

Original signed by George Youhanna on 14/04/2021

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

D112/01
GJY (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 112/01/19 – APPROVAL**

Development Consent Number: 112/01/19

Land to which this applies:

61 Lavender Street, Milsons Point
Lot No.: 100, DP: 1250925

Applicant:

Aqualand North Sydney Lavender Development Pty Ltd

Proposal:

Modification of consent for conversion of a commercial building to a mixed use development – Modification of conditions.

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. **112/01/19** 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 amend condition C17 of the development consent as follows:

Dilapidation Survey

C17. A photographic survey of adjoining properties to the south detailing the physical condition of those properties, both internally and externally, including such items as walls, ceilings, roof, structural members and other similar items, SHALL BE submitted to Council and the Principal Certifying Authority (where Council does not issue the Construction Certificate) prior to the issue of a Construction Certificate. This survey is to be prepared by an appropriately qualified independent person agreed to in writing by both the applicant and the owner of the adjoining property.

On completion of the excavation and building works and prior to occupation of the building, a certificate prepared by the person agreed to by the parties to the effect that no damage has resulted to adjoining premises, is to be provided to Council or the Principal Certifying Authority.

If damage is identified by the person agreed to by the parties which is considered to require rectification, the damage shall be rectified or a satisfactory agreement for rectification of the damage is to be made with the affected person/s as soon as possible and prior to occupation of the development.

All costs incurred in achieving compliance with this condition shall be borne by the person entitled to act on this Consent.

In the event that access for undertaking the photographic survey and dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing, to the satisfaction of Council that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed. Written acknowledgement must be obtained from Council in such circumstances, in which case compliance with this condition is not required as a condition of consent or otherwise prior to the issue of the final occupation certificate for the development. Note: The photographic survey and dilapidation report is for record keeping purposes only, and may be used by an applicant or affected property owner to assist in any action required to resolve any dispute over damage to adjoining properties arising from the works. It is in the applicant's and adjoining owner's interest for the photographic survey and dilapidation report to be as full and detailed as possible.

(Reason: Structural Safety)

2. To add condition G9 of the development consent as follows:

Access to 30 Cliff Street to complete external finish

G9. The development approval requires the applicant to apply a treatment to the external southern elevation of the building shown as (RN_01) 'External Render Colour: Off White to match Alchemy apartments' referred to in cover sheet drawing A-000, and drawing A-102 ('**Finish**'). The applicant is required to use its reasonable endeavours to agree with the owners of 30 Cliff Street, Milsons Point (**Alchemy Owners**) to obtain access to the podium of Alchemy Owners' apartments (**Podium**) so as to apply the Finish to the building. The applicant must write to the Alchemy Owners requesting the applicant or its contractor be granted temporary access to the Podium so as to apply the Finish, and offer to enter into an agreement regarding the Finish work on the following terms:

1. The applicant to complete the Finish work within a reasonable time but no more than 28 days after commencing the Finish work;
2. Use all reasonable measures to protect the Podium from damage;
3. Repair and make good any damage caused to the Podium caused by the Finish work;
4. Comply with all work, health and safety requirements;
5. Indemnify the Alchemy Owners for any property damage caused to the Alchemy Owners' common property, or personal injury suffered by any person arising out of the Finish work; and

6. Provide Alchemy Owners with evidence of current public liability insurance held by the applicant or its relevant contactor carrying out the work,
(Access Terms)

If despite the applicant offering to enter into an agreement with the Alchemy Owners containing the Access Terms, the Alchemy Owners:

1. Do not agree to enter into an agreement with the applicant within 14 days of receiving the written request from the applicant; or
2. Do not respond to the applicant's request to enter into an agreement within 14 days of the initial request, after the applicant has made a least 2 separate requests,

then provided the applicant can demonstrate to Council the applicant has satisfied the requirements of this condition, Council will provide correspondence to the applicant that it is not required to apply the external Finish (RN_01) to the southern elevation of the building as a condition of or otherwise prior to the issue of the **interim** occupation certificate for the development. For the avoidance of doubt, the external Finish (RN_01) to the southern elevation of the building would then be required to be applied prior to the issue of the final occupation certificate.

(Reason: To facilitate the issue of an interim occupation certificate where agreement on access to complete the Finish work is unreasonably delayed)

Reason for approval:

The proposal involves the modification under s.4.55(1A) of a development consent as detailed throughout this report. The proposal is satisfactory with regard to the provisions of s.4.55(1A) and is recommended for approval.

How community views were taken into account:

In accordance with the provisions of Council's Community Engagement Protocol, the subject application was not required to be notified.

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**