



TWT Property Group Pty Ltd
C/- Ethos Urban
Level 5, 55 Chandos Street
ST LEONARDS NSW 2065

D161/20
GJY (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 161/20/3 - APPROVAL**

Development Consent Number: 161/20

Land to which this applies:

23-35 Atchison Street, St Leonards
Lot No.: 27, SEC: 10, DP: 2872
Lot No.: 28, SEC: 10, DP: 2872
Lot No.: 29, SEC: 10, DP: 2872
Lot No.: 30, SEC: 10, DP: 2872
Lot No.: 31, SEC: 10, DP: 2872
Lot No.: 321, DP 566480

Applicant: TWT Property Group Pty Ltd

Proposal: Modification of consent for demolition of existing buildings and construction of shop top housing 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. **161/20** and registered in Council's records as Application No. **161/20/3** relating to the land described as **23-35 Atchison Street, St Leonards**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **18 May 2021**, has been determined in the following manner:

Conditions A1, A4, C24, C53, C55, C56, C57, G24, G28, G34, I4 to be modified as follows and Conditions C5 and C6 to be deleted:

A. Conditions that Identify Approved Plans

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	Dated
A2.02	3	Site plan	Team 2 Architects	14/06/2022
A2.03	2	Demolition Plan	A+ Design Group	9/11/2020
A2.04	3	Setback diagram	Team 2 Architects	14/06/2022
A3.01	5	Basement 3	Team 2 Architects	6/09/2022
A3.02	5	Basement 2	Team 2 Architects	6/09/2022
A3.03	5	Basement 1	Team 2 Architects	6/09/2022
A3.04	5	Lower ground level	Team 2 Architects	6/09/2022
A3.05	5	Upper ground level	Team 2 Architects	6/09/2022
A3.06	5	Level 1	Team 2 Architects	6/09/2022
A3.07	5	Level 2	Team 2 Architects	6/09/2022
A3.08	5	Level 3	Team 2 Architects	6/09/2022
A3.09	5	Level 4	Team 2 Architects	6/09/2022
A3.10	5	Level 5	Team 2 Architects	6/09/2022
A3.11	5	Level 6-8	Team 2 Architects	6/09/2022
A3.12	5	Level 9	Team 2 Architects	6/09/2022
A3.13	5	Level 10	Team 2 Architects	6/09/2022
A3.14	5	Level 11-13	Team 2 Architects	6/09/2022
A3.15	5	Level 14	Team 2 Architects	6/09/2022
A3.16	5	Level 15	Team 2 Architects	6/09/2022
A3.17	5	Level 16	Team 2 Architects	6/09/2022
A3.18	5	Roof plan	Team 2 Architects	6/09/2022
A4.01	4	North Elevation - Atchison Street	Team 2 Architects	6/09/2022
A4.02	4	South Elevation - Albany Lane	Team 2 Architects	6/09/2022
A4.03	4	East Elevation - Oxley Street	Team 2 Architects	6/09/2022
A4.04	4	West Elevation - Through site link	Team 2 Architects	6/09/2022
A5.01	4	Section A-A	Team 2 Architects	6/09/2022
A5.02	4	Section B-B	Team 2 Architects	6/09/2022
A5.03	3	Section C-C	Team 2 Architects	14/06/2022
A5.04	3	Section D-D and E-E	Team 2 Architects	14/06/2022
A5.05	2	Section F-F and G-G	Team 2 Architects	14/06/2022
A6.01	3	Pre/Post Adaptation Plan - Type 1	Team 2 Architects	14/06/2022
A6.02	3	Pre/Post Adaptation Plan - Type 2	Team 2 Architects	14/06/2022
A6.03	3	Pre/Post Adaptation Plan - Type 3	Team 2 Architects	14/06/2022
A6.04	3	Pre/Post Adaptation Plan - Type 4	Team 2 Architects	14/06/2022
A6.05	1	Pre/Post Adaptation Plan - Type 5	Team 2 Architects	14/06/2022
A7.01	3	Finishes Schedule	Team 2 Architects	14/06/2022
LDA-00	D	Landscape Cover Sheet	Ground Ink	14/6/2022
LDA-01	D	Site Context & Inspiration	Ground Ink	14/6/2022
LDA-02	D	Landscape Masterplan	Ground Ink	14/6/2022
LDA-03	D	Through Site Link Landscape Plan	Ground Ink	14/6/2022
LDA-04	D	Atchison Street Landscape Plan	Ground Ink	14/6/2022
LDA-05	D	Atchison Street Planting Palette	Ground Ink	14/6/2022
LDA-06	D	Albany Lane Landscape Plan & Rain Garden Details	Ground Ink	14/6/2022
LDA-07	D	Oxley Street Landscape Plan	Ground Ink	14/6/2022
LDA-08	D	Basement Landscape Plan	Ground Ink	14/6/2022
LDA-09	D	Level 1 to Level 3 & Level 5 Landscape Plan	Ground Ink	14/6/2022
LDA-10	D	Level 4 Landscape Plan	Ground Ink	14/6/2022
LDA-11	D	Rooftop Communal Area Landscape Plan	Ground Ink	14/6/2022
LDA-12	D	Rooftop Communal Area Renderings Planting Palette	Ground Ink	14/6/2022

