

Original signed by: Luke Donovan Dated: 28/11/2018

Development Consent No. 223/16

Section 4.55 Application

Applicant's Name

Catherine and Andrew Bloxham

Land to which this applies

2 Warung Street, McMahons Point
Lot No. A, DP 338032

Proposal

Section 4.55 (1A) application to modify DA 223/16 with regards to the installation of an internal lift between ground floor and Level 1 in lieu of an internal staircase.

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. **223/16** and registered in Council's records as Application No. **223/16/4** relating to the land described as **2 Warung Street, McMahons Point**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 7 June 2017, has been determined in the following manner:

Modify condition A6 'Development in Accordance with Plans (S4.55 Amendments)' to read as follows:

Development in Accordance with Plans (S4.55 Amendments)

A6. The development being carried out in accordance with plans identified in Condition **A1** of the consent and endorsed with Council's approval stamp, except as modified by the modifications shown in colour and/or clouded on plans that formed part of s.4.55 application No. 223/16/3:

Plan No.	Issue	Title	Drawn by	Received
Sect 96 – 001	D	Level 1 Plan	RJP Design	3/4/18
Sect 96 – 002	D	Level 2 Plan	RJP Design	3/4/18
Sect 96 – 003	D	Roof Plan	RJP Design	3/4/18
Sect 96 – 004	D	Ground Floor Plan	RJP Design	3/4/18
Sect 96 – 005	D	Elevations – Sheet 1	RJP Design	3/4/18
Sect 96 – 006	D	Elevations – Sheet 2	RJP Design	3/4/18
Sect 96 – 007	D	Elevations – Sheet 3	RJP Design	3/4/18

Plan No.	Issue	Title	Drawn by	Received
Sect 96 – 008	D	Elevations – Sheet 4	RJP Design	3/4/18
Sect 96 – 009	D	Sections – Sheet 1	RJP Design	3/4/18
Sect 96 – 010	B	Sections – Sheet 2	RJP Design	3/4/18

Except as modified by the changes in colours on the plans that form part of s.4.55 application No. 223/16/4:

Plan No.	Rev/Issue	Title	Drawn by:	Date
Lift Sect 96 001	A	Overall Subject Site – Level 1 Plan	RJP Design	28/08/2018
Lift Section 96 004	A	Overall Subject Site – Ground Floor Plan	RJP Design	28/08/2018
Lift Section 96 010	A	Overall Subject Site – Sections – Sheet 2	RJP Design	28/08/2018
Lift Sect 96 009	A	Overall Subject Site – Sections – Sheet 1	RJP Design	28/08/2018

And except as amended by the following conditions and this consent.

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

Add Condition C31 ‘Noise from Plant and Equipment’ and G14 ‘Noise Certification’ to read as follows:

Noise from Plant and Equipment

C31 The operation of the lift must not:

- (a) Contribute an LAeq(15min) which will cause the total LAeq(15min) from all plant and equipment operating contemporaneously on the site or in the strata scheme or in the mixed strata schemes to exceed the RBL by more than 5dB when measured at the boundary of any affected receiver. The modifying factor adjustments in Section 4 of the EPA Industrial Noise Policy shall be applied.
- (b) Cause “offensive noise” as defined in the *Protection of the Environment Operations Act 1997*.

“affected receiver” includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation, schools, hospitals, places of worship, commercial premises and parks and such other affected receiver as may be notified by the Council in writing.

“boundary” includes any window or elevated window of an affected receiver.

Terms in this condition have the same meaning as in the Noise Guide for Local Government and the Industrial Noise Policy published by the NSW Environment Protection Authority.

(Reason: To maintain an appropriate level of amenity for adjoining land uses)

Noise Certification

G14 Prior to issue of the any Occupation Certificate a certificate from an appropriately qualified acoustical consultant eligible for membership of the Association of Australian Acoustic Consultants is to be submitted to, and approved by, the Certifying Authority certifying that the noise from the operation of the lift complies with the conditions of consent here-in.

(Reason: To ensure acoustic amenity)

Reason for approval

The installation of an internal lift will provide improved access between ground and level 1 without resulting in any external changes to the approved building envelope, as such, there will be no material impacts to adjoining properties.

How were community views taken into account in making the decision

The new lift is proposed to be located within the approved building envelope with no external changes proposed, as such, the application was not required to be notified in accordance with Part A, Section 4.4.9(a) in NSDCP 2013.

The conditions attached to the original consent for Development Application No. 223/16 by endorsed date of 7 June 2017 still apply.

ADVISINGS

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