

Original signed by **Robyn Pearson** on **28/06/2022**

Anand Jamnadas Jaisingh
37 Earle Street
CREMORNE NSW 2090

D21/21
RT (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 21/21/2 - APPROVAL**

Development Consent Number: **21/21**

Land to which this applies: 37 Earle Street, Cremorne
Lot No.: 1, DP: 527432

Applicant: Anand Jamnadas Jaisingh

Proposal: Section 4.55(1) modifications to Conditions G1, G2, G9 and G11

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. **21/21** and registered in Council's records as Application No. **21/21/2** relating to the land described as **37 Earle Street, Cremorne**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **12 August 2021** has been determined in the following manner:

1. To modify Conditions G1, G2, G9 and G11 in Development Consent (D21/21) as follows:

Infrastructure Repair and Completion of Works

G1. Prior to the issue of **the relevant** Occupation Certificate any and all works relating to the development:

- (a) in the road reserve must be fully completed; and
- (b) to repair and make good any damaged public infrastructure caused as a result of any works relating to the development (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete vehicles) must be fully repaired;

to the satisfaction of Council Engineers at no cost to Council.

(Reason: Maintain quality of Public assets)

Certification- Civil Works

- G2. a) An appropriately qualified and practising Civil Engineer must certify to the Certifying Authority that the vehicular crossing and associated works and road works were constructed in accordance with this consent and any approval for works in the road reserve issued by the Council. A copy of the certificate must be submitted to Council (if it is not the Certifying Authority), upon completion of the development works and prior to the issue of **the relevant** Occupation Certificate.

(Reason: Compliance with the Consent)

Landscaping

- G9. The landscaping shown in the approved landscape plan as required by Condition C2, 'Landscape Plan' in this consent must be completed prior to the issue of **the relevant** Occupation Certificate.

(Reason: To ensure compliance)

Compliance with Certain Conditions

- G11. Prior to the issue of **the relevant** Occupation Certificate, Condition C1, 'External Colours, Materials and Finishes,' and Condition C2, 'Landscape Plan,' must be certified as having been implemented on site and complied with.

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

The proposed modifications seeking changes to Conditions G1, G2, G9 and G11 relating to the timing of the issue of an Occupation Certificate for the specified works, satisfy the provisions of Section 4.55(1) in that the proposed development is substantially the same as what was approved under DA 21/21 because the proposed modifications would not result in any physical changes to the approved development.

Reasons for Approval:

The proposed modifications would not change the level of compliance with the relevant development standards and controls as contained in North Sydney LEP 2013 and North Sydney DCP 2013.

It is considered to be more appropriate to change the words "final Occupation Certificate" to "relevant Occupation Certificate" given that the works associated with the approved garage and/or landscaping can be carried out in stages. The word "relevant Occupation Certificate" should ensure that the requirements of the modified conditions can be certified under the relevant Occupation Certificate should there be further staging of the approved works in the future.

The proposal was found to be acceptable in the site circumstances and is recommended that the subject Section 4.55(1) application be approved with modifications to the relevant 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 proposed modifications involve staging of works and the subsequent issue of an Occupation Certificate relevant to the completed works. There would be do not change the scope of the approved work and impacts for adjoining properties.

The conditions attached to the original consent for Development Application No. **21/21/2** by endorsed date of **12 August 2021** 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 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

28 June 2022

DATE

Signature on behalf of consent authority
ROBYN PEARSON
TEAM LEADER (ASSESSMENTS)