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Level 8, 20 Hunter Street
SYDNEY NSW 2000

D392/16
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 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. **392/16** and registered in Council's records as Application No. **392/16/2** relating to the land described as **99 Mount Street, North Sydney**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 4 August 2017, has been determined in the following manner: -

(A) To **modify** the following conditions so as to read 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.	Issue	Title	Drawn by	Received
4613_DA012	A	Level 2 – Demolition Plan	Nettleton Tribe	17/11/16
4613_DA013	A	Level 3 – Demolition Plan	Nettleton Tribe	17/11/16
4613_DA014	C	Level 4 – Demolition Plan	Nettleton Tribe	17/11/16
4613_DA021	B	Level 1 Plan	Nettleton Tribe	17/11/16
4613_DA022	F	Level 2 Plan	Nettleton Tribe	7/6/17
4613_DA023	F	Level 3 Plan	Nettleton Tribe	28/3/18
4613_DA024	K	Level 4 Plan	Nettleton Tribe	28/3/18
4613_DA025	F	Level 4 Roof Plan	Nettleton Tribe	7/6/17
4613_DA034	I	Proposed Elevations	Nettleton Tribe	28/3/18
4613_DA046	E	Podium Sections & Elevations	Nettleton Tribe	7/6/17

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

No signs on louvre blade screen

A6. No approval is granted or implied for any additional signage to be erected on the louvre blade screen above the glass awning, other than those signs approved under this Development Consent.

(Reason: Streetscape amenity)

Required Infrastructure Works –Roads Act 1993

C12. Prior to issue of any Construction Certificate engineering design plans and specifications must be prepared by a qualified civil design engineer. The plans and specifications must be to a detail suitable for construction issue purposes and must provide detail and specification for the following infrastructure works to be completed as part of the development. The responsibility for accuracy of the design fully rests with the designing engineer. All responsibility on implementation and supervision of works specified on design plans fully rests on designing engineer or whomever is chosen to be the applicant's engineering representative:

Road Works

- a) Construction of a fully new replacement footpath from granite pavers is required across the entire site frontages in Mount Street. The footpath pavement must be constructed for the full width using the construction required for that particular city area, as specified in Public Domain Style Manual and Design Codes. A longitudinal section is required along the footpath property boundary at a scale of 1:50 extending 5m past the property boundary line. The footpath shall be designed (at a single straight grade of 3% falling to top of 125 mm kerb) so that it is uniform without showing signs of dipping or rising particularly at entrances.
- b) The boundary footpath levels must match the existing levels on all street frontages and shall not be altered unless agreed to by Council.
- c) Construction of a new 125 mm high granite kerb and concrete gutter is required across the entire site frontage in Mount Street. A longitudinal section is required along the gutter line (existing and proposed levels), at a scale of 1:50 extending 5m past the property boundary line.
- d) Footpath cross sections at a scale of 1:50 along the centre-line of each access point to the building must be provided and are to show the calculated clearance to the underside of any overhead structure. All the entry points are to comply with the Building Code of Australia (BCA), including accessibility requirements. The Council approved footpath levels must be accommodated at the building entry points.
- e) Construction of a fully new road shoulder (maximum grade 5% down towards new gutter) extending to 600 mm out from the gutter alignment and across the entire development site frontage in Hill Street.
- f) **The applicant must design the Mount Street frontage in consultation with Council's public domain officers and have regard to the North Sydney Council Public Domain Strategy for the pedestrianising of Mount Street between Walker Street and Brett Whiteley Place (formerly Mount Street Plaza). The ground levels at the property boundary and all works to the public domain (other than tree planting) must be approved by Council prior to the issue of a Construction Certificate for required infrastructure works, or any building works interfacing with the required infrastructure.**

- g) The design for the public domain and publicly accessible areas at ground level on the site is to complement the design and materials palette outlined in North Sydney Public Domain Style Manual for the public domain surrounding the site. The detailed designs for these areas must be submitted to Council for approval by Council's Director Engineering and Property Services **prior to the issue of a Construction Certificate for public domain works, or any building works which interface with the public domain.**

Drainage Works

- a) Replacement of the existing drainage pits in Mount Street with double inlet pits with granite lintels and double grated lids, as specified in Public Domain Style Manual and Design Codes for the particular city area.

Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

Certifying Authorities must not issue a Construction Certificate without the formal written approval of Council (as Roads Authority) under the Roads Act 1993.

The required plans and specifications are to be designed in accordance with North Sydney Council's current documents Infrastructure Specification for Road Works, Drainage and Miscellaneous Works and Performance Guide for Engineering Design and Construction. The drawings must detail existing utility services and trees affected by the works, erosion control requirements and traffic management requirements during the course of works. A detailed survey must be undertaken as required. Traffic management is to be certified on the drawings as being in accordance with the documents SAA HB81.1 – 1996 – Field Guide for Traffic Control at Works on Roads – Part 1 and RMS Traffic Control at Work Sites (1998). **Construction of the works must proceed only in accordance with any conditions attached to the Council Roads Act 1993 approval.**

Note: A minimum of 21 days will be required for Council to assess Roads Act submissions. Early submission is recommended to avoid any delays in obtaining a Construction Certificate. A fee to cover cost of assessment (set out in Council's adopted fees and charges) is payable and Council will withhold any consent and approved plans until full payment of the correct fees. Plans and specifications must be marked to the attention of Council's Development Engineers. In addition, a copy of this condition must be provided, together with a covering letter stating the full address of the property and the accompanying DA number.

(Reason: To ensure infrastructure works are designed and constructed to appropriate standards and requirements of the Roads Act 1993)

Council Inspection of Public Infrastructure Works

- E6. During the works on public infrastructure reverting to Council's care and control, Council's development engineer must undertake inspections of the works at the following hold points: -
- a) Road civil works; and
b) Stormwater

All works must proceed in accordance with Roads Act 1993 approvals or other permits relating to roads issued by Council. A minimum of 48 hours' notice must be given to Council to book an inspection. Work must not proceed until the works or activity covered by the inspection is approved.

(Reason: To ensure quality of construction joints and connections in the drainage system)

Certification - Civil Works

- G3. a) An appropriately qualified and practising Civil Engineer must certify to the Certifying Authority that the stormwater drainage system is constructed in accordance with this consent and the provisions of the applicable Australian Standard. A copy of the certificate must be submitted to Council (if it is not the Certifying Authority) upon completion of the development works and prior to the issue of an Occupation Certificate.
- b) An appropriately qualified and practicing Civil Engineer must certify to the Certifying Authority that the road works were constructed in accordance with this consent and any approval for works in the road reserve issued by the Council. A copy of the certificate must be submitted to Council (if it is not the Certifying Authority), upon completion of the development works and prior to the issue of an Occupation Certificate.

(Reason: Compliance with the Consent)

Landscaping

- G9. The landscaping shown in the approved landscape plans must be completed prior to the issue of any Occupation Certificate.
- (a) In relation to the **ground level corner splay at Walker & Mount Streets**, in accordance with Landscape Masterplan Ground Level – Public Domain (Rev.02), Landscape Sections Ground Level – Public Domain (Rev.02) & Setout + Grading – Ground Level – Public Domain (Rev.02) and received by Council on 17/7/17; and
- (b) In relation to the **podium additions**, in accordance with landscape drawings numbered 102, 103, 202, 203, 302, 303, 402, 403, 530, 531 & 532 (Issue 2) dated 12/10/17 prepared by Arcadia Landscape Architecture and received by Council on 28/5/18, as amended by condition **A1** *Development in Accordance with Plans/documentation*.

(Reason: To ensure compliance)

Podium Lighting

- I12. Lighting on podium level areas must not be illuminated between **1:00 am** and 7:00 am, except for lighting for the purpose of CCTV or similar electronic surveillance measures. The design and placement of the lighting must:
- (a) be directed away from any residential dwelling;

- (b) not create a nuisance or negatively affect the amenity of the surrounding neighbourhood; and
- (c) comply with AS4282-1997 control of obtrusive effects of outdoor lighting.

