



Ms Grace Chen
C Squared Architects Pty Ltd
65 Coolaroo Road
LANE COVE NORTH NSW 2066

D313/20
MAB (CPE)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 313/20/2 - APPROVAL**

Development Consent Number:	313/20
Land to which this applies:	1/457 Miller Street, Cammeray Lot No.: 1, SP: 88843
Applicant:	C Squared Architects Pty Ltd
Proposal:	Modify hours of operation, increase maximum occupancy and minor additions to the interior to an existing restaurant

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. **313/20** and registered in Council's records as Application No. **313/20/2** relating to the land described as **1/457 Miller Street, Cammeray**.

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:

1. To delete the following conditions from the consent:

Delete conditions A1, A2, A3, C1, C2, C3, C4, C5, C6, C9, C10, D1, D2, D3, D4, E1, E2, E3, E4, E5, E6, E7, E8, E9, E10, E11, E12, E13, E14, F1, F2, F3, F4, F5, F6, F7, F8, F9, G1, G2, G3, G4, G5 and I14 of the consent.

2. To amend the description of the Proposal:

~~Modify hours of operation, increase maximum occupancy and minor additions to the interior to an existing restaurant~~ to

'Modify hours of operation and increase maximum occupancy of an existing restaurant'

3. To amend the Condition C8 as follows:

Compliance with Acoustic Report

C8. The recommendations contained in the Acoustic Report prepared by Acoustic Directions dated 17 March 2021, must be implemented during ~~construction and use of the development.~~ operation under this consent (insofar as they are relevant to the approved development as modified).

~~A statement from an appropriately qualified acoustical consultant eligible for membership of the Association of Australian Acoustic Consultants, certifying that the acoustic mitigation measures outlined in the above stated report have been suitably incorporated into the development and that relevant noise criteria have been satisfied, must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.~~

~~The Principal 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 maintain an appropriate level of amenity for adjoining land uses)

3. **To amend the Condition 14 as follows:**

Plan of Management

- 14 The Maggio Plan of Management submitted with the Development Application shall be adhered to at all times and forms part of this development consent. The Plan of Management shall be updated to incorporate all relevant conditions of consent including the recommendations contained within the Acoustic Report (insofar as they are relevant to the approved development as modified).

The Plan of Management shall be provided to Council for the purposes of Council records prior to ~~the issue of an Occupation Certificate~~ the commencement of operations under this consent. The Plan of Management shall be kept updated at all times.

(Reason: To ensure the appropriate management of the premises and to confirm the management arrangements proposed as part of this development consent)

4. **To amend the Condition 16 as follows:**

Noise and Vibration Impact (Compliance)

16. Within 60 days of commencement of operation of the premises further acoustic testing must be undertaken and a report from an appropriately qualified acoustical consultant eligible for membership of the Association of Australian Acoustic Consultants, prepared to demonstrate that the use of the premises complies with the conditions of this consent and the Acoustic Report prepared Acoustic Report prepared by Acoustic Directions dated 17 March 2021 (insofar as they are relevant to the approved development as modified).

The testing must be carried out when the premises is operating at full capacity. A copy of the report must be submitted to Council within 14 days of its completion.

If the use is found not to comply with the noise conditions, the use must cease immediately until appropriate measures to remedy the breach are implemented to the satisfaction of Council.

(Reason: To ensure compliance with acceptable noise levels to maintain the amenity of adjoining land uses)

Reasons for Approval:

The proposed modifications are considered to be generally consistent with the originally approved development application and s.4.55 of *the Environmental Planning and Assessment Act 1979*. Furthermore, the modifications do not result in any material amenity impact to adjoining properties or the surrounding area. The proposed modifications are consistent with the reasons for the granted of development consent to the originally approved development and is considered to be acceptable.

Having regard to the provisions of Sections 4.55 and 4.15(1) of *the Environmental Planning and Assessment Act 1979*, the proposed development as modified is substantially the same development as originally consented to. The application is therefore recommended for **approval**.

How community views were taken into account:

The proposal 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. **313/20** by endorsed date of **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 **Mark Bolduan**. 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 2023

DATE



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