



Aidop No 3 Pty Ltd
Suite 5.06, Level 5, 55 Miller Street
PYRMONT NSW 2009

D86/22
TH2 (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.56 APPLICATION 86/22/2 - APPROVAL**

Development Consent Number: DA 86/22/2

Land to which this applies: 96-98 Ben Boyd Road, Neutral Bay
Lot No.: A, DP: 348364

Applicant: Aidop No 3 Pty Ltd

Proposal: Section 4.56 modification relating to development consent DA 86/2022 for consolidation of 2 lots, demolition of existing structures, excavation and construction of a six-storey residential flat building containing 21 apartments over two levels of basement parking and parking at grade, landscaping and associated works at 96-98 Ben Boyd Road, Neutral Bay.

The 4.56 application was considered by the **North Sydney Local Planning Panel (NSLPP)** on 4 October 2023.

Pursuant to Section 4.56 of *the Act* notice is hereby given of the determination by the consent authority of your request for a modification to Development Consent No. **86/22** and registered in Council's records as Application No. **86/22/2** relating to the land described as **96-98 Ben Boyd Road, Neutral Bay**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 30 November 2022, has been determined in the following manner: -

A. **Impose Condition A7, C50, C51 and C52 as follows:**

Development in accordance with Plans (s4.56 Amendments)

- A7. The development being carried out in accordance with plans identified in Condition A1 of the consent endorsed with Council's approval stamp, except as modified by the modifications shown on:

Plan No.	Rev	Title	Drawn by	Received
DA 0000	F	Cover Page	MHNDUNION	12/09/2023
DA 0001	F	Project Summary	MHNDUNION	12/09/2023
DA 1000	F	Site Context	MHNDUNION	12/09/2023
DA 1001	F	Site Analysis	MHNDUNION	12/09/2023
DA 1002	F	Site Plan	MHNDUNION	12/09/2023
DA 1003	F	Demolition Plan	MHNDUNION	12/09/2023
DA 2000	F	Basement 02 Plan	MHNDUNION	12/09/2023
DA 2001	F	Basement 01 Plan	MHNDUNION	12/09/2023
DA 2002	F	Ground Floor Plan	MHNDUNION	12/09/2023
DA 2003	F	Level 1 Floor Plan	MHNDUNION	12/09/2023
DA 2004	F	Level 2 Floor Plan	MHNDUNION	12/09/2023
DA 2005	F	Level 3 Floor Plan	MHNDUNION	12/09/2023
DA 2006	F	Level 4 Floor Plan	MHNDUNION	12/09/2023
DA 2007	F	Level 5 Floor Plan	MHNDUNION	12/09/2023
DA 2008	F	Roof Plan	MHNDUNION	12/09/2023
DA 3000	F	North Elevation	MHNDUNION	12/09/2023
DA 3001	F	South Elevation	MHNDUNION	12/09/2023
DA 3002	F	East Elevation	MHNDUNION	12/09/2023
DA 3003	F	West Elevation	MHNDUNION	12/09/2023
DA 3100	F	Section A	MHNDUNION	12/09/2023
DA 3101	F	Section B	MHNDUNION	12/09/2023
DA 6000	F	External Finishes 01	MHNDUNION	12/09/2023
DA 6001	F	External Finishes 02	MHNDUNION	12/09/2023
DA 9100	F	SEPP 65 – Solar & Cross Ventilation	MHNDUNION	12/09/2023
DA 9101	F	SEPP 65 - Storage	MHNDUNION	12/09/2023
DA 9102	F	Landscape Calculation	MHNDUNION	12/09/2023
DA 9103	F	Site Coverage Diagram	MHNDUNION	12/09/2023
DA 9104	F	Height Plane Diagram	MHNDUNION	12/09/2023
DA 9300	F	Waste Management Plan	MHNDUNION	12/09/2023
DA 9301	F	Adaptable Unit Layout	MHNDUNION	12/09/2023
Landscape plans				
Page 21	G	Concepts Landscape Plan	Arcadia Landscape Architecture	13/04/2023
Page 22	G	Concepts Entry Forecourt	Arcadia Landscape Architecture	13/04/2023
Page 23	G	Concepts Entry Forecourt	Arcadia Landscape Architecture	13/04/2023
Page 24	G	Concepts Private Courtyard	Arcadia Landscape Architecture	13/04/2023
Page 25	G	Concepts Private Courtyard	Arcadia Landscape Architecture	13/04/2023
Page 26	G	Concepts Sandstone Edge Conditions	Arcadia Landscape Architecture	13/04/2023
Page 27	G	Concepts Rooftop Planting	Arcadia Landscape Architecture	13/04/2023
Page 28	G	Landscape Areas	Arcadia Landscape Architecture	13/04/2023
Page 29	G	Canopy Cover	Arcadia Landscape Architecture	13/04/2023
Page 30	G	Design Strategies Material Look and Feel	Arcadia Landscape Architecture	13/04/2023

