

Original signed by Jim Davies on 18/03/2022

Peter J Lonergan
156A Church Street
NEWTOWN NSW 2042

D399/17
JD6 (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 399/17/6 - APPROVAL**

Development Consent Number: 399/17/6

Land to which this applies: 61 Ernest Street, Crows Nest
Lot No.: 1, DP: 926655

Applicant: Peter J Lonergan

Proposal: Modify consent No. DA 399/17 to ensure compliance with the consent, to protect a tree (*Cinnamomum camphora*) at the rear of No 61 Ernest Street Crows Nest and to alter the approved development on Nos 61 Ernest Street, Crows Nest, specifically minor alterations of the approved dwellings and alterations to the approved garages and driveways off Burlington Lane.

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. **399/17** and registered in Council's records as Application No. **399/17/6** relating to the land described as **61 Ernest Street, Crows Nest**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 16 August 2018, has been determined in the following manner:

1. Modify Conditions A1, C1, C2, C8, C11, C13, C19, E9, and G9 as set out below:

Development in Accordance with Plans/Documentation

A1. The development must be carried out in accordance with the following drawings and documentation and endorsed with Council's approval stamp, except where amended by the following conditions of this consent:

Plan No.	Issue	Title	Drawn by	Date Received
DA 002	D	Site Context Plan	Cracknell & Lonergan Architects Pty Ltd	9 May 2018

DA 003	E	Site Plan	Cracknell & Lonergan Architects Pty Ltd	9 May 2018
DA 004	D	Existing Floor Plans	Cracknell & Lonergan Architects Pty Ltd	9 May 2018
DA 101	C	Ground Floor Plan	Cracknell & Lonergan Architects Pty Ltd	25 June 2021
DA 102	C	First Floor Plan	Cracknell & Lonergan Architects Pty Ltd	25 June 2021
DA 103	C	Roof Plan	Cracknell & Lonergan Architects Pty Ltd	25 June 2021
DA 201	C	Northern (Ernest Street), Internal Courtyard & Burlington Lane (Rear - Southern) Elevations	Cracknell & Lonergan Architects Pty Ltd	25 June 2021
DA 201	C	Western (No. 61) & Eastern (No 61A) Elevations	Cracknell & Lonergan Architects Pty Ltd	25 June 2021
DA 301	C	Sections	Cracknell & Lonergan Architects Pty Ltd	25 June 2021
DA 302	C	Concept Cross Section Garage	Cracknell & Lonergan Architects Pty Ltd	25 June 2021
DA 402	C	Proposed Subdivision Plan	Cracknell & Lonergan Architects Pty Ltd	25 June 2021
DA 501	D	Concept Landscape Plan	Cracknell & Lonergan Architects Pty Ltd	9 May 2018
LPS34 21 - 160/1	C	Hardscape Plan	Concept Landscape Architects	23 July 2021
LPS34 21 - 160/2	C	Landscape Plan	Concept Landscape Architects	23 July 2021
LPS34 21 - 160/3	B	Details	Concept Landscape Architects	25 January 2021
LPS34 21 - 160/4	C	Specifications	Concept Landscape Architects	25 January 2021
CW-01	B	Civil Works	MCA Consulting Engineers	August 2021
S-01	B	Site Plan, Pile Plans and Slab Plans	MCA Consulting Engineers	July 2021
DA 601	D	Erosion and Construction Management Plan	Cracknell & Lonergan Architects Pty Ltd	9 May 2018
DA 701	D	Concept Drainage Plan	Cracknell & Lonergan Architects Pty Ltd	9 May 2018
-	-	Arboricultural Impact Assessment for 61 Ernest Street Crows Nest	Urban Forestry Australia	September 2021

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

Side Boundary Setback

C1. The existing external wall on the western boundary shall be maintained if possible and altered and/or extended to achieve the outcome proposed on the approved plans. The proposed wall on the boundary is to be 900mm from the western boundary from a point adjacent to the intersection of the northern boundary of 18 Burlington Lane and the western boundary of the subject property and from there towards the Ernest Street frontage. Fencing complying with the Dividing Fences Act shall be provided to the north and the south of the wall and the privacy screen required by Condition C2. The external finishes to be applied to the wall and infill panel and the material used for the dividing fence shall be resolved in consultation with the owner of 18 Burlington Lane. Details of agreed colours and materials, and the agreement must be provided prior to the issue of any Construction Certificate.

(Reason: Protect the amenity of neighbours)

Width and Treatment of Rear Deck

- C2. The proposed ground level rear decks are to extend no further to the south than shown on Plan No 101, Revision C, dated 25 June 2021, by Cracknell Lonergan Architects. A brick privacy panel matching the proposed wall on the boundary with 18 Burlington Lane and extending to at least 2100mm above the finished floor level of the deck shall be provided for its full width and shall extend at the height to a point adjacent to the northern façade of 18 Burlington Lane.

