

Margaret Whitson and Douglas Whitson
30 Macpherson Street
CREMORNE NSW 2090

D153/20
AB7 (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 153/20/3 - APPROVAL**

Development Consent Number: 153/20

Land to which this applies: 30 Macpherson Street, Cremorne
Lot No.: A, DP: 441850

Applicant: Margaret Whitson and Douglas Whitson

Proposal: Modification of consent including minor changes to windows
and lowering the floor levels

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. **153/20** and registered in Council's records as Application No. **153/20/3** relating to the land described as **30 Macpherson Street, Cremorne**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 16 July 2020, has been determined in the following manner:

1. To modify Condition A1 as follows:

Development in Accordance with Plans (S4.55 Amendments)

- A1. The development must be carried out in accordance with the following drawings and documents endorsed with Council's approval stamp:

No.	Title	Drawn by	Dated	Issue	Received
1C	Site Plan/Site Analysis Plan	Thorsette Pty Ltd	09/2020	C	17/09/2020
4F	Proposed Floor Plan	Thorsette Pty Ltd	09/2020	F	17/09/2020
5D	Proposed North/West Elevation	Thorsette Pty Ltd	09/2020	D	17/09/2020
6C	Proposed Part South Elevation/Section A-A	Thorsette Pty Ltd	09/2020	C	17/09/2020
7E	Stormwater Concept Plan/Proposed Roof Plan	Thorsette Pty Ltd	09/2020	E	17/09/2020

Except as modified as such on the following drawings for DA153/20/2:

No.	Title	Drawn by	Dated	Issue	Received
1D	Site Plan/Site Analysis Plan	Thorsette Pty Ltd	May 2021	D	21/05/2021
4G	Proposed Floor Plan	Thorsette Pty Ltd	May 2021	G	21/05/2021
5E	Proposed North/West Elevation	Thorsette Pty Ltd	May 2021	E	21/05/2021
6D	Proposed Part South Elevation/Section A-A	Thorsette Pty Ltd	May 2021	D	21/05/2021
8D	Landscape Plan	Thorsette Pty Ltd	May 2021	D	21/05/2021

Except as modified as such on the following drawings for DA153/20/3:

No.	Title	Drawn by	Dated	Issue	Received
4K	Proposed Floor Plan	Thorsette Pty Ltd	March 2022	K	25/03/2022
5F	Proposed North/West Elevation	Thorsette Pty Ltd	March 2022	F	25/03/2022
6E	Proposed South Elevation/Section A-A	Thorsette Pty Ltd	March 2022	E	25/03/2022
-	Tree Pruning Diagram (Annotated)	BTL Building Pty Ltd	28/04/2022	-	29/04/2022

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

2. To modify Condition C8 as follows:

Pruning of Trees

- C8. 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
1 x <i>Melaleuca bracteata</i>	Southern boundary within the rear setback of 30 Macpherson Street	8 m
1 x <i>Schinus molle</i>	Council verge on the Richmond Avenue frontage outside 30 Macpherson Street	6 m x 10 m

No more than 10% of the canopy shall be removed from the *Melaleuca bracteata* tree. Only branches nominated in marked up pictures approved by council shall be permitted. No branches greater than 30 mm shall be cut on any protected tree and no additional pruning shall be permitted.

Pruning to the branches of the *Schinus molle* tree, shall only be undertaken below the blue lines marked by Council's Landscape Development Officer in the Tree Pruning Diagram dated 28 April 2022, and shall be carried out by an AQ3 arborist in accordance with AS4373.

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. The Certifying Authority must ensure that the details submitted fully satisfy the requirements of this condition.

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

3. Condition C12 is added as follows:

BASIX Certificate

- C12. Under clause 97A (3) of the Environmental Planning and Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. **A382526_03**, dated 21 March 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)

4. Condition G7 is added as follows:

BASIX Completion Certificate

- G7. In accordance with Clause 154C of the *Environmental Planning and Assessment Regulation 2000*, prior to issuing a final occupation certificate the Certifying Authority must apply to the Secretary of the Department of Planning and Environment for a BASIX completion receipt.

(Reason: To ensure compliance with the specified BASIX Certificate)

The proposed modifications satisfy the provisions of Section 4.55 (2) in that the proposed development remains substantially the same as what was approved by DA153/20. The proposed modifications will not alter the use of the development as originally approved and amenity impacts remain acceptable. The proposed modifications would also not change the level of compliance with the relevant development standards and controls as contained in NSLEP 2013 and NSDCP 2013.

Reasons for Approval:

As the proposed modifications are to slightly raise the floor level of the previously approved rear extensions alongside some wider windows and doors facing Richmond Avenue and the rear garden, there would be no additional unreasonable heritage or environmental impact in terms of overshadowing, view loss, privacy loss, foreshore and/or bulk and scale. The additional pruning of the existing peppercorn street tree is recommended to be conditioned to ensure any works to this tree are minimal and sympathetic.

The proposed works will provide additional resident amenity without negatively impacting the neighbourhood character, and the Montague Road Conservation Area. The proposal also remains consistent with the objectives of the R2 (Low Density Residential) Zone and the original reasons for granting consent. The proposal was found to be acceptable in the site circumstances and is recommended that the subject Section 4.55(2) application be **approved**.

How community views were taken into account:

The subject application was notified, and no submissions were received by Council. Nevertheless, it is considered that the proposal would provide improved amenity for the residents without causing any unreasonable impacts to the streetscape and/or adjoining properties.

The conditions attached to the original consent for Development Application No. 153/20 by endorsed date of 16 July 2020 still apply.

ADVISINGS

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

24 May 2022

DATE

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