

Development Consent No. 274/17/2

Section 4.55 Application

Applicant's Name

Alison Lipman

Land to which this applies

44 Illiliwa Street, Cremorne
Lot No.:9, DP: 168831

Proposal

A Section 4.55(1A) application to modify 274/17 with regards to the deletion of Conditions E1 and G4.

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. **274/17** and registered in Council's records as Application No. **274/17/2** relating to the land described as **44 Illiliwa Street, Cremorne**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 18 December 2017, has been determined by way of approval subject to the following changes to the conditions: -

Delete Conditions E1 and G4 as follows:

~~Rear ground floor deck~~

~~E1. The footings for the rear ground floor deck must be hand dug to minimise any adverse impacts on the root system of the adjacent Avocado Tree within the rear setback.~~

~~(Reason: To protect the Avocado Tree within the rear setback.)~~

~~Certification of Tree Condition~~

~~G4. 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:~~

~~Avocado Tree (rear yard), 6m (height)~~

~~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)~~

Add Condition G8 as follows:

Required Tree Planting

G8. On completion of works and prior to the issue of an Occupation Certificate, a native tree with a minimum mature height of 6m must be planted in the rear yard of the subject site. The tree must be planted a suitable distance away from the existing dwelling, swimming pool and the encased sewer line.

The installation of the tree, its current health and their prospects for future survival must be certified upon completion by an appropriately qualified horticulturalist.

Upon completion of installation and prior to the issue of an Occupation Certificate an appropriately qualified horticulturalist must certify that the tree planted in accordance with this condition is healthy and have good prospects of future survival. The certification must be submitted with any application for an Occupation Certificate.

(Reason: To ensure that replacement plantings are provide to enhance community landscaped amenity and cultural assets)

Reason for approval

The proposed modification relates to the removal of an Avocado tree and as such will not undermine the reasons for granting approval to the original development application.

The proposed modification has been assessed against 4.55(1A) of the Environmental Planning and Assessment Act 1979, and found to be generally acceptable in the site circumstances.

Consequently, the Section 4.55 application is considered to be reasonable in the circumstances and it is recommended for **approval** subject to the deletion of Conditions E1 and G4 and additional Condition G8 requiring a replacement tree.

The conditions attached to the original consent for Development Application No. 274/17 by endorsed date of 18 December 2017 still apply.

ADVISINGS

- (a) Council is always prepared to discuss its decisions and in this regard, please do not hesitate to contact **Luke Donovan**. 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. The use of the Section 34 Conference approach requires the appellant to agree, in advance and in writing, that the Court appointed assessor will be given the full authority to completely determine the matter at the conference.
- (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 Certifying Authority 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 & 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 & Assessment Act.

DATE

Signature on behalf of consent authority
ROBYN PEARSON
TEAM LEADER (ASSESSMENTS)