(Reason: Protect the amenity of Neighbours)

Dilapidation Survey Private Property (Neighbouring Buildings)

- C8. A photographic survey and dilapidation report of adjoining properties No's. 59 Ernest Street and 18 Burlington Lane detailing the physical condition of those properties, both internally and externally, including, but not limited to, such items as walls, ceilings, roof, structural members and other similar items, SHALL BE submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The survey and report is to be prepared by an appropriately qualified person agreed to by both the applicant and the owner of the adjoining property. A copy of the report is to be provided to Council, if Council is not the Certifying Authority, prior to the issue of any Construction Certificate.

All costs incurred in achieving compliance with this condition shall be borne by the person entitled to act on this Consent.

In the event that access for undertaking the photographic survey and dilapidation report is denied by an adjoining owner, the applicant MUST DEMONSTRATE, in writing, to the satisfaction of Council that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed. Written concurrence must be obtained from Council in such circumstances.

(Note: This documentation is for record keeping purposes only and may be used by an applicant or affected property owner to assist in any action required to resolve any dispute over damage to adjoining properties arising from the works. It is in the applicant's and adjoining owner's interest for it to be as full and detailed as possible)

(Reason: Proper management of records)

Required Infrastructure Works -Roads Act 1993

- C11. Prior to issue of any Construction Certificate engineering design plans and specifications must be prepared by a qualified civil design engineer. The plans and specifications must be to a detail suitable for construction issue purposes and must provide detail and specification for the following infrastructure works to be completed as part of the development:

Road Works

- a) Half road reconstruction, in AC-10, 50mm thick, is required for the full property frontage in Burlington Lane and adjacent to any new kerb and gutter works.

- b) construction of a fully new kerb/gutter and footpath (except in the location of any new vehicular laybacks) is required across the entire site frontage in Burlington Lane. A longitudinal section is required along the gutter line (existing and proposed levels), at a scale of 1:50 extending 5m past the property boundary line.

Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

Certifying Authorities must not issue a Construction Certificate without the formal written approval of Council (as Roads Authority) under the Roads Act 1993.

The required plans and specifications are to be designed in accordance with North Sydney Council's current documents Infrastructure Specification for Road Works, Drainage and Miscellaneous Works and Performance Guide for Engineering Design and Construction. The drawings must detail existing utility services and trees affected by the works, erosion control requirements and traffic management requirements during the course of works. A detailed survey must be undertaken as required. Traffic management is to be certified on the drawings as being in accordance with the documents SAA HB81.1 - 1996 - Field Guide for Traffic Control at Works on Roads - Part 1 and RMS Traffic Control at Work Sites (1998). **Construction of the works must proceed only in accordance with any conditions attached to the Council Roads Act 1993 approval.**

***Note:** A minimum of 21 days will be required for Council to assess Roads Act submissions. Early submission is recommended to avoid any delays in obtaining a Construction Certificate. A fee to cover cost of assessment (set out in Council's adopted fees and charges) is payable and Council will withhold any consent and approved plans until full payment of the correct fees. Plans and specifications must be marked to the attention of Council's Development Engineers. In addition, a copy of this condition must be provided, together with a covering letter stating the full address of the property and the accompanying DA number.*

(Reason: To ensure infrastructure works are designed and constructed to appropriate standards and requirements of the Roads Act 1993)

Obtain Driveway Crossing Permit under S.138 Roads Act 1993

C13. A driveway crossing and roads infrastructure works permit to suit the approved off-street parking facilities must be granted by the Council prior to the issue of any Construction Certificate. In order to obtain a permit under S.138 of the Roads Act 1993, an application must be made to Council on the 'Vehicular Access Application' form with payment of the adopted assessment/inspection fees. Council will require civil design construction drawings and certification from the applicant's Civil Engineer to verify design details and enable issue of the permit. The requirements of the permit must be complied with at all times.

The civil design drawings must include the following at a minimum;

- a) the vehicular access way must comply with AS 2890.1 and Council's current Vehicular Access Application Guidelines and Specification (gutter bridges not permitted) to ensure that a B85 vehicle will not scrape/strike the surface of the carriageway, layback, vehicular crossing or parking floor;
- b) the width of the vehicular layback must be a maximum of 7m metres (including the wings);

