

Original signed by **Robyn Pearson** on **4/03/2022**

Malcolm Coleman  
16 The Avenue  
NORTH SYDNEY NSW 2060

D301/20  
MS3 (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 MODIFICATION 301/2020/3 – APPROVAL**

---

**Development Consent Number:** **301/2020/3**

---

**Land to which this applies:** 16 The Avenue, North Sydney  
Lot No.: 5, DP: 940093

---

**Applicant:** Malcolm Coleman

---

**Proposal:** Section 4.55(2) modification relating to alterations and additions, including an attic conversion, within an existing dwelling house and construction of a two car garage with first floor studio above.

---

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. **301/2020** and registered in Council's records as Application No. **301/2020/3** relating to the land described as **16 The Avenue, North Sydney**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 16 April 2021, has been determined in the following manner: -

**1. Insert Condition A5 Development in accordance with s4.55 plans and documentation:**

**Development in accordance with s4.55 plans and documentation**

A5. The development being carried out in accordance with plans identified in Condition A1 of the consent and endorsed with Council's approval stamp, except as modified by the modifications shown in colour on:

Plan No	Issue	Title	Dated	Prepared	Received
S4.55 007	-	Site Plan	June 2021	COSO Architecture	12/10/2021
S4.55 008	-	Ground Floor Garage Plan	June 2021		12/10/2021
S4.55 009	-	First Floor Plan (Studio)	June 2021		12/10/2021

S4.55 010	-	Roof Plan	June 2021		12/10/2021
S4.55 011	-	Section A	June 2021		12/10/2021
S4.55 013	-	Laneway Elevation	June 2021		12/10/2021
S4.55 014	-	Garden Elevation	June 2021		12/10/2021
S4.55 015	-	South Elevation	June 2021		12/10/2021
S4.55 016	-	North Elevation	June 2021		12/10/2021

except as amended by the following conditions and this consent.

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

**2. Insert Condition C17 Garage Setback (Southern Side) as follows:**

**Garage Setback (Southern Side)**

C17. No consent is granted or implied for the proposed modification of the approved garage reducing the side setback from 900mm to 0mm from the southern side boundary adjoining No. 14 The Avenue. The approved side setback area of 900mm is to be retained for the use of landscaping in accordance with the landscape plans referenced in Condition G6 of this Consent. The building envelope of the garage is to be retained in accordance with DA approved plans referenced in Condition A1 of this Consent. Plans and specifications complying with the requirements of this condition are to be included and referenced on any Construction Certificate.

(Reason: To maintain a reasonable setback to the adjoining property)

**3. Insert Condition C18 Front fence as follows:**

**Front Fence Height**

C18. Plans are to be amended to reduce the height of the front fence on the western boundary facing The Avenue to a maximum height of 1.5m. Plans and specifications complying with the requirements of this condition are to be included and referenced on any Construction Certificate.

(Reason: To maintain a views to the subject property)

---

**Reason for approval:**

The modification application meets the requirements of section 4.55(2) and has been assessed with regard to the original reasons for approval and the matters for consideration as outlined in section 4.15(1) of the Act, which have been satisfied. The proposed development is permissible, meets the development standards and relevant provisions of NSLEP 2013 and is generally in accordance with the objectives of the NSDCP 2013.

The proposed modifications are considered substantially the same development.

---

---

The proposed extension to the southern side of the approved garaged reducing the side setback from 900mm to 0mm along the boundary is not supported as it does not satisfy the Planning Principle established in *Galea v Marrickville Council* and would have an adverse impact to the amenity of the adjoining property. A condition is recommended requiring this element to be deleted from the proposed development and the approved landscaped setback to be retained.

The proposed fencing, whilst inconsistent with the characteristic front fencing typology within the Whaling Road Conservation Area, is considered reasonable in the circumstances, subject to recommended condition C18 reducing the height to 1.5m, given the location of the subject site along the privately owned laneway that is partially concealed from the public domain.

The proposed modification is therefore considered reasonable and is recommended for approval.

---

**How community views were taken into account:**

The application was notified in accordance with Council's Community Engagement Protocol from 29 October 2021 until 12 November 2021. One submission was received which raised a reasonable concern that also related to a non-compliance. A condition is recommended to resolve this concern.

---

The conditions attached to the original consent for Development Application No. 301/20 by endorsed date of 16 April 2021 still apply.

**ADVISINGS**

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

**4/3/22**

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Signature on behalf of consent authority  
ROBYN PEARSON  
**TEAM LEADER ASSESSMENTS**