2 of 4	CP-5	09/09/21	Landscape Plan - Lower Ground Floor	Paul Bangay	08/10/21
3 of 4	CP-5	09/09/21	Details	Paul Bangay	08/10/21
4 of 4	CP-5	09/09/21	Details	Paul Bangay	08/10/21

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

2. To amend condition C33 of the consent so as to read as follows:

BASIX Certificate

C23. Under clause 97A(3) of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. A426283 (dwelling 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)

3. To delete Condition C34.

4. To amend condition C35 of the consent to read as follows:

Heritage Requirements

C35. Prior to the issue of a construction certificate, the plans must be amended as follows, to the satisfaction of Council's Conservation Planner -

a) Demolition Plan

Demolition Plan DA05A dated 8 April 2019 by Rob Mills Architecture to be amended show the retention of the nib wall on both sides of the external door to the Hallway to ensure that the original Hallway and Breakfast Room spaces are readily interpretable.

b) Hallway Entrance

The walls of the Hallway from the western front door are to remain in-situ. The location of the northern Hallway wall is to be confirmed.

c) Plumbing

Detail of dropper plumbing duct from first floor level down to the ground floor level library is to be submitted. The design of the duct should be such that it does not protrude beyond the depth of the mantelpiece such that the mantelpiece is fully expressed.

d) Bedroom 2

The proposed walk-in-robe and en-suite² to bedroom 2 on the first floor level shall be designed to allow for appreciation of the spatial volume of the room and is not to have its walls to the full ceiling height.

e) Windows and Doors

New windows and doors on the original Victorian dwelling are to be timber framed. New windows and doors on the additions are to have aluminium or steel framing sections of a width 45mm or wider, or are to be timber-framed. New door entry to existing Hallway on the North Elevation is to be detailed in the Victorian style as a conservation outcome.

f) Roof Sheetting

The new metal roofing to the ensuite and dining pavilion is to have a traditional corrugated roof profile equal to Custom Orb. Original timber shingles on the existing roof are to be retained. No approval is given for min-orb or tray profile roof sheetting.

g) Front Fence

The new vehicular and pedestrian gates are to be detailed in the Victorian style to match the character of the proposed sandstone piers. The lychgate roof is to be either deleted or re-designed in the Victorian style.

h) Retractable Awning

Fabric and frames of the retractable awning is to be coloured in a visually submissive colour.

Written concurrence with these conditions is to be provided from Council's Conservation Planner 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 that new details on the original dwelling are conservation works and to retain the character of the conservation area)

Reason for approval:

The proposal involves a number of changes to the approved layout of the lower ground floor, ground floor and first floor of the dwelling house and associated extension, endorsement of approved landscaping treatments (as stipulated in Condition C34) and the relocation of a Frangipani tree (T18). The proposed modification will result in development that is substantially and materially the same as approved by DA130/19.

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 been 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.

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

- Amend Condition A1 to include amended plans reflecting the proposed changes.
- Modify Condition C33 to reflect revised BASIX certificate.
- Delete Condition C34.
- Modify Condition C35 to reflect the proposed changes and recommendations provided by Council's Conservation Planner.

How community views were taken into account:

The application was notified in accordance with Council's Community Participation Plan from 22 October to 5 November 2021. No submissions were received during the above notification period.

Amended Proposal

The Applicant submitted amended plans on 11 July 2022 that were near identical to the original proposal except for the deletion of the originally proposed changes to the hallway (to facilitate the expanded butler's pantry and powder room) and to bedroom 02. These amendments are considered minor and simply retain the elements as approved by the original consent. As such, the amended proposal did not require notification under Council's Community Participation Plan.

The conditions attached to the original consent for Development Application No. 130/18 by endorsed date of 8 October 2019 still apply.

ADVISINGS

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

5 August 2022

DATE

Signature on behalf of consent authority
MIGUEL RIVERA
SENIOR ASSESSMENT OFFICER