



Ms Hilit Einav
Design Your Space
22 Laurel Street
WILLOUGHBY NSW 2068

D137/21
KRR (PE)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 137/21/5 - APPROVAL**

Development Consent Number: 137/21

Land to which this applies: 1 Prospect Avenue, Cremorne
Lot No.: 1, DP: 10545

Applicant: Hilit Einav, Design Your Space

Proposal: Section 4.55(2) modification to approved alterations and additions for Pool equipment and pool fence moved to rear for boundary, Trees T4, T5, T6/Stair Configuration and Tree Protection Conditions, Under alfresco bathroom, Deletion of Skylights, Electrical Cabinet, Typographical error, Modified conditions to allow partial OC to be issued, Condition C24 Amendments to the Landscape Plan, Compliance with Condition G2.

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. **137/21** and registered in Council's records as Application No. **137/21/5** relating to the land described as **1 Prospect Avenue, Cremorne**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **2 December 2021**, has been determined in the following manner:

1. To amend Condition A1:

Development in Accordance with Plans (Section 4.55 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

DA137/21 Approved Plan List

No.	Rev.	Title	Drawn by	Date	Received
A.00.02	C	Site Plan	Hilit Einav Design Your Space	25/10/2021	03/11/2021
A.04.01	B	East Elevation	Hilit Einav Design Your Space	30/07/2021	03/09/2021
A.04.02	C	South Elevation	Hilit Einav Design Your Space	25/10/2021	03/11/2021
A.04.03	C	West Elevation (Rear)	Hilit Einav Design Your Space	25/10/2021	03/11/2021
A.04.04	B	North Elevation	Hilit Einav Design Your Space	30/07/2021	03/09/2021
A.05.01	C	Section A	Hilit Einav Design Your Space	25/10/2021	03/11/2021
A.02.01a	C	Front Yard Landscape Plan	Hilit Einav Design Your Space	25/10/2021	03/11/2021
A.02.01b	C	Rear Yard Landscape Plan	Hilit Einav Design Your Space	25/10/2021	03/11/2021
A.02.02	B	New Ground Floor Plan	Hilit Einav Design Your Space	30/07/2021	21/09/2021
A.02.03	B	New First Floor Plan	Hilit Einav Design Your Space	30/07/2021	21/09/2021
A.02.04	A	New Roof Plan	Hilit Einav Design Your Space	01/05/2021	18/05/2021

DA137/21/2 Approved Plan List

No.	Rev.	Title	Drawn by	Date	Received
A.00.02	D	Site Plan	Hilit Einav Design Your Space	05/05/2022	11/11/2022
A.04.01	C	East Elevation	Hilit Einav Design Your Space	05/05/2022	11/11/2022
A.04.02	D	South Elevation	Hilit Einav Design Your Space	05/05/2022	11/11/2022
A.04.03	D	West Elevation (Rear)	Hilit Einav Design Your Space	05/05/2022	11/11/2022
A.04.04	C	North Elevation	Hilit Einav Design Your Space	05/05/2022	11/11/2022
A.02.01b	D	Rear Yard Landscape Plan	Hilit Einav Design Your Space	05/05/2022	11/11/2022
A.02.02	C	New Ground Floor Plan	Hilit Einav Design Your Space	05/05/2022	11/11/2022
A.02.04	B	New Roof Plan	Hilit Einav Design Your Space	05/05/2022	11/11/2022

DA137/21/5 Approved Plan List

No.	Rev.	Title	Drawn by	Date	Received
A.00.02	G	Site Plan	Hilit Einav Design Your Space	24/01/2024	19/02/2024
A.00.10	G	BASIX commitments	Hilit Einav Design Your Space	24/01/2024	19/02/2024
A.04.01	G	East Elevation	Hilit Einav Design Your Space	24/01/2024	19/02/2024
A.04.02	G	South Elevation	Hilit Einav Design Your Space	24/01/2024	19/02/2024
A.04.03	G	West Elevation (Rear)	Hilit Einav Design Your Space	24/01/2024	19/02/2024
A.04.04	G	North Elevation	Hilit Einav Design Your Space	24/01/2024	19/02/2024
A.02.01b	G	Rear Yard Landscape Plan	Hilit Einav Design Your Space	24/01/2024	19/02/2024
A.02.01c	G	Rear Yard - Pool Equipment Area, Pool Fence and Screens	Hilit Einav Design Your Space	24/01/2024	19/02/2024
A.02.02	G	New Ground Floor Plan	Hilit Einav Design Your Space	24/01/2024	19/02/2024
A.02.04	G	New Roof Plan	Hilit Einav Design Your Space	24/01/2024	19/02/2024

