

Original signed by: Robyn Pearson Dated: 13/9/2018

## Development Consent No. 240/17

### Section 4.55 Application

#### Applicant's Name

Matthew and Kim Turner, C/- Andrew Lee, Bijl Architecture

#### Land to which this applies

125 Carabella Street, Kirribilli  
Lot No. B, DP 438872

#### Proposal

Section 4.55(2) modifications to DA 240/17 including a new off-street parking space and driveway, new pedestrian access to the front of the dwelling and alterations to the front (southwest) of the dwelling and fenestration 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. **240/17** and registered in Council's records as Application No. **240/17/2** relating to the land described as **125 Carabella Street, Kirribilli**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 5 September 2017, has been determined in the following manner:

- To modify the development consent (D240/17) and modify condition A1 to include the revised plans:*

#### Development in Accordance with Plans (S 4.55 Amendments)

- A1. The development shall be carried out in accordance with the following drawings:

Plan No.	Issue/Rev	Date	Drawn by	Received
EX01	A	7 July 2017	Bijl Architecture	11 July 2017
DA02	A	7 July 2017	Bijl Architecture	11 July 2017
DA03	A	7 July 2017	Bijl Architecture	11 July 2017
DA04	A	7 July 2017	Bijl Architecture	11 July 2017
DA05	A	7 July 2017	Bijl Architecture	11 July 2017
DA06	A	7 July 2017	Bijl Architecture	11 July 2017
DA-01	A	15 July 2017	Groundlink Landscape Architect	11 July 2017
DA-02	A	15 June 2017	Groundlink Landscape Architect	11 July 2017

and endorsed with Council's approval stamp, except as modified by the areas clouded in red and on the new drawings for D240/17/2 as listed below:

<b>Drawing Number</b>	<b>Issue/Rev</b>	<b>Date</b>	<b>Drawn by</b>	<b>Received</b>
1608.DA02	B	16 July 2018	Bijl Architecture	16 July 2018
1608.DA03	B	16 July 2018	Bijl Architecture	16 July 2018
1608.DA04	B	16 July 2018	Bijl Architecture	16 July 2018
1608.DA05	B	16 July 2018	Bijl Architecture	16 July 2018
1608.DA06	B	16 August 2018	Bijl Architecture	16 July 2018
1608.DA12	B	16.07.2018	Bijl Architecture	16 July 2018
1608.EX01	B	16.07.2018	Bijl Architecture	16 July 2018
LA-01	-	13 July 2018	Ground Ink Landscape Architects	16 July 2018

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

**2. To insert new conditions A5, C20, C21, C22, C23, C24, E22, and E23 as follows:**

**Terms of Consent**

A5. Approval is granted for the following works as shown on drawings listed in Condition A1 above:

- (a) New driveway, hardstand parking space, landscaping of new front garden, new pedestrian entrance and amended front boundary treatment and gate.
- (b) Opening of front verandah and associated works.
- (c) Deletions and alterations to the size and location of windows on the southeastern elevation, and an alteration to screen type applied to window W11.
- (d) Removal of skylights from proposal.
- (e) Internal alterations at lower ground floor level.

No approval is given or implied in this consent for any other works, both internal and external, within the subject property.

(Reason: To ensure the terms of the consent are clear.)

**Protection of Trees**

C20 The following tree is required to be retained and protected as part of the development consent in accordance with AS 4970-2009 – Protection of trees on development sites:

<b>Tree</b>	<b>Location</b>	<b>Height (m)</b>
<i>Platanus acerifolia</i> (London Plane)	Council's footpath	15

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.

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)

### **Work Zone**

- C21. If a Work Zone is proposed, an application must be made to the North Sydney Local Traffic Committee to install the 'Work Zone'. A Work Zone permit is required to be issued by the Council prior to the issue of any Construction Certificate.

Work Zones are provided specifically for the set down and pick up of materials and not for the parking of private vehicles associated with the site. Works Zones will generally not be approved where there is sufficient space on-site for the setting down and picking up of goods being taken to or from a construction site. If the Works Zone is approved by the Committee, the Applicant must obtain a written copy of the related resolution from the North Sydney Local Traffic Committee and submit a copy of this to the Certifying Authority to enable issue of the Construction Certificate.

