



Mr Stephen Mee
134 Kurraba Road
KURRABA POINT NSW 2089

D125/22
AB7 (CPE)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 125/22/2 - APPROVAL**

Development Consent Number: 125/22

Land to which this applies: 134 Kurraba Road, Kurraba Point
Lot No.: 1, DP: 926442

Applicant: Stephen Mee

Proposal: Modification to conditions of DA 125/22 to facilitate improved vehicular access and associated works.

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. **125/22** and registered in Council's records as Application No. **125/22/2** relating to the land described as **134 Kurraba Road, Kurraba Point**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **17 May 2023**, 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 documents endorsed with Council's approval stamp:

| No. | Issue | Title | Drawn by | Received |
|-------|-------|---|-----------------------------|------------|
| DA 02 | B | Existing Lower Ground Floor Demolition Plan | Hobbs Jamieson Architecture | 20/03/2023 |
| DA 03 | B | Existing Ground Floor Demolition Plan | Hobbs Jamieson Architecture | 20/03/2023 |
| DA 04 | B | Existing First Floor Demolition Plan | Hobbs Jamieson Architecture | 20/03/2023 |
| DA 05 | B | Demolition Elevations | Hobbs Jamieson Architecture | 20/03/2023 |
| DA 06 | B | Demolition Elevations | Hobbs Jamieson Architecture | 20/03/2023 |
| DA 07 | B | Proposed Site Plan | Hobbs Jamieson Architecture | 20/03/2023 |
| DA 08 | B | Proposed Lower Ground Floor Plan | Hobbs Jamieson Architecture | 20/03/2023 |
| DA 09 | B | Proposed Ground Floor Plan | Hobbs Jamieson Architecture | 20/03/2023 |
| DA 10 | B | Proposed First Floor Plan | Hobbs Jamieson Architecture | 20/03/2023 |
| DA 11 | B | Proposed Roof Plan | Hobbs Jamieson Architecture | 20/03/2023 |

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|-------|---|---------------------|-----------------------------|------------|
| DA 12 | B | Proposed Elevations | Hobbs Jamieson Architecture | 20/03/2023 |
| DA 13 | B | Proposed Elevations | Hobbs Jamieson Architecture | 20/03/2023 |
| DA 14 | B | Proposed Section A | Hobbs Jamieson Architecture | 20/03/2023 |
| DA 15 | B | Proposed Section B | Hobbs Jamieson Architecture | 20/03/2023 |
| L-01 | F | Landscape Plan | Space Landscape Designs | 20/03/2023 |
| L-02 | D | Elevations | Space Landscape Designs | 20/03/2023 |
| L-04 | E | Planting Plan | Space Landscape Designs | 20/03/2023 |

Except as modified as such on the following drawings for DA 125/22/2:

| No. | Issue | Title | Drawn by | Dated | Received |
|------|-------|----------------|-------------------------|------------|------------|
| L-01 | I | Landscape Plan | Space Landscape Designs | 12/02/2024 | 28/02/2024 |
| L-04 | I | Planting Plan | Space Landscape Designs | 12/02/2024 | 28/02/2024 |

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

2. Condition C15 is deleted as follows:

Obtain Driveway Crossing Permit under S.138 Roads Act 1993

~~C15. A driveway crossing and roads infrastructure works permit to suit the approved off-street parking facilities must be granted by the Council prior to the issue of any Construction Certificate. In order to obtain a permit under S.138 of the Roads Act 1993, an application must be made to Council on the '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 issue of the permit. The requirements of the permit must be complied with at all times.~~

~~The civil design drawings must include the following at a minimum:~~

- ~~a) The vehicular access way must 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 width of the vehicular layback must be 3.5 metres (including the wings);~~
- ~~c) The vehicular laybacks must be set square to the kerb;~~
- ~~d) The crossing (between the layback and the property boundary) must be placed on a single straight grade of approximately 4.5%, falling to the back of the layback. The boundary levels will need to be adjusted (lowered) to accommodate this requirement;~~
- ~~e) the gutter levels must match the existing levels and shall not be altered;~~
- ~~f) The kerb transitioning works of two footpath panels on both sides of the driveway crossing are required to ensure uniformity in the footpath;~~
- ~~g) the kerb gutter must be reconstructed to marry into the existing kerb & gutter on both sides of the layback to ensure uniformity in the road reserve;~~

