

Kathryn Wiesner  
36 Ellalong Road  
CREMORNE NSW 2090

D2/17  
LD (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 MODIFICATION 2/17/4 – APPROVAL**

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**Development Consent Number:** 2/17/4

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**Land to which this applies:** 36 Ellalong Road, Cremorne  
Lot No.: 49, DP: 10291

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**Applicant:** Kathryn Wiesner

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**Proposal:** A Section 4.55 (1) application to modify DA2/17 in respect of the deletion of Condition C9(b)

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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. **2/17** and registered in Council's records as Application No. **2/17/4** relating to the land described as **36 Ellalong Road, Cremorne**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 7 June 2017, has been determined in the following manner: -

*1. To delete condition C9(b) of the consent as follows:*

**Obtain Driveway Crossing Permit under S.138 Roads Act 1993**

C9. 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 redundant layback crossing in Samora Avenue must be reinstated as kerb & gutter and grass verge;~~
- c) new kerb & gutter and road shoulder (0.6 m wide strip adjacent to all new gutter works) works in Samora Avenue are required in the location of the redundant layback;
- d) the maximum width of the new vehicular layback in Ellalong Road is 7m metres (including the wings);
- e) the vehicular layback must be set square to the kerb;
- f) the crossing (between the layback and the property boundary) must be placed on a single straight grade of approximately 4.0%, falling to the back of the layback;
- g) new footpath, kerb & gutter and road shoulder (1.0 m wide strip adjacent to all new gutter works) works are required for the full property frontage in Ellalong Road plus an additional 1.0m beyond the northern side boundary;
- h) transitioning works for the new footpath, kerb & gutter and road shoulder are required to ensure uniformity in the footpath, kerb & gutter and road shoulder;
- i) the gutter level and road shoulder will require lifting/adjustment to prevent scraping of vehicles and to ensure smooth transitions. The gutter shall be raised to ensure the cross fall grade of the road shoulder is 5.5% for a distance of 1.2m falling to the gutter lip. As a result, the kerb & gutter is to be transitioned for the full property frontage plus an additional 1.0m beyond the northern side boundary;
- j) any twisting of the driveway access must occur entirely within the subject property;
- 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;

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)

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**Reason for approval:**

The proposal is a Section 4.55(1) application given it relates to a minor error in this case part (b) of Condition C9 of DA2/17. A hard stand parking space off Samora Avenue was approved as part of the earlier modification application and as such the layback and crossover should have remained. Part (b) of Condition C9 asked for this crossover and layback to be removed and reinstated as kerb and gutter which was clearly in error as it is required to service the approved hard stand parking space. The application is therefore recommended for approval and Part (b) of Condition C9 of DA2/17 may therefore be deleted.

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

The subject application was not required to be notified in accordance with Section 3.4.1 of the Community Participation Plan as there are no changes to the approved dwelling and there will be no impacts on adjoining properties as the crossover already exists.

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The conditions attached to the original consent for Development Application No. 2/17 by endorsed date of 7 June 2017 still apply.

**ADVISINGS**

- (a) Council is always prepared to discuss its decisions and in this regard, please do not hesitate to contact **Luke Donovan**. 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  
DAVID HOY  
**TEAM LEADER (ASSESSMENTS)**