Where approval of the 'Work Zone' is given by the Committee, the requirements of the Committee, including installation of the necessary 'Work Zone' signage and payment of any fees, must occur prior to commencement of any works on the site. Further, at the expiration of the Work Zone approval, the developer is required to remove the Work Zone signs and reinstate any previous signs, all at the developer's cost. The requirements imposed by the Committee on the Work Zone permit (or permits) must be complied with at all times.

(Reason: Amenity and convenience during construction)

### **Obtain Driveway Crossing and associated works permit**

C22. Prior to the issue of the Construction Certificate, North Sydney Council must issue the applicant with a driveway crossing and road infrastructure works permit to suit the approved off-street parking facilities. To obtain the permit, an application must be made to Council on a '*Vehicular Access Application*' form with payment of the adopted assessment/inspection fees. Council will require civil design construction drawings and certification from the applicant's Civil Engineer to verify design details and enable permit issue. The responsibility for accuracy of the design fully rests with the designing engineer. All responsibility on implementation and supervision of works specified on design plans fully rests on designing engineer or whoever is chosen to be applicant's engineering representative. The civil design drawings shall detail the following infrastructure construction requirements of Council in relation to the consent:

- a) The proposed vehicular access ways must comply with AS 2890.1 and Council's current Vehicular Access Application Guidelines and Specification (gutter bridges not permitted) to ensure that a B85 vehicle will not scrape/strike the surface of the carriageway, layback, vehicular crossing or parking floor.
- b) The width of the vehicular layback must be 3.5m (including the wings).
- c) The right hand side edge (facing the property) of proposed vehicular crossing must have a minimum 1 m clearance from the street tree trunk.
- d) The vehicular laybacks must be set square to the kerb.
- e) The boundary footpath levels must match the existing levels and shall not be altered unless agreed to by Council.
- f) Alignment levels at the boundary have an important impact on the proposed levels for new driveway. The works must not start until confirmation of boundary alignment levels from registered surveyor. Council has the authority to remove any unauthorized works at the cost of the property owner.
- g) The Certifying Authority must ensure that the internal property levels at boundary matches council's confirmed boundary levels.
- h) The footpath and grass verge on Carabella Street must be reconstructed and are to be transitioned at least 1.5m on both sides or for additional pavement panel, whichever is greater, to ensure uniformity on the footpath.
- i) The footpath shall be set at a single straight grade of approximately 3% falling from the property boundary to the existing depression within the existing footpath slab so that it is uniform without showing signs of dipping or rising particularly at entrances.
- j) The gutter levels and road shoulder levels on Carabella Street must stay unchanged.
- k) The kerb gutter, and 600 mm road shoulder wide- strip, adjacent to all new layback and gutter works, on Carabella Street must be reconstructed, to ensure uniformity in the road reserve.
- l) Any twisting of driveway access to ensure vehicles do not scrape must occur wholly within the subject property.
- m) All inspection openings, utility services must be adjusted to match the proposed driveway levels and location.
- n) The design detail has to be provided with vehicular access application and must include sections along centre-line and extremities of the crossing at a scale of 1:25. Sections are to be taken from the centre of the roadway through to the parking area itself and shall include all changes of grade and levels, both existing and proposed.

- o) A longitudinal section along the footpath property boundary at a scale of 1:50 is required and shall include all changes of grade and levels, **both** existing and proposed.
- p) The sections must show the calculated clearance to the underside of any overhead structure.

All driveway and infrastructure works on the road reserve must proceed in accordance with the terms of the permit issued by Council. Inspections by Council will be required as specified on the permit. The Certifying Authority issuing the Construction Certificate must ensure that the permit issued by Council is obtained prior to its issue, is referenced on and accompanies the Construction Certificate issued.

(Reason: To facilitate appropriate vehicular access to private sites, without disruption to pedestrian and vehicular traffic).

#### **Deletion of Turf Cell pavers**

- C23. The Turf Cell treatment to the car parking hardstand areas shall be deleted and low growing planting shall be provided instead.

Plans and specifications which comply 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.

(Reason: To ensure the area between and around the tyre tracks in the parking area is soft landscaped in the interest of streetscape amenity and to accord with the requirements of NSDCP).

#### **Privacy**

- C24. The following shall be applied to the development:

- a. Window W11 on the living room southeast elevation shall be treated with a device such as fixed shutters which do not open to a horizontal position to avoid overlooking of the neighbour at 123 Carabella Street.
- b. Window W7 on the southeast elevation shall be fixed shut and obscure glazed to a height of 1.5 metres above floor level to avoid overlooking of the neighbour at 123 Carabella Street. Alternatively, this window can be deleted with the two slot windows (W07 and W08) being provided as previously approved as part of DA 240/17.

