

Original signed by Robyn Pearson on 11/11/2021

James Elliott  
7/9 Myrtle Street  
NORTH SYDNEY NSW 2060

D271/15  
AB7 (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 MODIFICATION 271/15/8 - APPROVAL**

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**Development Consent Number:** 271/15

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**Land to which this applies:** 134 Holt Avenue, Cremorne  
Lot No.: 0, SP: 101258

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**Applicant:** James Elliott

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**Proposal:** Section 4.55(1A) application to modify DA 271/15 with regards to Condition C19

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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. **271/15** and registered in Council's records as Application No. **271/15/8** relating to the land described as **134 Holt Avenue, Cremorne**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 2 December 2015, has been determined in the following manner:

**1. Condition C19 is modified as follows:**

**Tree Bond for Public Trees**

C19. Prior to the issue of any construction certificate, security in the sum of \$10,000.00 must be provided to Council for the protection of trees in public places, including the making good of any damage caused to such trees. The security is to be provided in accordance with the Schedule below.

The security must be provided by way of:

- a deposit with the Council; or
- a guarantee satisfactory to Council (such as a satisfactory bank guarantee).

The security will be refundable following the expiration of six months from the issue of any final Occupation Certificate, or Interim Occupation Certificate as may be applicable, but only upon inspection and release by Council's Landscape Development Officer.

If any tree is removed or damaged, Council may deduct from this security the reasonable cost of replacement with a tree of the same species and to a similar stage of growth it would have attained at the completion of the work.

In the case of any tree, which cannot be replaced with a similar specimen, the security for that tree will be forfeited to Council and used to provide replacement street plantings.

SCHEDULE

2 x *Lophostemon confertus* (Brush Box) on Council's nature strip outside property.

(Reason: Protection of existing environment public infrastructure, community assets and significant trees)

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**Reasons for Approval:**

The proposed amendment of Condition C19 (Tree Bond for Public Trees) is to permit the application for return of the tree bond by way of an Interim Occupation Certificate and would not materially change the level of compliance with any environmental planning instrument or policy control. Notification of this application was also not required.

Nonetheless, it is considered that there would be no impacts on the residential amenity of any adjoining properties, or on the character of the locality, and the proposal remains consistent with the reasons for granting consent originally.

The proposed change was found to be acceptable in the site circumstances and it is recommended that the subject Section 4.55(1A) application be approved with the modification of Condition C19.

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

The proposed development in its modified form is not contrary to the public interest.

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The conditions attached to the original consent for Development Application No. **271/15** by endorsed date of 2 December 2015 still apply.

**ADVISINGS**

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

**11 November 2021**

DATE

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