

Martin Hall  
7/136 Willoughby Road  
CROWS NEST NSW 2065

D214/20/2  
RW (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 MODIFICATION 214/20/2 - APPROVAL**

**Development Consent Number:** 214/20/2

**Land to which this applies:** 57 Hayberry Street, Crows Nest  
Lot No.: 16, DP: 1720

**Applicant:** Martin Hall

**Proposal:** Modify DA 214/20 regarding condition C15, C16, C17 and G5 to permit removal of *Schinus Molle* tree in the rear yard and provision of replacement tree.

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. **214/20** and registered in Council's records as Application No. **214/20/2** relating to the land described as **57 Hayberry Street, Crows Nest**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 3 February 2021, has been determined in the following manner:

**1. Condition A1 is amended to read as follows:**

**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 and this consent.

Plan No.	Rev	Title	Drawn by	Dated
<b>Architectural Plans</b>				
DA01	DA1	Site Plan	CastlePeake	13 January 2021
DA02	DA1	Ground Floor Plan	CastlePeake	13 January 2021

DA03	DA1	Upper Floor Plan	CastlePeake	13 January 2021
DA04	DA1	Roof Plan	CastlePeake	13 January 2021
DA05	DA1	North & South Elevations	CastlePeake	13 January 2021
DA06	DA1	East & West Elevations	CastlePeake	13 January 2021
DA07	DA1	Sections A; B; C & D	CastlePeake	13 January 2021
DA08	DA1	Sections E & F	CastlePeake	13 January 2021
EF01	-	External Finishes Schedule	CastlePeake	28 August 2020
ER01	-	Erosion & Sediment Control Plan	CastlePeake	28 August 2020
<b>Landscape Plans</b>				
L01	A	Landscape Concept Plan	CastlePeake	28 August 2020

Except where amended under the provisions of S.4.55 of the Act as follows:

**Mod 1**

The plans included in Condition A1 are amended to include the changes shown clouded red in the following plans:

Plan No.	Rev	Description	Prepared by	Dated
DA01	S4.55	Site Plan	Castlepeake Architects	25.03.2022
DA02	S4.55	Ground Floor Plan	Castlepeake Architects	25.03.2022
DA03	S4.55	Upper Floor Plan	Castlepeake Architects	01.03.2022

And except where amended by the following conditions

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

**2. Delete Condition C16 and insert the following Condition C16A:**

**Approval for Removal of Trees**

C16A. The following tree(s) are approved for removal in accordance with the development consent:

Tree No /Species	Location	Height (m)
1 x <i>Schinus molle</i>	Rear setback of 57 Hayberry Street	12 x 15m

The removal of the existing *Schinus molle* tree at the rear the site must be undertaken by an Arborist with a minimum (Australian Qualification Framework) AQF level 3 with the stump to be ground out. Removal or pruning of any other tree on the site is not approved, excluding species exempt under Section 16 of the North Sydney DCP 2013.

Removal or pruning of any other tree on the site is not approved, excluding species exempt under Section 16 of the North Sydney DCP 2013.

Any tree(s) shown as being retained on the approved plans (regardless of whether they are listed in the above schedule or not) must be protected and retained in accordance with this condition.

(Reason: Protection of existing environmental and community assets)

**3. Modify Conditions C15 and C17 as follows:**

**Protection of Trees**

C15. The following tree(s) are required to be protected and retained as part of the development consent in accordance with AS 4970-2009 – Protection of trees on development sites:

Tree	Location	Height
1 x <i>Sapium sebiferum</i>	Council verge in front of 57 Hayberry Street	5 x 5m
1 x <i>Sapium sebiferum</i>	Council verge in front of 55 Hayberry Street	5 x 5m
Street garden	In the street outside 55 Hayberry Street	Var
1 x <i>Syzygium luehmannii</i>	Eastern boundary of 55 Hayberry Street - rear setback	6 x 10 (cum)
1 x large <i>Syzygium paniculatum</i>	Eastern boundary of 55 Hayberry Street - rear setback	6 x 10 (cum)

Any tree(s) shown as being retained on the approved plans (regardless of whether they are listed in the above schedule or not) must be protected and retained in accordance with this condition.

