

Ms Melissa J Irwin
17C Belview Avenue
GREENWICH NSW 2065

D1/20
LD (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 1/20/2 - APPROVAL**

Development Consent Number: 1/20

Land to which this applies: 43 and 45 Sinclair Street, Wollstonecraft
Lot Nos.: A + B, DP: 103428

Applicant: Ms Melissa J Irwin

Proposal: Section 4.55 (1A) application to modify DA1/20 in regard to alterations and additions to garage, stairwell, ground level bathroom, garden, fireplace, bi-fold door, kitchen back-splash, door colour and skylights

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. **1/20** and registered in Council's records as Application No. **1/20/2** relating to the land described as 43 and 45 Sinclair Street, Wollstonecraft.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 14 May 2020, has been determined in the following manner:

- To add Condition A4 'Development in Accordance with Plans (S4.55 Amendments)', Condition C19 'Air Conditioners in Residential Premises', Condition C20 'Skylights' and Condition C21 'Privacy' to read as follows:***

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 clouded and annotated in red on:

Drawing Number	Revision/ Issue	Title	Drawn by	Dated
DA.02	D	Site Plan - Analysis	Brick Architects	25/06/2021
DA.03	E	Ground Level	Brick Architects	25/06/2021
DA.04	D	Undercroft	Brick Architects	25/06/2021

DA.05	C	Upper Level	Brick Architects	25/06/2021
DA.06	E	Elevations - North and West	Brick Architects	25/06/2021
DA.07	C	Elevations - South and East	Brick Architects	25/06/2021
DA.15	B	Schedule of Colours	Brick Architects	25/06/2021
DA.18	F	Sections	Brick Architects	25/06/2021
DA.19	D	Roof Level	Brick Architects	25/06/2021

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)

Air Conditioners in Residential Premises

C19. The use of any air conditioner installed on the premises must comply with the requirements of the Protection of the Environment Operations (Noise Control) Regulations 2008 and State Environmental Planning Policy (Infrastructure) 2007 and must not:

- (a) emit a noise that is audible within a habitable room in any affected residence (regardless of whether any door or window to that room is open);
 - (i) before 8.00 am and after 10.00 pm on any Saturday, Sunday or Public Holiday; or
 - (ii) before 7.00 am or after 10.00 pm on any other day
- (b) cause an LAeq(15min) which exceeds the RBL background noise level by more than 5dB when measured at the boundary of any affected residence. The modifying factor adjustments in Section 4 of the EPA Industrial Noise Policy will be applied.

“affected residence” includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation and hospitals.

“boundary” includes any window or elevated window of an affected residence.

Terms in this condition have the same meaning as in the Noise Guide for Local Government and the Industrial Noise Policy published by the NSW Environment Protection Authority.

(Reason: To maintain residential amenity)

Skylight(s)

C20. Skylight flashing(s) and frame(s) to be coloured to match the roof material. Skylight(s) to sit no higher than 100 mm above roof plane when in a closed position. Plans and specifications which comply 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 fully satisfy the requirements of this condition.

(Reason: To minimise the visual impact of the skylight(s) on the roof plane)

Privacy

C21 The ground level southern kitchen window (43 Sinclair Street) must be opaque and non-operable.

Plans and specification complying with this condition must be submitted to the Certifying Authority prior to the issue of the construction certificate.

(Reason: To ensure reasonable amenity is maintained with the adjoining property).

2. To modify Condition C17 'BASIX Certificate' to read as follows:

BASIX Certificate

C17. 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. A364966_02 - No. 43 Sinclair Street and A364967_02 - No. 45 Sinclair Street, 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 proposed modifications are considered to be generally consistent with the originally approved development application and s.4.55 of the EP&A Act 1979. Furthermore, the modifications do not result in any material amenity impact to adjoining properties or the surrounding area. The proposed modifications are consistent with the reasons for the granted of development consent to the originally approved development and is considered to be acceptable.

Reasons for Approval:

The proposed modifications will result in improved internal amenity, vehicular access and landscaping.

No submissions were received.

Having regard to the provisions of section 4.55 and 4.15(1) of the Environmental Planning and Assessment Act 1979, the proposed development as modified is substantially the same development as originally consented to. The application is therefore recommended for **approval**.

How community views were taken into account:

The recommended approval of the application is unlikely to offend the public interest for the reasons provided throughout this report. No submissions received.

The conditions attached to the original consent for Development Application No. 1/20 by endorsed date of 14 May 2020 still apply.

ADVISINGS

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

Endorsed for and on behalf of North Sydney Council

8 September 2021

DATE

Signature on behalf of consent authority
LUKE DONOVAN
SENIOR ASSESSMENT OFFICER