

Development Consent No. 263/16

Section 4.55 Application

Applicant's Name

Podia Pty Ltd

Land to which this applies

148-150 Holt Avenue, Cremorne

Lot No.: 1, 2, 3, 4, SP: 14338

Proposal

A Section 4.55 (2) Application to modify DA263/16 to allow the removal of trees, modify public domain works on Military Road and permit changes to certain windows openings within the building

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. **263/16** and registered in Council's records as Application No. **263/16/4** relating to the land described as **148-150 Holt Avenue, Cremorne**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 7 December 2016, has been determined in the following manner:

Modify Conditions A4, C13, C22, C35, D1, G11 and G15 as follows:

Development in Accordance with Plans

A4. The development being carried out in accordance with plans identified in Condition A1 of the consent and endorsed with Council's approval stamp, except as modified by the modifications shown in colour on:

Dwg No.	Revision	Date	Title	Drawn by	Received
DA-0003	C	19/04/17	Site and Roof Plan	PBD Architects	20/06/17
DA-1201	C	19/04/17	Holt Avenue East Elevation	PBD Architects	20/06/17
DA-1202	C	19/04/17	Military Road North Elevation	PBD Architects	20/06/17
DA-1103	C	19/04/17	Ground Floor Plan	PBD Architects	20/06/17

And except as modified by the modifications shown in colour on:

Dwg No.	Revision	Date	Title	Drawn by	Received
DA1101	C	31/07/17	Basement 2 Plan	Giles Tribe Architects	27/09/17
DA1102	C	31/07/17	Basement 1 Plan	Giles Tribe Architects	27/09/17
DA1103	D	-	Ground Floor Plan	Giles Tribe Architects	9/12/17
DA1104	D	-	First Floor Plan	Giles Tribe Architects	9/12/17
DA1105	D	-	Level 3 Plan	Giles Tribe Architects	9/12/17
DA1106	D	-	Roof Plan	Giles Tribe Architects	9/12/17
DA1107	D	-	Level 2 Plan	Giles Tribe Architects	9/12/17
DA1201	D	-	East Elevation	Giles Tribe Architects	9/12/17
DA1202	D	-	North Elevation	Giles Tribe Architects	9/12/17
DA1203	D	-	West Elevation	Giles Tribe Architects	9/12/17
DA1204	D	-	South Elevation	Giles Tribe Architects	9/12/17

As except as modified by the modifications shown in colour on:

Dwg No.	Revision	Date	Title	Drawn by	Received
DA1105	E	-	Level 3 Plan	Giles Tribe Architects	27 April 2018
DA1203	E	-	West Elevation	Giles Tribe Architects	27 April 2018
L/01	D	14 March 2018	Proposed Landscape Plan – Ground Floor	A Total Concept	27 April 2018

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

Required Infrastructure Works –Roads Act 1993

C13. Prior to issue of any Construction Certificate engineering design plans and specifications must be prepared by a qualified civil design engineer. The plans and specifications must be to a detail suitable for construction issue purposes and must provide detail and specification for the following infrastructure works to be completed as part of the development. The responsibility for accuracy of the design fully rests with the designing engineer. All responsibility on implementation and supervision of works specified on design plans fully rests on designing engineer or whoever is chosen to be applicant's engineering representative:

Road Works

- a) Construction of a fully new footpath from pavers is required across the entire site both frontages on Military Road and Holt Avenue. The footpath pavement must be placed on a single straight grade of 3.0% falling to the top of kerb, so that it is uniform without showing signs of dipping or rising particularly at entrances. The footpath pavement must be full width constructed of pavers, as specified in Public Domain Style Manual and Design Codes for 05 Village center area. A longitudinal section is required along the footpath property boundary at a scale of 1:50 extending 5m past the property boundary line.
- b) The footpath property boundary levels on both frontages on Military Road and Holt Avenue must match the existing levels and must not be altered unless agreed to by Council.
- c) The works must not start until confirmation of footpath boundary alignment levels from Council. Council has the authority to remove any unauthorized works at the cost of the property owner.