(Reason: In the interests of residential amenity).

### **Protection of Trees**

- E22. 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 amended tree report prepared by Tree Talk Arboricultural Consulting dated 22 May 2018 and received by Council 15 August 2018 must be implemented for the duration of the works.

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:

- a) 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.
- b) 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 assets).

### **Council Inspection of Public Infrastructure Works**

- E23. During the works on public infrastructure reverting to Councils care and control, Councils development engineer must undertake inspections of the works at the following hold points: -

- a) Vehicular access; and associated road civil works.

All works must proceed in accordance with Roads Act 1993 approvals or other permits relating to roads issued by Council. A minimum of 48 hours notice must be given to Council to book an inspection. Work must not proceed until the works or activity covered by the inspection is approved.

(Reason: To ensure quality of construction joints and connections in the drainage system).

2. *To modify conditions A4, C1, C14, C15, C18, C19, and G6 as follows:*

### **External Finishes & Materials**

- A4. External finishes and materials must be in accordance with the submitted schedule dated July 2018, prepared by Bijl Architecture, and received by Council on 16 July 2018 except as modified by conditions C1 and C23 attached to this decision notice.

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

## Heritage

C1. The following must be applied to the proposed development:

- i. **New Windows and Doors** - New windows and doors on the Carabella Street elevation are to be to be timber-framed. New doors and windows to all other elevations must have either aluminium or steel framing sections of a width 45mm or wider, or must be timber-framed to ensure that the design and appearance are sympathetic to the character of the original dwelling. The new front door to the Carabella Street elevation is to be solid timber or solid timber with glazing, multi-panelled with a high waist and in the Federation style.
- ii. **New Brickwork** - New brickwork to front façade (South-East Elevation) to be a Federation style red-brown face brick. Tuck pointing may be applied. Exposed brickwork on side elevation is not to be painted.
- iii. **New Front Verandah Tiles** - New floor tiles to the front verandah are to be Federation style unglazed tessellated tiles.
- iv. **Proprietary Vental Blind** - The proposed proprietary vental blind on the living room southeast elevation (or other screen provided in accordance with condition C24 of this decision notice) shall be painted in a visually submissive colour with a non-metallic finish.
- v. **Southwest Elevation** – The new verandah posts shall match the detail on the attached semi at 127 Carabella Street, and shall not be as shown on Drawing 1608.DA04 Revision B by Bijl Architecture.
- vi. **Front Fence** - The new front boundary fence, including the sandstone base, shall have a maximum height of 900mm above ground level and be constructed of sandstone and timber pickets, not metal pickets. The detailing of the pickets shall match the pickets at No. 127 Carabella Street.

Plans and specifications which comply with all aspects of this condition shall be submitted to the Certifying Authority for approval prior to the issue of a 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.

(Reason: To conserve the heritage significance of the attached semi-detached dwellings).

## Bond for Damage and Completion of Infrastructure Works – Stormwater, Kerb and Gutter, Footpaths, Vehicular Crossing and Road Pavement

C14. Prior to the issue of any Construction Certificate, security deposit or bank guarantee must be provided to Council to the sum of \$9,000.00 to be held by Council for the payment of cost for any/all of the following:

- a. making good any damage caused to any property of the Council as a consequence of the doing of anything to which this consent relates,
- b. completing any public work (such as road work, kerbing and guttering, footway construction, stormwater drainage and [environmental controls](#)) required in connection with this consent
- c. Remedying any defects in any such public work that arise within 1 year for stormwater and 6 months for major road works and 2 months for vehicular crossing & small associated footpath works, after the work is completed.

The security in accordance with the schedule contained later in these conditions and must be provided by way of a deposit with the Council; or a guarantee satisfactory to Council (such as a satisfactory bank guarantee).

The security will be refundable following the expiration of defect risk period for the particular type of work as specified above (under c)), from the issue of any final Occupation Certificate or completion of public work required to be completed (whichever is the latest) but only upon inspection and release by Council's Engineers.

