

Steven Laliotis  
15 Richmond Avenue  
CREMORNE NSW 2090

D326/16  
RT (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 MODIFICATION D326/16/4 - APPROVAL**

**Development Consent Number:** 326/16/4

**Land to which this applies:** 15 Richmond Avenue, Cremorne  
Lot No: 6, DP: 22892

**Applicant:** Steven Laliotis

**Proposal:** Section 4.55(2) application to modify an approved dual occupancy.

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. **326/16** and registered in Council's records as Application No. **326/16/4** relating to the land described as **15 Richmond Avenue, Cremorne**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **18 May 2017**, has been determined in the following manner:-

*1. To modify the development consent (D326/16) and modify conditions A1, C11, C15 C26 and the notes on drawing numbered LP 200, Rev 0, dated 10 March 2017, drawn by Tract Landscape Architects to read as follows:*

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

A1. The development being carried out in accordance with the following drawings,

Plan No.	Rev	Date	Drawn by	Received
DA01	G	05/05/17	Xotta Architects	9 May 2017
DA03	H	22/05/17	Xotta Architects	23 May 2017
DA05	H	22/05/17	Xotta Architects	23 May 2017
DA07	H	22/05/17	Xotta Architects	23 May 2017
DA07B	F	08/03/17	Xotta Architects	9 March 2017

DA08	G	05/05/17	Xotta Architects	9 May 2017
DA09	F	08/03/17	Xotta Architects	9 March 2017
DA10	G	05/05/17	Xotta Architects	9 May 2017
DA11	G	05/05/17	Xotta Architects	9 May 2017
DA12	F	08/03/17	Xotta Architects	9 March 2017
LD 000	0	10/03/17	Tract Landscape Architects	10 March 2017
LD 100	0	10/03/17	Tract Landscape Architects	10 March 2017
LD 200	0	10/03/17	Tract Landscape Architects	10 March 2017

and endorsed with approval stamp, except as modified by highlighting on the following drawings for D326/16/2:

Drawing No.	Issue	Title	Drawn by	Date Printed
CC02	CC2	Site Plan	Dixon Andrews Architects	04/09/2018
CC03	CC2	Plan LGF	Dixon Andrews Architects	04/09/2018
CC04	CC2	Plan GF	Dixon Andrews Architects	04/09/2018
CC05	CC2	Plan FF	Dixon Andrews Architects	04/09/2018
CC06	CC2	Plan Roof	Dixon Andrews Architects	04/09/2018
CC07	CC2	North and South Elevations	Dixon Andrews Architects	04/09/2018
CC08	CC2	East and West Elevations	Dixon Andrews Architects	04/09/2018
CC09	CC2	BASIX and North and South Sections	Dixon Andrews Architects	21/08/2018
CC10	CC2	Window Schedule Part 1	Dixon Andrews Architects	21/08/2018
CC11	CC2	Window Schedule Part 2	Dixon Andrews Architects	21/08/2018

and endorsed with approval stamp, except as modified by highlighting on the following drawings for D326/16/3:

Drawing No.	Issue	Date	Drawn by	Date Received
CC04	02	13/09/2019	Dixon Andrews Architects	17 September 2019
CC05	02	13/09/2019	Dixon Andrews Architects	17 September 2019
CC06	02	13/09/2019	Dixon Andrews Architects	17 September 2019
CC38	03	19/09/2019	Dixon Andrews Architects	19 September 2019

and endorsed with approval stamp, except as modified by highlighting on the following drawings for D326/16/4:

Drawing No.	Issue	Title	Drawn by	Received
CC01	CC-7	Site Plan	Dixon Andrews Architects	18/12/2020
CC03	CC-7	Plan LGF	Dixon Andrews Architects	18/12/2020
CC04	CC-7	Plan GF	Dixon Andrews Architects	18/12/2020
CC05	CC-7	Plan FF	Dixon Andrews Architects	18/12/2020
CC06	CC-7	Plan Roof	Dixon Andrews Architects	18/12/2020
CC07	CC-7	North and South Elevations	Dixon Andrews Architects	18/12/2020
CC08	CC-7	East and West Elevations	Dixon Andrews Architects	18/12/2020
CC09	CC-7	Sections NS1, NS2	Dixon Andrews Architects	18/12/2020
CC10	CC-7	Sections NS3, NS4	Dixon Andrews Architects	18/12/2020
CC11	CC-7	Sections NS5, NS6	Dixon Andrews Architects	18/12/2020
CC12	CC-7	Sections NS7, NS8	Dixon Andrews Architects	18/12/2020
CC13	CC-7	Section NS 9	Dixon Andrews Architects	18/12/2020
CC14	CC-7	Sections EW2, EW 3	Dixon Andrews Architects	18/12/2020
CC15	CC-7	Sections EW4	Dixon Andrews Architects	18/12/2020

“Arboricultural Review of Impacts of Commenced Earthworks(Rev CC-7) Drawings on Two Street Trees: 15 Richmond Avenue, Cremorne (DA326/16)” dated 25 January 2021 and prepared by Tree Wise Men.

