



A & M Property NSW  
C/- Willowtree Planning  
Suite 1, Level 10, 56 Berry Street  
NORTH SYDNEY NSW 2060

D453/16  
KRR (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 MODIFICATION 453/16/2 - APPROVAL**

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**Development Consent Number:** 453/16/2

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**Land to which this applies:** 104-106 Alexander Street, Crows Nest  
Lot No.: 16, DP: 653694

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**Applicant:** A & M Property NSW

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**Proposal:** Amalgamation of units and alterations and additions to the approved development

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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. **453/16** and registered in Council's records as Application No. **453/16/2** relating to the land described as **104-106 Alexander Street, Crows Nest**.

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 insert Condition A7, as follows: -**

**Development in Accordance with Plans (S.4.55 Modifications)**

A7. The development being carried out in accordance with plans identified in Condition A1 of the consent and endorsed with Council's approval stamp, except as modified by the modifications

Plan No.	Issue	Title	Drawn by	Received
DA100a	D	Basement 3 Plan	PBD Architects	15 August 2022
DA100	C	Basement 2 Plan	PBD Architects	15 August 2022
DA101	C	Basement 1 Plan	PBD Architects	15 August 2022
DA102	C	Ground Floor Plan	PBD Architects	15 August 2022
DA103	D	Level 1 Floor Plan	PBD Architects	15 August 2022
DA104	C	Level 2 Floor Plan	PBD Architects	15 August 2022
DA105	C	Level 3 Floor Plan	PBD Architects	15 August 2022

DA106	C	Roof Terrace Plan	PBD Architects	15 August 2022
DA200	D	North & South Elevations	PBD Architects	15 August 2022
DA201	D	East & West Elevations	PBD Architects	15 August 2022
DA300	D	Section AA	PBD Architects	15 August 2022
DA301	D	Section BB	PBD Architects	15 August 2022
DA302	D	Section CC	PBD Architects	15 August 2022
DA400	C	Materials Schedule - north and south elevations	PBD Architects	15 August 2022
DA401	C	Materials Schedule – east and west elevations	PBD Architects	15 August 2022

and except as amended by the following conditions and this consent.

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

**2. To modify Conditions C36 as follows: -**

**Section 7.11 Development Contributions**

C36. 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's Contribution Plan for the public amenities/ services detailed in column A below and, for the amount detailed in column B below, must be paid to Council.

**S7.11 Contribution**

Open space and recreation facilities:	\$70,575.95
Public domain:	\$13,206.25
Active transport:	\$754.12
Community facilities:	\$14,175.40
Plan administration and management:	\$1,467.78
<b>Total:</b>	<b>\$100,179.50</b>

**Indexation**

The monetary contribution required under this consent will be indexed at the time of payment in accordance with quarterly movements in the Consumer Price Index (All Groups Index) for Sydney as published by the Australian Bureau of Statistics.

**Timing of payment**

The contribution must be paid to Council prior to issue of any [Subdivision Certificate or Construction Certificate] [DELETE ONE where applicable].

Deferred payments will not be accepted.

A copy of the North Sydney Contribution Plan 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](http://www.northsydney.nsw.gov.au)

(Reason: To provide for local infrastructure identified in the North Sydney Council Local Contributions Plan 2020)

**BASIX Certificate**

C38. 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 No. (1288391M\_02) 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)

The modified proposal has been assessed as acceptable as it has been designed to respond to the concerns regarding unit mix, amenity and utilisation of roof space. The breach to the development standards for Clause 4.3 Building Height remains acceptable and variation to the standard continues to be supported due to the lack of impact arising from the departures (as detailed within this report).

**Reason for approval:**

Generally, the proposal as amended is considered to be acceptable and consistent with the planning controls applicable to the site pursuant to both North Sydney LEP 2013 and DCP 2013. It is the conclusion of this report that the development will continue to provide a reasonable and satisfactory level of amenity to the subject and surrounding sites, with the statutory breach being assessed and deemed acceptable in accordance with the principles established by the Land and Environment Court.

Consequently, the Section 4.55 application is considered to be reasonable in the circumstances and it is recommended for approval subject to modification via conditions.

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

No submissions were raised during the notification of the as modified application.

The conditions attached to the original consent for Development Application No. 453/16 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 **Kim Rothe**. 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

21 September 2022

DATE



Signature on behalf of consent authority  
KIM ROTHE  
SENIOR ASSESSMENT PLANNER