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

2. To amend Condition Nos. Conditions C13:

Protection of Trees

C13. The following tree(s) are required to be protected and retained as part of the development consent in accordance with AS 4970-2009 - Protection of trees on development sites:

Tree	Location	Height
T1 Melaleuca linariifolia	Council verge in front of 1 Prospect Ave	8.0 m x 6.0 m
T2 Jacaranda mimosifolia	Front setback of 1 Prospect Ave (NE corner)	9.0 m x 14.0 m
T3 Magnolia grandiflora	Front setback of 1 Prospect Ave	5.5 m x 7.0 m
T4 Archontophoenix cunninghamiana (group of 3)	Rear setback 1 Prospect Ave on the northern side boundary.	12.0 m x 5.0 m
T5 Archontophoenix cunninghamiana (group of 2)	Rear setback 1 Prospect Ave on the northern side boundary.	7.0 m x 5.0 m
T6 Howea forsteriana	Rear setback 1 Prospect Ave on the northern side boundary.-(Removed)	7.0 m x 4.0 m
T7 Syzygium australe	Rear setback 1 Prospect Ave on the northern side boundary (NW corner).	16.0 m x 6.0 m
T8 Melaleuca armillaris	Rear setback 1 Prospect Ave on the northern side boundary (NW corner).	10.0 m x 10.0 m
T9 Dypsis lutescens (group)	Rear setback 1 Prospect Ave on the southern side boundary.	8.0 m x 7.0 m
T11 Magnolia grandiflora	Front setback of 1 Prospect Ave (NE corner)	6.0 m x 2.0 m

Plans and specifications complying 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, referenced on, and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

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. All excavation and construction within the TPZ of any protected tree is to be carried out using sensitive construction techniques.

~~Stormwater installation shall be located as far from the centre of trunk of T4, T5, T6, and T9 as possible, and shall be installed using sensitive construction techniques, under the supervision of the project arborist.~~

(Reason: Protection of existing environmental and community assets)

3. To Amend Condition C24 to read as follows:

Amendments to the Landscape Plan

C24. The landscape plans approved within **Condition A1** of this consent must be amended as follows to provide an appropriate landscaped setting:

- 1) ~~The area around the swimming pool shall be constructed of open decking cantilevered over existing lawn.~~
- 2) T10 Elaeocarpus reticulatus that is to be removed by this consent shall be replaced with 1 x Backhousia citriodora (75 litre pot size)

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

(Reason: To ensure residential amenity, the protection of significant environmental assets, and to demonstrate compliance with Council's controls)

4. To amend Condition C23 to read as follows:

BASIX Certificate

*C23. 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. **A398554_06** 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 any 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)

5. To amend Condition I2 to read as follows:

Maintenance of Approved Landscaping

*I2. The owner of the premises at **1 Prospect Avenue, Cremorne** is to maintain the landscaping approved by this consent generally in accordance with the landscape plans numbered A.02.01a and A.02.01b, prepared by Hilit Einav Design Your Space, dated 25 October 2021 (Revision C), and as modified by **Condition C24**.*

Any replacement plants required shall be advanced in growth and be selected to maintain the anticipated mature height, canopy density and nature of those plant species as originally approved.

(Reason: To ensure maintenance of the amenity, solar access, and views of adjoining properties)

6. To amend Condition Nos. E11, G1, G2, G5, G7, G9 and G11 to read as follows:

Protection of Trees

E11. All trees required to be retained, as part of this consent must be protected from any damage during construction works in accordance with AS4970-2009. All recommendations contained within the Arboricultural Impact Assessment prepared by Peake Arboriculture dated 2 November 2021 (Revision A) and the Addendum to Arboricultural Impact Assessment prepared by Peake Arboriculture dated 20/6/2023 must be strictly adhered to and implemented for the duration of the works.

