



Ms Stella Xu  
Suite 3, 1/64 Talavera Road  
MACQUARIE PARK NSW 2113

D26/21  
MR3 (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 MODIFICATION 26/21/3 - APPROVAL**

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**Development Consent Number:** 26/21

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**Land to which this applies:** 37 Carr Street, Waverton  
Lot No.: 1, DP: 1138299

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**Applicant:** Stella Xu

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**Proposal:** Modification of consent to retain existing pool of dwelling house and deletion of Condition C3

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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. **26/21** and registered in Council's records as Application No. **26/21/3** relating to the land described as **37 Carr Street, Waverton**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **2 March 2022**, has been determined in the following manner:

**1. To modify the description of the proposal in the consent so as to read follows:**

**Proposal:**

Alterations and additions to the existing heritage listed dwelling including the addition of a balcony to the side dormer and the construction of a pergola over the deck in the rear yard.

**2. To modify Condition A1 of the consent so as to read as follows:**

**Conditions that Identify Approved Plans**

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.	Rev No.	Description	Prepared by	Dated
DA-001	9	Cover Page	WEN Architects	21/04/2021
DA-020	10	Site Plan	WEN Architects	21/04/2021
<del>DA-100</del>	9	<del>Existing Basement Plan</del>	<del>WEN Architects</del>	<del>21/04/2021</del>
<b>DA-100</b>	<b>10</b>	<b>Existing Basement Plan</b>	<b>WEN Architects</b>	<b>16/09/22</b>

DA-101	9	Basement Demolition Plan	WEN Architects	21/04/2021
DA-102	10	Proposed Basement Level	WEN Architects	21/04/2021
DA-110	10	Existing Ground Floor Plan	WEN Architects	21/04/2021
DA-111	8	GF Demolition Plan	WEN Architects	21/04/2021
DA-112	8	Proposed Ground Floor Plan	WEN Architects	21/04/2021
DA-120	10	Existing Attic Floor Plan	WEN Architects	21/04/2021
DA-121	9	Attic Demolition Plan	WEN Architects	21/04/2021
DA-122	9	Proposed Attic Plan	WEN Architects	21/04/2021
DA-130	10	Roof Plan	WEN Architects	21/04/2021
DA-131	1	Existing Roof Plan	WEN Architects	11/03/2021
DA-210	10	Building Elevations	WEN Architects	21/04/2021
DA-220	10	Building Elevations	WEN Architects	21/04/2021
DA-230	10	Proposed Porch Elevations	WEN Architects	21/04/2021
DA-240	10	Proposed Porch Elevations	WEN Architects	21/04/2021
DA-250	1	Existing Building Elevations	WEN Architects	11/03/2021
DA-260	1	Existing Building Elevation 2	WEN Architects	11/03/2021
DA-300	9	Proposed Pergola Section	WEN Architects	11/03/2021
DA-400	3	Window Schedule	WEN Architects	21/04/2021
DA-500	9	Site Analysis	WEN Architects	21/04/2021
DA-600	10	External Finish Schedule	WEN Architects	21/04/2021
LC01-LC03 (inclusive)	A	Landscape Plans	ECS Action Landscape Architects	19/01/2021

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

**3. To add Condition A4 so as to read as follows:**

**Indoor Pool and Pool Safety Fencing**

A3. The swimming pool must be surrounded by a child resistant barrier that complies with the *Swimming Pools Act 1992*. The final construction plans and any relevant documentation required as part of any Construction Certificate must incorporate the retained indoor pool and indicate that this ancillary structure and associated pool safety fencing are designed and built to comply with pool safety legislation and regulations including the *Swimming Pools Act 1992*. The relevant Certifying Authority must ensure that above aspects are captured in the Construction Certificate.

(Reason: To ensure that the retained pool achieves compliance with the provisions of the *Swimming Pools Act*)

**4. To delete Condition C1 - Statement of Methodology - Infill of the Swimming Pool**

**5. To delete Condition C3 - Dilapidation Survey Private Property (Neighbouring Buildings)**

**6. To add Condition G8 of the consent so as to read as follows:**

Access to the pool must be restricted by a child resistant barrier in accordance with the regulations prescribed in the *Swimming Pools Act 1992*, and the requirements of the applicable Australian Standard. The pool must not be filled with water or be allowed to collect stormwater until the installation of the child resistant barrier is completed.

Certification from an appropriately qualified person confirming compliance with these requirements must be provided prior to the issuing of any Occupation Certificate.

(Reason: To ensure that any person acting upon this consent is aware of their obligations under the provisions of the Swimming Pools Act)

The proposal (as modified) involves minor changes to retain the existing indoor pool (in the basement level) and deletion of Condition C3. The proposed modification will result in development that is substantially and materially the same as approved by DA26/21 (as demonstrated in the above considerations under Clause 4.55 of the *Environmental Planning and Assessment Act 1979*).

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 proposal description and conditions in the consent are amended:

**Reasons for Approval:**

- Modify the description of the proposal in the consent as follows:

*Alterations and additions to the existing heritage listed dwelling including the addition of a balcony to the side dormer and the construction of a pergola over the deck in the rear yard.*

- Modify Condition A1 to include the amended existing basement level plan reflecting the proposed changes.
- Add Condition A4 to amend any construction certificate documentation and include annotation indicating any associated safety fencing will comply with the *Swimming Pools Act 1992*.
- Delete Condition C1.
- Delete Condition C3.
- Add Condition G8 to ensure the pool and associated safety fencing complies with relevant legislation including the *Swimming Pools Act 1992*.

**How community views were taken into account:**

The relevant issues raised by any submitters have been addressed within this report (refer to Submissions section in this report).

The conditions attached to the original consent for Development Application No. **26/21** by endorsed date of **2 March 2022** 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**

**5 April 2023**

DATE



Signature on behalf of consent authority  
MIGUEL RIVERA  
**SENIOR ASSESSMENT OFFICER**