



Helm Pty Ltd
131 Sailors Bay Road
NORTHBRIDGE NSW 2063

D239/21
MS3 (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.56 APPLICATION 239/2021/2 - APPROVAL**

Development Consent Number: 239/2021/2

Land to which this applies:

131-139 Holt Avenue, Cremorne
Lot No.: 2, DP: 602238

Applicant:

Helm Pty Ltd

Proposal:

Section 4.56 modification relating to development consent DA 239/21 for excavation (not including demolition) and construction of a part four- part five-storey mixed use development with basement parking, and stratum subdivision.

The 4.56 application was considered by the **North Sydney Local Planning Panel (NSLPP)** on 7 June 2023.

Pursuant to Section 4.56 of the Act notice is hereby given of the determination by the consent authority of your request for a modification to Development Consent No. **239/2021** and registered in Council's records as Application No. **239/2021/2** relating to the land described as **131-139 Holt Avenue, Cremorne**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 18 October 2022, has been determined in the following manner: -

A. Impose Condition A development in accordance with Plan (S4.56 Modifications)

Plan Nos.	Issue	Description	Prepared by	Dated
DA.02	E	Site Plan	Brick Architecture	12 May 2023
DA.10	D	Ground Floor Plan		12 May 2023
DA.11	C	Level 1	"HELM"	27 January 2023
DA.12	C	Level 2		27 January 2023

DA.13	D	Level 3	27 January 2023
DA.14	D	Level 4	27 January 2023
DA.15	C	Roof Level	27 January 2023
DA.19	C	Elevation - South	27 January 2023
DA.20	C	Elevation - West	27 January 2023
DA.21	D	Elevation - North	27 January 2023
DA.22	D	Elevation - East	27 January 2023
DA.23	D	Section A-A	27 January 2023
DA.24	D	Section B-B	27 January 2023
DA.25	D	Section C-C	27 January 2023
DA.45	B	Section D-D	27 January 2023
DA.54	B	Section E-E	27 January 2023
DA.55	B	Section F-F	27 January 2023
DA.35	C	Adaptable Apartments 1	27 January 2023
DA.36	C	Adaptable Apartments 1	27 January 2023

B. Amend conditions C27, C43, C44, C45 and E15.

Tree Protection Measures to be shown on Construction Drawings

C27 The tree protection measures contained in the arborist report prepared by Arborist Network, dated **19 March 2021**, shall be shown clearly on the Construction Certificate drawings. Plans and specifications showing the said tree protection measures must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure the construction plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

Stormwater and other utilities shall not be directed through the TPZ of any protected tree where possible, but where not feasible are to be approved by the Project Arborist and installed using non-invasive excavation methods that are to be undertaken only under the supervision of the Project Arborist, with no roots greater than 40mm to be severed.

Plans and specifications showing the stormwater routing measures must be submitted to the Certifying Authority for approval prior to the issue of Construction Certificate CC1.

(Reason: To ensure that appropriate tree protection measures are shown on construction drawings)

Section 7.11 Development Contributions

C43. A monetary contribution pursuant to the provisions of Section 7.11 of the Environmental Planning and Assessment Act 1979, in accordance with the North Sydney Council's Contribution Plan for the public amenities/services detailed in column A below and, for the amount detailed in column B below, must be paid to Council.

A	B (\$)
Open space and recreation facilities:	\$194,760.71
Public domain:	\$107,153.14
Active transport:	\$6,115.90
Community facilities:	\$39,118.60
Plan administration and management:	\$5,190.60
Total:	\$352,338.95

Indexation

The monetary contribution required under this consent will be indexed at the time of payment in accordance with quarterly movements in the Consumer Price Index (All Groups Index) for Sydney as published by the Australian Bureau of Statistics.

Timing of Payment

The contribution must be paid to Council prior to issue of any Construction Certificate.

Deferred payments will not be accepted.

A copy of the North Sydney Contribution Plan can be viewed at North Sydney Council's Customer Service Centre, 200 Miller Street, North Sydney or downloaded via Council's website at www.northsydney.nsw.gov.au.

(Reason: To provide for local infrastructure identified in the North Sydney Council Local Contributions Plan 2020)

Security Deposit/Guarantee Schedule

C44. All fees and security deposits/guarantees in accordance with the schedule below must be provided to Council prior to the issue of any Construction Certificate:

Security deposit/ guarantee	Amount (\$)
Street Tree Bond (on Council Property)	\$50,000.00
Infrastructure Damage Bond	\$72,000.00
Drainage Construction Bond	\$100,000.00
Engineering Construction Bond	\$43,000.00
Others	
TOTAL BONDS	\$265,000.00

Note: The following fees applicable

Fees	
Section 7.11 Contribution	\$352,338.95
TOTAL FEES	\$352,338.95

The security required by the above schedule must be provided by way of a deposit with the Council; or other such guarantee that is satisfactory to Council (such as a bank guarantee). Any guarantee provided as security must name North Sydney Council as the nominated beneficiary and must not be subject to an expiry date.

(Reason: Compliance with the development consent)

BASIX Certificate

C45. Under clause 97A(3) of the Environmental Planning and Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. **1189674M_03**, dated **27 February 2023** for the development are fulfilled. Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of Construction Certificate CC3. 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.

(Reason: To ensure the proposed development will meet the Government's requirements for sustainability and statutory requirements)

Protection of Trees

E15 All trees required to be retained, as part of this consent must be protected from any damage during construction works in accordance with AS4970-2009. All recommendations contained within the tree report prepared by Arborist Network dated **19 March 2021** must be implemented for the duration of the works.

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.

Notes:

- a. 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.
- b. An application to modify this consent pursuant to Section 4.56 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)

Reason for approval:

The Panel notes this is a modification application and is satisfied that it will result in substantially the same development and the reasons for the original decision have been considered.

How community views were taken into account:

The submissions received by Council were addressed in the NSLPP report (see Council's website: [North Sydney Local Planning Panel \(NSLPP\) – North Sydney Council \(nsw.gov.au\)](https://www.nsw.gov.au/north-sydney-council))

The conditions attached to the original consent for Development Application No. 239/21 by endorsed date of 18 October 2022 still apply.

ADVISINGS

- (a) Council is always prepared to discuss its decisions and in this regard, please do not hesitate to contact **Michael Stephens**. 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 4.56 of the Environmental Planning & 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 4.56 of the Environmental Planning & Assessment Act.

Endorsed for and on behalf of North Sydney Council

19 June 2023

DATE



Signature on behalf of consent authority
ROBIN TSE
A/TEAM LEADER (ASSESSMENTS)