

Aqualand North Sydney Lavender Development Pty Ltd
Level 47, Tower 1, International Towers
100 Barangaroo Avenue
BARANGAROO NSW 2000

D112/01
GJY (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 112/01/14 – APPROVAL**

Development Consent Number: 112/01/14

Land to which this applies: 61 Lavender Street, Milsons Point
Lot No.: 2, DP: 549159

Applicant: Aqualand North Sydney Lavender Development Pty Ltd

Proposal: Modification of consent for conversion of a commercial building to a mixed use development.

The 4.55 application was considered by the **North Sydney Local Planning Panel (NSLPP)** on 2 September 2020.

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. **112/01** and registered in Council's records as Application No. **112/01/14** relating to the land described as **61 Lavender Street, Milsons Point**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 5 March 2001, has been determined in the following manner: -

1. To replace conditions A1 and G7 of the consent with the following new conditions:

Development in Accordance with Plans

A1. The development being carried out in accordance with the following drawings:

Plan No.	Issue	Title	Drawn by	Dated
A-000	X	Cover Sheet	PTW Architects	31/8/20
A-050	W	Basement B3	PTW Architects	7/8/20
A-051	V	Basement B2	PTW Architects	24/7/20
A-052	V	Basement B1	PTW Architects	24/7/20

A-053	V	Ground Floor	PTW Architects	24/7/20
A-054	S	Level 1	PTW Architects	1/5/20
A-055	Q	Level 2-3 typical	PTW Architects	23/11/17
A-056	Q	Level 4-7 typical	PTW Architects	23/11/17
A-057A	R	Level 8	PTW Architects	1/5/20
A-058	A	Level 9-17 typical	PTW Architects	1/5/20
A-071	Q	Level 18	PTW Architects	23/11/17
A-072	Q	Level 19	PTW Architects	23/11/17
A-073	R	Level 20	PTW Architects	1/4/18
A-074	R	Upper roof plant	PTW Architects	23/11/17
A-100	P	North Elevation	PTW Architects	1/5/20
A-102	P	South Elevation	PTW Architects	7/8/20
A-104	N	East Elevation	PTW Architects	1/5/20
A-106	N	West Elevation	PTW Architects	1/5/20
A-110	Q	Section AA	PTW Architects	1/4/18
A-111	R	Section BB	PTW Architects	1/4/18
A-130	K	Sample Board	PTW Architects	6/1/17
A-140	B	Upper Roof	PTW Architects	4/9/17
A-141	K	Aneeta Operable Facade	PTW Architects	20/7/17

except where amended by the following conditions.

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

Restrictive Covenant - shop top housing

G7. Prior to the use or occupation of the premises, a restrictive covenant pursuant to Section 88E of the Conveyancing Act, 1919 shall be created on the title of each of the three (3) shop top housing allotments providing that the ground floor of each allotment, being the non-residential level, shall at all times be used exclusively for non-residential purposes (subject to obtaining development consent, where necessary). North Sydney Council and its successors shall be named as the sole authority empowered to release or modify the restrictive covenants.

(Reason: To provide certainty in relation to the ongoing use of the ground floor for non-residential purposes.)

2. Additional Condition C28B to be included:

Section 7.11 Contributions

C28B. An additional monetary contribution is required in relation to the additional non-residential floor space of 175m², less credit for the deletion of two x studio apartments, approved under s.4.55 application DA112/01/14, pursuant to the provisions of Section 7.11 of the Environmental Planning and Assessment Act 1979, in accordance with the “North Sydney Section 94 Contributions Plan” for the public amenities/ services detailed in column A below and, for the amount detailed in column B below, must be paid to Council.

A	B (\$)
Administration	\$221.74
Community Centres	\$153.01
Child Care Facilities	\$1,400.34
Library and Local Studies Acquisition	\$45.73
Library Premises & Equipment	\$130.74
Multi-Purpose Indoor Sports Facility	\$100.47
Olympic Pool	\$327.23
Open Space Acquisition	-
Open Space Increased Capacity	-
North Sydney Public Domain	-
St Leonards Public Domain Improvements	-
Public Domain Improvements	\$1,157.13
Traffic Improvements	-
The total Contribution is	\$3,53639

The contribution MUST BE paid prior to issue of any Construction Certificate for the modified development.

The above amount will be adjusted for inflation by reference to the Consumer Price (All Ordinaries) Index applicable at the time of the payment of the contribution.

A copy of the North Sydney Section 94 Contributions Plan can be viewed at North Sydney Council's Customer Service Centre, 200 Miller Street, North Sydney or downloaded via Council's website at www.northsydney.nsw.gov.au.

(Reason: To retain a level of service for the existing population and to provide the same level of service to the population resulting from new development)

The Panel has considered the submissions received and is satisfied the modifications are relatively minor and will not unreasonably impact on adjoining properties or the built form of the subject development.

Where impacts exist, they are reasonably managed and mitigated by the recommended and existing conditions of consent.

Reason for approval:

The Chair expressed some concerns regarding the test of "substantially the same development" in relation to the original 2001 DA approval. However, it was clear the current proposal is substantially the same development as the currently approved development and the subject modifications marginally reduces the extent of difference to the original 2001 development consent.

The matter is further complicated by the substantial passing of time, previous modification approvals and changes to the governing legislation. Despite his expressed concerns and some doubt, the Chair was willing to support approval.

How community views were taken into account:

The application was notified to adjoining and surrounding properties between 22/5/20 and 5/6/20. Eighteen (18) submissions were received which were addressed in the delegated report. https://www.northsydney.nsw.gov.au/Council_Meetings/Meetings/NSLPP/2020/2_September_2020

The conditions attached to the original consent for Development Application No. 112/01 by endorsed date of 5 March 2001 still apply.

ADVISINGS

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

Endorsed for and on behalf of North Sydney Council

DATE

Signature on behalf of consent authority
GEORGE YOUHANNA
EXECUTIVE PLANNER