

Development Consent No. 471/15

Section 4.55 Application

Applicant's Name

D-Studio Architects

Land to which this applies

34-40A Falcon Street, Crows Nest
Lot No.: 100, DP: 1237594

Proposal

Section 4.55(2) modification to make alteration to the communal rooftop outdoor open space area.

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. **471/15** and registered in Council's records as Application No. **471/15/3** relating to the land described as **34-40A Falcon Street, Crows Nest**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 7 September 2016, has been determined in the following manner:

1. To amend Conditions A1 as follows: -

Development in Accordance with Plans (Section 4.55 Amendments)

A1 The development being carried out in accordance with plans identified below and endorsed with Council's approval stamp.

DA471/15 Approved Plans

Plan No.	Issue	Title	Dated	Drawn by	Received
DA 000	D	Cover sheet	10.08.2016	PBD Architects	16.08.2016
DA 001	D	Site Plan	10.08.2016	PBD Architects	16.08.2016
DA 002	B	Demolition Plan	03.06.2016	PBD Architects	03.06.2016
DA 100	C	Basement Plan	03.06.2016	PBD Architects	03.06.2016
DA 101	C	Ground Floor Plan	03.06.2016	PBD Architects	03.06.2016

DA 102	C	Level 1 Floor Plan	03.06.2016	PBD Architects	03.06.2016
DA 103	C	Level 2 Floor Plan	03.06.2016	PBD Architects	03.06.2016
DA 104	E	Level 3 Floor Plan	10.08.2016	PBD Architects	16.08.2016
DA 105	E	Roof Plan	10.08.2016	PBD Architects	16.08.2016
DA 200	E	Elevations 01	10.08.2016	PBD Architects	16.08.2016
DA 201	E	Elevations 02	10.08.2016	PBD Architects	16.08.2016
DA 300	E	Sections 01	10.08.2016	PBD Architects	16.08.2016
DA 301	E	Sections 02	10.08.2016	PBD Architects	16.08.2016
DA 302	E	Sections 03	10.08.2016	PBD Architects	16.08.2016
DA 310	A	Driveway Sections 01	03.06.2016	PBD Architects	03.06.2016
DA 311	A	Driveway Sections 02	03.06.2016	PBD Architects	03.06.2016
SWDA2.1	P3	Stormwater	31.05.2016	Partridge	21.06.2016
SWDA3.1	P3	Stormwater basement	31.05.2016	Partridge	21.06.2016
L/00	B	Cover Sheet	02.06.2016	A Total Concept Landscape Architects	03.06.2016
L/01	B	Proposed Level 1 Landscape Plan	02.06.2016	A Total Concept Landscape Architects	03.06.2016
L/02	B	Proposed Level 2 Landscape Plan	02.06.2016	A Total Concept Landscape Architects	03.06.2016
L/04	B	Proposed Level 3 Landscape Plan	02.06.2016	A Total Concept Landscape Architects	03.06.2016

DA471/15/2 Approved Plan List

Plan No.	Issue	Title	Dated	Drawn by	Received
S000	C	Cover sheet	04.05.2017	Dstudio	16.05.2017
S100	E	Basement Plan	03.05.2017	Dstudio	16.05.2017
S101	E	Ground Level Plan	03.05.2017	Dstudio	16.05.2017
S102	E	Level 1 Plan	03.05.2017	Dstudio	16.05.2017
S103	E	Level 2 Plan	03.05.2017	Dstudio	16.05.2017
S104	E	Level 3 Plan	03.05.2017	Dstudio	16.05.2017
S105	E	Roof Plan	03.05.2017	Dstudio	16.05.2017
S200	D	Elevations 01	03.05.2017	Dstudio	16.05.2017
S201	E	Elevations 02	03.05.2017	Dstudio	16.05.2017
S300	D	Sections 01	03.05.2017	Dstudio	16.05.2017
S301	E	Sections 02	03.05.2017	Dstudio	16.05.2017
S302	D	Sections 03	03.05.2017	Dstudio	16.05.2017

except as modified by the modifications highlighted in:

DA471/15/3 Approved Plan List

Plan No.	Issue	Title	Dated	Drawn by	Received
S104	B	Level 3 Plan	August 2018	Dstudio	9 August 2018
S301	B	South Elevation	August 2018	Dstudio	9 August 2018
S303	B	East Elevation	August 2018	Dstudio	9 August 2018
S304	B	West Elevation	August 2018	Dstudio	9 August 2018
CC951	A	Awning Plan 1	August 2018	Dstudio	9 August 2018
CC952	A	Awning Section 1	August 2018	Dstudio	9 August 2018
CC953	A	Awning Section 2	August 2018	Dstudio	9 August 2018

and as amended by the following conditions and this consent.

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

2. To modify Condition C27 as follows: -

Awnings, Footpath Entries and Fire Exit Details (Mixed Use/Commercial/Apartments)

C27. Prior to issue of Any Construction Certificate, ~~a plan must be submitted with application form: "To Satisfy DA Consent Condition" and approved in writing from Council.~~ the following matters must be specifically addressed in the plan. Footpaths, entries and exits and fire exits for the development must be designed by an appropriately qualified and practicing Civil Engineer and submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The design must include (but is not limited to) the following:

- (i) Cross section along the centre-line of each access point to the building including fire exits at a scale of 1:50 to be taken from the centre of the road and shall include all changes of grade both existing and proposed.
- (ii) The sections must show all relevant levels and grades (both existing and proposed) including those levels stipulated as boundary levels.
- (iii) The sections must show the calculated clearance to the underside of any overhead structure.
- (iv) A longitudinal section along the boundary line showing how it is intended to match the internal levels of the building with the boundary footpath levels. The footpath must be designed (at a single straight grade of 3% falling to top of kerb) so that it is smooth without showing signs of dipping or rising particularly at entrances.
- (v) A longitudinal section along the gutter and kerb line extending 5 meters past property lines showing transitions.
- (vi) Awning edge, parallel to the kerb line must not exceed edges of existing awnings in the same city block or if no other neighbouring awnings to compare, the edges of proposed awning must be offset at least 600 mm from the kerb line.
- (vii) Awnings must have a shape to accommodate trees on Falcon Street.

Details, plans and specifications complying with this condition are to be certified as complying with the Building Code of Australia (BCA) and Council's standard footpath specifications, and the certification, details, plans and specifications must be provided to the Certifying Authority for approval prior to the issue of any Construction Certificate. ~~Written concurrence confirming there will be no change to existing boundary and footpath levels is to be provided to the Certifier and North Sydney Council, prior to issue of any Construction Certificate.~~

(Reason: To facilitate suitable pedestrian and disabled access to private sites, and to ensure that internal levels reflect footpath boundary levels)

Reason for approval

The proposed modifications are considered to be of minimal environmental impact and are consistent with the originally approved development application and s.4.55 of the EP & A Act 1979. Furthermore, the modifications do not result in any material amenity impact to adjoining properties or the surrounding area. The proposed modifications are consistent with the reasons for the granted of development consent to the originally approved development and is considered to be acceptable.

Having regard to the provisions of section 4.55 & 79C of the Environmental Planning and Assessment Act 1979, 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 Hayberry/Holtermann Precinct were notified of the proposal between 15 June 2018 to 29 June 2018. The notification resulted in no submissions

The conditions attached to the original consent for Development Application No. 471/15 by endorsed date of 7 September 2016 still apply except where amended by this notice.

ADVISINGS

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