(Reason: Protection of existing environmental and community assets)

**Root Mapping**

C17. Non-invasive/non- destructive root mapping is to be undertaken within the tree protection zone (TPZ) (identified as per AS4970-2009) of the 1 x *Syzygium luehmannii* & 1 x *Syzygium paniculatum* on the eastern boundary of 55 Hayberry Street (rear setback) (6 x 10 cumulative height) to determine the size and depth of the tree roots prior to the design of the required footings for the proposed development. Location of footings or proposed construction shall be modified should the root mapping and subsequent arborist appraisal determine that this is required.

Root mapping is to be undertaken under the direct supervision of an AQF level 5 arborist. The said consulting/ project arborist is to prepare a written report, with images, addressing the following:

- a) describing the results of the root mapping;
- b) providing an assessment of potential tree impacts of the excavation; and
- c) making recommendations of protection measures to be implemented for the duration of excavation and construction activity to ensure the ongoing health and viability of the tree.

4. **Modify Conditions G5 as follows:**

**Certification of Tree Condition**

G5. Prior to the issue of an Occupation Certificate, a report prepared by an appropriately qualified person (being an arborist or the like) must be submitted to the Certifying Authority, describing the health of the tree(s) specifically nominated below: -

Tree	Location	Height
1 x <i>Sapium sebiferum</i>	Council verge in front of 57 Hayberry Street	5 x 5m
1 x <i>Sapium sebiferum</i>	Council verge in front of 55 Hayberry Street	5 x 5m
Street garden	In the street outside 55 Hayberry Street	Var
1 x <i>Syzygium luehmannii</i>	Eastern boundary of 55 Hayberry Street - rear setback	6 x 10 (cum)
1 x large <i>Syzygium paniculatum</i>	Eastern boundary of 55 Hayberry Street - rear setback	6 x 10 (cum)
Any 1 x replacement tree listed under condition I3:  <ul style="list-style-type: none"> <li>• <i>Jacaranda mimosifolia</i> (200l)</li> <li>• <i>Ulmus parvifolia</i> (200l)</li> <li>• <i>Lophostemon confertus</i> (200l)</li> <li>• <i>Schinus molle</i> (200l)</li> <li>• Chinese Tallow, <i>Sapium sebiferum</i> (200l)</li> <li>• Trident Maple, <i>Acer buergerianum</i> (200l)</li> <li>• Maidenhair Tree, <i>Ginkgo biloba</i> (200l)</li> </ul>	Rear setback of 57 Hayberry Street	(200l)

5. **Add Condition I3 as follows:**

**Tree Replacement**

I3. Development consent is granted on the condition that the removal of the existing *Schinus molle* (Peppercorn) tree at the rear of the site is replaced by one advance growth specimen from the following nominated species, in approximately the same location:

**Tree Species/Min Pot size**

1. *Jacaranda mimosifolia* (200l)
2. *Ulmus parvifolia* (200l)
3. *Lophostemon confertus* (200l)
4. *Schinus molle* (200l)
5. Chinese Tallow, *Sapium sebiferum* (200l)
6. Trident Maple, *Acer buergerianum* (200l)
7. Maidenhair Tree, *Ginkgo biloba* (200l)

The replacement planting shall be carried out by a qualified horticulturalist, with the specimen to be installed with the above nominated minimum pot size. The consulting Horticulturalist must supervise a maintenance program for a period of 6 months post planting.

A written report attesting to the health, vigour and likelihood for longevity of the replacement tree shall be provided to Council, marked to the attention to the Landscape Development Officer, prior to issue of the Occupation Certificate.

(Reason: to ensure that amenity of the surrounding locality is maintained)

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**Reasons for Approval:**

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 subject to conditions, are consistent with the reasons for the grant of development consent to the originally approved development and are considered to be acceptable.

Having regard to the provisions of section 4.55 & 4.15(1a) 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 can be approved.

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

The application has been notified in accordance with Council's Community Participation Plan with adjoining properties and the Precinct notified between 24 April-6 May 2022. One submission was received during this period which was addressed in the delegated report.

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The conditions attached to the original consent for Development Application No. 214/20 by endorsed date of 3 February 2021 still apply.

**ADVISINGS**

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

**03/08/2022**

DATE

Signature on behalf of consent authority

DAVID HOY

**TEAM LEADER ASSESSMENTS**