- c) the new gutter invert levels must be set on a single straight grade between the existing gutter levels adjacent to the eastern and western boundaries of the subject premises;
- d) the crossing (between the layback and the property boundary) must be placed on a single straight grade of approximately 4.5%, falling to the back of the layback;
- e) the new concrete kerb and gutter adjacent to the western layback wing, must marry into the existing eastern layback wing servicing 18 Burlington Lane;
- f) the new kerb and gutter between the eastern layback wing and the proposed western layback wing for the driveway at 63 Ernest Street, must be constructed in asphalt;
- g) the new footpath shall be placed on a single straight grade of approximately 3%, falling to the back of the kerb and must transition into the existing levels adjacent to the western side boundary and marry into the proposed levels adjacent to the eastern side boundary;
- h) new footpath, kerb gutter, layback and road shoulder works are required for the full property frontage in Burlington Lane. Any proposed concrete works that may impact on the root system of the existing *Camphor Laurel* tree must be instead constructed of asphalt in AC10, under the guidance of a qualified arborist.
- i) transitioning works of one (1) footpath panel on both sides of the driveway crossing are required to ensure uniformity in the footpath;
- j) any twisting of driveway access must occur entirely within the garages;
- k) all inspection openings, utility services must be adjusted to match the proposed driveway levels;
- l) sections along centre-line and extremities are required at a scale of 1:50 to be taken from the centre-line of the roadway through to the parking area itself and must include all changes of grade and levels both existing and proposed;
- m) a longitudinal section along the gutter line at a scale of 1:50 showing how it is intended to blend the vehicular crossing with the existing kerb and gutter;
- n) a longitudinal section along the footpath property boundary at a scale of 1:50 is required;
- o) the sections must show the calculated clearance to the underside of any overhead structure;
- p) a swept path analysis is required demonstrating that an 85th percentile vehicle can manoeuvre in and out of the garage spaces in accordance with AS 2890.1 2004 "Off Street Parking".
- q) An easement for right-of-carriageway, must be indicated on the plans submitted with the application for the Subdivision Certificate and be registered on the title of the relevant lots.

The permit must be granted by Council prior to the issue of any Construction Certificate.

All driveway and infrastructure works on the road reserve must be undertaken in accordance with the terms of the permit issued by Council. Inspections by Council will be required as specified. The Certifying Authority issuing the Construction Certificate must ensure that the permit issued by Council is obtained and referenced on and accompanies the Construction Certificate issued.

(Reason: To facilitate appropriate vehicular access to private sites, without disruption to pedestrian and vehicular traffic)

BASIX Certificate

C19. Under clause 97A(3) of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in BASIX Certificate Nos. A315375_02 (No. 61) and A315377_02 No. (61A) for the development are fulfilled. 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.

(Reason: To ensure the proposed development will meet the Government's requirements for sustainability and statutory requirements)

Protection of Trees

E9. 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 report prepared by Lee Hancock dated 14/9/17 and the Arboricultural Impact Assessment report, prepared by Urban Forestry Australia, dated September 2021, must be implemented for the duration of the works.

In addition to adherence with the recommendations of the reports cited, the following must be complied with:

- a) Pruning of the canopy of the Camphor Laurel tree (*Cinnamomum camphora*) at the rear of No 61 Ernest Street must not exceed 10% of the total canopy.
- b) No pruning of any branch of the *Cinnamomum camphora* overhanging the laneway shall be permitted on the basis that it could be, or is being damaged by passing vehicles,
- c) Pruning of the *Cinnamomum camphora* shall be carried out by a qualified arborist (AQF3 minimum qualification/accreditation) in accordance with Australian Standard 4373.
- d) A project arborist (AQF5, minimum qualification/accreditation) shall be appointed to supervise all work within the Tree Protections Zone of the *Cinnamomum camphora*, and sensitive construction techniques shall be used within the Tree Protection Zone of this tree.
- e) Should the supervising project arborist determine the *Cinnamomum camphora* is at risk of damage during demolition and construction, all works must cease until the risk is eliminated or reasonably minimised, to the satisfaction of the project arborist.
- f) The subject *Cinnamomum camphora* shall be protected in accordance with AS4970 and have trunk and branch protection installed for the duration of works.

- g) Paving at the rear of the dwellings is to be permeable and must be laid on either a sand or road base substrate. Any paving in the rear yards must not be laid on concrete or any impermeable subsurface material.

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 trees are 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)

Landscaping

- G9. The landscaping shown in the approved landscape plans numbered DA302 prepared by Cracknell & Lonergan dated May 2018 and LPS34 21 - 160, Sheets 1 - 4 prepared by Conzept Landscape Architects (referred to in condition A1), as amended by any condition of this consent, must be completed prior to the issue of any Occupation Certificate.

(Reason: To ensure compliance)

2. Add the following conditions:

Protection of Trees

- C20. Further investigation to confirm whether damage to the *Cinnamomum camphora* tree will likely occur as a result of the modified design must be carried out before an application for a Construction Certificate is made. Should these investigations indicate detailed design amendments are necessary to the garage or driveway to eliminate or acceptably minimise damage to the *Cinnamomum camphora*, information must be submitted to Council's Landscape Officer that demonstrates the impacts of the design amendments are acceptable. An application for a Construction Certificate must not be made unless written approved as required by this condition is provided by Council's Landscape Officer.

