

Original signed by **Geoff Mossemenear** on **1/7/2020**

Katherine Henderson
C/- Contemporary Architecture
203/10-12 Clarke Street
CROWS NEST NSW 2065

D158/18
GM (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 158/18/2 – APPROVAL**

Development Consent Number: 158/18/2

Land to which this applies: 74 Ellalong Road, Cremorne
Lot No.: 7, DP: 10291

Applicant: Katherine Henderson

Proposal: To modify consent for alterations and additions to dwelling including the construction of a new first floor, double carport and swimming pool.

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. **158/18** and registered in Council's records as Application No. **158/18/2** relating to the land described as **74 Ellalong Road, Cremorne**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 27 August 2020, has been determined in the following manner: -

- *To delete condition D5 and insert the following new conditions:*

Development in Accordance with Plans (S96 Amendments)

A5. 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:

Plan No.	Issue	Title	Drawn by	Received
4.55-01	A	Site Plan	Contemporary Architecture	20 May 2020
4.55-02	A	Ground Floor	Contemporary Architecture	20 May 2020
4.55-03	A	Level 1	Contemporary Architecture	20 May 2020
4.55-04	A	Roof Plan	Contemporary Architecture	20 May 2020
4.55-05	A	Elevation 1 & 2	Contemporary Architecture	20 May 2020

4.55-06	A	Elevation 3 & 4	Contemporary Architecture	20 May 2020
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except as amended by the following conditions and this consent.

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

Privacy

C19. The following privacy device shall be provided:

- a) Fixed obscure gazing to a minimum height of 1800mm above floor level to window numbered W17A (facing the SW side boundary) or W17A being deleted.

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.

(Reason: To ensure an adequate level of privacy is provided to adjoining property located at 72 Ellalong Road)

Tree removal and replacement plantings

E37. The *Cinnamomum camphora* (18x10m) located in the northern corner of the site, may be removed subject to the following conditions:

- Removal of the stump shall be carried out via hand excavation, under the supervision of an (AQ5) qualified arborist. No roots belonging to the *Liquidambar styraciflua* planted on the adjacent boundary of 76 Ellalong Road greater than 40mm in diameter, shall be cut or damaged in any way.
- All root material from the *Cinnamomum camphora* shall be removed from the soil prior to replacement planting. The void left by the removed root mass shall be filled with an open friable premium garden mix, with the suitable addition of nitrogenous fertiliser to combat any nitrogen drawdown caused by remnants of sawdust, grindings or woody material retained.
- 4 x 100l (min) *Xcupressus Leylandii* 'Leightons Green' shall be planted in the northern corner of the site, along the fence line, in line with the existing planting.
- The hedge shown to be planted along the fence line on the north eastern boundary adjacent to the pool in the determined plans, shall be planted with *Xcupressus Leylandii* 'Leightons Green' (75l) planted at minimum 900mm centres, and shall extend in a south easterly direction for at least the width of the pool.
- An additional *Lagerstroemia indica* (75l) shall be planted within the rear setback of 74 Ellalong Road.

(Reason: To ensure suitable replantings to tree to be removed)

Replacement planting maintenance

G11. A report confirming the satisfactory health, vigour, and likelihood of ongoing longevity of all of the replacement plantings required under condition E37 shall be provided by a qualified horticulturalist at a date no earlier than 6 months after their planting, prior to any issue of a Final Occupation Certificate.

(Reason: To ensure ongoing longevity of the replacement plantings)

Reason for approval:

The proposed modifications are considered to be 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 subject to the privacy concern being resolved by condition.

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 approved.

How community views were taken into account:

Three submissions were received. One in support, one against the tree removal and one against one of the proposed corner windows. The submissions are addressed in the assessment with the recommendation of Council's Landscape Officer and further screening required on the corner window that impacts on the neighbour's property. Window numbered W17A (facing the SW side boundary) should be deleted or have obscure glazing to a height of 1800mm above floor level to resolve the concern raised. This window does not add to the outlook or solar access as the other proposed windows would.

The conditions attached to the original consent for Development Application No. 158/18 by endorsed date of 27 August 2020 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.

- (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 Certifier 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.

Endorsed for and on behalf of North Sydney Council

DATE

Signature on behalf of consent authority
**GEOFF MOSSEMENEAR
EXECUTIVE PLANNER**