

Original signed by **Robyn Pearson** on **12/07/2022**

CE Waters Pty Limited
Level 17, 100 Miller Street
NORTH SYDNEY NSW 2060

D92/21
RT (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 92/21/3 - APPROVAL**

Development Consent Number: 92/21/3

Land to which this applies: 12-14 Waters Road, Neutral Bay
Lot No.: 18, DP: 53770, SP 68360, SP75848, SP 88483

Applicant: CE Waters Pty Limited

Proposal: Section 4.55(1A) modifications to DA92/21 for the amalgamation of apartments 2.07 and 2.08 to create an apartment (Apartment 2.07) containing two (2) bedrooms and a library/bedroom on Level 2 of the approved mixed-use development

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. **92/21** and registered in Council's records as Application No. **92/21/3** relating to the land described as **12-14 Waters Road, Neutral Bay**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **27 October 2021**, has been determined in the following manner:

1. To insert a new condition A6 as follows:

Terms of Consent (D92/21/3)

A6. Approval is granted for the following works as shown on drawing numbered DA-0213 Rev 7, DA-0503 Rev 6, DA-0602 Rev 8, all dated 22.02.2022, all prepared by SJB Architects:

- (a) The amalgamation of apartments 2.07 and 2.08 to create an apartment (Apartment 2.07) containing two (2) bedrooms and a library/bedroom on Level 2 of the approved mixed-use building.

No approval is given or implied in this consent for any other works, both internal and external, within the subject property.

(Reason: To ensure the terms of the consent are clear.)

2. To modify the heading and the relevant wording of the following conditions to read as follows:

Development in Accordance with Plans/Documentation (S4.55 Amendments)

A1. The development must be carried out in accordance with the following drawings and documentation:

Plan No.	Rev	Title	Prepared by	Date
DA-0103	4	Site Plan and Analysis	SJB Architects	3/11/2021
DA-0104	4	Demolition	SJB Architects	3/11/2021
DA-0205	9	Floor Plan - Basement 5	SJB Architects	3/11/2021
DA-0206	9	Floor Plan - Basement 4	SJB Architects	3/11/2021
DA-0207	9	Floor Plan - Basement 3	SJB Architects	3/11/2021
DA-0208	9	Floor Plan - Basement 2	SJB Architects	3/11/2021
DA-0209	9	Floor Plan - Basement 1	SJB Architects	3/11/2021
DA-0210	8	Floor Plan - Waters Lane	SJB Architects	3/11/2021
DA-0211	10	Floor Plan - Waters Road	SJB Architects	3/11/2021
DA-0212	7	Floor Plan - Level 1	SJB Architects	3/11/2021
DA-0213	6	Floor Plan - Level 2	SJB Architects	3/11/2021
DA-0214	6	Floor Plan - Level 3	SJB Architects	3/11/2021
DA-0215	6	Floor Plan - Level 4	SJB Architects	3/11/2021
DA-0217	6	Floor Plan - Roof Level	SJB Architects	3/11/2021
DA-0218	6	Roof Plan	SJB Architects	3/11/2021
DA-0501	5	Building Elevations - East (Waters Road)	SJB Architects	3/11/2021
DA-0502	5	Building Elevations - West (Waters Lane)	SJB Architects	3/11/2021
DA-0503	5	Building Elevations - North (Grosvenor Street)	SJB Architects	3/11/2021
DA-0504	5	Building Elevations - South	SJB Architects	3/11/2021
DA-0601	8	Section A	SJB Architects	3/11/2021
DA-0602	7	Section B	SJB Architects	3/11/2021
DA-4001	4	Photomontage and Materials - Sheet 1	SJB Architects	3/11/2021
DA-4002	4	Photomontage and Materials - Sheet 2	SJB Architects	3/11/2021
DA-4003	4	Photomontage and Materials - Sheet 3	SJB Architects	3/11/2021

and endorsed with Council's approval stamp, except as modified by highlighting on the following drawings for D92/21/3:

Plan No.	Rev	Title	Prepared by	Date
DA-0213	7	Floor Plan - Level 2	SJB Architects	22.02.2022
DA-0503	6	Building Elevations - North (Grosvenor St)	SJB Architects	22.02.2022
DA-0602	8	Section B	SJB Architects	22.02.2022

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

Section 7.11 Contributions

C42. A monetary contribution pursuant to the provisions of Section 7.11 of the Environmental Planning and Assessment Act 1979, in accordance with the North Sydney Council Local Infrastructure Contribution Plan 2020 for the public amenities/ services detailed in column A below and, for the amount detailed in column B below, must be paid to Council.

Contribution Categories/Facilities:	Contribution
Open space and recreation facilities:	\$293,113.49
Public domain:	0.00*
Active transport:	0.00*
Community facilities:	58,872.41
Plan administration and management:	4,678.33
Total:	\$356,664.23

* Contribution required for the current proposal offset by credit from the existing commercial development.

The contribution MUST BE paid prior issue of any Construction Certificate.

The above amount will be adjusted for inflation by reference to the Consumer Price (All Ordinaries) Index applicable at the time of the payment of the contribution.

A copy of the North Sydney Local Infrastructure Contribution Plan 2020 can be viewed at North Sydney Council's Customer Service Centre, 200 Miller Street, North Sydney, or downloaded via Council's website at www.northsydney.nsw.gov.au.

(Reason: To retain a level of service for the existing population and to provide the same level of service to the population resulting from new development)

Security Deposit/Guarantee Schedule

C43. 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)	\$110,000.00
Infrastructure Damage Bond	13,000.00
Drainage Construction Bond	7,100.00
Engineering Construction Bond	328,000.00
TOTAL BONDS	\$458,100.00

Note: The following fees applicable

Fees	Amount (\$)
Section 7.11 contribution	\$356,664.23
TOTAL FEES	\$356,664.23

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)

BASIX Certificate (CC3)

C44. 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. 1170679M_08 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 the Construction Certificate (CC3).

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)

Reasons for Approval:

The proposal satisfies the provisions of Section 4.55(1A) in that the development would be substantially the same as what was approved under DA 92/21 as the proposed modifications will not alter the use and the general form of the development as originally approved.

The proposed modifications would not change the overall level of compliance with the relevant SEPP65/ADG, LEP and DCP provisions and requirements.

The proposed modifications would not change the development outcome in terms of height, bulk and scale, envelope and appearance of the approved mixed use development.

The proposed modifications would have no material amenity impacts for the adjoining properties.

The proposal was found to be acceptable in the site circumstances and is recommended that the subject Section 4.55(1A) application be approved with modifications to the relevant conditions.

How community views were taken into account:

The adjoining property owners and the Brightmore Precinct was notified about the application between 18 March and 1 April 2022. The notification of the application attracted nil submissions.

The conditions attached to the original consent for Development Application No. **92/21** by endorsed date of **27 October 2021** still apply.

ADVISINGS

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

12 July 2022

DATE

Signature on behalf of consent authority
ROBYN PEARSON
TEAM LEADER (ASSESSMENTS)