



Ms Jiazhen Tian  
Unit 1101/438 Victoria Avenue  
CHATSWOOD NSW 2067

D63/21  
RW (CPE)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 MODIFICATION 63/21/3 - APPROVAL**

<b>Development Consent Number:</b>	<b>63/21</b>
<b>Land to which this applies:</b>	5 Earle Street, Cremorne Lot No.: 9, SEC: 1, DP: 979110
<b>Applicant:</b>	Jiazhen Tian
<b>Proposal:</b>	Modification to approved development for construction of a three-storey dwelling.

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. **63/21** and registered in Council's records as Application No. **63/21/3** relating to the land described as **5 Earle Street, Cremorne**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **15 October 2021**, has been determined in the following manner:

**A. Modify Condition A4, C25 and G7 as follows:**

**External Finishes and Materials**

A4. External finishes and materials must be in accordance with the submitted schedule on Drawing 9, 10, 11, Revision E, dated 26/3/2024, prepared by Peak Architects.

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

**BASIX Certificate**

C25. The BASIX Certificate provided in the original consent DA63/21 with the BASIX Certificate No. **1180379S\_2** is to be replaced with the new BASIX Certificate No. **1180379S\_03**, issued on 26 March 2024.

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

### Landscaping

G7. The landscaping shown in the approved landscape plan numbered Drawing 15, Revision E, prepared by Peak Architects, dated 26 March 2024 as amended by the conditions in the original consent DA63/21 must be completed prior to the issue of any Occupation Certificate.

(Reason: To ensure compliance)

**A. Add Conditions A5, A6, A7, A8, C29 and G5 as follow:**

### Development in accordance with Plans (s4.55 Amendments)

A5. The development being carried out in accordance with plans identified in Condition A1 of the consent and A5 of the modification to consent endorsed with Council's approval stamp, except as modified by the modifications shown on:

Plan No.	Rev	Description	Prepared by	Dated
0	E	Site/Roof Plan	Peak Architects	26/3/2024
5	E	Roof Plan 1:100	Peak Architects	26/3/2024
6	E	Ground Floor Plan 1:100	Peak Architects	26/3/2024
7	E	First Floor Plan 1:100	Peak Architects	26/3/2024
8	E	Second Floor Plan 1:100	Peak Architects	26/3/2024
9	E	North Elevations	Peak Architects	26/3/2024
10	E	South Elevation	Peak Architects	26/3/2024
11	E	East and West Elevation	Peak Architects	26/3/2024
12	E	Section A & B	Peak Architects	26/3/2024
13	E	Section C	Peak Architects	26/3/2024
15	E	Landscape Plan	Peak Architects	26/3/2024

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

### Northwestern Corner of Driveway within Subject Site

A6. The northwestern corner of the driveway (clouded red within the stamped plans) within the subject site is to be landscaped as per the approved Site/Roof Plan, Drawing 0, Revision E, dated 26/3/2024.

(Reason: To ensure development complies with s1.5.8 *Front Gardens* in the locality and area character statement)

### Eastern and Western Boundary Stair Removal

A7. The area proposed for stair removal on the eastern and western boundary towards the rear of the site is to be landscaped.

(Reason: To comply with Landscaped Area within NSDCP 2013; to ensure development is in accordance with approved plans)

### Replacement of Tree T16

A8. A replacement tree to replace Tree T16 *Camellia japonica* (5m) that was removed from the site, is to be planted within the rear setback in consultation with an AQ5 Arborist with details submitted to Council. The replacement tree must be a minimum pot size of 75 Litres, be advanced in growth and selected to

maintain an anticipated mature height of 3 metres, canopy density and nature of those plant species as originally approved.

An experienced consulting arborist with minimum qualification of AQF Level 5 must be commissioned to assist the design development and contract documentation for the approved development. Written details of the engagement of the experienced arborist must be submitted to the Certifying Authority prior to the issue of any Construction Certificate.

(Reason: To ensure development is in accordance with approval)

**Original Conditions relating to Landscaping apply**

C29. Conditions in the original consent DA63/21 relating to landscaping still apply. In particular, **Condition C26** in the original consent relating to amendments to the Landscape Plan and **C28** Garden Bed Retaining Wall Amendments.

(Reason: To ensure development is in accordance with approval)

**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 Principal Certifier, describing the health of the tree(s) specifically nominated below:

<b>Tree</b>	<b>Location</b>	<b>Height</b>
Replacement tree as per Condition A8	Within the rear setback of 5 Earle Street	5 m

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

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

**Reasons for Approval:**

The proposed modifications are considered to be generally 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 material amenity impact to adjoining properties or the surrounding area. The proposed modifications are consistent with the reasons for the grant of development consent to the originally approved development and is considered to be acceptable.

Having regard to the provisions of section 4.55 and 4.15(1) 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:**

The proposal is considered to be in the public interest for the reasons stated throughout this report. No submissions were received during the notification period.

The conditions attached to the original consent for Development Application No. **63/21** by endorsed date of **15 October 2021** still apply.

**ADVISINGS**

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

**8 April 2024**

DATE

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