Page 31	G	Design Strategies Indicative Lighting Strategy	Arcadia Landscape Architecture	13/04/2023
Page 32	G	Design Strategies Planting Look and Feel	Arcadia Landscape Architecture	13/04/2023
Page 33	G	Design Strategies Planting Palette	Arcadia Landscape Architecture	13/04/2023
Page 34	G	Design Strategies Planting Schedule	Arcadia Landscape Architecture	13/04/2023
SK1	G	Landscape Plan Ground	Arcadia Landscape Architecture	13/04/2023
SK2	G	Landscape Plan Rooftops	Arcadia Landscape Architecture	13/04/2023
SK3	G	Landscape Details	Arcadia Landscape Architecture	13/04/2023

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

Ground Level Parking Design Change

C50. The communal room is to be enlarged to the west by approximately 1.2m, the DDA car parking space is to be relocated to the west to accommodate for the enlarged communal room and the car parking space adjacent to the visitor car parking for use as a storage cage will be redesigned as both a space for motorbike parking and storage cage.

The Ground Floor Plan must be submitted to Council for the written approval of Council's Assessment Team Leader prior to the issue of any construction certificate.

(Reason: To ensure appropriate provision of internal common space and appropriate provision of parking and storage)

Balconies – Design Amendments

C51. The southern balcony that serves Units 102 & 103 on Level 1, Units 202 & 203 on Level 2, Units 302 & 303 on Level 3, Unit 402 on Level 4 and Unit 502 on Level 5 is to be amended so not to be a continuous balcony but encompass a break in form as per that approved under DA 86/22 – LEC No. 2022/165233. The balconies subject to design amendments are clouded in red on the approved plans in A7 of this modification application consent.

The Level 5 balcony on the western side of the building (Unit 501) is not approved and shall remain as per the balcony approved under determination for DA 86/22 – LEC No. 2022/165233. The respective balcony subject to design amendments is clouded in red on Level 5 Floor Plan, DA 2007 Rev F.

The floor plans (Levels 1-5) and elevations must be submitted to Council for the written approval of Council's Manager Development Services prior to the issue of any construction certificate.

(Reason: To ensure control in site density, maintenance in articulation in built form to the streetscape and minimise additional exceedance in site coverage)

Deep Soil Area

- C52. The rectangular deep soil area to the northern boundary of the site shall remain unexcavated or be reinstated with no continuous slab at the base as per that in Section B, DA 3101 Rev approved under DA 86/22 – LEC No. 2022/165233.

An amended Section must be submitted to Council for the written approval of Council's Manager Development Services prior to the issue of any construction certificate.

