

Original signed by Jim Davies on 18/03/2022

Peter J Lonergan
156A Church Street
NEWTOWN NSW 2042

D400/17
JD6 (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 400/17/4 - APPROVAL**

Development Consent Number: 400/17/4

Land to which this applies: 63 Ernest Street, Crows Nest
Lot No.: 1, DP: 926654

Applicant: Peter J Lonergan

Proposal: Modify consent No. DA 400/17 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 and 63 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. **400/17** and registered in Council's records as Application No. **400/17/4** relating to the land described as **63 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, C8, C10, C11, C12, C16, E8, and G7 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. 63) & Eastern (No 63A) 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 and Lonergan Architects Pty Ltd	3 May 2018
LPS34 21 - 160/1	C	Hardscape Plan	Conzept Landscape Architects	23 July 2021
LPS34 21 - 160/2	C	Landscape Plan	Conzept Landscape Architects	23 July 2021
LPS34 21 - 160/3	B	Details	Conzept Landscape Architects	25 January 2021
LPS34 21 - 160/4	C	Specifications	Conzept 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)

Required Infrastructure Works -Roads Act 1993

C8. 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

- C10. 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 must marry into the existing kerb and gutter and be constructed approximately 1m beyond the eastern side boundary or to an existing joint and marry into the proposed levels adjacent to the western side boundary;
- f) the new kerb and gutter between the western layback wing and the proposed eastern layback wing for the driveway at 61 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 eastern side boundary and marry into the proposed levels adjacent to the western 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, located within 61 Ernest Street, 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)

Stormwater Disposal - Drainage Plan

C11. Prior to the issue of any Construction Certificate, site drainage plans must be prepared by a licensed plumber or drainage engineer. The site drainage plans must -be designed in accordance with the following criteria:

- a) compliance with BCA drainage requirements and current Australian Standards and guidelines;
- b) stormwater runoff and subsoil drainage generated by the approved development must be conveyed in a controlled manner by gravity to Council's kerb/gutter in Ernest Street and Burlington Lane;
- c) new pipelines within council land shall be hot dipped galvanised steel hollow section with a minimum wall thickness of 4.0 millimetres and a section height of 100 millimetres;
- d) the design and installation of the Rainwater Tanks shall comply with BASIX and Sydney Water requirements. Overflow from tank shall be connected by gravity to the stormwater disposal system; and
- e) prevent any stormwater egress into adjacent properties by creating physical barriers and surface drainage interception.

Drainage 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: Proper disposal of stormwater)

Bond for Damage and Completion of Infrastructure Works - Stormwater, Kerb and Gutter, Footpaths, Vehicular Crossing and Road Pavement

C12. Prior to the issue of any Construction Certificate, security deposit or bank guarantee must be provided to Council to the sum of \$7,500 to be held by Council for the payment of cost for any/all of the following:

- a) making good any damage caused to any property of the Council as a consequence of the doing of anything to which this consent relates,

- b) completing any public work (such as road work, kerbing and guttering, footway construction, stormwater drainage and environmental controls) required in connection with this consent
- c) remedying any defects in any such public work that arise within 6 months after the work is completed.

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 or completion of public work required to be completed (whichever is the latest) but only upon inspection and release by Council's Engineers.

Council shall have full authority to make use of the bond for such restoration works as deemed necessary by Council in circumstances including the following: -

- where the damage constitutes a hazard in which case Council may make use of the security immediately;
- the applicant has not repaired or commenced repairing damage within 48 hours of the issue by Council in writing of instructions to undertake such repairs or works;
- works in the public road associated with the development are to an unacceptable quality; and
- the Certifying Authority must ensure that security is provided to North Sydney Council prior to issue of any Construction Certificate.

(Reason: To ensure appropriate security for works on public land and an appropriate quality for new public infrastructure)

BASIX Certificate

C16. 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. A315378_02 (No. 63) and A315425_02 (No. 63A) 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

E8. 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:

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

- G7. 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:

Tree Protection Measures to be shown on Construction Drawings

- C17. 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

- C18. 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)
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)

Tree Bond for Public Trees

C19. 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

C20. 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	\$27,500.00

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

D6. 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)

Certification- Civil Works

- G10. a) An appropriately qualified and practising Civil Engineer must certify to the Certifying Authority that the stormwater drainage system is constructed in accordance with this consent and the provisions of the applicable Australian Standard. A copy of the certificate must be submitted to Council (if it is not the Certifying Authority) upon completion of the development works and prior to the issue of an Occupation Certificate.
- b) An appropriately qualified and practicing Civil Engineer must certify to the Certifying Authority that the vehicular crossing and associated works and road works were constructed in accordance with this consent and any approval for works in the road reserve issued by the Council. A copy of the certificate must be submitted to Council (if it is not the Certifying Authority), upon completion of the development works and prior to the issue of an Occupation Certificate.

(Reason: Compliance with the Consent)

Protection of Trees

G11. 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

G12. 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

I1. 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. 400/17 by endorsed date of 16 August 2018 still apply.

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