Council shall have full authority to make use of the bond for such restoration works as deemed necessary by Council in circumstances including the following: -

- where the damage constitutes a hazard in which case Council may make use of the security immediately;
- the applicant has not repaired or commenced repairing damage within 48 hours of the issue by Council in writing of instructions to undertake such repairs or works;
- works in the public road associated with the development are to an unacceptable quality; and
- the Certifying Authority must ensure that security is provided to North Sydney Council prior to issue of any Construction Certificate.

(Reason: To ensure appropriate security for works on public land and an appropriate quality for new public infrastructure).

### **Tree Bond for Public Trees**

C15. Prior to the issue of any construction certificate, security in the sum of \$8,000.00 must be provided to Council for the protection of trees in public places, including the making good of any damage caused to such trees. The security is to be provided in accordance with the Schedule below.

The security must be provided by way of a deposit with the Council; or a guarantee satisfactory to Council (such as a satisfactory bank guarantee).

The security will be refundable following the expiration of 6 months from the issue of any final Occupation Certificate but only upon inspection and release by Council's Landscape Development Officer.



If any tree is removed or damaged Council may deduct from this security the reasonable cost of replacement with a tree of the same species and to a similar stage of growth it would have attained at the completion of the work.

In the case of any tree, which cannot be replaced with a similar specimen, the security for that tree will be forfeited to Council and used to provide replacement street plantings.

**SCHEDULE**

1x *Platanus acerifolia* (London Plane) located on the Carabella Street frontage

(Reason: Protection of existing environment public infrastructure, community assets and significant trees).

**Security Deposit/ Guarantee Schedule**

C18. All fees and security deposits/ guarantees in accordance with the schedule below must be provided to Council prior to the issue of any Construction Certificate:

<b>Security deposit/ guarantee</b>	<b>Amount (\$)</b>
Street Tree Bond (on Council Property)	\$8,000.00
Infrastructure Damage Bond	\$3,000.00
Drainage Construction Bond	-
Engineering Construction Bond	\$6,000.00
Others	-
<b>TOTAL BONDS</b>	<b>\$17,000.00</b>

(Reason: Compliance with the development consent).

**BASIX Certificate**

C19. Under clause 97A (3) of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. A278328\_03 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.

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

**Compliance with Certain conditions**

G6. Prior to the issue of any Occupation Certificate, Conditions C1, C23, and C24 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).

### **Reason for approval**

The proposed modifications including the new parking space with driveway and other alterations within the front garden area, opening of the front verandah, alterations to fenestration on the southeast elevation, deletion of skylights, front boundary treatment alterations and internal alterations, satisfy the provisions of Section 4.55(2) in that the proposed development is substantially the same as what was approved under DA 240/17 and the proposed modifications will not materially alter the use or the form of the development as originally approved.

The proposed modifications generally would not change the level of compliance with the relevant development standards and controls as contained in North Sydney LEP 2013 and North Sydney DCP 2013. There would be no undue impacts on the residential amenity of any adjoining properties subject to a condition relating to privacy, or on the character of the locality subject to conditions, and the proposal remains consistent with the objectives of the R2 (Low Density Residential) Zone, and the reasons for granting consent originally.

The proposed works to the front facade of the dwelling including the opening of the original verandah would improve the appearance of the dwelling and would complement the streetscape, and the new off street parking space and driveway is acceptable as it is uncovered and will be suitably landscaped in accordance with NSDCP expectations.

The proposal was found to be acceptable in the site circumstances and is recommended that the subject Section 4.55(2) application be approved with modifications to the relevant conditions and new conditions as required.

### **How were community views taken into account in making the decision**

The proposal was notified and advertised in accordance with Part A, Section 4 *Notification of Applications* of North Sydney DCP 2013. A total of four (4) submissions were received, two against the application and two in support, with one recommending alterations. The issues raised in the submissions have also been fully considered, and conditions are recommended where necessary to minimise privacy impacts and ensure impacts to the street tree are acceptable.

The conditions attached to the original consent for Development Application No. 240/17 by endorsed date of 5 September 2017 still apply.

### **ADVISINGS**

- (a) Council is always prepared to discuss its decisions and in this regard, please do not hesitate to contact **Lisa Kamali**. 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. The use of the Section 34 Conference approach requires the appellant to agree, in advance and in writing, that the Court appointed assessor will be given the full authority to completely determine the matter at the conference.

- (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 Certifying Authority 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 & 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 & Assessment Act.

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DATE

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Signature on behalf of consent authority  
ROBYN PEARSON  
TEAM LEADER (ASSESSMENTS)