



Ms Lucie Clare Austin
14 Tobruk Avenue
CREMORNE NSW 2090

D112/22
RT (PE)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 112/22/4 - APPROVAL**

Development Consent Number: 112/22

Land to which this applies: 14 Tobruk Avenue, Cremorne
Lot No.: 1, DP: 1279174

Applicant: Lucie Clare Austin

Proposal: Section 4.55(1A) modification to DA112/22 for changes to the approved secondary 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. **112/22** and registered in Council's records as Application No. **112/22/4** relating to the land described as **14 Tobruk Avenue, Cremorne**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **9 March 2023**, has been determined in the following manner:

1. To modify the development consent (D112/22) and modify conditions A1 and C33 to read as follows:

Development in Accordance with Plans (S4.55 Amendments)

A1. The development being carried out in accordance with the following drawings:

Plan No.	Description	Prepared by	Dated
01B	Site Plan	Peter Drowns	23/02/2023
02B	Garage Level	Peter Drowns	23/02/2023
03B	Secondary Dwelling Top Floor Plan	Peter Drowns	23/02/2023
04B	Secondary Dwelling Bottom Floor Plan	Peter Drowns	23/02/2023
05B	North Elevation	Peter Drowns	23/02/2023
06B	South Elevation	Peter Drowns	23/02/2023
07B	East & West Elevations	Peter Drowns	23/02/2023
08B	Street Elevation	Peter Drowns	23/02/2023
09B	Section	Peter Drowns	23/02/2023
13b	Roof Plan	Peter Drowns	23/02/2023

and endorsed with Council's approval stamp, except as modified by highlighting on the following drawings for D112/22/2:

Plan No.	Description	Prepared by	Dated
01C	Site Plan	Peter Drowns	27/03/2023
02C	Garage Level	Peter Drowns	27/03/2023
03C	Secondary Dwelling Top Floor Plan	Peter Drowns	27/03/2023
04C	Secondary Dwelling Bottom Floor Plan	Peter Drowns	27/03/2023
05C	North Elevation	Peter Drowns	27/03/2023
06C	South Elevation	Peter Drowns	27/03/2023
07C	East & West Elevations	Peter Drowns	27/03/2023
08C	Street Elevation	Peter Drowns	27/03/2023
09C	Section	Peter Drowns	27/03/2023
13C	Roof Plan	Peter Drowns	27/03/2023

and endorsed with Council's approval stamp, except as modified by highlighting on the following drawings for D112/22/4:

Plan No.	Description	Prepared by	Dated
04E	Secondary Dwelling Bottom Floor Plan	Peter Drowns	02/04/2024

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

BASIX Certificate

C33. Under clause 75 of the Environmental Planning and Assessment Regulation 2021, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. (1259670S_05) for the development are fulfilled. Plans and specifications complying with this condition must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The Principal Certifier 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)

2. To insert new condition A5 to read as follows:

Terms of Consent (D112/22/4)

A5. Approval is granted for the following modifications to the approved secondary dwelling:

- (a) Changes to the internal layout of the bottom floor of the approved secondary dwelling by repositioning the bathroom and study room; and
- (b) Deletion of an intermediate inclinor landing (Landing 3) adjacent to the deck of the bottom floor bedroom of the approved secondary dwelling.

No approval is given or implied in this consent for any other works, both internal and external, within the subject property.

(Reason: To ensure the terms of the consent are clear.)

The proposed modifications to DA 122/22 for modifying the internal layout of the approved secondary dwelling and the deletion of an intermediate landing for the approved inclinor is considered to be acceptable and would not alter the building height and building envelope of the previously approved development.

Reasons for Approval:

The proposed modifications would not change the level of compliance with the relevant development standards and controls as contained in North Sydney LEP 2013 and North Sydney DCP 2013.

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:

Notification of the application was waived in accordance with Section 3.5 of North Sydney Community Engagement Protocol.

The conditions attached to the original consent for Development Application No. **112/22** by endorsed date of **9 March 2023** 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

29 May 2024

DATE



Signature on behalf of consent authority
ROBIN TSE
SENIOR ASSESSMENT OFFICER