



Mr Nick Wheatley
Development Manager
AP Development No 1 Pty Ltd
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D432/21
MS3 (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 432/2021/3 - APPROVAL**

Development Consent Number: 432/2021

Land to which this applies: 2 Sutherland Street, Cremorne
Lot No.: 1, DP: 528502

Applicant: AP Development No 1 Pty Ltd

Date of Determination 8 June 2023

Proposal: Section 4.55(2) modification relating to the demolition of an existing residential flat building and construction of a part 4-, part 5-storey residential flat building containing 11 apartments with basement parking for 18 vehicles, and landscaping and associated works.

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. **432/21** and registered in Council's records as Application No. **432/21/3** relating to the land described as **2 Sutherland Street, Cremorne**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **3 August 2022** has been determined in the following manner:

A. To insert Condition A5 Development in Accordance with Plan (s4.55 Modifications)

A5. 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 shown in colour on:

Plan No	Title	Dated	Prepared	Received
DA-0100 2	Site Plan	10/03/2023	3EM Architects	16/03/2023
DA-0201 1	Basement 02	25/11/2022	3EM Architects	16/03/2023

DA-0202 1	Basement 01	25/11/2022	3EM Architects	16/03/2023
DA-0203 1	Lower Ground Floor	25/11/2022	3EM Architects	16/03/2023
DA-0204 2	Ground Floor	10/03/2023	3EM Architects	16/03/2023
DA-0205 2	Level. 01	10/03/2023	3EM Architects	16/03/2023
DA-0206 2	Level. 02	10/03/2023	3EM Architects	16/03/2023
DA-0207 2	Level. 03	10/03/2023	3EM Architects	16/03/2023
DA-0208 2	Roof Plan	10/03/2023	3EM Architects	16/03/2023
DA-0501 2	East Elevation	10/03/2023	3EM Architects	16/03/2023
DA-0502 1	North Elevation	25/11/2022	3EM Architects	16/03/2023
DA-0503 2	South Elevation	10/03/2023	3EM Architects	16/03/2023
DA-0504 1	West Elevation	25/11/2022	3EM Architects	16/03/2023
DA-0505 2	West Elevation with fence	17/03/2023	3EM Architects	12/05/2023
DA-0506 3	South Elevation with fence	17/03/2023	3EM Architects	12/05/2023
DA-0507 3	East Elevation with fence	17/03/2023	3EM Architects	12/05/2023
DA-0601 1	Section A	25/11/2022	3EM Architects	16/03/2023
DA-0602 2	Section B	10/03/2023	3EM Architects	16/03/2023
DA-0603 2	Section D	10/03/2023	3EM Architects	16/03/2023
DA-0604 2	Section E	10/03/2023	3EM Architects	16/03/2023
DA-0605 1	Section F	25/11/2022	3EM Architects	16/03/2023
DA-0606 1	Section G	25/11/2022	3EM Architects	16/03/2023
DA-0607 1	Section H	25/11/2022	3EM Architects	16/03/2023

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)

B. To amend conditions C33 and C46 as follows:

Location of Plant

C33. **Except where indicated on the plans referenced in Condition A5**, all plant and equipment (including but not limited to air conditioning equipment) is to be located within the basement of the building and is not to be located on balconies or the roof. Plans and specifications complying with this condition must be submitted to the Certifying Authority for Approval prior to the issue of **the relevant** 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: Minimise impact on surrounding properties, improved visual appearance and amenity for locality)

BASIX Certificate

C46. Under clause 97A(3) of the Environmental Planning and Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. **1256357M_05**, dated **12 December 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)

The modification application meets the requirements of section 4.55(2) of the Act and has been assessed with regard to the original reasons for approval and the matters for consideration as outlined in section 4.15(1) of the Act, which have been satisfied. The proposed development is permissible, meets the development standards and relevant provisions of NSLEP 2013 and is generally in accordance with the objectives of the NSDCP 2013.

Reasons for Approval:

The proposed modifications are considered substantially the same development. The proposed modifications have largely been proposed to resolve relevant NCC and construction related design development. The proposed additional fire egress staircase would detract from the landscaping within the Sutherland Street setback area, however, having regard to the requirements of the NCC and relevant fire safety requirements, the location of the additional staircase structure is considered acceptable.

Relevant conditions were imposed on the original development consent that would satisfactorily manage the potential noise impacts of the air conditioners units proposed to be relocated to the roof top. The roof mounted air conditioner units are set back from the edges of the roof form and are screened from view from the public domain to minimise the potential visual impact.

The proposed modification application is therefore considered reasonable and is recommended for approval.

How community views were taken into account:

The application was notified in accordance with Council's Community Engagement Protocol and one submission was received which has been addressed in part by existing conditions.

3 August 2022 still apply.

ADVISINGS

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

13 June 2023

DATE



Signature on behalf of consent authority

ROBIN TSE

A/TEAM LEADER (ASSESSMENTS)