- d) The Certifying Authority must ensure that the internal property levels at boundary matches council's confirmed boundary levels.
- e) The redundant layback crossings on Holt Avenue must be reinstated as upright kerb gutter and pavers footpath.
- f) Full width road carriageway surface reconstruction in Cranbrook Lane.
- g) Construction of a new kerb and gutter is required across the entire site in Holt Avenue. A longitudinal section is required along the gutter line (existing and proposed levels), at a scale of 1:50 extending 5m past the property boundary line.
- h) The gutter levels and road shoulder levels on Holt Avenue must stay unchanged.
- i) Cross sections at a scale of 1:50 along the centre-line of each access point to the building must be provided and are to show the calculated clearance to the underside of any overhead structure. All the entry points are to comply with the Building Code of Australia (BCA), including disability requirements. The Council approved footpath levels must be accommodated at the building entry points.
- j) Construction of a fully new road shoulder (maximum grade 5% down towards new gutter) extending to 0.6 metres out from the gutter alignment and across the entire development site frontage in Holt Avenue.
- k) All inspection openings, utility services must be adjusted to match the proposed driveway levels and location.

Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

Certifying Authorities must not issue a Construction Certificate without the formal written approval of Council (as Roads Authority) under the Roads Act 1993.

The required plans and specifications are to be designed in accordance with North Sydney Council's current documents Infrastructure Specification for Road Works, Drainage and Miscellaneous Works and Performance Guide for Engineering Design and Construction. The drawings must detail existing utility services and trees affected by the works, erosion control requirements and traffic management requirements during the course of works. A detailed survey must be undertaken as required. Traffic management is to be certified on the drawings as being in accordance with the documents SAA HB81.1 – 1996 – Field Guide for Traffic Control at Works on Roads – Part 1 and RMS Traffic Control at Work Sites (1998). **Construction of the works must proceed only in accordance with any conditions attached to the Council Roads Act 1993 approval.**

Note: A minimum of 21 days will be required for Council to assess Roads Act submissions. Early submission is recommended to avoid any delays in obtaining a Construction Certificate. A fee to cover cost of assessment (set out in Council's adopted fees and charges) is payable and Council will withhold any consent and approved plans until full payment of the correct fees. Plans and specifications must be marked to the attention of Council's Development Engineers. In addition, a copy of this condition must be provided, together with a covering letter stating the full address of the property and the accompanying DA number.

(Reason: To ensure infrastructure works are designed and constructed to appropriate standards and requirements of the Roads Act 1993)

Protection of Trees

- C22. 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
3 x Casuarina sp.	146 Holt Avenue, Cremorne	Approximately 20 metres

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)

Amendments to the Landscape Plan

- C35. The 3 x *Elaeocarpus reticulatus* (Blueberry Ash) located in the north-west corner of the site on the Military Rd frontage are to be replaced with 3 x 100L (minimum) deciduous trees, such as *Pyrus ussuriensis* (Manchurian Pear) or similar, that have a minimum mature height of 8m.

An amended landscape plan 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 amended landscape plan and other plans and specifications submitted fully satisfy the requirements of this condition.

(Reason: To provide visual amenity to the site and to Military Road)

Roads and Maritime Services

- D1. The following RMS requirements must be met prior to the commencement of any works:

1. Roads and Maritime has previously resumed and dedicated a strip of land as road along the Military Road frontage of the subject property. Therefore, all buildings and structures other than standard pedestrian footpath awnings together with any improvements integral to the future use of the site are to be wholly within the freehold property unlimited in height or depth along the Military Road boundary.
2. The design and construction of the kerb and gutter on Military Road shall be in accordance Roads and Maritime requirements. Details of these requirements should be obtained from Roads and Maritime Services, Manager Developer Works, State Wide Delivery, Parramatta (telephone 9598 7798).

Detailed design plans of the proposed kerb and gutter are to be submitted to Roads and Maritime for approval prior to the issue of a Construction Certificate and commencement of any road works.

A plan checking fee (amount to be advised) and lodgement of a performance bond may be required from the applicant prior to the release of the approved road design plans by Roads and Maritime.

