

David Doust  
1 Malvern Crescent  
STRATHFIELD NSW 2135

D31/14  
RT (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 MODIFICATION 31/14/2 – APPROVAL**

**Development Consent Number:** 31/14/2

**Land to which this applies:** 45 Park Avenue, Cremorne  
Lot No.: 18, DP: 18694

**Applicant:** David Doust

**Proposal:** Section 4.55(2) modifications to DA31/14 including retrospective consent for changes to the roof design and location of skylights and the construction of a new timber deck at the rear of the dwelling.

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. **31/14** and registered in Council's records as Application No. **31/14/2** relating to the land described as **45 Park Avenue, Cremorne**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 11 July 2014, has been determined in the following manner: -

- To modify the development consent (D31/14) and modify conditions A1, C4, and G6 read as follows:*

**Development in Accordance with Plans (S4.55 Amendments)**

- A1. The development being carried out in accordance with drawings numbered 08328 01 and 08328 03, dated 28.10.13, and received by Council on 12 February 2014 and endorsed with Council's approval stamp, except as modified by highlighting on the following drawings for D31/14/2:

<b>Plan No.</b>	<b>Description</b>	<b>Prepared by</b>	<b>Dated</b>
RV001 Rev 1	Elevations	Dado Designs	4/11/20
RV002	Landscape plan	Dado Designs	17/8/20
RV003	Roof plan and proposed rear deck	Dado Designs	undated

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

### **Revised Landscape Plan**

- C4. The applicant shall submit a revised landscape plan for the subject site, based on drawing numbered RV002, dated 17/8/20, prepared by Dado Designs, identifying the species of plants to be planted, their numbers and their mature heights including the following amendments:

The paved area within the front garden south of the main dwelling entrance shall be replaced by soft landscaping (turf) and as marked in red on the approved plans to reduce unbuilt upon area within the property and to ensure landscape quality of the subject site.

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 requirement of this condition.

(Reason: To reduce unbuilt upon area and to ensure landscape quality of the subject site)

### **Compliance with Certain conditions**

- G6. Prior to the issue of any Occupation Certificate, **Conditions A4, C1, C2, C3, C4, C21 and C22** must be certified as having been implemented on site and complied with.

(Reason: To ensure the development is completed in accordance with the requirements of this consent)

2. *To insert a new conditions A4, C21, C22, C23, C24, D3, D4 and G7 to read as follows:*

### **Terms of Consent (D31/14/2)**

- A4. Approval is granted for the following modifications only:

- a) The as-built roof and gutter over the ground floor kitchen. The modified gutter line will have a 100mm setback from the southern property boundary;
- b) The as-built roof form above the attic storage area on the main dwelling with the installation of a skylight on the southern roof plane;
- c) The construction of a new ground floor timber deck at the rear of the approved rear addition;
- d) Modifications to the landscape plan for various changes to planting including the removal of two (2) existing trees within the rear yard subject to the requirements of modified Condition C4 in this consent; and
- e) Modifications to the front fencing to Park Avenue.

No approval is given or implied in this consent for any other works, both internal and external, within the subject property.

(Reason: To ensure the terms of the consent are clear)

**Deletion of Panel Lift Door to Carport**

C21. The proposed panel lift door to the carport is not approved and form no part of this consent.

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 maintain the character of the conservation area.)

**Brick Garden Edging**

C22. The exact locations and/or the alignment of the proposed brick garden edging shall be revised subject to the locations of existing roots of retained and protected trees within the rear yard. No roots greater than 30mm shall be cut without prior notification and consultation with Council’s Landscape Officer.

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 minimise impacts on existing roots of retained/protected trees within the subject site)

**Protection of Trees**

C23. The existing trees to be retained within the rear yard are required to be protected and retained as part of the development consent in accordance with AS 4970-2009 – Protection of trees on development sites.

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**

C24. The following tree(s) are approved for removal in accordance with the development consent:

<b>Tree</b>	<b>Location</b>
<i>Glochidion ferdinandi</i>	Near the north-eastern corner of the rear yard of the subject site
Mulberry tree	Near the south-eastern corner of the rear yard of the subject site

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)

### **Protection of Trees**

D3. All trees that are specifically nominated to be retained by notation on plans or by condition as a requirement of this consent must be maintained and protected during demolition, excavation and construction on the site in accordance with AS4970-2009 (Protection of trees on development sites). A report containing recommendations, and methods of tree protection prepared by an appropriately qualified person must be provided to the Certifying Authority for approval by an appropriately qualified person prior to commencement of any works on the site. Any recommendations must be undertaken for the duration of works on the site.

(Reason: To ensure compliance with the requirement to retain significant planting on the site)

### **Temporary Fences and Tree Protection**

D4. All protected trees on-site that are specifically nominated to be retained by notation on plans or by condition as a requirement of this consent must be tagged with luminous tape or the like for purposes of identification prior to demolition, excavation or construction works and must remain so for the duration of works on the site. No materials or builder's waste are to be stored in the vicinity of the nominated tree/trees at any time.

Appropriate fencing or barricades in accordance with AS4970-2009 (Protection of trees on development sites), not less than the distance shown in the schedule hereunder, must be installed to the satisfaction of the Certifying Authority prior to demolition or commencement of any works and must be maintained for the duration of the works.

(Reason: To protect the trees to be retained on the site during construction works)

### **Landscaping**

G7. The landscaping for the entire property as required in **Condition C4** of this consent must be completed prior to the issue of any Occupation Certificate.

(Reason: To ensure compliance)

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### **Reason for approval:**

The proposed modifications are considered to be generally consistent with the originally approved development application and s.4.55 of the EP & A Act 1979.

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The proposed modifications would result in a development which is substantially the same development as originally approved.

The proposed modifications would not result in changes in terms of the overall height, bulk/scale and the overall form of the approved development and would maintain compliance with the DCP site coverage, unbuilt upon area and landscaped area requirements subject to the imposition of a condition requiring additional soft landscaping within the front garden. There would be no material impacts on the amenity of the adjoining properties subject to the modifications/imposition of appropriate conditions.

The proposed modifications would not have adverse impacts on the significance of the subject contributory item and the conservation area subject to the imposition of appropriate conditions including the requirement for the deletion of the proposed panel lift door for the carport.

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 recommended for approval.

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

The owners of adjoining properties and the Parks Precinct were notified of the proposed development between 6 to 20 November 2020. The notification resulted in no submissions.

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The conditions attached to the original consent for Development Application No. 31/14 by endorsed date of 11 July 2014 still apply.

**ADVISINGS**

- (a) Council is always prepared to discuss its decisions and in this regard, please do not hesitate to contact **Robin Tse**. 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

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Signature on behalf of consent authority  
ROBYN PEARSON  
**TEAM LEADER ASSESSMENTS**