



Claire Brooksley Morgan and
Ian Richard Morgan
5 Ryries Parade
CREMORNE NSW 2090

D311/21
RT (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 311/21/2 - APPROVAL**

Development Consent Number: 311/21/2

Land to which this applies: 5 Ryries Parade, Cremorne
Lot No.: 52, DP: 10291

Applicant: Claire Brooksley Morgan and Ian Richard Morgan

Proposal: Section 4.55(1A) modifications to D311/21 for changes to the wording of Condition C7 and various numbering and typographical changes

Date of Determination: 17 October 2022

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. **311/21** and registered in Council's records as Application No. **311/21/2** relating to the land described as **5 Ryries Parade, Cremorne**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **5 July 2022**, has been determined in the following manner:

- To modify the development consent (D311/21) by modifying conditions C7, C11 and D2 to read as follows:***

Obtain Driveway Crossing Permit under s.138 Roads Act 1993

- C7. Prior to the issue of the Construction Certificate for the approved carport and associated works, North Sydney Council must issue the applicant with a driveway crossing and road infrastructure works **permit** to suit the approved off-street parking facilities. To obtain the permit, an application must be made to Council on a 'Vehicular Access Application' form with payment of the adopted assessment/inspection fees. Council will require civil design construction drawings and certification from the applicant's Civil Engineer to verify design details and enable permit issue. The responsibility for accuracy of the design fully rests with the designing engineer. All responsibility on implementation and supervision of works specified on design plans fully rests on designing engineer or whoever is chosen to be applicant's

engineering representative. The civil design drawings shall detail **the following infrastructure construction requirements of Council in relation to the consent:**

- (a) The proposed vehicular access ways must comply with AS 2890.1 and Council's current Vehicular Access Application Guidelines and Specification (gutter bridges not permitted) to ensure that a B85 vehicle will not scrape/strike the surface of the carriageway, layback, vehicular crossing or parking floor.
- (b) The width of the vehicular layback must be 4.5 m (including the wings).
- (c) The vehicular laybacks must be set square to the kerb.
- (d) The crossing (between the layback and the property boundary) must be perpendicular on a single straight grade of approximately 4.5%, falling to the back of the layback.
- (e) The boundary footpath levels must match the existing levels and shall not be altered unless agreed to by Council.
- (f) The kerb gutter, and 1200 mm road shoulder wide- strip, adjacent to all new layback and gutter works, on Ryries Parade must be reconstructed, to ensure uniformity in the road reserve.
- (g) All inspection openings, utility services must be adjusted to match the proposed driveway levels and location.
- (h) The design detail has to be provided with **vehicular access application** and must include sections along centre-line and extremities of the crossing at a scale of 1:25. Sections are to be taken from the centre of the roadway through to the parking area itself and shall include all changes of grade and levels, **both** existing and proposed.
- (i) A longitudinal section along the gutter line of Ryries Parade at a scale of 1:50 showing how it is intended to transition the layback with the existing gutter levels and shall include all changes of grade and levels, **both** existing and proposed.
- (j) A longitudinal section along the footpath property boundary at a scale of 1:50 is required and shall include all changes of grade and levels, **both** existing and proposed.
- (k) The sections must show the calculated clearance to the underside of any overhead structure.
- (l) Pipelines within the footpath area must be hot dipped galvanized rectangular steel hollow section with a minimum wall thickness of 4.0 millimetres and a section height of 100 millimetres.
- (m) Any footpath panel on Ryries Parade that is disturbed for the purpose of stormwater connection must be reconstructed as a whole panel.

All driveway and infrastructure works on the road reserve must proceed in accordance with the terms of the permit issued by Council. This may require the re-construction of the existing driveway in order to comply with the requirements as detailed above in this condition. Inspections by Council will be required as specified on the permit. The Certifying Authority issuing the Construction Certificate must ensure that the permit issued by Council is obtained prior to its issue, is referenced on and accompanies the relevant Construction Certificate issued.

(Reason: To facilitate appropriate vehicular access to private sites, without disruption to pedestrian and vehicular traffic)

Protection of Trees

C11. The above street trees shall be protected in accordance with AS4970, 1.8 m high tree protection fencing to be installed around entire verge for duration of works, no pruning shall be permitted.