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

### **External Colours, Materials and Finishes**

C11 The external colours, materials and finishes must match those as shown on drawings numbered CC07 Issue CC-7, CC08 Issue CC-7, prepared by Dixon Andrews Architects and received by Council on 19 February 2021.

A schedule of external colours, materials and finishes, based on the above drawings, 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.

(Reason: To ensure that the completed colours, materials and finishes of the works are consistent with the approved plans)

### **Stormwater Management and Disposal Design Plan - Construction Issue**

C15. Prior to issue of the Construction Certificate, the applicant shall have a site drainage management plan prepared by a qualified drainage design engineer. The site drainage management plan must detail the following requirements of North Sydney Council:

- (a) Compliance with BCA drainage requirements, Councils Engineering Performance guide and current Australian Standards and guidelines, such as AS/NZ3500.3.2 1998, National Plumbing and Drainage Code.
- (b) Stormwater runoff and subsoil drainage generated by the approved dwellings must be conveyed in a controlled manner by gravity either:
  - i. Via stormwater lines installed in the existing stormwater inter-allotment stormwater easement over the neighbouring property at 11 Levick Street. The stormwater lines must be of adequate pipe size and installed at the applicant's expense, or
  - ii. Via stormwater lines to be installed in a new stormwater inter-allotment stormwater easement created over the neighbouring property at 11 Levick Street. The easement shall be located to permit gravity surface drainage at the lowest point on the site in the south west corner. Stormwater lines must be of adequate pipe size and installed at the applicant's expense. In this case, install physical barriers and surface drainage interception to prevent any stormwater egress into adjacent properties. Discharge to Levick Street is to be approved by council and any modifications required to meet conditions imposed by council in the approval are to be carried out at the Applicant's expense.
- (c) Any disturbed land or building structure on neighbouring property must be restored to its previous condition at the expense of the owners of No 15 Richmond Avenue.
- (d) Provision is to be made for the collection and disposal in an approved manner of any overland flow entering the subject property or concentrated as a result of the proposed works.

- e) The design and installation of the Rainwater Tanks shall comply with Basix and Sydney Water requirements. Overflow from tank shall be connected by gravity to the stormwater disposal system.
- f) Prevent any stormwater egress into adjacent properties by creating physical barriers and surface drainage interception.

Details demonstrating compliance are to be submitted with the Construction Certificate.

The Certifying Authority issuing the Construction Certificate must ensure that the approved drainage plan and specifications, satisfying the requirements of this condition, is referenced on and accompanies the Construction Certificate.

(Reason: To ensure controlled stormwater management and disposal without nuisance)

### **Revised Landscape Plan**

C26. A revised landscape plan for the subject site must be prepared incorporating the following:

- (a) Landscaping treatments, as shown on the approved landscape plans (Drawings numbered LD100 Rev 0, LD100 Rev 0 and LD200 Rev 0 (as amended in red), all dated 10/3/2017, drawn by Tract Landscape Architects), must be applied to the areas within the subject site not affected by the proposed modifications (D326/16/4); and
- (b) Landscaping treatments for areas within the subject site as modified by D326/16/4. The modified landscape plan shall be amended to reflect the revised building details and to incorporate new planting on unpaved areas the numbers and species of plants to be planted and their mature heights and submitted to Council for the written approval by Council's Development Landscape Officer.

Plans, specifications and documentation 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.

(Reason: To ensure desirable landscape outcomes for the subject site and the locality)

**Amended notes in red titled "Tree Protection/Removal Measures" on Drawings numbered LD200 Rev 0, dated 10/3/2017, drawn by Tract Landscape Architects:**

### **Tree Protection/Removal Measures:**

*All trees noted to be retained are to be protected in accordance with AS4970-2009 - Protection of trees on development sites under the existing site condition as of March 2021. Any works within the TPZ of any protected tree is to be carried out using sensitive construction techniques including hand excavation using hand tools. Mechanical excavation shall only be used within the tree root zone once the embankment to the south of the subject trees has been retained and stabilised under supervision of, and to the written satisfaction of, the project arborist. Mechanical excavation shall only be used in areas to the south of the retained and stabilised*

*embankment and shall be carried out under the supervision of the project arborist. No roots greater than 40 mm shall be cut. The protection measures for the trees to be retained as shown on the landscape plan must be consistent with the recommendation as contained in the document titled "Arboricultural Review of Impacts of Commenced Earthworks and Revised (Rev CC-7) Drawings on Two Street Trees: 15 Richmond Avenue, Cremorne (DA326/16) and the relevant tree protection measures in the development consent.*

**2. To insert new conditions A5, C27, C28, D5, D6, E23 and G13 to read as follows:**

**Terms of Consent (D326/16/4)**

A5. Approval is granted for the following modifications to the approved attached dual occupancy only:

