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D227/18
KRR (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 227/18/2 - APPROVAL**

Development Consent Number: 227/18

Land to which this applies: 5-7 Doohat Avenue, North Sydney
Lot No.: 9-11, DP: 8869

Applicant: MacKenzie Architects

Proposal: Modification of Development Consent DA227/18/1 for a residential flat building - various modifications

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. **227/18** and registered in Council's records as Application No. **227/18/2** relating to the land described as **5-7 Doohat Avenue, North Sydney**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **1 October 2019**, has been determined in the following manner:

1. Insertion of the following new condition A4, F10 and G22 as follows:

Development in Accordance with Plans/Documentation (s4.56 Amendments)

A4. The development must be carried out in accordance with plans identified in Condition A1 of the consent, A4(a), A4(b) and A4(c) of the modification to consent endorsed with Council's approval stamp, except as modified by the modifications shown on:

Plan No.	Rev	Description	Prepared by	Dated
A000	C	Cover Page	MacKenzie Architects	05/08/2022
A100	C	Roof/Site Plan	MacKenzie Architects	05/08/2022
A101	B	Basement 02	MacKenzie Architects	19/07/2022
A102	B	Basement 01	MacKenzie Architects	19/07/2022
A103	C	Ground Floor	MacKenzie Architects	05/08/2022
A104	C	First Floor	MacKenzie Architects	05/08/2022
A105	C	Second Floor	MacKenzie Architects	05/08/2022

A106	C	Third Floor	MacKenzie Architects	05/08/2022
A2000	C	East + West Elevations	MacKenzie Architects	05/08/2022
A2001	C	North + South Elevations	MacKenzie Architects	05/08/2022
A2002	B	Sections	MacKenzie Architects	19/07/2022
A3001	C	Site Coverage	MacKenzie Architects	05/08/2022
A3002	C	Deep Soil	MacKenzie Architects	05/08/2022
A3003	C	COS Compliance	MacKenzie Architects	05/08/2022
A3004	B	Excavation Compliance	MacKenzie Architects	19/07/2022
A3005	C	HOB Compliance	MacKenzie Architects	05/08/2022
A3006	C	Natural Ventilation	MacKenzie Architects	05/08/2022
A3008	C	Finishes Schedule	MacKenzie Architects	05/08/2022
A3009	B	Demolition Plan	MacKenzie Architects	19/07/2022
A3010	B	Driveway Section	MacKenzie Architects	19/07/2022
A3014	C	Pre + Post Adaptable Units (1)	MacKenzie Architects	05/08/2022
A3015	C	Pre + Post Adaptable Units (2)	MacKenzie Architects	05/08/2022
A3016	C	LHD Silver Level Units	MacKenzie Architects	05/08/2022
LPCC 22 - 355 - L01	I	Landscape Plan - Ground Floor	Conzept Landscape Architects	15/12/2021
LPCC 22 - 355 - L02	G	Landscape Plan - Rooftop	Conzept Landscape Architects	15/07/2021
LPCC 22 - 355 - L03	C	Details 1	Conzept Landscape Architects	15/07/2021
LPCC 22 - 355 - L04	A	Detail 2	Conzept Landscape Architects	15/07/2021

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

Protection of Public Places

- F10. 1) A hoarding and site fencing must be erected between the work site and adjoining public place.
- 2) If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.
- 3) The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.
- 4) Any such hoarding, fence or awning is to be removed when the work has been completed.
- 5) No access across public reserves or parks is permitted.

Note: Prior to the erection of any temporary fence or hoarding over property owned or managed by Council, written approval must be obtained. Any application needs to be accompanied by plans indicating the type of hoarding and its layout. Fees are assessed and will form part of any approval given. These fees must be paid prior to the approval being given. Approval for hoardings will generally only be given in association with approved building works, maintenance or to ensure protection of the public. An application form for a Hoarding Permit can be downloaded from Council's website.

(Reason: To ensure public safety and the proper management of public land)

Covenant and Restriction (Stormwater Control Systems)

- G22. An Instrument pursuant to Sections 88B and 88E of the *Conveyancing Act 1919* and one copy must be submitted to Council in registrable form, providing for:
- a. a restriction as to user and positive covenant as to user as appropriate in favour of North Sydney Council requiring the ongoing retention, maintenance and operation of the stormwater facility (on-site detention and basement pump-out system) in accordance with this consent;
 - b. North Sydney Council being nominated in the Instrument as the only party authorised to release, vary or modify the Instrument.
 - c. the wording on the Instrument making reference to the Council file/s which hold:
 - (i) the Construction plans; and
 - (ii) the "Work-as-Executed" (as built) plans.

Upon Council being satisfied as to the terms of the Instrument, North Sydney Council's official seal will be affixed to these documents, prior to submission to the Land & Property Information Office for registration.

