

Original signed by Robyn Pearson on 13/8/2018

Date determined: 7/8/2018

Date operates: 7/8/2017

Date lapses:7/8/2022

Development Consent No. 134/17/2

Section 4.55 Application

Applicant's Name

AK Vincentina Pty Ltd

Land to which this applies

6 Richmond Avenue, Cremorne
Lot No.: 4, DP: 340022

Proposal

Section 4.55 (2) modifications to the approved multi-dwelling development including the removal of a palm tree and the planting of a replacement tree at a different location.

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. **134/17** and registered in Council's records as Application No. **134/17/2** relating to the land described as **6 Richmond Avenue, Cremorne**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 2 August 2017, has been determined in the following manner: -

- To modify conditions A1, C19, C20, C21, D1, E15, G10 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.	Issue/ Rev	Date	Drawn by	Received
DA101	D	28.07.2017	PDB Architects	31 July 2017
DA102	D	28.07.2017	PDB Architects	31 July 2017
DA103	D	28.07.2017	PDB Architects	31 July 2017
DA104	C	28.07.2017	PDB Architects	31 July 2017
DA201	B	30.06.2017	PDB Architects	5 July 2017
DA202	C	28.07.2017	PDB Architects	31 July 2017
DA301	D	28.07.2017	PDB Architects	31 July 2017
DA400	B	30.06.2017	PDB Architects	5 July 2017
DA701	A	21.04.2017	PDB Architects	28 April 2017
LA00	A	04.07.2017	Taylor Brammer	5 July 2017

LA02	A	04.07.2017	Taylor Brammer	5 July 2017
LA03	A	04.07.2017	Taylor Brammer	5 July 2017

and endorsed with Council's approval stamp, except as modified by highlighting on the following drawings for D134/17/2:

Drawings numbered LT02 Rev B, LT04 Rev B, LT06 Rev B, all dated 2/05/2018, drawn by Taylor Brammer, and received by Council on 7 May 2018

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

Tree Protection Measures to be shown on Construction Drawings

C19. The tree protection measures contained in the arborist report prepared by Redgum Horticultural, dated 10 August 2016, and received by Council on 28 April 2017 and the Arboricultural Impact Assessment prepared by Redgum Horticultural, dated 23 April 2018, and received by Council on 7 May 2018 shall be shown clearly on the Construction Certificate drawings. Plans and specifications showing the said tree protection measures must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure the construction plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure that appropriate tree protection measures are shown on construction drawings)

Protection of Trees

C20. The following tree(s) are required to be protected and retained as part of the development consent in accordance with AS 4970-2009 – Protection of trees on development sites:

Tree	Location	Height (m)
<i>T12. Acer negundo</i>	Property to east, 8 Richmond Avenue	7m
<i>T13. Camellia japonica</i>	Front garden	5m

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.

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)

Approval for removal of Trees

C21. The following tree(s) are approved for removal in accordance with the development consent:

Tree	Location	Height
<i>T1. Callistemon viminalis</i>	Street tree	6m
<i>T2. Callistemon viminalis</i>	Street tree	5m
<i>T3. Jacaranda mimosifolia</i>	Western garden	12m
<i>T4. Callistemon salignus</i>	Western garden	5m
<i>T5. Stenocarpus sinuatus</i>	Western garden	13m
<i>T6. Jacaranda mimosifolia</i>	Rear garden	10m
<i>T7. Macadamia tetraphylla</i>	Rear garden	8m
<i>T8. Liquidambar styraciflua</i>	Eastern garden	18m
<i>T9. Phoenix canariensis</i>	Rear garden on top of cliff	8m
<i>T10. Cupressus sempervirens</i>	Front garden – South east corner	12m
<i>T11. Pittosporum undulatum</i>	Front garden – South-east corner	7m
<i>T14. Ulmus parvifolia</i>	Front garden	7m

Removal or pruning 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)

Temporary Fences and Tree Protection

D1. All protected trees on-site that are specifically nominated to be retained by notation on plans or by condition as a requirement of this consent must be tagged with luminous tape or the like for purposes of identification prior to demolition, excavation or construction works and must remain so for the duration of works on the site. No materials or builder's waste are to be stored in the vicinity of the nominated tree/trees at any time.

Appropriate fencing or barricades in accordance with AS4970-2009 (Protection of trees on development sites), not less than the distance shown in the schedule hereunder, must be installed to the satisfaction of the Certifying Authority prior to demolition or commencement of any works and must be maintained for the duration of the works: -

Schedule

Tree	Location	Height (m)
<i>T12. Acer negundo</i>	Property to east, 8 Richmond Avenue	7m
<i>T13. Camellia japonica</i>	Front garden	5m

(Reason: To protect the trees to be retained on the site during construction works)

Protection of Trees

- E15. All trees required to be retained, as part of this consent must be protected from any damage during construction works in accordance with AS4970-2009. All recommendations contained within the arborist report prepared by Redgum Horticultural dated 10 August 2016 and received by Council on 28 April 2017 and the Arboricultural Impact Assessment prepared by Redgum Horticultural, dated 23 April 2018, and received by Council on 7 May 2018 must be implemented for the duration of the works.

