

Annabel Johnson
C/- Corben Architects
PO Box 1021
NEUTRAL BAY NSW 2089

D231/19
DWH (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 231/19/2 – APPROVAL**

Development Consent Number: 231/19/2

Land to which this applies: 18 Queens Avenue, McMahons Point
Lot No.: 1, DP: 936013

Applicant: Annabel Johnson

Proposal: To modify development consent No. 231/19 to modify condition C3(a).

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. **231/19** and registered in Council's records as Application No. **231/19/2** relating to the land described as **18 Queens Avenue, McMahons Point**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 11 February 2020, has been determined in the following manner: -

1. To amend condition C3(a) of the consent so as to read as follows:

Amendments to the Approved Plans

C3. The approved plans, including the landscape plan, must be amended as follows:

- (a) **Any sewer encasement required by Sydney Water to be undertaken under joint monitoring and supervision by Consulting Arboriculturist (“the project arboriculturist”) and Council’s Tree Management Officer to ensure the on-going health and viability of tree T4;**
- (b) The timber stairs between the pool and the lower rear yard shall be located and constructed so that no bush rock is destroyed;
- (c) The western waterline of the pool shall be reduced by 1m, and the southern waterline reduced by 500mm, and the pool area (including coping and balance trough) reduced in turn;

- (d) The level of the proposed lawn area in the south western corner of the site shall not change more than 100mm;
- (e) A circular/curved garden bed around the base of T4 *Corymbia maculata* (20x15m) shall be created and planted with native grasses;
- (f) The pool overflow tank shall be connected to the sewer;
- (g) The dispersion trench to the west of the pool shall be relocated to the eastern end of the proposed lower lawn, below the proposed stone seat, and extending below the timber stairs, and shall comprise gabion construction, as described in
 - (i) the letter of response to Council prepared by Corben Architects dated 28/11/19 and received by Council on 02/12/2019,
 - (ii) the Stormwater Engineer's Email prepared by WaterPlan dated 29/11/2019 received by Council on 29/11/2019, an
 - (iii) The Arborist's Letter prepared by Michael Shaw dated 06/12/2019 and received by Council on 06/12/2019; and
- (h) The proposed Indian Hawthorne (*Raphiolepis sp.*) must be deleted and replaced with locally endemic vegetation.
- (i) The bush rock is be retained and protected during construction. The dispersion trench, stone seat, retaining walls, fencing, fill and other works must be designed to accommodate the bush rock;

Amended plans, including a 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 the encroachment into the tree protection zone (TPZ) of T4 will not harm its stability and ongoing viability and will not adversely affect the adjoining bushland)

The proposal involves the modification of a consent to permit the deletion of Condition No. C3(a) from the consent relating to a requirement to prevent the use of concrete encasement for protection of trees and a Sydney Water Sewer line.

Reason for approval:

In respect of the requirements of Condition No. C3(a), for the reasons expressed above, Council is satisfied that the requirements of the condition are overly prescriptive and therefore may be considered to have been applied in error.

Accordingly, it is recommended that the condition be amended to reflect appropriate construction methods to be employed under the supervision of an appropriately qualified consulting arborist.

How community views were taken into account:

In accordance with the provisions of Section 3.4.2 of Council's Community Participation Plan, the subject application was not required to be notified.

The conditions attached to the original consent for Development Application No. 231/19 by endorsed date of 11 February 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
DAVID HOY
TEAM LEADER ASSESSMENTS