Street Trees	Location
<i>Camellia sasanqua</i> (6 m x 6 m)	Council verge in front of 5 Ryries Parade
<i>Callistemon viminalis</i> (12 m x 12 m)	Council verge in front of 5 Ryries Parade

All other site and neighbouring trees shall be retained and protected including:

Other Trees	Location
1 x <i>Plumeria sp</i> (7 m x 10 m)	Within the front setback of subject site
1 x <i>Camellia sp.</i> (4 m x 4 m)	Within the front setback of subject site
1 x <i>Lagerstroemia indica</i> (12 m x 8 m)	Within the adjoining property No. 7 Ryries Parade

Sensitive construction techniques including hand excavation, pier and beam construction, flexible locations of piers/footings shall be used within the TPZ of these trees, no roots greater than 30 mm shall be cut, tree protection fencing shall be installed.

Minor pruning to these trees, of minor branches only, up to no more than 10% of canopy may be carried out by AQ3 arborist in accordance with AS4373.

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.

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)

Temporary Fences and Tree Protection

- D2. All protected trees on-site that are specifically nominated as per **Condition C11** to be retained by notation on plans or by condition as a requirement of this consent must be tagged with luminous tape or the like for purposes of identification prior to demolition, excavation or construction works and must remain so for the duration of works on the site. No materials or builders' waste are to be stored in the vicinity of the nominated tree/trees at any time.

Appropriate fencing or barricades in accordance with AS4970-2009 (Protection of trees on development sites), not less than the distance shown in the schedule hereunder, must be installed to the satisfaction of the Certifying Authority prior to demolition or commencement of any works and must be maintained for the duration of the works:

(Reason: To protect the trees to be retained on the site during construction works)

- 2. To modify the numbering of Condition C1A and C2A and the attached revised index page of the consent (Page 6 of 30):**

Dilapidation Report Damage to Public Infrastructure

- C1A. A dilapidation survey and report (including photographic record) must be prepared by a suitably qualified consultant which details the pre-developed condition of the existing public infrastructure in the vicinity of the development site. Particular attention must be paid to accurately recording any pre-developed damaged areas so that Council is fully informed when assessing any damage to public infrastructure caused as a result of the development. A copy of the dilapidation survey and report is to be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

The developer may be held liable for all damage to public infrastructure in the vicinity of the site, where such damage is not accurately recorded and demonstrated as pre-existing under the requirements of this condition.

The developer shall bear the cost of carrying out works to restore all public infrastructure damaged as a result of the carrying out of the development, and no occupation of the development shall occur until damage caused as a result of the carrying out of the development is rectified.

A copy of the dilapidation survey and report must be lodged with North Sydney Council by the Certifying Authority with submission of the Construction Certificate documentation.

(Reason: To record the condition of public infrastructure prior to the commencement of construction)

Structural Adequacy of Existing Building

C2A. A report prepared by an appropriately qualified and practising structural engineer, certifying the structural adequacy of the property and its ability to withstand the proposed additional, or altered structural loads during all stages of construction shall be submitted to the Certifying Authority for approval prior to issue of any Construction Certificate. The certified report must also include all details of the methodology to be employed in construction phases to achieve the above requirements. The methodology in the certified report must be complied with at all times.

(Reason: To ensure the structural integrity of the building is maintained)

Reasons for Approval:

The proposed modifications satisfy the provisions of section 4.55(1A) in that the proposed development is substantially the same as what was approved under DA 311/21 because the proposed modifications would not change the design of the approved development or its level of compliance with the DCP controls, as approved under the original DA.

The proposed modifications, involving changes to wording of various conditions, would not cause material impacts upon the amenity of the adjoining properties.

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 proposal is only limited to the wording of a condition (Condition C7) and the correction of a number of typographic/numbering errors in the Development Consent. These modifications to conditions would have no material impacts on the building envelope of the approved development or the amenity of the surrounding properties.

The conditions attached to the original consent for Development Application No. 311/21 by endorsed date of **5 July 2022** 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

17 October 2022

DATE



Signature on behalf of consent authority
MICHAEL STEPHENS
A/TEAM LEADER (ASSESSMENTS)