

Original signed by: Geoff Mossemenear Dated: 8/10/2018

## Development Consent No. 316/13

### Section 4.55 Application

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#### Applicant's Name

Ming Tian Real Property Pty Ltd  
3/26 James Ruse Drive  
GRANVILLE NSW 2142

#### Land to which this applies

139-147 West Street, Crows Nest  
Lot No. A, DP 412803

#### Proposal

Modification to consent, to amend plans for the approved development comprising demolition of existing buildings and construction of a 4 storey apartment building consisting 50 apartments and basement parking for 68 vehicles.

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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. **316/13** and registered in Council's records as Application No. **316/13/7** relating to the land described as **139-147 West Street, Crows Nest**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 2 April 2014, has been determined in the following manner:

**To delete conditions C22 and C33 and add the following conditions:**

#### 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:
- 2 x Melaleucas sp. (paperbark) growing in the north-western corner of the property.

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**

C23. The following tree(s) are approved for removal in accordance with the development consent:

- The mature Brush Box growing to the north of the approved driveway.
- All trees within property other than those protected in Condition C22.
- **3 x Melaleuca quinquenervia trees (Tree 2, 3 and 4) to the north west of the property.**

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)

**Required Tree Planting**

G13. Trees in accordance with the schedule hereunder shall be planted on the property prior to the issue of the final Occupation Certificate required on completion of works:

Schedule Tree Species	Location	Pot Size
3 x Melaleuca quinquenervia (Broadleaved Paperbark), or Corymbia ficifolia 'Summer Beauty' (Summer Beauty Gum) or Hymenosporum flavum (Native Frangipani)	3 trees in lieu of tree 2, 3 and 4 to the north west of the property	100 litre

The installation of such trees, their current health and their prospects for future survival shall be certified upon completion by an appropriately qualified horticulturalist.

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

### **Reason for approval**

The proposed modifications are considered to be generally consistent with the originally approved development application and s.4.55 of the EP & A Act 1979. Furthermore, the modifications do not result in any material amenity impact to adjoining properties or the surrounding area. The proposed modifications are consistent with the reasons for the granted of development consent to the originally approved development and is considered to be acceptable.

Having regard to the provisions of section 4.55 & 4.15(1) of the Environmental Planning and Assessment Act 1979, the proposed development as modified is substantially the same development as originally consented to. The application is therefore recommended for **approval**.

### **How were community views taken into account in making the decision**

The application did not require notification under Council's policy.

The conditions attached to the original consent for Development Application No. 316/13 by endorsed date of 2 April 2014 still apply.

### **ADVISINGS**

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

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DATE

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Signature on behalf of consent authority  
GEOFF MOSSEMENEAR  
TEAM LEADER (ASSESSMENTS)