



Mr Benson Leong
67 West Street
NORTH SYDNEY NSW 2060

D73/22
MR3 (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 73/22/2 - APPROVAL**

Development Consent Number: 73/22

Land to which this applies: 67 West Street, North Sydney
Lot No.: A, DP: 307138

Applicant: Benson Leong

Proposal: Section 4.55(1) modification to delete Conditions C2, C6, D1 and D2

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. **73/22** and registered in Council's records as Application No. **73/22/2** relating to the land described as **67 West Street, North Sydney**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **29 June 2022**, has been determined in the following manner:

- To delete Condition C2 - Upgrades - Building Code of Australia (BCA)***
 - To delete Condition C6 - Protection of Trees***
 - To delete Condition D1 - Protection of Trees***
 - To delete Condition D2 - Temporary Fences and Tree Protection***
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Reasons for Approval:

The proposal (as modified) involves amendments of the consent to delete superfluous/irrelevant conditions associated with BCA compliance and tree protection. The proposed modification will result in development that is substantially and materially the same as approved by DA143/22 (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:

- Delete Condition C2.
- Delete Condition C6.
- Delete Condition D1.
- Delete Condition D2.

How community views were taken into account:

The application did not require neighbour notification as per Council's Community Participation Plan.

The conditions attached to the original consent for Development Application No. **73/22** by endorsed date of **29 June 2022** still apply.

ADVISINGS

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

3 March 2023

DATE



Signature on behalf of consent authority
MIGUEL RIVERA
SENIOR ASSESSMENT OFFICER