LDA-13	D	Landscape Details	Ground Ink	14/6/2022
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(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information)

External Finishes and Materials

A4. External finishes and materials must be in accordance with the following submitted schedule:

Plan No.	Issue	Title	Drawn by	Dated
A7.01	3	Finishes Schedule	Team 2 Architects	14/06/2022

Unless otherwise modified by Council in writing.

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

~~Winter gardens~~

~~C5. The winter gardens serving apartments 103, 205, 305 shall be designed to ensure they can be utilised as balconies.~~

~~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 a high level of amenity is provided)~~

~~Balcony or winter garden to be provided to Apartment 308~~

~~C6. A balcony or winter garden shall be provided to Apartment 308. The balcony or winter garden shall have a size of 8sqm with a minimum width of 2m. The apartment shall be reconfigured to delete the 'storage area' to enable this reconfiguration. The balcony or winter garden and floor space within the apartment shall be set back 9m from the centreline of Albany Lane with no encroachments.~~

~~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 a high level of amenity is provided)~~

Bicycle Storage and Parking

C24. The bicycle storage area must accommodate a minimum of 82 bicycles (non-residential); and 10 bicycles (visitor parking). The bicycle storage lockers and bicycle rail shall be designed in accordance with the applicable Australian Standards.

Each individual residential basement storage area (Total of 99 apartments) shall be of an appropriate size that is capable of storing a bicycle.

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, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To promote and provide facilities for alternative forms of transport)

Privacy

C53. The following privacy devices are to be provided:

- a) Privacy screening shall be provided to the southern end of each balcony serving Apartments 205, 206, 207, 208, 305, 306, 307, 308, 405 and 507, to a minimum height of 1.5m above finished floor level.
- b) Proposed louvres on the south and west facing elevations of the facades serving the non-residential uses shall be fixed and angled to ensure there is no direct overlooking into any existing or future residential properties.

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 an adequate level of privacy is provided to adjoining properties to the south and west of the subject site)

Section 7.11 Contributions for Modified Development

C55. 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 Contribution Plan 2020 for the public amenities/ services detailed in the table below, must be paid to Council.

S7.11 Contribution	\$
Open space and recreation facilities	\$985,605.01
Public domain	527,271.99
Active transport	30,094.92
Community facilities	197,963.31
Plan administration and management	26,025.89
The total contribution is	<u>\$1,766,961.12</u>

The monetary contribution, less any monetary contribution already paid in relation to the original s.7.11 contribution condition applying to DA161/20, must be paid prior to the issue of the first Occupation Certificate, except as provided below.

If no Construction Certificate in respect of the erection of any building to which the consent relates has been issued before or on 25 September 2022, the monetary contribution must be paid prior to the issue of the first Construction Certificate for the modified development (DA161/20/3) after that date for any such building.

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 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

C56. 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)	\$69,500.00
Drainage Construction Bond	15,000.00
Engineering Construction Bond	135,000.00
TOTAL BONDS	\$219,500.00

Note: The following fees applicable

The following fees must be paid prior to the issue of a Construction Certificate (or Occupation Certificate, if the provisions set out in Condition C55 (Section 7.11 Contributions) - are satisfied)

Fees	Amount (\$)
Section 7.11 Contributions	\$1,766,961.12
TOTAL FEES	\$1,766,961.12

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

C1. 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. 1117747M_06 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)

Height

G24. Upon completion of the works and prior to the issue of any Occupation Certificate the RL of the development measured at the highest point of the building being the lift overrun, must be surveyed and certified by an appropriately qualified and practising surveyor as compliant with the maximum approved levels RL145.05 AHD. This survey and certification must be submitted to the Certifying Authority with

the application for an Occupation Certificate and a copy provided to Council (if it is not the Certifying Authority).