3. Roads and Maritime does not support plantation of any large trees (such as Eucalyptus tree) along Military Road boundary and the new trees to be planted should be low height trees which would not lift or have any impact on road pavements, kerb & gutter.
4. The developer is to submit design drawings and documents relating to the excavation of the site and support structures to Roads and Maritime for assessment, in accordance with Technical Direction GTD2012/001.
5. The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment by Roads and Maritime. The report and any enquiries should be forwarded to:

Project Engineer, External Works
Sydney Asset Management
Roads and Maritime Services
PO Box 973
PARRAMATTA CBD NSW 2124
Telephone: 8849 2114 Fax: 8849 2766

6. If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owner/s of the roadway is/are given at least seven (7) days' notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.
7. Detailed design plans and hydraulic calculations of any changes to the Roads and Maritime's stormwater drainage system are to be submitted to Roads and Maritime for approval, prior to the commencement of any works. Details should be forwarded to:

The Sydney Asset Management
Roads and Maritime Services
PO Box 973
PARRAMATTA CBD NSW 2124

A plan checking fee will be payable and a performance bond may be required before Roads and Maritime approval is issued. With regard to the Civil Works requirement please contact the Roads and Maritime Project Engineer, External Works Ph: 8849 2114 or Fax: 88492766

8. The developer shall be responsible for all public utility adjustment/relocation works, necessitated by the above work and as required by the various public utility authorities and/or their agents.
9. A construction zone will not be permitted on Military Road.
10. All works/regulatory signposting associated with the proposed development are to be at no cost to Roads and Maritime.

(Reason: To ensure compliance with the requirements of the RMS)

Landscaping

- G11. The landscaping shown in the approved landscape plan numbered L/01 Revision D dated 14 March 2018 prepared by A Total Concept Landscape Architects and received by Council on 27 April 2018, **with any amendments required by Condition C35**, must be completed prior to the issue of any Occupation Certificate.

(Reason: To ensure compliance)

Delete Condition C21 'Tree Protection Measures to be shown on Construction Drawings'

Add Conditions C38 and G17 as follows:

Tree Bond for Public Trees

- C38. Prior to the issue of any construction certificate, security in the sum of \$2,000.00 must be provided to Council for the protection of trees in public places, including the making good of any damage caused to such trees. The security is to be provided in accordance with the Schedule below.

The security must be provided by way of:

- a deposit with the Council; or
- a guarantee satisfactory to Council (such as a satisfactory bank guarantee).

The security will be refundable following the expiration of 6 months from the issue of any final Occupation Certificate but only upon inspection and release by Council's Landscape Development Officer.

If any tree is removed or damaged Council may deduct from this security the reasonable cost of replacement with a tree of the same species and to a similar stage of growth it would have attained at the completion of the work.

In the case of any tree, which cannot be replaced with a similar specimen, the security for that tree will be forfeited to Council and used to provide replacement street plantings.

SCHEDULE

Gordonia Tree growing on Holt Avenue in front of the subject site

(Reason: Protection of existing environment public infrastructure, community assets and significant trees)

Unpaved Verge

G17. The unpaved verge area must be constructed/reconstructed with an appropriate species of grass prior to completion of the works at no cost to Council

(Reason: To ensure that community assets are presented in accordance with reasonable community expectations)

Reason for approval

The proposed modification has been assessed against Section 4.55(2) of the Environmental Planning and Assessment Act 1979, and found to be generally acceptable in the site circumstances, with the exception of the proposed re-wording of the conditions relating to the public infrastructure works on Military Road, as the B-Line have not confirmed in writing to Council that they will be undertaking these works, therefore the onus rests with the developer to undertake these works.

How were community views taken into account in making the decision

The S4.55 application was notified to the Harrison Precinct Committee and surrounding properties between 11 May to 25 May 2018. Two (2) submissions were received against the application. The issues raised in the submissions are summarised within the delegated report and addressed with conditions, where appropriate.

The conditions attached to the original consent for Development Application No. 263/16 by endorsed date of 7 December 2016 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)