

Original signed by **Robyn Pearson** on **8/3/2021**

Stephen & Sascha Garner
C/- Bijl Architecture
7/100 Penshurst Street
WILLOUGHBY NSW 2068

D334/19
RT (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 334/19/2 – APPROVAL**

Development Consent Number: 334/19/2

Land to which this applies: 38 Kurraba Road, Neutral Bay
Lot No.: A, DP: 164450

Applicant: Stephen & Sascha Garner
C/- Bijl Architecture

Proposal: Section 4.55 (1A) application seeking modifications to D334/19 for temporary removal and rebuilding of the existing chimneys.

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. **334/19** and registered in Council's records as Application No. **334/19/2** relating to the land described as **38 Kurraba Road, Neutral Bay**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 17 February 2020, has been determined in the following manner: -

1. To modify the development consent (D334/19) and modify condition A1 to read as follows:

Development in Accordance with Plans (S4.55 Amendments)

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

Drawing No.	Issue	Date	Drawn	Received
D02	A	18.10.19	Bijl Architecture	18 October 2019
D03	A	18.10.19	Bijl Architecture	18 October 2019
D04	A	18.10.19	Bijl Architecture	18 October 2019
D05	A	18.10.19	Bijl Architecture	18 October 2019
D06	A	18.10.19	Bijl Architecture	18 October 2019
D07	A	18.10.19	Bijl Architecture	18 October 2019

and endorsed with Council's approval stamp, except as modified by highlighting on the following drawings for D334/19/2:

Drawing No.	Issue	Date	Drawn	Received
D02	C	25.02.21	Bijl Architecture	25 February 2021
D05	C	05.03.21	Bijl Architecture	5 March 2021
D06	C	05.03.21	Bijl Architecture	5 March 2021
D07	C	05.03.21	Bijl Architecture	5 March 2021

(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 A4, C24 and G15 to read as follows:

Terms of Consent (D334/19/2)

A4. Approval is granted for the following modifications only:

- The temporary removal and reconstruction of the two (2) existing chimneys on the roof of the main dwelling.

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.)

Reconstruction of Existing Chimneys

C24. The two existing chimneys must be reconstructed by a suitably qualified stonemason, experienced in heritage work and that all material that is re-usable is salvaged and re-used on the site.

Any new sandstone used for the reconstruction shall match the colour of the original stone. The texture of the new sandstone shall be slightly different such that the new work can be differentiated from the original.

The Certifying Authority must ensure that the building plans and specifications submitted by the Applicant, referenced and accompanying the issued Construction Certificate, fully satisfy the requirement of this condition.

(Reason: To ensure that the reconstructed chimneys will be compatible with the existing heritage dwelling)

Reconstruction of Chimneys

G15. Prior to the issue of an Occupation Certificate, a statement prepared by a qualified heritage consultant must be submitted to the Principal Certifier certifying the chimney reconstruction works are completed in accordance with Condition C24 of this consent.

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

The proposed modifications involving the temporary removal and reconstruction of two (2) existing chimneys on the heritage listed dwelling, satisfy the provisions of Section 96(1A) in that the proposed development is substantially the same as what was approved under DA 334/19 as the proposed works would not change the building height, setbacks, site coverage/unbuilt upon area/landscaped area and the overall appearance as originally approved.

Reason for approval:

The proposed modifications would have no material impacts on the amenity of the surrounding properties.

The proposed modifications would have no adverse impacts on the significance of the heritage listed property subject to the imposition of conditions.

The proposal was found to be acceptable in the site circumstances and is recommended that the subject Section 4.55(1A) application be approved with the addition of new conditions.

How community views were taken into account:

Notification of the subject application was waived in accordance with Section 3.4.2 of Council's Community Engagement Protocol because the proposal relates to the temporary removal and the reconstruction of the existing chimneys. The works are minor and temporary in nature and there would be no significant changes to the appearance of the heritage listed dwelling. Therefore, the proposed changes would have no material impacts for adjoining properties.

The conditions attached to the original consent for Development Application No. 334/19 by endorsed date of 17 February 2020 still apply.

ADVISINGS

- (a) Council is always prepared to discuss its decisions and in this regard, please do not hesitate to contact **Robin Tse**. 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
ROBYN PEARSON
TEAM LEADER (ASSESSMENTS)