

Peter Princi Architects  
PO Box 615  
FRENCHS FOREST NSW 1640

D226/19  
HS1 (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 MODIFICATION - REFUSAL**

---

**Development Number:** 226/19/2

---

**Land to which this applies:** 62-64 Hayberry Street, Crows Nest  
Lot No.: 421, DP: 1217169

---

**Applicant:** Peter Princi Architects

---

**Proposal:** Modification application to delete Condition C2 from  
DA226/19 for the construction of a double garage.

---

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. **226/19** and registered in Council's records as Application No. **226/19/2** relating to the land described as **62-64 Hayberry Street, Crows Nest**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 12 March 2020, has been refused.

**Reason for refusal:**

**1. Non-compliance with Section 4.55(1A)(b) of the EP&A Act 1979**

With regards to Section 4.55(1A) of the EP&A Act 1979, the proposal does not satisfy subclause (b), as it is not substantially the same development in comparison to the original development application being DA226/19. The proposed modification results in a number of non-compliances with the North Sydney Development Control Plan 2013.

***Particulars:***

- a) Council approved the development application subject to Condition C2.
- b) The proposed double space garage for both sites would result in two double car space garages fronting Hayberry Lane in a single built form. This will result in non-compliances with Council's site coverage and car parking controls outlined in the NSDCP 2013. The substantial non-compliances with the NSDCP 2013 would result in a site coverage that is uncharacteristic for the Hayberry Street properties.

**2. Site Coverage Non-compliance**

The proposal will result in an increase in site coverage which would result in non-compliant site cover. When compared to properties along Hayberry Street, the proposal will be inconsistent with the desired character site coverage for properties along Hayberry Street.

***Particulars:***

- a) The proposal would result in an additional 8% site coverage for both sites, resulting in a non-compliance of 13% with the site coverage control of 50% specified in Provision 1 of Section 1.5.5 of the NSDCP 2013.

**3. Car Parking Non-compliance**

The proposal would result in a non-compliance with Provision 14, Provision 16 and Provision 17 of Section 1.5.4 of the NSDCP 2013. The proposed modifications would also result in non-compliance with Provision 6 of Section 1.4.4 of the NSDCP 2013. The proposed double space garage will be span 12.19m across the laneway from boundary to boundary of each site.

- a) The proposal comprises the hard and soft built upon area. Both sites will result in a site coverage being 13% greater than what is specified by Provision 14 of Section 1.5.4.
- b) The proposed openings will result in the width of both garage structures being in 5.4m, which is in excess of the minimum 2.5m specified by Provision 16 of Section 1.5.4.
- c) The proposed door openings for both double car space garages are 5.4m and is non-compliant with the 5.5m specified by Provision 17 of Section 1.5.4.
- d) The proposed double car space garage will result in car accommodation being the full width of both sites. The proposal is therefore greater than 50% of laneway frontage and non-compliant with Provision 6 of Section 1.5.4.

**4. Insufficient Information provided**

No statement of modification was provided to Council for assessment.

***Particulars:***

- a) No formal description of the proposal was provided to Council for assessment.
- b) No written justification was provided to Council on the non-compliances with Council's controls.

**5. Impact to amenity of adjoining properties**

The proposed double car space garage will result in an increase in site coverage, which will adversely affect the amenity of adjoining properties.

***Particulars:***

- a) the double car garage would have a nil setback to the adjoining property's side boundaries and would permanently prevent the planting of trees and vegetation between the carport and the side boundary and as approved in the consent for DA226/19

**How community views were taken into account:**

The application was notified to adjoining properties between 18 September and 2 October 2020 in accordance with the North Sydney Community Participation Plan 2019. The application resulted in nil (0) submissions.

Any variation to the Development Consent can only be made with the written approval of the Council. Major variations will require a new or amended Development Consent.

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.

Section 4.55 of the Act confers on an applicant who is dissatisfied with the determination of a consent authority a right of appeal to the Land and Environment Court pursuant to Section 8.7 of the Environmental Planning and Assessment Act, 1979.

**Endorsed for and on behalf of North Sydney Council**

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Signature on behalf of consent authority  
LARA HUCKSTEPP  
EXECUTIVE PLANNER