

Original signed by: Robyn Pearson Dated: 10/3/2022.

WKJ Pty Limited  
C/- Urbis  
Level 8, 123 Pitt Street  
SYDNEY NSW 2000

D34/19  
TH2 (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED**  
**SECTION 4.55 APPLICATION 34/19/3 - APPROVAL**

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**Development Consent Number:** 34/19/3

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**Land to which this applies:** 85 Kurraba Road, Kurraba Point  
Lot No.: 0, SP: 16183

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**Applicant:** WKJ Pty Limited, C/- Urbis

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**Proposal:** To modify a consent for demolition of an existing residential flat building, tree removal and excavation to provide for the construction of a part three, part four and part five storey residential flat building comprising 14 apartments, with basement parking for 24 cars and associated landscaping.

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The 4.55 application was considered by the **North Sydney Local Planning Panel (NSLPP)** on 2 March 2022.

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. **34/19** and registered in Council's records as Application No. **34/19/3** relating to the land described as 85 Kurraba Road, Kurraba Point.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 2 March 2022, has been determined in the following manner: -

**Add Condition A5 as follows:**

**Development in accordance with Plans (s4.55 Amendments)**

- A5. The development being carried out in accordance with plans identified in Condition A2 of the consent and A5 of the modification to consent endorsed with Council's approval stamp, except as modified by the modifications shown on:

Plan Nos	Revision No.	Description of Works	Prepared by	Received
DA001	D	Project Summary	PBD Architects	15 February 2022
DA100	D	Basement 2	PBD Architects	15 February 2022
DA101	E	Basement 1	PBD Architects	15 February 2022
DA102	E	Lower Ground Floor Plan	PBD Architects	15 February 2022
DA103	E	Ground Floor Plan	PBD Architects	15 February 2022
DA104	E	Level 1 Plan	PBD Architects	15 February 2022
DA105	E	Level 2 Plan	PBD Architects	15 February 2022
DA106	G	Level 3 Plan	PBD Architects	15 February 2022
DA107	F	Roof Plan	PBD Architects	15 February 2022
DA200	D	Elevation 01	PBD Architects	15 February 2022
DA201	D	Elevation 02	PBD Architects	15 February 2022
DA300	D	Section 01	PBD Architects	15 February 2022
DA301	D	Section 02	PBD Architects	15 February 2022

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

**Delete Condition C3 Retention of Trees and C28 Location of Plant**

**Add new Conditions C3, C28, C35 & I7 as follows:**

**Tree Planting**

- C3. The following tree is required to be planted and retained as part of the development consent in accordance with AS 4970-2009 – Protection of trees on development sites:

Tree	Location	Container Size (l)
1 x Lophostemon confertus or 1 x Glochidion ferdinandii	Within landscaped north western corner of the site in close proximity to the removed Tree 24 Lophostemon confertus	400l

Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate for external works and landscaping.

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 tree planting provided enhances environmental and landscaped amenity)

### **Solar Panels**

C28. The solar panels to be located on the roof of the building must be at a height of RL 42.40 not above the building parapet. The solar panel materials must be factory pre finished with low glare and reflectivity properties. The selected solar panels material must not cause a glare nuisance or excessive reflectivity to adjoining or nearby properties.

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. 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 height of the solar panels are below the building parapet not evident from the street and that excessive glare or reflectivity nuisance from solar panels does not occur as a result of the development)

### **Charging Facilities for Electric Vehicles**

C35 Appropriate provisions must be incorporated in the design of the basement and lower ground floor car park to facilitate future owners to install charging facilities for electric vehicles to their car parking space when required.

Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of a Construction Certificate. The Certifying Authority must ensure that the building plans and specification submitted fully satisfy the requirements of this condition.

(Reason: To promote sustainability and energy efficiency)

### **Use of Storage Facilities**

17. The storage facilities on the ground level, lower ground level, basement levels 01 and 02 must be used for the nominated purposes as shown on the approved plans and only by the residents of the building.

The storage areas as indicated on the plans must be enclosed with a metal enclosure/cage so as to prevent the use of storage spaces as car spaces.

Any changes to the allocation of the use and design of these facilities would require further approval from Council.

The restrictions on the use of the underground storage facilities must be incorporated in the by-law of any strata plan for the approved development.

(Reason: To ensure compliance)

**Modify Conditions C22, C23, C34 and G14, as follows:**

**Tree Protection Measures to be shown on Construction Drawings**

C22. The tree protection measures contained in the Arboricultural Impact Appraisal and Method Statement (Revision B) prepared by Naturally Trees dated 29 May 2019 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**

C23. 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
Tree 3 <i>Jacaranda mimosifolia</i>	Eastern boundary	9m
Tree 6 <i>Syzigium paniculatum</i>	North eastern boundary	14m
Tree 18 <i>Lophostemon confertus</i>	NW corner of site	16m
Tree 28 <i>Pittosporum undulatum</i>	SW boundary fence	10m
Tree 17 <i>Phoenix canariensis</i>	SW boundary of 83 Kurraba Road	10m

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)

### BASIX Certificate

C34. 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 No **(991892M\_07 dated 17 February 2022)** 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)

### Certification of Tree Condition

G14. 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: -

Tree	Location	Height
Tree 3 <i>Jacaranda mimosifolia</i>	Eastern boundary	9m
Tree 6 <i>Syzigium paniculatum</i>	North eastern boundary	14m
Tree 18 <i>Lophostemon confertus</i>	NW corner of site	16m
<b><i>Lophostemon confertus</i> or <i>Glochidion ferdinandii</i></b>	<b>NW corner of site</b>	
Tree 28 <i>Pittosporum undulatum</i>	SW boundary fence	10m
Tree 17 <i>Phoenix canariensis</i>	SW boundary of 83 Kurraba Road	10m

The report must detail the condition and health of the nominated trees upon completion of the works, and shall certify that the trees have not been significantly damaged during the works on the site, and shall confirm that the trees have reasonable prospects for survival.

(Reason: To ensure compliance with the terms of this consent)

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### Compliance with Certain conditions

G20. Prior to the issue of any Occupation Certificate, conditions **C3, C28, C4, C16, C17, C23, D1, G2** and G14 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)

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### Reason for approval:

The Panel generally supported the proposed modifications including the proposed number of car spaces provided a condition be imposed for recharging facilities to be provided for electrical cars within the basement and lower ground floor car park to allow for a more sustainable development. The applicant advised the development is intended to provide this, and the Panel has imposed a relevant condition in accordance with best practice.

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### How community views were taken into account:

The submissions received by Council were addressed in the NSLPP report (see Council's website: [https://www.northsydney.nsw.gov.au/Council\\_Meetings/Meetings/NSLPP/2022/2\\_March\\_2022](https://www.northsydney.nsw.gov.au/Council_Meetings/Meetings/NSLPP/2022/2_March_2022))

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The conditions attached to the original consent for Development Application No. 34/19 by endorsed date of 7 August 2019 still apply.

### ADVISINGS

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