

Gardner Wetherill & Associates
Suite 2.01, 460 Pacific Highway
ST LEONARDS NSW 2065

D155/16
HS1 (CIS)

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

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

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. **155/16** and registered in Council's records as Application No. **155/16/2** relating to the land described as **3-7 Fifth Avenue, Cremorne**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 31 August 2016, has been determined in the following manner: -

1. *To modify the development consent (D155/16) and modify conditions A1, C42, C82 and F1 as follows:*

Development in Accordance with Plans/documentation

- A1. The development must be carried out in accordance with the following drawings and documentation and endorsed with Council's approval stamp, except where amended by the following conditions of this consent.

Plan No.	Title	Drawn by	Received
DA1201 - B	Ground Floor Plan	Gardner Wetherill & Associates	21/7/16
DA1301 - B	Typical Floor Plan	Gardner Wetherill & Associates	21/7/16
DA1401 - C	Elevations – Sheet 1	Gardner Wetherill & Associates	21/7/16
DA1501 - B	Elevations – Sheet 2	Gardner Wetherill & Associates	21/7/16
DA1601 - D	Typical Balcony Cross Section	Gardner Wetherill & Associates	21/7/16

As amended by the following plans:

Plan No.	Title	Drawn by	Received
DA1401 - D	Elevations – Sheet 1	Gardner Wetherill & Associates	22/1/18
DA1501 - D	Elevations – Sheet 2	Gardner Wetherill & Associates	22/1/18
DA1301 – C	Typical floor plan	Gardner Wetherill & Associates	22/1/18
DA1601 – E	Typical Balcony Cross section	Gardner Wetherill & Associates	22/1/18
DA1201 – C	Ground floor plan	Gardner Wetherill & Associates	22/1/18

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

Upgrade of existing building – Fire Spread and Safe Egress

C42. Pursuant to clause 94 of the EP&A Regulation 2000, aspects of the existing building must be brought into conformity with the National Construction Code (NCC). Work must be carried out as part of the development so as to upgrade the building to bring it into compliance with Sections C, D & E of the NCC 2016, Volume 1. Plans and specifications showing the upgrading works which must be carried out under this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. Notes:

- 1) The Certifying Authority must be satisfied that the plans and specifications submitted prior to the issue of any Construction Certificate comply with the requirements of this condition.
- 2) The Certifying Authority issuing the Construction Certificate has no power to remove the requirements to upgrade the existing building as required by this condition.
- 3) Where this condition specifies compliance with the performance requirements of the BCA, the Certifying Authority, subject to their level of accreditation, may be satisfied as to such matters.

(Reason: Application of Regulations relating to Fire and Life Safety)

BASIX Certificate

C82. Under clause 97A(3) of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. (see below) 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 any Construction Certificate:

- A252228_03
- A253667_03
- A253679_04
- A253688_03
- A253671_02
- A253668_03
- A253681_02
- A253689_02
- A253673_02
- A253669_02
- A253682_02
- A253690_04
- A253674_02
- A253670_04
- A253683_02
- A253675_02

- A254330_04
- A253684_02
- A253676_02
- A254331_04
- A253685_03
- A253677_02
- A254332_05
- A253686_03
- A253678_02
- A254334_04
- A253687_03

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)

The conditions attached to the original consent for Development Application No. 155/16 by endorsed date of 31 August 2016 still apply.

ADVISINGS

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

DATE

Signature on behalf of consent authority
ROBYN PEARSON
TEAM LEADER (ASSESSMENTS)