



Mr P Lonergan  
Cracknell Lonergan Architects  
156A Church Street  
NEWTOWN NSW 2042

D399/17  
JD6 (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 MODIFICATION 399/17/7 - APPROVAL**

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**Development Consent Number:** 399/17

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**Land to which this applies:** 61 Ernest Street, Crows Nest  
Lot No.: 1, DP: 926655

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**Applicant:** Mr P Lonergan, Cracknell Lonergan Architects

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**Proposal:** Modify consent No. DA 399/17 to substitute approved plans to extend the approved living rooms, update BASIX Certificates, and to remove a section of the approved living room on the ground floor reduce the length of the adjacent boundary wall

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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. **399/17** and registered in Council's records as Application No. **399/17/7** relating to the land described as **61 Ernest Street, Crows Nest**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **16 August 2018**, has been determined in the following manner:

***Condition A1 shall be amended as set out below:***

**Development in Accordance with Plans/Documentation**

- A1. The development must be carried out in accordance with the following drawings and documentation and endorsed with Council's approval stamp, except where amended by the following conditions of this consent:

Plan No.	Issue	Title	Drawn by	Date Received
DA 002	D	Site Context Plan	Cracknell & Lonergan Architects Pty Ltd	9/05/2018
DA 003	E	Site Plan	Cracknell & Lonergan Architects Pty Ltd	9/05/2018
DA 004	D	Existing Floor Plans	Cracknell & Lonergan Architects Pty Ltd	9/05/2018

DA 101	A	Ground Floor Plan	Cracknell & Lonergan Architects Pty Ltd	30/06/2022
DA 102	A	First Floor Plan	Cracknell & Lonergan Architects Pty Ltd	30/06/2022
DA 103	A	Roof Plan	Cracknell & Lonergan Architects Pty Ltd	30/06/2022
DA 201	A	Northern (Ernest Street), Internal Courtyard & Burlington Lane (Rear - Southern) Elevations	Cracknell & Lonergan Architects Pty Ltd	30/06/2022
DA 201	A	Western (No. 63) & Eastern (No 63A) Elevations	Cracknell & Lonergan Architects Pty Ltd	30/06/2022
DA 301	A	Sections	Cracknell & Lonergan Architects Pty Ltd	30/06/2022
DA 302	C	Concept Cross Section Garage	Cracknell & Lonergan Architects Pty Ltd	25/06/2021
DA 402	C	Proposed Subdivision Plan	Cracknell & Lonergan Architects Pty Ltd	25/06/2021
DA 501	D	Concept Landscape Plan	Cracknell & Lonergan Architects Pty Ltd	3/05/2018
LPS34 21 - 160/1	C	Hardscape Plan	Conzept Landscape Architects	23/07/2021
LPS34 21 - 160/2	C	Landscape Plan	Conzept Landscape Architects	23/07/2021
LPS34 21 - 160/3	B	Details	Conzept Landscape Architects	25/01/2021
LPS34 21 - 160/4	C	Specifications	Conzept Landscape Architects	25/01/2021
CW-01	B	Civil Works	MCA Consulting Engineers	Aug 2021
S-01	B	Site Plan, Pile Plans and Slab Plans	MCA Consulting Engineers	July 2021
DA 601	D	Erosion and Construction Management Plan	Cracknell & Lonergan Architects Pty Ltd	9/05/2018
DA 701	D	Concept Drainage Plan	Cracknell & Lonergan Architects Pty Ltd	9/05/2018
-	-	Arboricultural Impact Assessment for 61 Ernest Street Crows Nest	Urban Forestry Australia	Sept 2021

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

***Condition C1 shall be amended as set out below:***

**Side Boundary Setback**

- C1. The existing external wall on the western boundary shall be maintained and altered and/or extended to achieve the outcome proposed on the approved plans. The proposed wall on the boundary is to be 900mm from the western boundary from a point adjacent to the intersection of the northern boundary of 18 Burlington Lane and the western boundary of the subject property and from there towards the Ernest Street frontage. Fencing complying with the Dividing Fences Act shall be provided to the north and the south of the wall and the privacy screen required by Condition C2. The external finishes to be applied to the wall and infill panel and the material used for the dividing fence shall be resolved in consultation with the owner (as required) of 18 Burlington Lane. Details of agreed colours and materials, and the agreement must be provided prior to the issue of any Construction Certificate.

(Reason: Protect the amenity of neighbours)

*Condition C2 shall be amended as set out below:*

**Width and Treatment of Rear Deck**

- C2. The proposed ground level rear decks are to extend no further to the south than shown on Plan No 101, Revision A, dated 30/06/2022, by Cracknell Lonergan Architects. A brick privacy panel matching the proposed wall on the boundary with 18 Burlington Lane and extending to at least 2100mm above the finished floor length of the deck shall be provided for its full width and shall extend at the height to a point adjacent to the northern façade of 18 Burlington Lane.

(Reason: Protect the amenity of Neighbours)

*Condition C19 shall be amended as set out below:*

**BASIX Certificate**

- C19. Under clause 97A(3) of the Environmental Planning and Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in BASIX Certificate Nos. **A315375\_03 (No. 61) and A315377\_02 No. (61A)** 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)

*The following conditions being added following Condition C19:*

**Reduction of Living Room Extensions**

- C20. The proposed 1.5m extension of the living room of each dwelling shall be reduced to 1.0m.

(Reason: Consistency with desired character and reduce aggregate impact of site coverage variation)

**Extension's roof design**

- C21. The roof over the approved 1.5m extension of the living room being mended to a skillion design.

(Reason: The approved development will be more compatible with other development in the Heritage Conservation Area)

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**Reasons for Approval:**

The application has been assessed and found to be satisfactory, having had regard to applicable legislation, plans and policies.

Accordingly, the subject application to modify the consent is recommended for approval, subject to conditions, to be either modified or added to the consents, as detailed herein.

As the number of submissions was 7, the recommendation was co-signed by the Manager, Development Services.

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

Matters raised by submissions made when the application was notified in accordance with Council's Community Engagement Protocol have been considered, as required.

The conditions attached to the original consent for Development Application No. 399/17 by endorsed date of 16 August 2018 still apply.

**ADVISINGS**

- (a) Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact **Jim Davies**. 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/05/require the submission of a further modification under Section 4.55 of the *Environmental Planning and Assessment Act, 1979* (as amended).

Council staff would be pleased to assist in identifying such changes which/05/require the submission of a modification of a Development Application under Section 4.55 of the *Environmental Planning and Assessment Act*.

**Endorsed for and on behalf of North Sydney Council**

15/05/2023

DATE

Signature on behalf of consent authority

JIM DAVIES

**EXECUTIVE PLANNER (ASSESSMENTS)**