In the event that any tree required to be retained is damaged during works on the site, notice of the damage must be given to Council forthwith.

Notes:

- a. If the nominated tree is damaged to a significant degree or removed from the site without prior written approval being obtained from Council, the issuing of fines or legal proceedings may be commenced for failure to comply with the conditions of this consent.
- b. An application to modify this consent pursuant to Section 96 of the Environmental Planning and Assessment Act 1979 will be required to address the non-compliance with any of the conditions of consent relating to the retention of nominated trees, and Council may require tree replenishment.

(Reason: Protection of existing environmental infrastructure and community assets)

Damage to Adjoining Properties

- G10. On completion of the development the subject of this consent and prior to the issue of the Occupation Certificate, a report is to be prepared by an appropriately qualified consultant and is to be provided to the Certifying Authority (and a copy to Council if it is not the Certifying Authority) certifying:

- a) whether any damage to adjoining properties has occurred as a result of the development including tree removal;
- b) the nature and extent of any damage caused to the adjoining property as a result of the development including tree removal;
- c) the nature and extent of works required to rectify any damage caused to the adjoining property as a result of the proposed development including tree removal;
- d) the nature and extent of works carried out to rectify any damage caused to the adjoining property as a result of the development including tree removal; and

- e) the nature and extent of any agreements entered into for rectification of any damage caused to the adjoining property as a result of the development including tree removal.

The report and certification must reference the dilapidation survey and reports required to be provided to the Certifying Authority in accordance with this consent.

Where works required to rectify any damage caused to adjoining property as a result of the development identified in the report and certification have not been carried out, a satisfactory agreement for rectification of the damage is to be made with the affected person/s as soon as possible prior to the issue of an Occupation Certificate.

All costs incurred in achieving compliance with this condition shall be borne by the developer.

(Reason: To ensure adjoining owner's property rights are protected in so far as possible)

2. To insert new conditions nos. A4 and G14 as follows:

Terms of Consent (D134/17/2)

A4. Approval is granted for the following works as shown on drawings numbered LT02 Rev B, LT04 Rev B, LT06 Rev B, all dated 2/05/2018, drawn by Taylor Brammer, and received by Council on 7 May 2018:

- (a) Removal of an existing date palm tree (*phoenix canariensis*) adjacent to the eastern property boundary; and
- (b) Planting of a replacement cabbage palm tree (*cordyline asutralis*) within a landscape area at the north-eastern corner of the subject site

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.)

Landscaping

G14. The landscaping shown in the following approved landscaping plans must be completed and certified prior to the issue of any Occupation Certificate.

Plan No.	Issue/ Rev	Date	Drawn by	Received
LA00	A	04.07.2017	Taylor Brammer	5 July 2017
LA02	A	04.07.2017	Taylor Brammer	5 July 2017
LA03	A	04.07.2017	Taylor Brammer	5 July 2017
LT02	B	2/05/2018	Taylor Brammer	7 May 2018
LT04	B	2/05/2018	Taylor Brammer	7 May 2018

LT06	B	2/05/2018	Taylor Brammer	7 May 2018
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(Reason: To ensure the development is completed in accordance with the requirements of this consent)

Reason for approval

The proposed modifications satisfy the provisions of Section 4.55 (2) in that the proposal is considered to be substantially the same development as that which was originally approved by Council.

The proposed modifications involve the removal of a tree (Date Palm) and the planting of a replacement tree (Cabbage Palm Tree (*Cordyline australis*)). There would be no changes to the height, form, bulk and scale and the building envelope of the approved development. There would be no change to the approved site coverage, unbuilt upon area and landscaped area within the subject site.

Furthermore, the proposal would not cause material amenity impacts on the adjoining properties in terms of privacy, overshadowing and view loss.

Council's Landscape Officer has raised no objection to the proposed tree removal subject to the modifications to various tree related conditions and approval of a replacement tree at a suitable location.

In summary, the proposal was found to be acceptable in the site circumstances and is recommended that the subject Section 4.55(2) application be approved with modifications to the relevant conditions.

How were community views taken into account in making the decision

The owners of adjoining properties and Willoughby Bay Precinct were notified of the proposed development between 18 May and 1 June 2018. The notification resulted in a total of one submission that was addressed in the delegated report.

The conditions attached to the original consent for Development Application No. 134/17 by endorsed date of 2 August 2017 still apply.

ADVISINGS

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