- ~~h) — the works will require reconstruction of the carriageway shoulder extending out 600mm from the gutter lip in AC10 — 50mm thick, adjacent to all new gutter works;~~
- ~~i) — any twisting of driveway access must occur entirely within the subject property;~~
- ~~j) — all inspection openings, utility services must be adjusted to match the proposed driveway levels;~~
- ~~k) — sections along centre line and extremities are required at a scale of 1:50 to be taken from the centre line of the roadway through to the parking area itself and must include all changes of grade and levels both existing and proposed;~~
- ~~l) — a longitudinal section along the footpath property boundary at a scale of 1:50 is required~~

~~The permit must be granted by Council prior to the issue of any Construction Certificate.~~

~~All driveway and infrastructure works on the road reserve must be undertaken in accordance with the terms of the permit issued by Council. Inspections by Council will be required as specified. The Certifying Authority issuing the Construction Certificate must ensure that the permit issued by Council is obtained and referenced on and accompanies the Construction Certificate issued.~~

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

3. Condition C22 is deleted as follows:

~~Trees to be Retained and Transplanted~~

~~C22. — The following trees are required to be retained and transplanted within the front setback of 134 Kurraba Road and the works shall be undertaken under the guidance of a qualified AQ5 arborist:~~

| Tree | Location | Height (m) |
|---|--|-------------------|
| 1 x Archontophoenix cunninghamiana | Located within the front garden of 134 Kurraba Road | 8m |
| 1 x Howea forsteriana | Located within the front garden of 134 Kurraba Road | 8m |

~~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.~~

~~(Reason: — Protection of existing environmental and community assets)~~

4. Condition C29 is amended as follows:

Amendments to the Landscape Plans

C29. The plans as approved by **Condition A1** of this consent must be amended as follows:

- 1) The existing vehicular crossing over Council's road reserve and footpath is to be retained as existing.

(Reason: To ensure compliance and protect significant trees)

5. A new Condition C31 is inserted as follows:

Approval for Removal of Trees

C31. The following tree(s) are approved for removal in accordance with the development consent:

| Trees that are acceptable to remove | Location | Height |
|---|---|--------|
| 1 x <i>Archontophoenix cunninghamiana</i> | Located within the front garden of 134 Kurraba Road | 8m |
| 1 x <i>Howea forsteriana</i> | Located within the front garden of 134 Kurraba Road | 8m |

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)

6. A new Condition E21 is inserted as follows:

Trees to be Removed

E21. 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 |
|---|---|--------|
| 1 x <i>Archontophoenix cunninghamiana</i> | Located within the front garden of 134 Kurraba Road | 8m |
| 1 x <i>Howea forsteriana</i> | Located within the front garden of 134 Kurraba Road | 8m |

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

7. 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 tree(s) specifically nominated below:

| Tree | Location | Height |
|------------------------------------|---|--------|
| 1 x <i>Melaleuca quinquenervia</i> | Located on the footpath opposite 134 Kurraba Road | 10m |
| 1 x <i>Jacaranda mimosifolia</i> | Located on the footpath opposite 134 Kurraba Road | 6m |
| 2 x <i>Howea forsteriana</i> | Located within the front garden of 134 Kurraba Road (Tree 4 and 5 as annotated in the Landscape Plan and identified in the arborist report) | 8m |

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

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

8. Condition G9 is amended as follows:

Compliance with Certain Conditions

G9. Prior to the issue of any Occupation Certificate Conditions **C10 - First Floor Addition Skylight, C11 - Solar Array on Roof of First Floor Addition, C25 - Privacy, and C29 - Amendments to the Landscape Plans**, must be certified as having been implemented on site and complied with.

(Reason: To ensure the development is completed in accordance with the requirements of this consent)

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 DA 125/22. The proposed modifications to the site landscaping will not alter the use of the development as originally approved and will have a minimal environmental impact. The proposed replacement of the two palm trees within the front setback with two new trees is considered to be acceptable as the existing trees are in poor condition and not able to be transplanted, and they will be appropriately replaced new trees of the same species within the front setback.

Reasons for Approval:

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.

How community views were taken into account:

The proposed modifications were not required to be notified. Nevertheless, it is considered that the proposed modifications would not result in any significant additional impacts to the streetscape and/or adjoining properties.

The conditions attached to the original consent for Development Application No. **125/22** by endorsed date of **17 May 2023** 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

21 March 2024

DATE



Signature on behalf of consent authority
ANDREW BEVERIDGE
SENIOR ASSESSMENT OFFICER