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

Tree Protection Measures to be shown on Construction Drawings

- C21. The tree protection measures contained in the arborist report prepared by Urban Forestry Australia, dated September 2021, shall be shown clearly on the Construction Certificate drawings. Plans and specifications showing the said tree protection measures must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

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

(Reason: To ensure that appropriate tree protection measures are shown on construction drawings)

Protection of Trees

C22. 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:

Tree	Location	Height (m)
<i>Cinnamomum camphora</i>	At the rear of 61 Ernest Street Crows Nest	17m (approx.)
2 x <i>Lophostemon confertus</i>	In the council verge approximately in front of 61-63 Ernest St	Unknown

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)

Pruning of Trees

C23. All pruning works shall to the following tree(s) shall be undertaken under the guidance of an appropriately qualified arborist/tree surgeon in accordance with Australian Standard AS 4373-2007 - Pruning of Amenity Trees:

Tree	Location	Height (m)
<i>Cinnamomum camphora</i>	At the rear of 61 Ernest Street Crows Nest	17m (approx.)

A report detailing the measures to be employed during construction shall be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

All measures required by the said report must be complied with at all times in the carrying out of the development.

(Reason: To ensure the protection and longevity of existing significant trees)

Tree Bond for Public Trees

C24. Prior to the issue of any construction certificate, security in the sum of \$10,000 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 required by this condition and in the schedule contained later in these conditions must be provided by way of a deposit with the Council; or other such guarantee that is satisfactory to Council (such as a bank guarantee). Any guarantee provided as security must name North Sydney Council as the nominated beneficiary and must not be subject to an expiry date.

The security will be refundable following the expiration of 6 months from the issue of any final Occupation Certificate 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

Tree	Location	Height (m)
2 x <i>Lophostemon confertus</i>	In the council verge approximately in front of 61-63 Ernest St	Unknown

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

Security Deposit/ Guarantee Schedule

C25. All fees and security deposits/ guarantees in accordance with the schedule below must be provided to Council prior to the issue of any Construction Certificate:

Security deposit/ guarantee	Amount (\$)
Street Tree Bond (on Council Property)	\$10,000.00
Footpath Damage Bond	\$1,000.00
Engineering Construction Bond	\$6,500.00
Others	
TOTAL BONDS	\$17,500.00

The security required by the above schedule must be provided by way of a deposit with the Council; or other such guarantee that is satisfactory to Council (such as a bank guarantee). Any guarantee provided as security must name North Sydney Council as the nominated beneficiary and must not be subject to an expiry date.

(Reason: Compliance with the development consent)

Protection of Trees

D7. 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)

Protection of Public Places

- F11. 1) A hoarding and site fencing must be erected between the work site and adjoining public place.
- 2) If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.
- 3) The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.
- 4) Any such hoarding, fence or awning is to be removed when the work has been completed.

(Note: Prior to the erection of any temporary fence or hoarding over property owned or managed by Council, written approval must be obtained. Any application needs to be accompanied by plans indicating the type of hoarding and its layout. Fees are assessed and will form part of any approval given. These fees must be paid prior to the approval being given. Approval for hoardings will generally only be given in association with approved building works, maintenance or to ensure protection of the public. An application form for a Hoarding Permit can be downloaded from Council's website)

(Reason: To ensure public safety and the proper management of public land)

Protection of Trees

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 subject *Cinnamomum camphora* tree.

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

No encroachment of development

G13. A registered surveyor shall submit a certificate and plan to the certifying authority before issue of an Occupation Certificate, demonstrating there is no encroachment of any part of the development upon any adjoining public or private land, unless explicitly authorised by this consent.

(Reason: To ensure compliance and construction in accordance with the consent.)

3. Add a new heading "I. Ongoing/Operational Conditions" containing the following condition:

I. Ongoing/Operational Conditions

Use of Garage Lofts

11. The loft areas in the garages are only to be used for the purpose of storage and not for any other purpose.

(Reason: To ensure the lofts are not used for a purpose unintended by the application.)

Reason for Approval:

The development application has been assessed and found to be satisfactory, having had regard to applicable legislation, plans and policies.

Accordingly, the subject applications to modify the consents can be approved, subject to conditions, to be either modified or added to the consents, as detailed in Appendix C.

How community views were taken into account:

Matters raised by submissions made when the applications were notified in accordance with Council's Community Engagement Protocol have been considered, as required.

The conditions attached to the original consent for Development Application No. 399/17 by endorsed date of 16 August 2018 still apply, unless modified by this approval.

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 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

18 March 2022

DATE

Signature on behalf of consent authority
JIM DAVIES
EXECUTIVE PLANNER