



Ms Maryann Schmidt
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NEUTRAL BAY NSW 2089

D276/21
MR3 (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 276/21/2 - APPROVAL**

Development Consent Number: 276/21

Land to which this applies: 14 Hayberry Street, Crows Nest
Lot No.: 8, Sec. 2, DP: 1265

Applicant: Maryann Schmidt

Proposal: Section 4.55 (2) application to modify the approved building to comply with fire regulations

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. **276/21** and registered in Council's records as Application No. **276/21/2** relating to the land described as **14 Hayberry Street, Crows Nest**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **28 February 2022**, has been determined in the following manner:

1. To amend Condition A1 of the consent so as to read as follows:

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	Description	Prepared by	Dated
2101/DA-01	A	Site Plan	B H Designs	October 2022
2101/DA-02	A	Existing and Demolition - Ground Floor	B H Designs	October 2022
2101/DA-03	A	Existing and Demolition - Level 1	B H Designs	October 2022
2101/DA-04	A	Existing and Demolition - Roof	B H Designs	October 2022
2101/DA-05	A	Proposed Ground Floor	B H Designs	October 2022

2101/DA-06	A	Proposed Level 1	B H Designs	October 2022
2101/DA-07	A	Proposed Roof Plan	B H Designs	October 2022
2101/DA-08	A	Existing Elevations and Section	B H Designs	October 2022
2101/DA-09	A	Proposed Elevations and Section	B H Designs	October 2022
2101/DA-10	A	Proposed Elevations	B H Designs	October 2022

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

2. To add Condition C19 to the consent so as to read as follows:

Obtain Driveway Crossing Permit under S.138 Roads Act 1993

C19. A driveway crossing and roads infrastructure works permit to suit the approved off-street parking facilities must be granted by the Council prior to the issue of any Construction Certificate. In order to obtain a permit under S.138 of the Roads Act 1993, an application must be made to Council on the 'Vehicular Access Application' form with payment of the adopted assessment/inspection fees. Council will require civil design construction drawings and certification from the applicant's Civil Engineer to verify design details and enable issue of the permit. The requirements of the permit must be complied with at all times.

The civil design drawings must include the following at a minimum: -

- a) the vehicular access way must comply with AS 2890.1 and Council's current Vehicular Access Application Guidelines and Specification (gutter bridges not permitted) to ensure that a B85 vehicle will not scrape/strike the surface of the carriageway, layback, vehicular crossing or parking floor,
- b) the width of the vehicular layback must be 3.5 metres (including the wings),
- c) the vehicular crossover must be set square to the kerb,
- d) the crossover (between the layback and the property boundary) must be placed on a single straight grade of approximately 4.5%, falling to the back of the layback,
- e) Construction of a fully new concrete footpath is required across the entire site frontage in Hayberry Lane. The footpath shall be designed (at a single straight grade of 3% falling to the top of kerb) so that it is uniform without showing signs of dipping or rising particularly at entrances;
- f) Construction of a new kerb ramp in Hayberry Lane is to be constructed and must align with the proposed access ramp;
- g) Construction of a new kerb/gutter is required in Hayberry Lane. The kerb/gutter shall extend from the new kerb ramp and marry into the existing kerb/gutter.
- h) the gutter levels must match the existing levels and shall not be altered,
- i) transition works of one (1) footpath panels on both sides of the driveway crossing are required to ensure uniformity in the footpath,
- j) the works will require reconstruction of the carriageway shoulder extending out 600mm from the gutter lip in AC10 - 50mm thick, adjacent to all new gutter works,

- k) any twisting of driveway access must occur entirely within the subject property,
- l) all inspection openings, utility services must be adjusted to match the proposed driveway levels,
- m) sections along centreline and extremities are required at a scale of 1:50 to be taken from the centreline of the roadway through to the parking area itself and must include all changes of grade and levels both existing and proposed,
- n) a longitudinal section along the gutter line at a scale of 1:50 showing how it is intended to blend the vehicular crossing with the existing kerb and gutter,
- o) a longitudinal section along the footpath property boundary at a scale of 1:50 is required,
- p) the sections must show the calculated clearance to the underside of any overhead structure,

The permit must be granted by Council prior to the issue of the relevant Construction Certificate.

All driveway and infrastructure works on the road reserve must be undertaken in accordance with the terms of the permit issued by Council. Inspections by Council will be required as specified. The Certifying Authority issuing the Construction Certificate must ensure that the permit issued by Council is obtained and referenced on and accompanies the Construction Certificate issued.

(Reason: To facilitate appropriate vehicular access to private sites, without disruption to pedestrian and vehicular traffic)

3. To add Condition E17 to the consent so as to read as follows:

Council Inspection of Public Infrastructure Works

E17. During the works on public infrastructure reverting to Council's care and control, Council's development engineer must undertake inspections of the works at the following hold points: -

- Formwork for kerb/gutter, layback, crossover, footpath, kerb ramp etc.

All works must proceed in accordance with Roads Act 1993 approvals or other permits relating to roads issued by Council. A minimum of 48 hours' notice must be given to Council to book an inspection. Work must not proceed until the works or activity covered by the inspection is approved.

(Reason: To ensure quality of construction joints and connections in the drainage system)

4. To add Condition G4 to the consent so as to read as follows:

Utility Services

G4. All utility services shall be adjusted to the correct levels and/or location/s required by this consent, prior to issue of an occupation certificate. This shall be at no cost to Council.

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

Reasons for Approval:

The proposal (as modified) involves a number of changes to the approved development, including upgrading of windows/openings to comply with BCA and a new driveway

crossover off Hayberry Lane The proposed modification will result in development that is substantially and materially the same as approved by DA276/21 (as demonstrated in the above considerations under Clause 4.55 of the *Environmental Planning and Assessment Act 1979*).

The merits of the proposed modification and an assessment of this modification against relevant provisions and controls under environmental planning instruments (including the NSLEP 2013) have been described and detailed throughout this report. In summary, the proposed modification is considered acceptable and supportable, satisfying the above requirements and the provisions under Section 4.55 of the *Environmental Planning and Assessment Act 1979*.

Accordingly, it is recommended that the following conditions are amended in the consent:

- Amend Condition A1 to include amended plans reflecting the proposed changes.
- Add Condition C19 to facilitate driveway crossing works.
- Add Condition E17 to facilitate driveway crossing works.
- Add Condition G4 to facilitate driveway crossing works.

How community views were taken into account:

The proposal as modified is considered to be in the public interest for the reasons stated throughout this report.

The conditions attached to the original consent for Development Application No. **276/21** by endorsed date of **28 February 2022** still apply.

ADVISINGS

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

27 March 2023

DATE



Signature on behalf of consent authority
MIGUEL RIVERA
SENIOR ASSESSMENT OFFICER