

## Development Consent No. 267/17

### Section 4.55 Application

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#### Applicant's Name

Graham Andrew Dreverman

#### Land to which this applies

15 Bay View Street, Lavender Bay  
Lot No.: 4, DP: 222638

#### Proposal

The application seeks to modify consent No. 267/17 including changes to fenestrations and deck.

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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. **267/17** and registered in Council's records as Application No. **267/17/3** relating to the land described as **15 Bay View Street, Lavender Bay**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 6 December 2017, has been determined in the following manner:

- 1. To delete Conditions (A1) and (A1B) of the consent and insert in lieu thereof the following new condition namely:*

#### Development in Accordance with Plans (S96 Amendments)

**A1C.** The development being carried out in accordance with drawings numbered Drawings numbered A01-A13, dated 20.06.17, drawn by Scope Architects, and received by Council on 07.08.17, and endorsed with Council's approval stamp, except as modified by highlighting on:

- Drawings numbered A02, A06, A07 and A08, rev. no. 2, dated 20.03.2018, drawn by Scope Architects, and received by Council on 29.03.2018;
- Drawings numbered A03, A04, A05 and A09, rev. no. 3, dated 02.05.2018, drawn by Scope Architects, and received by Council on 04.05.2018;

- c. Dwg. no. A02, A03, A04, A06 and A07, rev. no. 4, dated 13.07.18, drawn by Scope Architects, and received by Council on 20.07.18, and
- d. Dwg. no. A08 and A09, rev. no. 5, dated 14.08.18, drawn by Scope Architects, and received by Council on 14.08.18.

except as amended by the following conditions.

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

**2. To modify condition C16 with reference to the new BASIX Certificate, as follows:**

**BASIX Certificate**

C16. 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. A284078\_03 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. 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)

**Reason for approval**

The proposed modifications have been considered against the relevant provisions of the *Environmental Planning and Assessment Act 1979*, *North Sydney Local Environmental Plan 2013*, *North Sydney Development Control Plan 2013* and all other relevant statutory Instruments and is considered to satisfactorily address those requirements.

The proposed modifications vary the Building Height development standard of NSLEP 2013 but is assessed to be justifiable in the circumstances of the case and well founded on planning grounds. The proposed windows and hoods are to an existing wall and so do not increase the existing and approved building footprint. The proposed windows do not introduce new overlooking, overshadowing or obstruction of views to neighbouring properties.

The proposed modifications retain the essence of the originally approved development application and, subject to conditions, would not result in any material adverse amenity impact to adjoining properties or the surrounding area. The proposed modifications are considered to be substantially the same development as that approved. The modifications are consistent with the reasons for the approval of the original Development Application.

Having regard to the provisions of section 4.55 & 4.15(1) of the Act, the proposed development as modified is substantially the same development as originally consented to. The application is therefore recommended for approval.

### **How were community views taken into account in making the decision**

The owners of adjoining properties and the Lavender Bay Precinct were notified of the proposed development for a 14-day period. The notification resulted in no submissions. The existing Notice of Determination includes conditions which adequately address any potential, unreasonable adverse impacts to the locality and ensure the protection of the public interest.

Having regard to the provisions of Section 4.15 of the Act, the application is considered to be satisfactory and therefore can be approved.

The conditions attached to the original consent for Development Application No. 267/17 by endorsed date of 6 December 2017 still apply.

### **ADVISINGS**

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

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DATE

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