



Mr Lesley Knight  
C/- Hill Thalys Architecture  
and Urban Projects  
Lvl 4, 15 Foster Street  
SURRY HILLS NSW 2010

D69/21  
AB7 (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 MODIFICATION 69/21/3 - APPROVAL**

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**Development Consent Number:** 69/21

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**Land to which this applies:** 110 Carabella Street, Kirribilli  
Lot No.: 9, SEC: a, DP: 4453

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**Applicant:** Lesley Knight, C/- Hill Thalys Architecture and Urban Projects

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**Proposal:** S4.55(1A) application to modify DA69/21 to remove and replace two *Murraya paniculata* located within front setback

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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. **69/21** and registered in Council's records as Application No. **69/21/3** relating to the land described as **110 Carabella Street, Kirribilli**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **2 July 2021**, has been determined in the following manner:

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

**Development in Accordance with Plans (S4.55 Amendments)**

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 of this consent:

Plan No.	Revision	Title	Drawn by	Dated	Received
DA200	D	Proposed Ground Floor Plan	Hill Thalys Architects	9/06/2021	9/06/2021
DA201	D	Proposed First Floor Plan	Hill Thalys Architects	9/06/2021	9/06/2021
DA202	D	Proposed Roof Plan	Hill Thalys Architects	9/06/2021	9/06/2021
DA203	D	Proposed Site Plan	Hill Thalys Architects	9/06/2021	9/06/2021
DA220	E	Proposed Section A+B	Hill Thalys Architects	9/06/2021	9/06/2021
DA221	D	Proposed Section C	Hill Thalys Architects	9/06/2021	9/06/2021

Plan No.	Revision	Title	Drawn by	Dated	Received
DA222	C	Proposed Section D	Hill Thalys Architects	9/06/2021	9/06/2021
DA210	D	Proposed Street Elevations	Hill Thalys Architects	9/06/2021	9/06/2021
DA211	D	Proposed Side SE Elevation	Hill Thalys Architects	9/06/2021	9/06/2021
DA212	D	Proposed Side NW Elevation	Hill Thalys Architects	9/06/2021	9/06/2021
DA400	C	External Finishes Schedule	Hill Thalys Architects	9/06/2021	9/06/2021
LS01	C	Existing Trees	Melissa Wilson	8/06/2021	9/06/2021
LS02	C	Landscape - Ground Level	Melissa Wilson	8/06/2021	9/06/2021
LS03	C	Landscape - Level 1	Melissa Wilson	8/06/2021	9/06/2021

Except as modified as such on the following drawings for DA 69/21/2:

Plan No.	Revision	Title	Drawn by	Dated	Received
DA200	E	Proposed Ground Floor Plan	Hill Thalys Architects	29/09/2021	30/09/2021
DA201	E	Proposed First Floor Plan	Hill Thalys Architects	29/09/2021	30/09/2021
DA202	E	Proposed Roof Plan	Hill Thalys Architects	29/09/2021	30/09/2021
DA203	D	Proposed Site Plan	Hill Thalys Architects	29/09/2021	30/09/2021
DA204	A	Proposed Lower Ground Plan	Hill Thalys Architects	29/09/2021	30/09/2021

Except as modified as such on the following drawings for DA 69/21/3:

Plan No.	Revision	Title	Drawn by	Dated	Received
LS01	D	Existing Trees	Melissa Wilson	18/08/2022	25/08/2022
LS02	D	Landscape - Ground Level	Melissa Wilson	18/08/2022	25/08/2022
LS03	D	Landscape - Level 1	Melissa Wilson	18/08/2022	25/08/2022

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)

**2. Condition C20 is amended as follows:**

**Protection of Trees**

C20. 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
T1 <i>Plumeria acutifolia</i>	Front setback of 110 Carabella Street	5 m x 4 m
T2 <i>Jacaranda mimosifolia</i>	Council verge in front of 110 Carabella Street	9 m x 10 m

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)

3. Condition C21 is amended as follows:

**Approval for Removal of Trees**

C21. The following tree(s) are approved for removal in accordance with the development consent:

Trees that are acceptable to remove	Location	Height
T3 <i>Murraya paniculata</i>	The front setback of 110 Carabella Street.	5.00 m x 4.00 m
T4 <i>Murraya paniculata</i>	The front setback of 110 Carabella Street.	4.00 m x 5.50 m
T5 <i>Juniperus sp.</i>	The rear setback of 110 Carabella Street.	7.00 m x 3.00 m
T6 <i>Juniperus sp.</i>	The rear setback of 110 Carabella Street.	5.00 m x 0.75m
T7 <i>Juniperus sp.</i>	The rear setback of 110 Carabella Street.	6.00 m x 1.00 m
T8 <i>Juniperus sp.</i>	The rear setback of 110 Carabella Street.	8.00 m x 3.75 m

Removal of any other tree on the site is not approved, excluding species exempt under Council's Tree Preservation Order. 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)

4. Condition C27 is added as follows:

**Amendments to the Landscape Plans**

C27. The landscaping shown on the approved plans must be amended as follows to provide an appropriate landscaped setting:

- 1) The 7 x *Acmena smithii* proposed for the front setback landscaping shall be 75-litre pot size.

An amended site plan and landscape plan 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 amended plans and specifications submitted fully satisfy the requirements of this condition.

(Reason: To ensure residential amenity and to demonstrate compliance with Council's controls)

5. Condition D3 is amended as follows:

**Temporary Fences and Tree Protection**

D3. All protected trees on-site that are specifically nominated as per **Condition C20** 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.

Appropriate fencing or barricades in accordance with AS4970-2009 (Protection of trees on development sites), not less than the distance of the perimeter of the garden bed specified 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.