- (a) Lower Ground Floor (LGF - the RL of the floor level would increase from RL65.70 to RL66.30 in Dwelling 2; addition of rear retaining walls at the rear of the cinema room, store room and stair well in Dwelling 1; addition of rear retaining walls at the rear the cinema room in Dwelling 2 and addition of a doorway to provide access to the undercroft area for a water tank;
- (b) Ground Floor (GF) - the RL of the floor level would increase from RL68.90 to RL69.50 in Dwelling 2; reduction in the size of lightwell within the stairwell and bathroom at the rear of Dwelling 1 and reduction in the size of the lightwell to bedroom 5 in Dwelling 2;
- (c) First Floor (FF) - the RL for the floor level would increase from RL72.10 (main dwelling) /RL72.50 (garage) to 72.70 (main dwelling and garage) in Dwelling 2; reduction in the size of the lightwell to the study (Dwelling 2); the slab for the Dwelling 2 entrance terrace to be constructed on piers and installation of light weight fencing to Richmond Avenue for Dwelling 2 on piers;
- (d) External - the maximum building height for Dwelling 2 would increase from RL76.63 (main dwelling)/RL75.60 (garage) to RL77.23 (main dwelling)/RL75.70 (garage), fenestration changes: deletion of window (B04) on GF and roof light windows (D02 & D12) and reduction in the size of windows (B06 and B13) on the GF; and
- (e) Changes to landscaping treatments to match the revised building design and the retention of two (2) street trees on Richmond 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)

**Retention of Street Trees**

C27. The 2 x Sydney Blue Gum (*Eucalyptus saligna*) on Council's nature strip in front of the subject site must be retained in accordance with the "Arboricultural Review of Impacts of Commenced Earthworks(Rev CC-7) Drawings on Two Street Trees: 15 Richmond Avenue, Cremorne (DA326/16)" dated 25 January 2021 and prepared by Tree Wise Men, and the requirements as outline in the tree protection conditions in this consent.

The Certifying Authority must ensure that the revised landscape plan, building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure the retention and proper protection of the street trees)

**Protection of Trees**

C28. The following tree(s) 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:

<b>Tree</b>	<b>Location</b>
2 x Sydney Blue Gum ( <i>Eucalyptus saligna</i> )	Council's nature strip in front of the subject site

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)

**Protection of Trees**

D5. 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**

D6. 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), 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: -

**Schedule**

<b>Tree</b>	<b>Location</b>
2 x Sydney Blue Gum ( <i>Eucalyptus saligna</i> )	Council's nature strip in front of the subject site

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

**Protection of Trees**

E23. All trees required to be retained, as part of this consent must be protected from any damage during construction works in accordance with AS4970-2009. All recommendations contained within the tree report prepared by the “Arboricultural Review of Impacts of Commenced Earthworks(Rev CC-7) Drawings on Two Street Trees: 15 Richmond Avenue, Cremorne (DA326/16)” must be implemented for the duration of the works.

In the event that any tree required to be retained is damaged during works on the site, notice of the damage must be given to Council forthwith.

Notes:

- a. If the nominated tree is damaged to a significant degree or removed from the site without prior written approval being obtained from Council, the issuing of fines or legal proceedings may be commenced for failure to comply with the conditions of this consent.
- b. An application to modify this consent pursuant to Section 4.55 of the Environmental Planning and Assessment Act 1979 will be required to address the non-compliance with any of the conditions of consent relating to the retention of nominated trees, and Council may require tree replenishment.

(Reason: Protection of existing environmental infrastructure and community assets)

**Certification of Tree Condition**

G12. 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:-

<b>Tree</b>	<b>Location</b>
2 x Sydney Blue Gum ( <i>Eucalyptus saligna</i> )	Council’s nature strip in front of the subject site

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)

**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.

The proposed modifications would result in a development that would be substantially the same development as originally approved as an attached dual occupancy including the retention of the street trees.

The non-compliance with the LEP maximum building height is considered to be acceptable because the proposed modifications are unlikely to cause material impacts on the amenity of the adjoining properties.

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The proposal would comply with the LEP's common wall/ceiling attachment control due to an increase in the proportion of the shared the common wall for the proposed dual occupancy units.

The proposed modifications would not result in a significant change in the level of compliance with the DCP's site coverage, unbuilt upon areas and landscaped area requirements.

The proposed modifications would have no material impacts in terms of the building envelope, and the overall bulk/scale of the approved building given that the approved stepped profile of the building on the street elevation would generally be retained.

The issues raised in the submissions have been addressed in the assessment report.

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

The original proposal was notified to the adjoining property owners and the Willoughby Bay Precinct seeking comments for 14 days between 18 September and 2 October 2020. The notification of the application attracted eight (8) submissions. The issues raised have been addressed in the Assessment Report.

The amended proposal, involving a revised building design with a stepped built form on Richmond Avenue and the retention of the street trees, was notified between 24 February and 9 March 2021. This notification attracted one (1) late submission.

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The conditions attached to the original consent for Development Application No. **326/16** by endorsed date of **18 May 2017** 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 and 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 and Assessment Act.

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

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Signature on behalf of consent authority  
ROBYN PEARSON  
**TEAM LEADER (ASSESSMENTS)**