

Development Consent No. 177/18

Section 4.55 Application

Applicant's Name

Christopher Harrhy and Jennette R Harrhy

Land to which this applies

59A Hayberry Street, Crows Nest
Lot No.: 152, DP: 629361

Proposal

Modifications to Condition C16 and C9

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. **177/18** and registered in Council's records as Application No. **177/18/2** relating to the land described as **59A Hayberry Street, Crows**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 6 September 2018, has been determined in the following manner:

1. To amend Condition No. C16 of the consent as follows:

Carport and roller door widths are to be reduced

C16. The carport is to be reduced in width to have a maximum width of 3.0 metres and a clear entry of not more than 3.0 metres. The rear fence and gate may be extended to accommodate the reduction of the carport.

The Certifying Authority must ensure that the building plans and specifications submitted by the Applicant, referenced and accompanying the issued Construction Certificate, fully satisfy the above.

(Reason: To reduce the size and, in turn, the impact of the built form on the laneway)

2. *To amend Condition No. C9 of the consent as follows:*

Obtain Driveway Crossing Permit under S.138 Roads Act 1993

C9. A driveway crossing and roads infrastructure works permit to suit the approved off-street parking facilities must be granted by the Council prior to the issue of any Construction Certificate. In order to obtain a permit under S.138 of the Roads Act 1993, an application must be made to Council on the 'Vehicular Access Application' form with payment of the adopted assessment/inspection fees. Council will require civil design construction drawings and certification from the applicant's Civil Engineer to verify design details and enable issue of the permit. The requirements of the permit must be complied with at all times.

The civil design drawings must include the following at a minimum

- a) the vehicular access way must comply with AS 2890.1 and Council's current Vehicular Access Application Guidelines and Specification (gutter bridges not permitted) to ensure that a B85 vehicle will not scrape/strike the surface of the carriageway, layback, vehicular crossing or parking floor;
- b) the maximum width of the vehicular layback must be **4.0 metres** (including the wings);
- c) the back of the layback shall be set 100mm above the existing gutter levels;
- d) the carport floor must be placed on a single straight grade falling to the back of the layback;
- e) the works will require 600mm wide reconstruction of the asphalt carriageway adjacent to all new kerb/gutter works;
- f) the cross fall of the road shoulder (falling to the gutter) must not exceed 5.5%. The cross fall of the road shoulder is measured for a distance of 1200 mm from the gutter alignment.
- g) all inspection openings, utility services must be adjusted to match the proposed driveway levels;
- h) sections along centre-line and extremities are required at a scale of 1:50 to be taken from the centre-line of the roadway through to the parking area itself and must include all changes of grade and levels both existing and proposed;
- i) a longitudinal section along the gutter line at a scale of 1:50 showing how it is intended to blend the vehicular crossing with the existing neighbouring levels;
- j) the sections must show the calculated clearance to the underside of any overhead structure;

The permit must be granted by Council prior to the issue of any Construction Certificate.

All driveway and infrastructure works on the road reserve must be undertaken in accordance with the terms of the permit issued by Council. Inspections by Council will be required as specified. The Certifying Authority issuing the Construction Certificate must ensure that the permit issued by Council is obtained and referenced on and accompanies the Construction Certificate issued.

(Reason: To facilitate appropriate vehicular access to private sites, without disruption to pedestrian and vehicular traffic)

Reason for approval

The proposal involves the modification of a consent to amend condition no. C16 and elsewhere relating to the specified width of the roller shutter door. Condition C9 also relates to vehicular access.

The development application assessment report included specific reasons with respect to sections, objectives and provisions contained in the DCP for limiting the width of the proposed roller door and carport structure. The proposed development exceeded the maximum permitted width of parking areas and Council's assessment report recommended that conditions limit the roller shutter door and carport to 3m wide.

Council's Assessment Officer and Development Engineer have considered the request to delete Condition C16 but consider that a 3-metre-wide opening allows sufficient access for a vehicle into the site. Accordingly, it is recommended that the condition be amended to explicitly identify that the proposed carport be reduced in width to comply with the requirements of Council's DCP.

Council's Development Engineer has confirmed that the maximum width of the vehicular layback should be 4m. In these circumstances it is recommended that condition C9 be amended with this new value.

How were community views taken into account in making the decision

In accordance with the provisions of Section 4.4.9 of NSDCP 2013, the subject application was not required to be notified and, therefore, no submissions have been received.

The conditions attached to the original consent for Development Application No. 177/18 by endorsed date of 6 September 2018 still apply.

ADVISINGS

- (a) Council is always prepared to discuss its decisions and in this regard, please do not hesitate to contact **Michael Doyle**. 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
DAVID HOY
TEAM LEADER (ASSESSMENTS)