



Nimbus Architecture and  
Heritage Pty Ltd  
Suite 31-32, 48-50 George Street  
PARRAMATTA NSW 2150

D300/13  
RT (CPE)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 MODIFICATION 300/13/4 - APPROVAL**

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**Development Consent Number:** 300/2013

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**Land to which this applies:** 28 Ellalong Road, Cremorne  
Lot No.: 1, DP: 1186070

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**Applicant:** Nimbus Architecture and Heritage Pty Ltd

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**Date of Determination:** 6 July 2023

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**Proposal:** Section 4.55(1) modifications to D300/13 to deletion Condition C11

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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. **300/13** and registered in Council's records as Application No. **300/13/4** relating to the land described as **28 Ellalong Road, Cremorne**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **7 January 2014**, has been determined in the following manner:

**1. Condition C11 is deleted**

**~~Driveway Crossing and associated works permit~~**

~~C11. Prior to the issue of the Construction Certificate, 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 civil design drawings shall detail the following infrastructure construction requirements of Council in relation to the consent:~~

- ~~a) The proposed vehicular access ways shall 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 existing carport hardstand must be reconstructed to ensure smooth transitions in such a manner, that a B85 vehicle will not scrape/strike the surface of the carriageway or parking floor.~~
- ~~c) The internal width of parking area must be a minimum of 3.0 m.~~
- ~~d) Proposed kerb at the end of carport hardstand must not be higher than 100 mm.~~
- ~~e) Wheel stop must be constructed at the rear of parking space to prevent vehicle from running over the edge of raised platform and inhibiting contact with existing building.~~
- ~~f) Parked vehicle must maintain clearance of minimum 0.5 m from existing building.~~
- ~~g) Wheel stop must be between 90 and 100 mm in height and 1650 +/- 50 mm in width (length).~~
- ~~h) Location of the wheel stop must be in accordance with AS/NZS 2890.1.2004.~~
- ~~i) Alignment levels at the boundary have an important impact on the proposed levels for new carport. Council has the authority to remove any unauthorized works at the cost of the developer.~~
- ~~j) The Certifying Authority must ensure that the internal property levels at boundary matches Right of Way boundary levels.~~
- ~~k) The property boundary levels must match the existing levels and shall not be altered unless agreed to by Council.~~
- ~~l) The road shoulder levels on Right of Way must stay unchanged.~~
- ~~m) Any twisting of driveway access to ensure vehicles do not scrape must occur entirely within the subject property.~~
- ~~n) All inspection openings, utility services shall be adjusted to match the proposed driveway levels and location.~~
- ~~o) Clearance to the underside of any overhead structure must comply with AS/NZS 2890.1.2004.~~

~~The Certifying Authority issuing the Construction Certificate must ensure that the approved plans and specifications, satisfying the requirements of this condition, is referenced on and accompanies the Construction Certificate.~~

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

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The proposed modifications would not materially change the design, form and scale of the approved development and its level of compliance with any environmental planning instrument, including NSLEP 2013, or NSDCP 2013.

Notification of this application was not required in accordance with Section 3.4.2 of Council's Community Engagement Protocol.

**Reasons for Approval:**

The proposed modification would have 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 R2 Low Density Residential Zone, and the reasons for granting consent originally.

The proposed changes were found to be acceptable in the site circumstances and it is recommended that the subject Section 4.55(1) application be approved to delete Condition C11 (Driveway Crossing and associated works permit).

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

Notification of the subject S4.55(1) application was not required in accordance with Section 3.4.2 of Council's Community Engagement Protocol.

The conditions attached to the original consent for Development Application No. **300/13** by endorsed date of **7 January 2014** still apply.

**ADVISINGS**

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

**6 July 2023**

DATE



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