



Wurley Group Pty Ltd  
T/- Willoughby Architects  
PO Box 535  
WILLOUGHBY NSW 2068

D382/21  
DWH (PE)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 MODIFICATION 382/21/2 - APPROVAL**

**Development Consent Number:** 382/21

**Land to which this applies:** 108 Hayberry Street, Crows Nest  
Lot No.: 2, DP: 521540

**Applicant:** Wurley Group Pty Ltd

**Proposal:** Section 4.55(1a) modification application to modify consent including the installation of solar panels and removal of (3) three trees

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. **382/21** and registered in Council's records as Application No. **382/21/2** relating to the land described as **108 Hayberry Street, Crows Nest**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **4 May 2022**, has been determined in the following manner:

**1. Condition A1 of the consent shall be amended 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. | Rev No. | Description                       | Prepared by           | Dated      |
|----------|---------|-----------------------------------|-----------------------|------------|
| TP 03    | Rev C   | Demolition Plan                   | Willoughby Architects | 29/09/2021 |
| TP 04    | Rev D   | Proposed Site and Stormwater Plan | Willoughby Architects | 04/03/2022 |
| TP 05    | Rev C   | Ground Floor Plan                 | Willoughby Architects | 29/09/2021 |
| TP 06    | Rev D   | First Floor Plan                  | Willoughby Architects | 04/03/2022 |
| TP 07    | Rev C   | Roof Plan                         | Willoughby Architects | 29/09/2021 |
| TP 08    | Rev D   | North Elevation West Elevation    | Willoughby Architects | 04/03/2022 |
| TP 09    | Rev C   | South Elevation East Elevation    | Willoughby Architects | 29/09/2021 |

|       |       |                               |                       |            |
|-------|-------|-------------------------------|-----------------------|------------|
| TP 10 | Rev C | Sections                      | Willoughby Architects | 29/09/2021 |
| TP 11 | Rev D | Garage Plans                  | Willoughby Architects | 04/03/2022 |
| TP 12 | Rev D | Garage Elevation and Sections | Willoughby Architects | 04/03/2022 |
| TP 13 | Rev C | Finishes                      | Willoughby Architects | 29/09/2021 |
| TP 14 | Rev C | Schedules                     | Willoughby Architects | 29/09/2021 |

Except where modified by the modifications shown coloured on the following plans

#### MOD 1 - Trees and solar panels

| Plan No. | Rev No. | Description                       | Prepared by           | Dated     |
|----------|---------|-----------------------------------|-----------------------|-----------|
| TP 03    | Rev F   | Demolition Plan                   | Willoughby Architects | 9/08/2023 |
| TP 04    | Rev F   | Proposed Site and Stormwater Plan | Willoughby Architects | 9/08/2023 |
| TP 07    | Rev F   | Roof Plan                         | Willoughby Architects | 9/08/2023 |

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

- The Trees identified as T1, T2 and T3 in the Arboricultural Impact Assessment Report, prepared by Mark Hartley, dated 5 June 2023, may be removed from the site.***
- Conditions C16 and C17 shall be amended to read as follows:***

#### Tree Protection Measures to be shown on Construction Drawings

- C16. All trees within the site and road reserve that are affected by the approved development must be retained and must be protected in accordance with AS4970. All tree protection measures shall be shown clearly on the Construction Certificate drawings.

Plans and specifications showing the said tree protection measures must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure the construction plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure that appropriate tree protection measures are shown on construction drawings)

#### Protection of Trees

- C.17 All trees to be retained within the site and road reserve that are affected by the approved development must be protected in accordance with AS 4970-2009 - Protection of trees on development sites.

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.

Sensitive construction techniques including hand excavation, pier and beam, flexible location of piers/footings must be used within the TPZ of any protected tree. No roots greater than 40mm shall be cut.

Any tree(s) shown as being retained on the approved plans (regardless of whether they are listed in the above schedule or not) must be protected and retained in accordance with this condition.

(Reason: Protection of existing environmental and community assets)

4. **The following additional condition requiring replacement trees shall be imposed:**

**Required Tree Planting**

G6. On completion of works and prior to the issue of the Occupation Certificate for the whole of the building, trees in accordance with the schedule hereunder must be planted within the rear garden area between the garage and the dwelling: -

**Schedule**

| Tree Species                                                                 | Location           | Pot Size    |
|------------------------------------------------------------------------------|--------------------|-------------|
| 1 x <i>Callestimon Viminalis</i>                                             | Within rear garden | 75Ltr (min) |
| 1 x small tree capable of attaining a minimum height at maturity of 5 metres | Within rear garden | 75Ltr (min) |

The installation of such trees is to be undertaken by an appropriately qualified horticulturalist. On completion of installation and prior to the issue of the Final Occupation Certificate an appropriately qualified horticulturalist must certify that the trees required to be planted in accordance with this condition are healthy and have good prospects of future survival. The certification must be submitted with any application for an Occupation Certificate.

(Reason: To ensure that replacement plantings are provided to enhance community landscaped amenity and cultural assets)

**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 of development consent to the originally approved development and is considered to be acceptable.

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 (not) 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. 382/21 by endorsed date of 4 May 2022 still apply.

**ADVISINGS**

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

**3 April 2024**

\_\_\_\_\_  
DATE

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