

Original signed by: Susanna Cheng Dated: 15/1/2018.

Ionic Management Pty Ltd
Attention: Chris Ryan
PO Box 3877
SYDNEY NSW 2001

D327/15/3
SMC1 (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979
(AS AMENDED)**

**Notice to Applicant of Determination of Request
to Modify a Development Consent**

Pursuant to Section 96 of the Act notice is hereby given of the determination by the consent authority of your request for a modification to Development Consent No. **327/15/3** and registered in Council's records as Application No. **327/15** relating to the land described as **101 – 111 Willoughby Road and a portion of Zig Zag Lane, Crows Nest.**

Your request for the modification of the Development Consent as set out in Notice of Determination dated 13 July 2017, has been determined in the following manner:-

Condition Nos. C42 & C42a amended to read as follows:-

Underground Electricity and Other Services

C42. All overhead electricity and other lines (existing and proposed) shall be placed underground from the proposed building on the site to the appropriate power pole(s) or other connection point, in accordance with the requirements of Ausgrid and any other relevant infrastructure provider including the following works:

| Location | Ausgrid Pole No(s). | Required works |
|-----------------|----------------------------------|---|
| Zig Zag Lane | MO 89583 | Remove pole MO 89583, overhead cables & lines and street light |
| Atchison Street | MO 89575 MO 89592 MO 89593 | Place all overhead cables & lines underground from poles MO 89575 (Willoughby Rd) to MO 89592 & MO 89593 Remove all redundant poles Provide under awning pedestrian lighting to Atchison Street |

| Location | Ausgrid Pole No(s). | Required works |
|-----------------|----------------------|--|
| Willoughby Road | MO 89578 MO 89579 | Place all overhead cables & lines underground from poles MO 89575 (Willoughby Rd) to MO 89579 Place all overhead cables & lines underground to MO 89578 Remove all redundant poles Provide suitable under awning or other pedestrian lighting to Willoughby Street |
| Albany Street | MO 89508 MO 89510 | Place all overhead cables & lines underground from pole MO 89508 to MO 89510. That bundling of existing wires between MO 89508 and MO 89507 be undertaken to the full extent possible. Make provision for costs associated with the future removal of pole MO 89508 and undergrounding of wires that connect to pole MO 89507. |

(B) To **add** the following condition:

Agreement in Lieu of Removal of Power Pole and Power lines (MO89508)

C42A. In lieu of the original consent requirement to remove the existing power pole in Albany Street MO 89508 and to undertake undergrounding of power and communication lines across Willoughby Road, the applicant and owners of the land, or any person acting on this consent, must enter into a Deed of Agreement with Council which provides for the payment to Council an amount that is equivalent to the reasonable costs of carrying out the following works:

- decommissioning and removal only of power pole MO 89508;
- under grounding of existing power and communication lines across Willoughby Road from MO 89507 to MO 89508;
- any associated adjustments to pavement and services necessary to facilitate the works; and
- a contribution towards the future costs of replacement of existing street lighting associated with pole MO89508.

The apportionment of costs shall be based on Ausgrid's Network Asset Relocation and Undergrounding Policy Guidelines (July 2010), indexed as appropriate.

The required Deed of Agreement is to make provision as necessary, in consultation with Council's Engineering Infrastructure Department, for the design and location of a replacement standalone lighting pole or multi-function lighting pole in a similar location, or other suitable lighting infrastructure adjacent to the site boundary in Albany Street.

The valuation of the works must be undertaken by the developer/applicant in agreement with Council. The Deed of Agreement must be executed and required payments made to Council prior to the release of the relevant Construction Certificate *or prior to the commencement of any work at or above the Plaza Level ("Upper Ground")*. *The Certifying Authority must not issue any Occupation Certificate for the Plaza Level of the development unless the Deed of Agreement is satisfied in full.*

The Deed of Agreement and any associated documentation shall be prepared, executed and registered at the sole cost of the applicant, including the reasonable costs of Council in obtaining advice, the cost and expense of negotiating the terms and conditions of the lease, producing documents or otherwise facilitating the preparation, execution and registration of the required documents. The Deed must bind all successors in title and shall only be subject to variation at the discretion of the Council.

(Reason: To provide for the reasonable costs of undergrounding of powerlines otherwise required by this consent)

The conditions attached to the original consent for Development Application No. 327/15 by endorsed date of 8 June 2016 still apply.

ADVISINGS

- (a) Council is always prepared to discuss its decisions and in this regard, please do not hesitate to contact **Susanna Cheng**. However, if you wish to pursue your rights of appeal in the Land and Environmental Court pursuant to Section 97 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. The use of the Section 34 Conference approach requires the appellant to agree, in advance and in writing, that the Court appointed assessor will be given the full authority to completely determine the matter at the conference.
- (b) Pursuant to Section 96AB, an applicant is able to request Council to review its determination. An application for a review under Section 96AB 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 81A(2) (a) of the Act.
 - (ii) A Principal Certifying Authority is to be appointed and Council is to be notified of the appointment in accordance with Section 81A(2)(b1)(i) 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 81A(2)(c) 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 96 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 96 of the Environmental Planning & Assessment Act.

DATE

Signature on behalf of consent authority
DAVID HOY
TEAM LEADER (ASSESSMENTS)