



Barbro Constructions (NSW) Pty Ltd
C/- CPS Planning
PO Box 1074
BOTANY NSW 2019

D335/20
JV1 (PE)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 335/20/7 - APPROVAL**

Development Consent Number: 335/20

Land to which this applies: 287 Miller Street, Cammeray
Lot No.: 5, DP: 4206

Applicant: Barbro Constructions (NSW) Pty Ltd

Proposal: Section 4.55 (1A) Modification Application to amend conditions of consent to delete Conditions C2, C5, and C37, and modify condition C16

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. **335/20** and registered in Council's records as Application No. **335/20/7** relating to the land described as **287 Miller Street, Cammeray**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **7 July 2021**, has been determined in the following manner:

1. Condition C2 is deleted as follows:

Dilapidation Report Private Property (Excavation)

~~C2. A full dilapidation survey and report on the visible and structural condition of all neighbouring structures within the 'zone of influence' of the required excavations must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The zone of influence is to be defined as the horizontal distance from the edge of the excavation face to twice the excavation depth.~~

~~The dilapidation report and survey is to be prepared by a consulting structural/geotechnical engineer agreed to by both the applicant and the owner of any affected adjoining property. 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 dilapidation survey 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 the developer 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: To record the condition of property/ies prior to the commencement of construction}~~

2. Condition C5 is deleted as follows:

~~Structural Adequacy of Adjoining Properties – Excavation Works~~

~~C5. A report prepared by an appropriately qualified and practising structural engineer detailing the structural adequacy of adjoining properties Nos. 291 Miller Street, 285 Miller Street (A and B); and 187 Ernest Street (where structures are adjacent to the site) which certifies their ability to withstand the proposed excavation and outlines any measures required to be implemented to ensure that no damage will occur to adjoining properties 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.~~

~~{Reason: To ensure the protection and structural integrity of adjoining properties in close proximity during excavation works}~~

3. Condition C37 is deleted as follows:

~~Flood Evacuation Plan and Deed of Release~~

~~C37. Prior to the issue of a Construction Certificate, a Flood Evacuation Plan must be prepared to the satisfaction of Council detailing the methods to be employed in the event of a flood. A deed of release agreement must also be entered into between the affected property owner and Council, to indemnify Council in respect of any claims that may arise in the event of a flood.~~

~~{Reason: To ensure that appropriate plans and agreements are in place in the event of a flood}~~

4. Condition C16 is amended as follows:

Stormwater Management and Disposal Design Plan - Construction Issue Detail

C16. Prior to issue of any Construction Certificate, a site drainage management plan must be prepared by a qualified drainage design engineer. The site drainage management plan must detail the following requirements of North Sydney Council:

- a) compliance with BCA drainage requirements, Councils Engineering Performance guide and current Australian Standards and guidelines, such as AS/NZ3500.3.2 1998, National Plumbing and Drainage Code.
- b) stormwater runoff and subsoil drainage generated by the approved development must be conveyed in a controlled manner by gravity with a direct connection to the Sydney Water Stormwater Channel that traverses the site. The connection must be approved by and constructed in accordance with Sydney Water requirements. Application must be made to Sydney Water in this regard.
- c) the stormwater drainage system shall be designed for an average recurrence interval (A.R.I) of 1 in 20 years.

- d) All entrances to the building(s) are to be above the 1% AEP level + 500mm freeboard excluding the lower ground floor.
- e) any redundant stormwater pipelines within the footpath area shall be removed and footpath and kerb shall be reinstated.
- f) any pipelines that may be placed within the footpath area shall be hot dipped galvanised steel hollow section with a minimum wall thickness of 4.0 millimetres and a section height of 100 millimetres.
- g) the design and installation of the rainwater tank(s) must comply with BASIX and Sydney Water requirements. Overflow from the tank(s) shall be connected by gravity to the stormwater disposal system;
- h) any proposed fence/building structure is to be constructed so as not to impede the natural overland flow; and
- i) provision is to be made for the collection and disposal in an approved manner of any overland flow entering the subject property or concentrated as a result of the proposed works.
- j) surface inlet pits shall be located to catch surface flows and shall be provided at all pipe junctions and changes in pipe direction exceeding 45 degrees, prior to connection to the Sydney Water Stormwater Channel and shall be of sufficient size to accept the flow.
- k) all sub-soil seepage drainage shall be discharged via a suitable silt arrester pit. Details of all plans certified as being adequate for their intended purpose and compliant with the provisions of AS3500.3.2 by an appropriately qualified and practising civil engineer shall be submitted with the application for a Construction Certificate.
- l) prevent any stormwater egress into adjacent properties by creating physical barriers and surface drainage interception.
- m) provide subsoil drainage to all necessary areas with pump out facilities as required.

A site drainage management plan which complies with this condition must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The Principal Certifier 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 controlled stormwater management and disposal without nuisance)

Reasons for Approval:

The proposed modifications satisfy the provisions of Section 4.55(1A) in that the proposed development remains substantially the same as what was approved by DA 335/20. The proposed modifications will not alter the use of the development as originally approved and will have a minimal environmental impact.

The proposed modifications would not significantly change the level of compliance with the relevant development standards and controls as contained in the *North Sydney LEP 2013* and *North Sydney DCP 2013*. There would be no significant long-term impacts on the residential amenity of any adjoining properties, or on the character of the locality, and the proposal remains consistent with the objectives of the R4 High Density Residential zone, and the original reasons for granting consent. The proposal was found to be acceptable in the site circumstances and is recommended that the subject Section 4.55(1A) application be approved.

How community views were taken into account:

On 4 April 2024, the subject application was notified to adjoining properties and the Anzac Park Precinct Committee between 4 April 2024 and 19 April 2024. No submissions were received.

The conditions attached to the original consent for Development Application No. **335/20** by endorsed date of **7 July 2021** still apply.

ADVISINGS

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

6 June 2024

DATE



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