The Instrument creating the restriction and/or covenant under Sections 88B and 88E required by this condition of consent must be registered on the Title of the development site prior to the issue of an Occupation Certificate or commencement of use of the site, whichever is the earlier.

Evidence of the registration of the instrument referred to in this condition is to be provided to Council prior to the issue of an Occupation Certificate.

All costs associated with the preparation, approval and registration of the Instrument required by this condition of consent must be borne by the person acting on this consent including the reasonable costs of Council in obtaining advice, negotiating the terms or otherwise facilitating the execution and registration of the required Instrument.

(Reason: Compliance and adequate maintenance of drainage system)

2. Modify Conditions , C35, G5, G6 and G8 as follows:

BASIX Certificate

- C35. 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. **946545M_06**, dated 29 August 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)

Certification - Civil Works

- G5. 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)

Works as Executed Drawings - Stormwater and Video

- G6. A works-as-executed survey drawing (W.A.E.) of the completed stormwater drainage system must be obtained. The W.A.E. survey drawing must show the alignment, depth and grade of the stormwater drainage pipelines, pits and ancillary plumbing. The W.A.E. survey drawing must be reviewed by a qualified and practising civil engineer and certification provided to the Certifying Authority that the as-built system achieves the design intent of the plans approved with the Construction Certificate. Certification must be provided with the W.A.E. survey drawing to the Certifying Authority prior to the issue of an Occupation Certificate.

A video inspection must also be carried out of completed drainage works that are to revert to Council's care and control, and the video tape / DVD forwarded to Council to support the certification.

A copy of the W.A.E. survey drawing and certification must be submitted to the Council if it is not the Certifying Authority.

CCTV inspection of conduits, that revert to the care and control of Council, shall be conducted in accordance with the Conduit Inspection Reporting Code of Australia WSA 05-2013.

The camera, transportation unit, distance measuring devices, illumination systems and ancillary equipment shall be used suitable for the conduit size, material and conditions under which the inspection is undertaken.

The camera shall be steerable and be able to negotiate bends within the drainage pipe. The use of a pushrod camera may only be acceptable for pipe diameters less than 150mm or where a steerable camera cannot navigate.

A colour camera shall be used which has remotely operated automatic and/or manual adjustment of the focus and iris to allow optimum picture quality to be achieved.

The camera lens shall be capable of viewing the extremities of the conduit and panning and or tilting to view the lateral connections and defects or features at and position around the conduit regardless of the direction of travel of the camera in the main conduit.

The adjustment of focus and iris shall provide a focal range from 15 mm to infinity. The distance along the conduit in focus from the initial point of observation shall be a minimum of four times the vertical height of the conduit.

Where required, specialised instruments, apparatus and/or software shall be used to facilitate measurement of parameters to determine acceptance. Hardware and software used in measuring the parameters shall be correctly calibrated for each application using the manufacturer's methods.

For circular or regular shaped conduits, the camera shall be positioned centrally, $\pm 10\%$ of the vertical and horizontal diameter, within the conduit.

(Reason: Compliance with the Consent)

Damage to Adjoining Properties

G8. On completion of the development the subject of this consent and prior to the issue of the Occupation Certificate, a report is to be prepared by an appropriately qualified consultant and is to be provided to the Certifying Authority (and a copy to Council if it is not the Certifying Authority) certifying:

- a) whether any damage to adjoining properties has occurred as a result of the development.
- b) the nature and extent of any damage caused to the adjoining property as a result of the development.
- c) the nature and extent of works required to rectify any damage caused to the adjoining property as a result of the proposed development;
- d) the nature and extent of works carried out to rectify any damage caused to the adjoining property as a result of the development; and
- e) the nature and extent of any agreements entered into for rectification of any damage caused to the adjoining property as a result of the development.

The report and certification must reference the dilapidation survey and reports required to be provided to the Certifying Authority in accordance with this consent.

A copy of the report and certification required by this condition must be submitted to Council with the Final Occupation Certificate. All costs incurred in achieving compliance with this condition shall be borne by the developer.

(Reason: To ensure adjoining owner's property rights are protected in so far as possible)

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).

Reasons 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:

The application was notified as per Council's Community Participation Plan. The notification period ended on 4 February 2022. One submission was received during this period regarding the concerns relating to the demolition and construction noise from the commencement of works for the original consent. Appropriate conditions are already imposed in the modification consent to maintain residential amenity and no further actions are required in this regard.

The conditions attached to the original consent for Development Application No. **227/18** by endorsed date of **1 October 2019** still apply.

ADVISINGS

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

28 November 2022

DATE



Signature on behalf of consent authority
DAVID HOY
TEAM LEADER (ASSESSMENTS)