

Original signed by: Robyn Pearson Dated: 2/11/2018

Development Consent No. 155/16

Section 4.55 Application

Applicant's Name

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

Land to which this applies

3-7 Fifth Avenue, Cremorne
Lot No.: 0, SP: 4640

Proposal

Section 4.55 (1A) modification to DA 155/16/2

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. **155/16/3** 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:

Upgrade of Existing Building – Fire Spread and Safe Egress

Condition No. C42 be deleted from 155/16/2.

Reason for approval

The Section 4.55 application has been assessed against the North Sydney Local Environmental Plan 2013 and the North Sydney Development control Plan 2013 and found to be satisfactory.

The deletion of Condition C42 would not cause a loss of amenity for adjoining properties and/or the public domain.

Council's Building Surveyor has indicated that the deletion of Condition C42 would not cause an additional fire hazard given that the building is being upgraded as a result of Fire Safety Order No. 6, dated 11 January 2016 as well as the works approved under the original application 155/16 and 155/16/2.

How were community views taken into account in making the decision

The community views were taken into consideration with the notification of the original proposal for 14 days with no submissions received following Council's notification letter. A subsequent modification application did not receive any submissions. Nevertheless, appropriate conditions of consent were imposed with the original and subsequent applications to preserve residential amenity.

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 **the undersigned**. 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)