Tree	Location	Protection
T1 <i>Plumeria acutifolia</i> (5 m x 4 m)	Front setback of 110 Carabella Street.	1.8 m high steel mesh tree protection fencing.
T2 <i>Jacaranda mimosifolia</i> (9 m x 10 m)	Council verge in front of 110 Carabella Street.	Trunk and branch protection

Sensitive construction techniques including hand excavation shall be carried out within the TPZ of these trees, no roots greater than 40mm shall be cut, no pruning shall be permitted. No level changes shall be permitted within the TPZ of these trees.

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

**6. Condition E13 is amended as follows:**

**Protection of Trees**

E13. All trees required to be retained as part of this consent must be protected from any damage during the construction works in accordance with AS4970-2009. In the event that any tree required to be retained is damaged during works on the site, notice of the damage must be given to Council forthwith.

Sensitive construction techniques including hand excavation shall be carried out within the TPZ of trees T1-T2, no roots greater than 40 mm shall be cut, no pruning shall be permitted. No level changes shall be permitted within the TPZ of trees T1-T2.

Notes:

- 1) If the nominated tree is damaged to a significant degree or removed from the site without prior written approval being obtained from Council, the issuing of fines or legal proceedings may be commenced for failure to comply with the conditions of this consent.
- 2) An application to modify this consent pursuant to Section 4.55 of the Environmental Planning and Assessment Act 1979 will be required to address the non-compliance with any of the conditions of consent relating to the retention of nominated trees, and Council may require tree replenishment.

(Reason: Protection of existing environmental infrastructure and community assets)

**7. Condition E14 is amended as follows:**

**Trees to be Removed**

E14. All trees on the site must be protected and retained save for those expressly identified below as being approved for removal:

Trees that are acceptable to remove	Location	Height
T3 <i>Murraya paniculata</i>	The front setback of 110 Carabella Street.	5.00 m x 4.00 m
T4 <i>Murraya paniculata</i>	The front setback of 110 Carabella Street.	4.00 m x 5.50 m
T5 <i>Juniperus sp.</i>	The rear setback of 110 Carabella Street.	7.00 m x 3.00 m
T6 <i>Juniperus sp.</i>	The rear setback of 110 Carabella Street.	5.00 m x 0.75 m
T7 <i>Juniperus sp.</i>	The rear setback of 110 Carabella Street.	6.00 m x 1.00 m
T8 <i>Juniperus sp.</i>	The rear setback of 110 Carabella Street.	8.00 m x 3.75 m

(Reason: To ensure compliance with the terms of this development consent)

8. **Condition G5 is amended 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 trees specifically nominated below: -

Tree	Location	Height/Size
T1 <i>Plumeria acutifolia</i>	Front setback of 110 Carabella Street.	5 m x 4 m
T2 <i>Jacaranda mimosifolia</i>	Council verge in front of 110 Carabella Street.	9 m x 10 m

The report must detail the condition and health of the nominated trees upon completion of the works and shall certify that the trees have not been significantly damaged during the works on the site and have reasonable prospects for survival.

(Reason: To ensure compliance with the terms of this consent)

9. **Condition G7 is amended as follows:**

**Landscaping**

- G7. The landscaping shown in the approved landscape plans numbered LS01, LS02 and LS03 prepared by Melissa Watson, dated 18 August 2022 (Issue D), received by Council on 25 August 2022, as a modified by the conditions of this consent, must be completed prior to the issue of any Occupation Certificate.

(Reason: To ensure compliance with the terms of this consent)

10. **Condition I1 is amended as follows:**

**Maintenance of Approved Landscaping**

- I1. The owner of the premises at No. 110 Carabella Street, Kirribilli, is to maintain the landscaping approved by this consent generally in accordance with the approved landscape plans numbered LS01, LS02 and LS03, prepared by Melissa Watson, dated 18 August 2022 (Issue D), received by Council on 25 August 2022, as a modified by the conditions of this consent.

Any replacement plants required shall be advanced in growth and be selected to maintain the anticipated mature height, canopy density and nature of those plant species as originally approved.

(Reason: To ensure maintenance of the amenity, solar access, and views of adjoining properties)

**Reasons for Approval:**

The proposed modifications satisfy the provisions of Section 4.55(1A) in that the proposed development remains substantially the same as what was approved by DA69/21. The proposed modifications to the site landscaping will not alter the use of the development as originally approved and will have minimal environmental impact. The proposed replacement of the two *Murraya* trees within the front setback with seven new *Lilly Pilly* trees is considered to be acceptable as the *Murraya* trees are relatively small trees in a constricted location and will be appropriately replaced by a greater number of new trees.

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The proposed modifications would not significantly change the level of compliance with the relevant development standards and controls as contained in North Sydney LEP 2013 and North Sydney DCP 2013. There would be no impacts on the residential amenity of any adjoining properties, or on the character of the locality, and the proposal remains consistent with the objectives of the R2 Low Density Residential zone, and the original reasons for granting consent.

The proposal was found to be acceptable in the site circumstances and is recommended that the subject Section 4.55(1A) application be **approved**.

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

The proposed modifications were not required to be notified in accordance with Council's Community Engagement Protocol. Nevertheless, it is considered that the proposed modifications would not result in any additional impacts to the streetscape and/or adjoining properties.

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The conditions attached to the original consent for Development Application No. 69/21 by endorsed date of **2 July 2021** still apply.

**ADVISINGS**

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

**25 October 2022**

DATE



Signature on behalf of consent authority

ROBYN PEARSON

**TEAM LEADER (ASSESSMENTS)**