*No level changes, other than for the excavation of the pool shell itself, shall be permitted within the Tree Protection Zones (TPZ) of T7 (*Syzygium australe*) and T8 (*Melaleuca armillaris*). No over-excavation shall be permitted.*

Sensitive construction techniques including hand excavation, pier and beam construction, and flexible location of piers/footings shall be carried out within the TPZ of all protected trees, and no roots greater than 30mm shall be cut.

In addition to the specified trunk protection, tree protection fencing or mulch or other root protection as per AS4970 shall be installed around the TPZ of all protected trees within the front setback of 1 Prospect Avenue. No canopy pruning shall be permitted to any protected tree.

In the event that any tree required to be retained is damaged during works on the site, notice of the damage must be given to Council forthwith. Notes:

- 1) If the nominated tree is damaged to a significant degree or removed from the site without prior written approval being obtained from Council, the issuing of fines or legal proceedings may be commenced for failure to comply with the conditions of this consent.*
- 2) An application to modify this consent pursuant to Section 96 of the Environmental Planning and Assessment Act 1979 will be required to address the non-compliance with any of the conditions of consent relating to the retention of nominated trees, and Council may require tree replenishment.*

(Reason: Protection of existing environmental infrastructure and community)

Infrastructure Repair and Completion of Works

*G1. Prior to the issue of ~~any~~ **the final** Occupation Certificate any and all works relating to the development:*

- a. in the road reserve must be fully completed; and*
- b. to repair and make good any damaged public infrastructure caused as a result of any works relating to the development (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete vehicles) must be fully repaired;*

to the satisfaction of Council Engineers at no cost to Council.

(Reason: Maintain quality of public assets)

Pool Access

*G2. 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~~ **the relevant** 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)

Utility Services

*G5. All utility services shall be adjusted to the correct levels and/or location/s required by this consent, prior to issue of **the final** occupation certificate. This shall be at no cost to Council.*

(Reason: To ensure compliance with the terms of this consent)

Certification of Tree Condition

G7. Prior to the issue of **the final** Occupation Certificate, a report prepared by an appropriately qualified person (being an arborist or the like) must be submitted to the Principal Certifier, describing the health of the trees specifically nominated below: -

Tree	Location	Height
T1 Melaleuca linariifolia	Council verge in front of 1 Prospect Avenue	8.0 m x 6.0 m
T2 Jacaranda mimosifolia	Front setback of 1 Prospect Avenue (NE corner)	9.0 m x 14.0 m
T3 Magnolia grandiflora	Front setback of 1 Prospect Avenue	5.5 m x 7.0 m
T4 Archontophoenix cunninghamiana (group of 3)	Rear setback 1 Prospect Avenue on the northern side boundary.	12.0 m x 5.0 m
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T9 Dypsis lutescens (group)	Rear setback 1 Prospect Avenue on the southern side boundary.	8.0 m x 7.0 m
T11 Magnolia grandiflora	Front setback of 1 Prospect Avenue (NE corner)	6.0 m x 2.0 m

The report must detail the condition and health of the nominated trees upon completion of the works and shall certify that the trees has/have not been significantly damaged during the works on the site and have reasonable prospects for survival.

(Reason: To ensure compliance with the terms of this consent)

Landscaping

G9. The landscaping shown in the approved landscape plans numbered A.02.01a and A.02.01b, prepared by Hilit Einav Design Your Space, dated 25 October 2021 (Revision C), and as amended by **Condition C24** of this consent, must be completed prior to the issue of ~~any~~ **the final** Occupation Certificate.

(Reason: To ensure compliance)

Compliance with Certain Conditions

G11. Prior to the issue of ~~any~~ **the final** Occupation Certificate **Conditions C19 'Privacy Measures' and C24 'Amendments to the Landscape Plan'** must be certified as having been implemented on site and complied with.

(Reason: To ensure the development is completed in accordance with the requirements of this consent)

Reasons for Approval:

The proposed modifications are considered to be of minimal environmental impact and are 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 new 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 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 subject application was notified to adjoining properties and the Willoughby Bay and Brightmore Precinct Committees seeking comment. No submissions were received for the duration of the assessment. The community and public interest is served via the assessment of this application.

The conditions attached to the original consent for Development Application No. **137/21** by endorsed date of **2 December 2021** still apply.

ADVISINGS

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

13 June 2024

DATE



Signature on behalf of consent authority
MR KIM ROTHE
A/TEAM LEADER (ASSESSMENTS)