

Original signed by: Robyn Pearson Dated: 20/7/2020

AK Planning
Attention: Annelise Kaalsen
1A Edward Street
WILLOUGHBY NSW 2068

D240/19
MS3(CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 240/19/2 – APPROVAL**

Development Consent Number: 240/19/2

Land to which this applies: 68 Ellalong Road, Cremorne
Lot No.: 10, DP: 10291

Applicant: AK Planning

Proposal: Modification – changes to stormwater disposal,
landscaping and rear vergola

Date of Determination (s4.55): 17 July 2020

Consent to operate from: 17 July 2020

Consent will lapse on: 17 July 2025

Period of Consent

Subject to Section 4.20 of the Act, this consent becomes effective and operates from the date listed above. The consent lapses five years after the date of consent in accordance with Section 4.53 of the Act and cannot be extended. To activate this consent, works must physically commence onsite by 17 July 2025.

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. 240/19 and registered in Council's records as Application No. **40/19/2** relating to the land described as **68 Ellalong Road, Cremorne**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 30 January 2020, has been determined in the following manner: -

1. Deletion of Deferred Commencement Conditions AA1 and AA2

As the deferred Commencement Condition no longer applies, the consent is made operational from 17 July 2020, being the date of determination of this section 4.55 (DA240/19/2).

2. Condition A1 is to be amended as follows:

Development in Accordance with Plans

A1 The development must be carried out in accordance with the following drawings and documentation and endorsed with Council's approval stamp, except where amended by the following conditions of this consent.

Plan No.	Issue	Title	Dated	Drawn by	Received
	P-1	Proposed Site Plan	Undated	Your Beautiful Home	12/05/2020
DA07	P-5 B	Ground Floor Demolition Plan	06/05/2020		12/05/2020
DA08	P-6 B	First Floor Demolition Plan	06/05/2020		12/05/2020
DA09	P-7 B	Proposed Ground Floor Plan	06/05/2020		12/05/2020
DA10	P-8 B	Proposed First Floor Plan	06/05/2020		12/05/2020
DA11	E-05 B E-06 B	North East South West	06/05/2020		12/05/2020
DA12	E-07 B E-08 B	North West South East	06/05/2020		12/05/2020
DA13	S-01 B	Section	06/05/2020		12/05/2020
DA14	P-09 B	Proposed Pool	06/05/2020		12/05/2020
DA15	P-10 B	Pool Detail	06/05/2020		12/05/2020
DA16	P-11 B	Pool Site Details	06/05/2020		12/05/2020
DA17	P-12 B	Roof Plan	06/05/2020		12/05/2020
L-01	F	Landscape Plan	20/04/2020		Space Landscape Design

(Note: The final drawing numbers and associated details in this condition are the subject of the Section 4.55 modification lodged to resolve the relevant deferred commencement conditions)

3. Insert the following new conditions:

Amended Plans

C22. The following amendments are to be incorporated into the plans:

- a) The vergola is to have a maximum width of 4.45m, measured from its south western side with the depth remaining as 3.5m, measured perpendicular to the rear elevation of the building.
- b) The pool feature wall along the north eastern side of the swimming pool must not encroach the 4.5m radial setback to the *Meleluca quinquenervia* located along the north eastern boundary of the subject site.

- c) The timber deck adjacent to the swimming pool must be established above existing ground level within the 4.5m radial setback to the *Melaleuca quinquenervia* located along the north eastern boundary of the subject site.

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 limit the site coverage of the development in accordance with the reasons for approval)

Amendments to Landscape Plan

C23. The landscape plan must be amended as follows to provide an appropriate landscaped setting:

- *The Elaeocarpus reticulatus pot size shall be increased from 25l to 45l*
- *The Backhousia citriodora pot size shall be increased from 45l to 75l*
- *The Backhousia citriodora are to be planted a minimum of 600mm from the southwestern boundary.*

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 ensure residential amenity)

Works with TPZ of trees to be retained

E22. All landscaping works within the TPZ of any neighbouring tree (particularly the tree located on the neighbouring property (39 Ryries Parade) adjacent to the northern corner of 68 Ellalong, and the Melaleuca on the boundary of 70 Ellalong Street, shall be carried out by hand & no roots greater than 40mm shall be cut.

(Reason: To ensure the health and stability of any neighbouring tree is not adversely impacted)

Landscaping

G9. The landscaping shown in the approved landscape plan L-01 prepared by Space Landscape Design dated 20/04/200 and received by Council on 12 May 2020 must be completed prior to the issue of any Occupation Certificate.

