



Ms Sophie Litherland  
Canopy Crows Nest Pty Ltd  
C/- Willowtree Planning  
Level 10, 56 Berry Street  
NORTH SYDNEY NSW 2060

D205/21  
KRR (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 MODIFICATION 205/21/3 - APPROVAL**

**Development Consent Number:** 205/21

**Land to which this applies:** 23-27 Wheatleigh Street, Crows Nest  
Lot No.: 49, DP: 11773

**Applicant:** Ms Sophie Litherland

**Proposal:** *Amended Proposal:* Section 4.55(2) modification application to incorporate a substation into the south western corner of the subject site

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. **205/21** and registered in Council's records as Application No. **205/21/3** relating to the land described as **23-27 Wheatleigh Street, Crows Nest**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **25 May 2022**, has been determined in the following manner:

**1. To insert Condition A5 and C39, as follows:-**

**Development in Accordance with Plans (S.4.55 Modifications)**

A5. 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 by the modifications

Plan No.	Dated	Issue	Title	Drawn by	Received
DA00	1/03/2023	11	Cover Sheet	Corben Architects	1/03/2023
DA04	14/10/2022	7	Level 1 Plan	Corben Architects	1/03/2023
DA05	1/03/2023	9	Level 2 Plan	Corben Architects	1/03/2023
DA06	14/10/2022	7	Level 3 Plan	Corben Architects	1/03/2023
DA07	14/10/2022	7	Level 4 Plan	Corben Architects	1/03/2023
DA08	14/10/2022	7	Roof Plan	Corben Architects	1/03/2023

Plan No.	Dated	Issue	Title	Drawn by	Received
DA09	1/03/2023	10	North and South Elevation	Corben Architects	1/03/2023
DA10	1/03/2023	10	East and West Elevation	Corben Architects	1/03/2023
Plan Set 18 Pages 1-18	23/01/2023	G	Concept Design Presentation L-400 Plant Schedule Ground Floor L-401 Softworks Plan Ground Floor	Arcadia	23/01/2023

and except as amended by the following conditions and this consent. In the event of any inconsistency, the approval plans of DA205/21 prevails.

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

### Additional Landscaping Requirements

C39. The landscaping Plans prepared by Arcadia Revision G dated 23 March 2023 are to be amended to show the following:

- i. Two additional street trees are to be planted on the roadside verge comprising either advanced specimens of *Lagerstroemia indica* (Crepe Myrtles) with a minimum pot size of 100 litres to be planted. The trees required by this condition shall be planted in the location shown on the stamped approved plans and their health and vitality certified by a qualified Horticulturalist prior to the issue of the occupation certificate of the development.

The amended landscaping details are to include a maintenance schedule for the new trees for the following twelve months after the issue of the Occupation Certificate including provision for replacement of the tree(s) if they do not survive.

Details demonstrating compliance with these requirements must be submitted to the principal Certifying authority prior to the issue of any further Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted fully satisfy the requirements of this condition.

(Reason: To ensure additional street landscaping is provided)

### 2. To modify Conditions G1 as follows:-

#### Landscaping

G1. The landscaping shown in the approved landscape plan prepared by Arcadia including amended details required pursuant to **Condition C39 Additional Landscaping Requirements** must be installed completed prior to the issue of any Occupation Certificate.

(Reason: To ensure compliance)

**Reasons for Approval:**

The proposed modifications are considered to be of no unacceptable impact and are 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 new material amenity impact to adjoining properties or the surrounding area. The proposed modifications are consistent with the reasons for the granted of development consent to the originally approved development and is considered to be acceptable.

Having regard to the provisions of section 4.55 & 4.15 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 recommended for **approval**.

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

No submissions were raised during the notification of the as modified application.

The conditions attached to the original consent for Development Application No. **205/21** by endorsed date of **25 May 2022** 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**

**28 March 2023**

DATE



Signature on behalf of consent authority

DAVID HOY

**TEAM LEADER (ASSESSMENTS)**