(Reason: To minimise excavation and site disturbance and to enhance natural drainage)

B. Modify Conditions A5, C13, C31, C44, C49 and G21 as follows:

Works to Stone Wall

- A5. All works to the stone wall at the Ben Boyd boundary of the site are to follow the methodology provided in the Stone Wall Reconstruction Methodology, John Outram Heritage Design, dated 21 November 2022. The works are to be guided by a suitably qualified heritage consultant and undertaken by a stonemason experienced in heritage work. Any variation to the works methodology will be notified in writing to the manager of development services and will require sign off by the manager of development services within Council.

FBHV Cabinet - The proposed new fire services cabinet to be located within the sandstone wall is to be painted in a visually submissive colour that is sympathetic to the sandstone wall.

(Reason: To ensure the appropriate conservation of the stone wall)

Bicycle Storage and Parking

- C13. The bicycle storage area must accommodate a minimum of ~~21~~ **20** bicycles, and a visitor parking bicycle rail shall be provided for ~~3~~ **2** visitor bicycles. The bicycle storage lockers and bicycle rail shall be designed in accordance with the applicable Australian Standards. Plans and specifications which comply 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, 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)

Location of Plant

C31. Except where shown on the approved plans identified in condition A7, All plant and equipment (including but not limited to air conditioning equipment) is to be located within the basement of the building or adjoining the car park lift shaft and is not to be located on balconies or the roof. Fireplace flues to roof areas are permitted (in accordance with Condition C10). 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

C44. Under clause 75 of the *Environmental Planning and Assessment Regulation 2021*, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. ~~1273153M_03, dated 21 November 2022~~ **1273153M_04 dated 4 April 2023**, 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 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: To ensure the proposed development will meet the Government's requirements for sustainability and statutory requirements)

Pedestrian Sight Distance at Vehicular Exit Driveway

C49. A pedestrian sight triangle of 2.0 metres by 2.5 metres is to be provided on both sides of the vehicular egress driveway in accordance with AS2890.1:2004. Any variation to this sight distance requirement would need to be assessed by an appropriately qualified traffic engineer and supplemented with additional traffic control devices such as convex mirrors at the egress (within the site) to assist with sight lines, with the variation to not result in any detrimental impact in terms of pedestrian safety. Details demonstrating compliance with the requirements of this condition are to be submitted to the Certifying Authority prior to the issue of a Construction Certificate.

(Reason: To ensure pedestrian safety at the site exit driveway)

Allocation of Spaces

G21. 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:

Residential	Parking Spaces
Residential (including 4 accessible spaces)	27
Visitor (excluding carwash bay)	3
Total	30 spaces

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.

Visitor parking facilities must be designated as common property on the strata plan. Visitor parking facilities 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 for use by building visitors.

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

Reasons for approval:	<p>The Panel is of the view that excavation is to be minimised and deep soil optimised. The Panel also considers that the engineered deep soil areas are to be free of any continuous constructed slab.</p> <p>The Panel is of the view that the street elevation would benefit from additional articulation to the balconies similar to the original approval.</p> <p>The Panel agrees that the louvres can be replaced with concrete to allow floor to ceiling doors on the eastern elevation.</p>
How community views were taken into account:	<p>The application has been notified in accordance with Council's Community Consultation Plan with adjoining properties and the Neutral Bay Precinct notified between 12 May to 26 May 2023. In response to the notification Council received no submissions to the proposal.</p>

The conditions attached to the original consent for Development Application No. 86/22 by endorsed date of 30 November 2022 still apply.

ADVISINGS

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

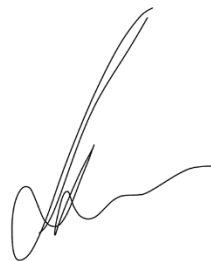
- (b) Pursuant to Section 8.2, an applicant is able to request Council to review its determination. An application for a review under Section 8.2 of *the Act* must be made no later than 28 days after the date on which the application for the modification of the development consent was determined.
- (c) 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 & 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 & Assessment Act*.

Endorsed for and on behalf of North Sydney Council

13 October 2023

DATE



Signature on behalf of consent authority
ISOBELLA LUCIC
TEAM LEADER (ASSESSMENTS)

