

Original signed by: David Hoy Dated: 5/12/2018

Development Consent No. 28/18/2

Section 4.55 Application

Applicant's Name

Michael Legend, Sanctum Design

Land to which this applies

108 West Street, Crows Nest
Lot No. B, DP 374914

Proposal

Alterations and additions to existing retail premises and dwelling including new garage (Existing Use Rights). Section 4.55 (1A) Modification to remove several conditions from the DA 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. **28/18** and registered in Council's records as Application No. **28/18/2** relating to the land described as **108 West Street, Crows Nest**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 15 August 2018, has been determined in the following manner:

- (A) To delete Conditions **B1**, **C10** and **G14** of the consent.
- (B) To delete Condition **C11** of the consent and insert in lieu thereof the following new condition:

Obtain Driveway Crossing Permit under S.138 Roads Act 1993

- C11. A driveway crossing and roads infrastructure works permit to suit the approved off-street parking facilities must be granted by the Council prior to the issue of any Construction Certificate. In order to obtain a permit under S.138 of the Roads Act 1993, an application must be made to Council on the 'Vehicular Access Application' form with payment of the adopted assessment/inspection fees. Council will require civil design construction drawings and certification from the applicant's Civil Engineer to verify design details and enable issue of the permit. The requirements of the permit must be complied with at all times.

The civil design drawings must include the following at a minimum:-

- a) the vehicular access way must comply with AS 2890.1 and Council's current Vehicular Access Application Guidelines and Specification (gutter bridges not permitted) to ensure that a B85 vehicle will not scrape/strike the surface of the carriageway, layback, vehicular crossing or parking floor;
- b) the maximum width of the vehicular layback in Bernard Lane must be 3.5m (no wings);
- c) the width of the garage door opening is to be restricted to a maximum of 3m;
- d) the crossing (between the layback and the property boundary) must be placed on a single straight grade of approximately 4.5%, falling to the back of the layback;
- e) the works will require reconstruction of the carriageway shoulder extending out 600mm from the gutter lip in AC10 - 50mm thick, adjacent to the new layback and matching the existing levels;
- f) the alignment of the new layback gutter must be placed on a prolongation of the existing return kerb/gutter at the intersection of Bernard Lane and Hayberry Street;
- g) both ends of the new layback must be designed to blend into the existing road surface;
- h) any twisting of driveway access must occur entirely within the subject property;
- i) all inspection openings, utility services must be adjusted to match the proposed driveway levels;

The permit must be granted by Council prior to the issue of any Construction Certificate.

All driveway and infrastructure works on the road reserve must be undertaken in accordance with the terms of the permit issued by Council. Inspections by Council will be required as specified. The Certifying Authority issuing the Construction Certificate must ensure that the permit issued by Council is obtained and referenced on and accompanies the Construction Certificate issued.

(Reason: To facilitate appropriate vehicular access to private sites, without disruption to pedestrian and vehicular traffic)

- (C) To delete Condition **C17** of the consent and insert in lieu thereof the following new condition:

Approval for removal of Trees

- C17. The following tree(s) are approved for removal in accordance with the development consent and as recommended in the arborist report prepared by Hugh the Arborist, dated 11 October 2018, and received by Council on 26 October 2018:

Tree	Location	Height (m)
Row of pine trees	Within the northern side setback of the site, adjacent to Hayberry Street	4

Removal or pruning of any other tree on the site is not approved, excluding species exempt under Council's Tree Preservation Order.

Any tree(s) shown as being retained on the approved plans (regardless of whether they are listed in the above schedule or not) must be protected and retained in accordance with this condition.

(Reason: Protection of existing environmental and community assets)

- (D) To delete Conditions **G7** and **G13** of the consent and insert in lieu thereof the following new condition:

Required Tree Planting

- G13. On completion of works and prior to the issue of an Occupation Certificate trees in accordance with the schedule hereunder must be planted: -

Schedule

Tree Species	Location	Pot Size
<i>Syringa vulgaris</i> (Lilac) or other small tree	Within the residential entry courtyard	20L
New/replacement trees selected in accordance with AS2303-2015 Tree stock for landscape use	Within the northern side setback of the site, adjacent to Hayberry Street	20L

The installation of such trees, their current health and their prospects for future survival must be certified upon completion by an appropriately qualified horticulturalist.

Upon completion of installation and prior to the issue of an Occupation Certificate an appropriately qualified horticulturalist must certify that any trees planted in accordance with this condition are healthy and have good prospects of future survival. The certification must be submitted with any application for an Occupation Certificate.

(Reason: To ensure that replacement plantings are provide to enhance community landscaped amenity and cultural assets)

- (E) To delete Condition **C27** of the consent and insert in lieu thereof the following new condition:

Lift Enclosure to be Masonry

- C27. The lift enclosure is to be extended is to match the approved northern elevation wall's rendered appearance. No approval is granted or implied any louvre screening to be installed to the lift structure.

The Certifying Authority must ensure that the building plans and specifications submitted by the Applicant, referenced and accompanying the issued Construction Certificate, fully satisfy the above.

(Reason: To improve the visual connection of the rear addition and its relationship to the existing building)

- (F) To insert the following new condition:

Structural Adequacy (Semi Detached and Terrace Buildings)

- C30. A report from an appropriately qualified and practising structural engineer, certifying the structural adequacy of the adjoining property No. 106 West Street, which certifies its ability to withstand the proposed works and outlines any measures required to be implemented to ensure that no damage will occur to the adjoining premises during the course of the works, must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The measures outlined in the certified report must be complied with at all times.

Under no circumstances shall the party or common wall be extended or altered without the prior written consent of the adjoining owner. Any such extension of the party wall shall be noted on title by way of appropriate easement or Section 88B instrument.

(Reason: To ensure the protection and structural integrity of adjoining properties, and that common law property rights are recognised)

Reason for approval

The application has 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.

Council's Development Engineer has reviewed the site and surrounding streets and recommends the modification of the existing consent.

However, the Asbestos Material Survey condition was included in the consent in accordance with Council's Standard Conditions, and the applicant has provided insufficient justification for the condition to be altered or deleted.

The proposal will not affect noise, privacy, sunlight or amenity of neighbouring buildings or the public domain from the approved development. The proposal is consistent with the reasons for approval of the original consent.

Having regard to the provisions of sections 4.15 and 4.55 of the Act, the application proposes substantially the same development as originally approved.

How were community views taken into account in making the decision

North Sydney Development Control Plan 2013 does not require the notification of Modification of Consent Applications which it determines will not substantially change the originally approved development or which will not disadvantage neighbouring land.

The proposal satisfies Section 4.5.1 within the Development Control Plan and Clause 4.15 (2) (c) within the Act and the application has not been notified.

The conditions attached to the original consent for Development Application No. 28/18 by endorsed date of 15 August 2018 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.

DATE

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