



Kaream Diskoros
C/- DFP Planning Pty Ltd
11 Dartford Road
THORNLEIGH NSW 2120

D221/16
KRR (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.56 MODIFICATION 221/16/3 - APPROVAL**

Development Consent Number: 221/16

Land to which this applies: 37-39 Murdoch Street, Cremorne
Lot No.: 1, DP: 607324; Lot No.: C, DP: 158882

Applicant: K Diskoros, c/- DFP Planning Pty Ltd, 11 Dartford Road,
Thornleigh

Proposal: Section 4.56 application seeks to modify DA 221/16 to address tree removal which has occurred during construction of the childcare centre and to include the submitted landscape plan as an approved plan in condition A1 of the court approved consent

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. **221/16** and registered in Council's records as Application No. **221/16/3** relating to the land described as **37-39 Murdoch Street, Cremorne**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **28 August 2018**, has been determined in the following manner:

1. To insert Condition A4 and G8, as follows:

Development in Accordance with Plans (S.4.56 Modifications)

A1. 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 as shown clouded in red on the following plans:

Plan No.	Title	Rev	Date	Drawn by	Received
CC-03_E	Proposed Lower Ground Floor Plan	E	1/03/2022	Robertson and Marks	13/04/2022

and except as amended by the following conditions and this consent. In the event of any inconsistency, the approval of DA221/16 prevails.

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

Replacement Planting Under DA221/2016/3

G8 Prior to the issue of a final occupation certificate revised landscape plans must be prepared incorporating the following amendments requiring the following replacement planting in accordance with approved under Condition A1.1 Section 4.56:

Amended landscape plan to include

1. 1 x *jacaranda mimosifolia* (400 l)
2. 1 x *Fraxinus 'Aurea'* (400 l)
3. 3 x triple trunked *Archontophoenix cunninghamiana*
4. Detailed landscape sections are to be shown on the landscape plan detailing adequate soil depth for landscaping and soil conditions suitable for replacement planting.

The landscaping required by this consent must be implemented in accordance with this condition prior to the issue of the final occupation certificate. Replanting shall occur under supervision of a qualified arborist or horticulturalist, who must also provide a written confirmation that the replacement plantings have occurred in accordance with this condition.

Additionally, no final Occupation Certificate shall be provided until six months post planting, and a written report has been provided to the PCA and Council prepared by a certified horticulturalist attesting to the health, vigour, and likely longevity of the replacement trees.

If the requirements of this conditions cannot be met, then a further modification must be submitted. Conformance with this condition does not imply approval of level changes or new planters in the rear yard play area which if deemed by the arborist, may be required to achieve the requirements of the condition.

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

Reasons for Approval:

The s.4.56 application has been assessed against all applicable environmental planning instruments and Council policies and with regard to the Land and Environment Court decision, and is considered to be generally satisfactory, including in relation to s.4.56 of the *Environmental Planning and Assessment Act 1979*, the North Sydney LEP 2013 and North Sydney DCP 2013, subject to amended conditions of consent.

Having regard to the provisions of Section 4.15 of the EP&A Act 1979, the application is considered to be satisfactory as detailed in the assessment report.

How community views were taken into account:

The proposal was notified and advertised in accordance with s.3.4.3 of the North Sydney Community Engagement Protocol. No submissions were received.

The conditions attached to the original consent for Development Application No. **221/16** by endorsed date of **28 August 2018** still apply.

ADVISINGS

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

24 October 2022

DATE



Signature on behalf of consent authority
DAVID HOY
TEAM LEADER (ASSESSMENTS)