



Mr James Graham  
24 Waiwera Street  
LAVENDER BAY NSW 2060

D439/21  
AB7 (CPE)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 MODIFICATION 439/21/2 - APPROVAL**

---

**Development Consent Number:** 439/21

---

**Land to which this applies:** 1 Ellalong Road, Cremorne  
Lot No.: 10, DP: 807022

---

**Applicant:** James Graham

---

**Proposal:** Addition of skylight and window 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. **439/21** and registered in Council's records as Application No. **439/21/2** relating to the land described as **1 Ellalong Road, Cremorne**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **13 July 2022**, has been determined in the following manner:

**1. Condition A1 is amended as follows:**

**Development in Accordance with Plans (S4.55 Amendments)**

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.	Title	Drawn By	Received
EX01	Existing Ground Floor Plan	Astral Design Studio - James Graham	10/12/2021
DA01	Site Plan	Astral Design Studio - James Graham	10/12/2021
DA02	Ground Floor Plan	Astral Design Studio - James Graham	10/12/2021
DA03	North and South Elevation	Astral Design Studio - James Graham	10/12/2021
DA04	East and West Elevation	Astral Design Studio - James Graham	10/12/2021
DA05	Sections A, B & C	Astral Design Studio - James Graham	10/12/2021
DA06	Exterior Finishes Schedule	Astral Design Studio - James Graham	10/12/2021

Except as modified as such on the following drawings for DA 439/21/2:

Plan No.	Revision	Title	Drawn By	Date	Received
DA02	A	Ground Floor Plan	James Graham	30/08/2023	14/09/2023
DA03	B	North & South Elevations	James Graham	30/08/2023	14/09/2023
DA05	B	Sections A, B & C	James Graham	30/08/2023	14/09/2023
DA06	B	Exterior Finishes Schedule	James Graham	30/08/2023	14/09/2023
DA07	A	Roof Plan	James Graham	30/08/2023	14/09/2023

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

**2. Condition C11 is amended as follows:**

**BASIX Certificate**

C11. Under clause 75 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. **A1372633** (dated 13 October 2023) for the development are fulfilled. Plans and specifications complying with this condition must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate. The Principal Certifier 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. A new Condition C12 is added as follows:**

**Skylight(s)**

C12. Skylight flashing(s) and frame(s) to be coloured to match the roof material. Skylight(s) to sit no higher than 100mm above roof plane when in a closed position. Plans and specifications which comply with this condition must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate.

The Principal Certifier must ensure that the building plans and specifications submitted fully satisfy the requirements of this condition.

(Reason: To minimise the visual impact of the skylight(s) on the roof plane)

**4. Condition G5 is amended as follows:**

**BASIX Completion Receipt**

G5. In accordance with Section 45 of the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*, prior to issuing a final occupation certificate the Principal Certifier must provide a BASIX completion receipt.

(Reason: To ensure compliance with the Regulations)

**Reasons for Approval:**

The proposed modifications satisfies the provisions of Section 4.55(2) in that the proposed development remains substantially the same as what was approved by DA 439/21. The proposed modifications to retain the significant fabric of the existing contributory item and will not involve any further demolition/removal of significant fabric. The proposal will not alter the use of the development and will have minimal environmental impacts given that the works will be within the existing footprint of the building and will not be highly visible from any adjoining property or the public domain.

The proposed modification would not significantly change the level of compliance with the relevant development standards and controls as contained in North Sydney LEP 2013 and North Sydney DCP 2013. Notably, the proposal is wholly contained within the footprint of the development and will not alter the building height, bulk and massing, setbacks, site coverage, landscaped area, and unbuilt-upon area, of the approved scheme. The minor changes to the approved development will result in some improvements to the existing residence in terms of amenity and functionality whilst not resulting in adverse environmental impacts and not compromising the amenity of adjoining properties. Accordingly, the proposal remains consistent with the original reasons for granting consent.

The proposal was found to be acceptable in the site circumstances and is recommended that the subject Section 4.55(2) application be **approved**.

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

The subject application was notified to adjoining properties and the precinct committee seeking comment, and no submissions were received. Nevertheless, it is considered that the proposed modifications would not substantially alter the potential impacts in comparison to the approved development and would not cause any unreasonable impacts to the streetscape and/or adjoining properties.

The conditions attached to the original consent for Development Application No. **439/21** by endorsed date of **13 July 2022** still apply.

**ADVISINGS**

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

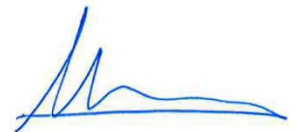
- (b) Pursuant to Section 8.2, an applicant is able to request Council to review its determination. An application for a review under Section 8.2 of the Act must be made no later than 28 days after the date on which the application for the modification of the development consent was determined.
- (c) 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**

**10 November 2023**

DATE



Signature on behalf of consent authority  
ANDREW BEVERIDGE  
**SENIOR ASSESSMENT OFFICER**