(Reason: To ensure that the development in undertaken in accordance with the Consent)

4. The following conditions are to be amended:

Protection of Trees

C12. The following tree(s) are required to be protected and retained as part of the development consent in accordance with A 4970-2009 – Protection of trees in development sites:

Tree	Location	Height
1 x <i>Jacaranda mimosifolia</i>	Council verge between 68 & 66 Ellalong Road	(4x5m–lopped Under wires)
1 x <i>Jacaranda mimosifolia</i>	Council verge outside 68 Ellalong Rd	(5m x5m)
<i>Camellia sasanquas</i> (hedge)	Front setback of 66 Ellalong Road	(3m)
1 <i>Archontophoenix cunninghamiana</i>	Front setback of 68 Ellalong Road	(9m)
1 x <i>Lagerstroemia indica</i>	Northeastern boundary of 66 Ellalong Road adjacent to the rear building line of 68 Ellalong Road	(6m x4m)
1 x <i>Melaleuca quinquenervia</i>	Northeastern boundary of 68 Ellalong Road (within rear setback)	(12m x 12m)
1 x <i>Glochidion ferdinandii</i>	Southeastern corner of 39 Ryries Parade	(10m x 8)

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

C13. The following trees are approved for removal in accordance with the development consent:

Trees that are acceptable to remove	Location	Reason
2 x <i>Camellia sp.</i> (Pruned to 4m)	Northwestern boundary 68 Ellalong Road within rear setback	Conflicts with development
1 x <i>Camellia sp.</i> (5m x 3m)	Northwestern boundary 68 Ellalong Road within rear setback	Conflicts with development
1 x <i>Nerium oleander</i>	Rear setback of 68 Ellalong Road	Low value
1 x <i>Plumeria acutifolia</i> (6 x 7m)	Adjacent to rear deck of 68 Ellalong Road	Conflicts with development
3x <i>Camellia sp.</i> ,	Front setback of 68 Ellalong Road	To be replaced
1x <i>Lagerstroemia indica</i> (5m x 5,)	Front setback of 68 Ellalong Road	To be replaced
1x <i>Rondeletia amoena</i> (4m)	Front setback of 68 Ellalong Road	To be replaced
1 x <i>Magnolia grandiflora cv.</i> (9m x 4m)	Rear setback of 68 Ellalong Road	To be replaced
1 x <i>Magnolia grandiflora cv.</i> (8m x 3m)	Rear setback of 68 Ellalong Road	To be replaced
3 x <i>Elaeocarpus eumundii</i> (Up to 8m x 5m)	Rear setback of 68 Ellalong Road	To be replaced
Hedge of <i>Syzygium sp.</i> and <i>Murraya paniculata</i> (mixed) (pruned to 5m)	Rear setback of 68 Ellalong Road	To be replaced

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)

Certification of Tree Condition

G6. Prior to the issue of an Occupation Certificate, a report prepared by an appropriately qualified person (being an arborist or the like) must be submitted to the Certifying Authority, describing the health of the tree(s) specifically nominated below:

Tree	Location	Height
1x <i>Jacaranda mimosifolia</i>	Council verge between 68 & 66 Ellalong Road	(4x5m–lopped Under wires)
1x <i>Jacaranda mimosifolia</i>	Council verge outside 68 Ellalong Rd	(5m x5m)
<i>Camellia sasanquas</i> (hedge)	Front setback of 66 Ellalong Road	(3m)
1x <i>Archontophoenix cunninghamiana</i>	Front setback of 68 Ellalong Road	(9m)
1x <i>Lagerstroemia indica</i>	Northeastern boundary of 66 Ellalong Road adjacent to the rear building line of 68 Ellalong Road	(6m x4m)
T1 <i>Melaleuca quinquenervia</i>	Northeastern boundary of 68 Ellalong Road (rear setback)	(12m x 12m)
1x <i>Glochidion ferdinandii</i>	Southeastern corner of 39 Ryries Parade	(10m x 8)

The report must detail the condition and health of the nominated tree(s) upon completion of the works, and shall certify that the tree(s) has/have not been significantly damaged during the works on the site, and has/have reasonable prospects for survival.

(Reason: To ensure compliance with the terms of this consent)

5. The following conditions are to be deleted:

C7 No External Service Ducts

G7 Additional Landscaping – North Eastern Side Swimming Pool Setback Area

Reason for approval:

The development as proposed to be modified is considered substantially the same development and has regard to the reason for approval of the original application. The modification has been assessed against the matters for consideration as outlined in section 4.15(1) of the Act which have been satisfied. The proposed development is permissible, meets the development standards and relevant provisions of NSLEP 2013 and is generally in accordance with the objectives of the NSDCP 2013.

The proposed modifications are minor in nature and seek to resolve the issues reflected in the conditions of consent imposed. The revised landscape plan submitted provides a comprehensive approach to the sites landscaping and includes adequate replacement landscaping to justify the removal of more of the existing landscaping on the site.

Notification of the modification resulted in two submission regarding stormwater disposal and landscaping. The issues raised in the submissions have been considered, however the potential impacts identified are not considered unreasonable.

The proposed modification is considered acceptable and is recommended for approved. The modifications also resolve the deferred commencement conditions and therefore the consent is to be made operative from the date of determination.

How community views were taken into account:

The application to modify the development consent was notified in accordance with Council's Community Engagement Policy. The issues raised in the submissions have been considered, and further advice sought as required, however the potential impacts identified are not considered unreasonable.

The conditions attached to the original consent for Development Application No. 240/19 by endorsed date of 30 January 2020 still apply.

ADVISINGS

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