



Mr Alistair J C Lee and Mrs Sarah Lee
2 Wilona Avenue
LAVENDER BAY NSW 2060

D323/22
RW (CPE)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 323/22/2 - APPROVAL**

Development Consent Number: 323/22

Land to which this applies: 5 Wilona Avenue, Lavender Bay
Lot No.: 12, DP: 216639

Applicant: Alistair James Carvell Lee

Proposal: Section 4.55(1a) modification to an approved application including internal, external changes, landscape, and fencing changes

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. **323/22** and registered in Council's records as Application No. **323/22/2** relating to the land described as **5 Wilona Avenue, Lavender Bay**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **22 December 2022**, has been determined in the following manner:

A. Add Condition A5 as follows:

Development in Accordance with Plans/Documentation

A1. The development being carried out in accordance with drawings numbered

Plan	Rev	Description	Prepared by	Dated
D001	A	Demolition Site/Roof Plan	4d Architecture & Design	4/08/2023
D002	A	Demolition Ground Floor Plan	4d Architecture & Design	4/08/2023
D003	B	Demolition Underfloor Floor Plan	4d Architecture & Design	5/10/2023
A001	B	Site/Roof Plan	4d Architecture & Design	5/10/2023
A002	B	Ground Floor Plan	4d Architecture & Design	5/10/2023
A003	B	First Floor Plan	4d Architecture & Design	5/10/2023
A004	C	Underfloor Storage Plan	4d Architecture & Design	5/10/2023
A100	A	North/South Elevations	4d Architecture & Design	4/08/2023
A200	C	Sections 01/02	4d Architecture & Design	5/10/2023

A201	A	Sections 03/04	4d Architecture & Design	5/10/2023
A600	A	Door/Window/Glazing/Gate Schedule	4d Architecture & Design	4/08/2023
A601	A	Door/Window/Glazing/Gate Schedule	4d Architecture & Design	4/08/2023
A602	A	Door/Window/Glazing/Gate Schedule	4d Architecture & Design	4/08/2023
L001	B	Landscape Plan	4d Architecture & Design	5/10/2023
S03	A	Chimney Alterations Plan & Details	Burgess, Arnott & Grava P/L	4/08/2023

B. Modify Conditions as follows:

Front Tiling

C1. The new tiling in front of the dwelling entry is to generally match No.13 Wilona Avenue.

(Reason: To maintain the heritage significance of the contributory Item)

Front Fence

C4. The height of the front fence on all three sides are to remain as a horizontal timber fence type instead of a picket fence design. An additional horizontal timber fence element may be added to the existing design on all three sides of the front fence to increase the height of the front fence.

(Reason: To maintain the heritage significance of the contributory Item)

BASIX Certificate

C26. Under clause 97A(3) of the Environmental Planning and Assessment Regulation 2021, it is a condition of this development consent that all the commitments listed in BASIX Certificate **No. A471038, dated 24 August 2022**, 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.

The original BASIX Certificate (A471038) dated 24 August 2022 is required to be updated in accordance with the modification consent for proposed works.

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

Amendments to the Landscape Plan

C27. The landscape plan prepared by 4D Architecture and Design, dated 5 October 2023 and numbered L001, must be amended as follows to provide an appropriate landscaped setting incorporating the following:

T7 - 1 x *Lagerstroemia indica*, and

T8 -1 x *Elaeocarpus reticulatus* shall be shown as 45L min pot size.

An amended landscape plan 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 amended landscape plan and other plans and specifications submitted fully satisfy the requirements of this condition.

(Reason: To ensure residential amenity)

Landscaping

- G1. The amended landscape plan carried out in accordance with **Condition C27** and approved by the Certifying Authority prior to the issue of any Construction Certificate must be completed prior to the issue of any Occupation Certificate.

(Reason: To ensure compliance with original consent conditions and residential amenity)

Reasons for Approval:

The proposed modifications are considered to be generally consistent with the originally approved development application and s.4.55 of the EP&A Act 1979. Furthermore, the modifications do not result in any material amenity impact to adjoining properties or the surrounding area. The proposed modifications are consistent with the reasons for the granted development consent to the originally approved development and is considered to be acceptable.

The proposed modifications achieve the objectives of the R2 Low Density Residential zone and provide a high level of residential amenity to the subject site with changes supported by various professional opinions and documentation. The proposal is considered satisfactory and consistent with the original consent.

Having regard to the provisions of section 4.55 and 4.15(1) of the *Environmental Planning and Assessment Act 1979*, the proposed development as modified is substantially the same development as originally consented to. The application is therefore recommended for **approval**.

How community views were taken into account:

The proposal is considered to be in the public interest for the reasons stated throughout this report.

The conditions attached to the original consent for Development Application No. **323/22** by endorsed date of **22 December 2022** still apply.

ADVISINGS

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

17 October 2023

DATE



Signature on behalf of consent authority
DAVID HOY
TEAM LEADER (ASSESSMENTS)