(Reason: To ensure residential premises are not affected by inappropriate or excessive illumination)

Through Site Link

- I17. Pedestrian access between Mount Street and Hill Street bridge across the Level 4 podium shall be maintained unimpeded to a minimum width of 1.8m for all members of the public during and to the full extent of the approved business hours of the tenancies on the podium level.

(Reason: Maintain safe public access to the through-site pedestrian link)

Publicly Accessible Podium

- I18. The western side of the Level 4 podium from western awning eave of “Proposed Retail 11” shall be available for public access during approved business hours of tenancies on the podium level and not used for the purpose of, or in association with, “Proposed Retail 11”, except as detailed in drawing DA024.

(Reason: Maintain publicly accessible open space)

- (B)** To **insert** the following new conditions:

Signs 22, 23 & 24

- A8. Signs 22 & 23 (on Mount Street) and Sign 24 (on Walker Street) are to be *business identification signs*, as defined in North Sydney Local Environmental Plan, associated with “Existing Retail 7” on Level 2 and/or “Existing Retail 9” on Level 3 as indicated in the approved plans.

The Certifying Authority must ensure that the building plans and specifications submitted by the Applicant, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: Inappropriate signage location)

Sign 25 to be deleted

- A9. Sign 25 (on Walker Street), in relation to a car park, is not approved and is to be deleted.

The Certifying Authority must ensure that the building plans and specifications submitted by the Applicant, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: Inappropriate signage content and location relating to car park)

Cleanliness and Maintenance of Food Preparation Areas (Retail Tenancy 11)

A10. To ensure that adequate provision is made for the cleanliness and maintenance of all food preparation areas, all building work in connection with any occupation or use of “Retail Tenancy 11” on Level 4 (podium) for the preparation and storage of food shall be designed and carried out in accordance with the requirements of: -

- a) the Food Act 2003;
- b) the Food Regulation;
- c) the relevant Australian Standards;
- d) Council’s Food Premises Code;
- e) Sydney Water Corporation - Trade Waste Section;
- f) the Protection of the Environment Operations Act and associated Regulations;
and
- g) the Building Code of Australia.

(Reason: To ensure compliance with acceptable standards for the construction of food premises established under environmental health and safety legislation)

Certification for Mechanical Exhaust Ventilation

G14. Prior to issue of an Occupation Certificate for the purpose of any *food and drink premises* (as defined in North Sydney Local Environmental Plan 2013) within “Retail Tenancy 11” on Level 4 (podium) and following the completion, installation, and testing of all the mechanical ventilation systems, a Mechanical Ventilation Certificate of Completion and Performance in accordance with Clause A2.2(a)(iii) of the Building Code of Australia, must be submitted to, and approved by, the Certifying Authority.

(Reason: To ensure compliance with acceptable standards for the construction and operation of mechanical plant)

Use of Retail Tenancy 11

I21. Retail Tenancy 11 on the podium shall be used only for the purpose of retail premises, as defined in North Sydney Local Environmental Plan 2013, or for a purpose permitted under a State Environmental Planning Policy.

(Reason: To clarify the nature of approved use)

Hours of operation of Retail Tenancy 11

I22. The hours of operation of Retail Tenancy 11 on Level 4 (podium) are restricted to:

- 6am to Midnight (indoor trading); and
- 7am to 11pm (outdoor trading)

Upon expiry of the permitted hours:

- (a) all restaurant and drinks services must immediately cease;
- (b) no person shall be permitted entry; and

- (c) all customers on the premises must be required to leave within the following half hour.

(Reason: To ensure that amenity of the surrounding locality is maintained and hours of operation are consistent with those in surrounding locality)

(C) To **delete** the following condition(s):

A7. Signage not approved

C13. Obtain Driveway Crossing Permit under S.138 Roads Act 1993

C35. Delete Security Gate

II. First Use of Premise – Further consent required

The conditions attached to the original consent for Development Application No. 392/16 by endorsed date of 4 August 2017 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 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
DAVID HOY
TEAM LEADER (ASSESSMENTS)