

Original signed by Michael Stephens (A/TL) on 4/04/2022

Andrew La Martina
10 Levick Street
CREMORNE NSW 2090

D223/21
TH2 (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 223/21/2 - APPROVAL**

Development Consent Number: 223/21

Land to which this applies: 10 Levick Street, Cremorne
Lot No.: 10, DP: 10545

Applicant: Andrew Keith La Martina

Proposal: To modify development consent DA223/21 for the construction a carport with vehicular access and alterations to the front fence

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. **223/21** and registered in Council's records as Application No. **223/21/2** relating to the land described as **10 Levick Street, Cremorne**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **21 July 2021**, has been determined in the following manner:

A. Delete Condition C11 and G6 as follows:

~~C11. Tree Planting~~

~~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 <i>Tristaniopsis laurina</i> or 1 x <i>Callistemon viminalis</i>	Within landscaped front setback of 10 Levick Street	75l

~~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 that tree planting provided enhances environmental and landscaped amenity)~~

G6. Required Tree Planting

~~On completion of works and prior to the issue of an Occupation Certificate trees in accordance with the schedule hereunder must be planted:-~~

Schedule

Tree	Location	Container Size (l)
1 x <i>Tristaniopsis laurina</i> or 1 x <i>Callistemon viminalis</i>	Within landscaped front setback of 10 Levick Street	75l

~~The installation of such trees, their current health and their prospects for future survival must be certified upon completion by an appropriately qualified horticulturalist.~~

~~Upon completion of installation and prior to the issue of an Occupation Certificate an appropriately qualified horticulturalist must certify that any trees planted in accordance with this condition are healthy and have good prospects of future survival. The certification must be submitted with any application for an Occupation Certificate.~~

~~(Reason: ——— To ensure that replacement plantings are provide to enhance community landscaped amenity and cultural assets)~~

B. Add a new Condition C11, G6 and I1 as follows:

C11. Amendments to the Landscape Plan

The roof plan and landscape plan (Sheet No. 202) must be amended as follows to provide an appropriate landscaped setting:

- 3 x trees or screening plants must be provided within front garden bed adjacent to the south-eastern boundary.
- Screening plants must be provided along the north-eastern boundary. Nominated screen plant specimens must be advanced in growth and have a minimum height of 1.5 metres at installation.
- The remaining landscaped areas in the front setback as shown on the roof plan/landscape plan (Sheet No. 202) must comprise grasses, groundcovers and/or shrubs.

An amended landscape plan 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 amended landscape plan and other plans and specifications submitted fully satisfy the requirements of this condition.

(Reason: To ensure residential amenity)

G6. Landscaping

The landscaping shown on the amended landscape plan, subject to Condition C11 *Amendments to the Landscape Plan*, must be completed prior to the issue of any Occupation Certificate.

(Reason: To ensure compliance)

11. Maintenance of Approved Landscaping

The owner of the premises at 10 Levick Street, Cremorne is to maintain the landscaping as approved by this consent generally in accordance with the Landscape Plan as modified by condition C11 *Amendments to the Landscape Plan*.

Any replacement plants required shall be advanced in growth and be selected to maintain the anticipated mature height, canopy density and nature of those plant species as originally approved.

Should it be desired to substitute plants which are not of the same mature height, canopy density and nature (particularly flowering for non-flowering, native for exotic, deciduous for non-deciduous or the reverse of any these) a modification to this consent will be required.

(Reason: To ensure maintenance of the amenity, solar access and views of adjoining properties)

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. Furthermore, the modifications do not result in any material amenity impact to adjoining properties or the surrounding area. The proposed modifications are consistent with the reasons for the granted of development consent to the originally approved development and is considered to be acceptable.

Deletion of conditions of consent requiring the planting of 1 x native tree within the front garden bed (1 x *Tristaniopsis laurina* or 1 x *Callistemon viminalis*) is acceptable noting the natural constraints of the site (sandstone rock shelf) preventing the planting and growth of a tree.

The existing front garden comprises *Viburnum odoratissimum* within the north-western front boundary and 3 x *Magnolia* 'Teddy Bear' within the front setback adjacent to the south-eastern side boundary. New conditions of consent are therefore recommended for the planting of three trees, screen planting and the remainder of the landscaped area within the front setback to comprise of grasses, groundcovers and/or shrubs and a condition of consent will require maintenance of the landscaping. Conditions of consent requiring alternative landscape provision and maintenance of landscaping within the front setback ensures the front garden complements the landscape character of the street and softens the dwelling from the street.

Reason for Approval:

Having regard to the provisions of section 4.55 and 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**.

How community views were taken into account:

The subject application was not notified because the application to modify a development consent met the criteria outlined in s3.4.2 'Modifications to Development Consents granted by Council' of the North Sydney Council Community Engagement Protocol.

The conditions attached to the original consent for Development Application No. **223/21** by endorsed date of **21 July 2021** still apply.

ADVISINGS

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

4 April 2022

DATE

Signature on behalf of consent authority
MICHAEL STEPHENS
A/TEAM LEADER (ASSESSMENTS)