(Reason: To ensure compliance with the terms of this development consent)

Landscaping

G28. The landscaping shown in the approved landscape plan numbered LDA-00 - LDA13 (inclusive), all Revision D, dated 14 June 2022 and prepared by Ground Ink, as amended by the relevant conditions of consent, must be completed prior to the issue of any Occupation Certificate.

(Reason: To ensure compliance)

Allocation of Spaces

G34. Car parking spaces must be provided and maintained at all times on the subject site. The spaces shall be allocated to uses within the building in accordance the following table:

42	Residential car parking (including 15 adaptable spaces)
15	Residential adaptable car parking
18	Non-residential car parking (including 4 adaptable spaces)
4	Non-residential adaptable car parking
4	Residential motorbike
3	Non-residential motorbike

The car parking spaces are to be identified on-site by line-marking and numbering upon the completion of the works and prior to issue of Occupation Certificate. Car parking spaces provided must only be used in conjunction with the approved uses contained within the development.

In the case of Strata subdivision any car parking for strata lots for residential purposes must be individually allocated to its corresponding residential strata lot as part of each lots' unit entitlement.

Electric car charging stations and the car wash bay must be designated as common property on the strata plan and must not at any time be allocated, sold, licensed or leased for the exclusive use of any occupier or owner and must be retained as common property by the Owners Corporation.

(Reason: To ensure that adequate parking facilities to service the development are provided on site)

Allocation of Spaces

I4. The allocation of Carparking spaces within the development must be maintained at all times in accordance with the terms of this consent. The allocation of spaces must be maintained in accordance with the following table:

42	Residential car parking (including 15 adaptable spaces)
15	Residential adaptable car parking
18	Non-residential car parking (including 4 adaptable spaces)
4	Non-residential adaptable car parking
4	Residential motorbike
3	Non-residential motorbike

Car parking spaces provided must only be used in conjunction with the approved uses contained within the development.

In the case of Strata subdivision any car parking for strata lots for residential purposes must be individually allocated to its corresponding residential strata lot as part of each lot's unit entitlement.

Electric car charging stations and the car wash bay must be designated as common property on the strata plan and must not at any time be allocated, sold, licensed or leased for the exclusive use of any occupier or owner and must be retained as common property by the Owners Corporation.

(Reason: To ensure that adequate parking facilities to service the development are provided on site)

The proposed modification has been assessed under the relevant Environmental Planning Instruments and policies including NSLEP 2013, NSDCP 2013, SEPP 65 and various other relevant plans and policies and found to be satisfactory, subject to amended and additional conditions of consent.

The application proposes a shop top housing development that is a permissible form of development in the mixed-use zone.

As detailed within the report, the proposed development will provide a general level of compliance with the relevant planning controls applicable to the site. Whilst it is acknowledged that the proposed development will result in impacts on the surrounding locality, the proposed development is considered to be generally the expected outcome of development on the site, as expressed within the planning controls and more broadly within the *St Leonards and Crows Nest 2036 Plan*. The existing solar access and views that are currently enjoyed across the site by many properties are considered to be generally enjoyed across an under developed site.

Reasons for Approval:

A number of amendments to the submitted modification were required to insure its acceptability. The modified development is considered to provide a high level of amenity to its future occupants.

Council received 2 submissions and the issues raised have been discussed in this report.

On balance, the development as modified is considered to be satisfactory having regard to the relevant Environmental Planning Instruments, Development Control Plans and Council policies and is therefore recommended for **approval** subject to conditions.

How community views were taken into account:

The subject application was notified to adjoining properties and the Holtermann/Wollstonecraft Precincts for 21 days. Two submissions were received, and the issues raised were considered and have been addressed in this report. The development is satisfactory, including in relation to the matters raised by submitters, subject to amended and additional conditions of consent.

The conditions attached to the original consent for Development Application No. **161/20** by endorsed date of **18 May 2021** still apply.

ADVISINGS

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

25 November 2022

DATE



Signature on behalf of consent authority
GEORGE YOUHANNA
EXECUTIVE ASSESSMENT PLANNER