



Mr Jaye O'Dwyer
118 Wyndham Street
ALEXANDRIA NSW 2015

D66/20
RW (PE)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 66/20/2 - APPROVAL**

Development Consent Number: 66/20

Land to which this applies: 1 Parker Street, McMahons Point
Lot No.: Y, DP: 438679

Applicant: Jaye O'Dwyer

Proposal: To modify Conditions C2 and C3 of Consent DA66/20 for the alterations and additions to an existing dwelling.

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. **66/20** and registered in Council's records as Application No. **66/20/2** relating to the land described as **1 Parker Street, McMahons Point**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **14 October 2020**, has been determined in the following manner:

A. Modify Conditions C2 and C3 as follows:

Dilapidation Survey Private Property (Neighbouring Buildings)

- C2. A photographic survey and dilapidation report of adjoining property ~~No. 33 Middle Street~~, **No.30 Middle Street**, McMahons Point detailing the physical condition of the property, both internally and externally, including, but not limited to, such items as walls, ceilings, roof, structural members and other similar items, SHALL BE submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The survey and report is to be prepared by an appropriately qualified person agreed to by both the applicant and the owner of the adjoining property. A copy of the report is to be provided to Council, if Council is not the Principal Certifier, prior to the issue of any Construction Certificate.

All costs incurred in achieving compliance with this condition shall be borne by the person entitled to act on this Consent.

In the event that access for undertaking the photographic survey and dilapidation report is denied by an adjoining owner, the applicant MUST DEMONSTRATE, in writing, to the satisfaction of Council that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed. Written concurrence must be obtained from Council in such circumstances.

Note: This documentation is for record keeping purposes only and may be used by an applicant or affected property owner to assist in any action required to resolve any dispute over damage to adjoining properties arising from the works. It is in the applicant's and adjoining owner's interest for it to be as full and detailed as possible.

(Reason: Proper management of records)

Structural Adequacy (Semi Detached and Terrace Buildings)

C3. A report from an appropriately qualified and practising structural engineer, certifying the structural adequacy of the adjoining property ~~No. 33 Middle Street~~, **No. 30 Middle Street, McMahons Point**, which certifies the ability to withstand the proposed works and outlines any measures required to be implemented to ensure that no damage will occur to adjoining premises during the course of the works, must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The measures outlined in the certified report must be complied with at all times.

Under no circumstances shall the party or common wall be extended or altered without the prior written consent of the adjoining owner. Any such extension of the party wall shall be noted on title by way of appropriate easement or Section 88B instrument.

(Reason: To ensure the protection and structural integrity of adjoining properties, and that common law property rights are recognised)

The proposal involves the modification of a consent relating to Conditions No. C2 and C3. The conditions relate to dilapidation survey report and structural adequacy report to be carried out by the Applicant on the adjoining property at No.30 Middle Street, McMahons Point.

Reasons for Approval:

Council is satisfied that the requirements of the condition misdescribe the development and therefore may be considered to have been applied in error.

Accordingly, it is recommended that the conditions are modified in the consent.

How community views were taken into account:

In accordance with the provisions of Section 3.4.1 of Council's Community Participation Plan, the subject application was not required to be notified. Therefore, no submissions have been received.

The conditions attached to the original consent for Development Application No. **66/20** by endorsed date of **14 October 2020** still apply.

ADVISINGS

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

15 April 2024

DATE

Signature on behalf of consent authority

DAVID HOY

TEAM LEADER (ASSESSMENTS)