

Development Consent No. 102/16

Section 4.56 Application

Applicant's Name

Modog Pty Ltd

Land to which this applies

3 East Crescent Street, McMahons Point
SP: 12278

Proposal

Section 4.56 Application to modify DA 102/16 with regards to internal changes, window changes, changes to louvres and various external changes.

Pursuant to Section 4.56 of the Act notice is hereby given of the determination by the consent authority of your request for a modification to Development Consent No. **102/16** and registered in Council's records as Application No. **102/16/5** relating to the land described as **3 East Crescent Street, McMahons Point**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 19 September 2016, has been determined in the following manner:

Modify Conditions A3, A4, C31, C34, C38, G16 and I4 to read as follows:

External Finishes & Materials

A3. External finishes and materials must be in accordance with the submitted External Wall Finishes, Drawing Number CD80b Rev mm dated 11/02/19 drawn by Max Wessels except as modified by other conditions of this consent.

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

Development in Accordance with Plans (Modification applications)

A4. The development being carried out in accordance with plans identified in **Condition A1** of the consent, except as modified by the modifications shown in colour on the plans that formed part of modification No. 102/16/2:

Drawing No.	Revision	Title	Drawn by	Dated
S96 01	C	Site and roof plan	Max Wessels	13/12/2016
S96 02	C	Level 6 and Level 7 Plans	Max Wessels	13/12/2016
S96 03	C	Elevations	Max Wessels	13/12/2016
S96 04	C	Elevation and Section	Max Wessels	13/12/2016

And except as amended by the modifications shown in colour on the plans that formed part of modification No. 102/16/4:

Drawing No.	Revision	Title	Drawn by	Dated
S96/01	B	Car Park B3	Max Wessels	19/6/17
S96/02	B	Car Park B2	Max Wessels	19/6/17
S96/03	B	Car Park B1	Max Wessels	19/6/17
S96/04	B	Level 1 L1	Max Wessels	19/6/17
S96/05	B	Level 2 L2	Max Wessels	19/6/17
S96/06	B	Level 3 L3	Max Wessels	19/6/17
S96/07	B	Ground Floor GF	Max Wessels	19/6/17
S96/08	B	Level 5 L5	Max Wessels	19/6/17
S96/09	B	Level 6 L6	Max Wessels	19/6/17
S96/10	B	Level 7 L7	Max Wessels	19/6/17
S96/11	B	Elevations	Max Wessels	19/6/17
S96/12	B	Elevations	Max Wessels	19/6/17
S96/13	B	Sections	Max Wessels	19/6/17
S96/14	B	Site and Roof Plan	Max Wessels	19/6/17

And except as modified by the modifications shown in colour on the plans below:

Drawing No.	Revision	Title	Drawn by	Dated
S96 01	C	Site & Roof Plan	Max Wessels	16/10/18
S96 02	C	B1 & B2 Plans	Max Wessels	16/10/18
S96 03	C	B3 & L1 Plan	Max Wessels	17/10/18
S96 04	C	LG.L2 & LG.L3 Plans	Max Wessels	16/10/18
S96 05	C	Ground Floor & Level 5 Plan	Max Wessels	16/10/18
S96 06	C	Level 6 & 7 Plan	Max Wessels	16/10/18
S96 07	C	Elevations	Max Wessels	5/11/18
S96 08	C	Elevations & Section	Max Wessels	16/10/18
S96/14	B	Site and Roof Plan	Max Wessels	19/6/17
CD80d	oo	Louvre details	Max Wessels	1/2/19
CD121	oo	East side landscaping sections	Max Wessels	11/2/19

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

Privacy

C31. The following privacy devices are to be provided:

- a) The southern dining/living room windows (Unit 6, Level 5 – Windows W35, W36 and W37) must be fitted with horizontal louvres that are fixed at an upward angle of 45 degrees.

- b) The southern office window (Unit 7, Level 6 – W41(a)) must be fitted with horizontal louvres that are fixed at an upward angle of 45 degrees.
- c) The horizontal louvres to the northern windows of Level 7 may be adjustable at upward angle.
- d) The horizontal louvres to the northern windows of Level 6 must be fixed at an upward angle of 45-degrees.
- e) The vertical louvres to the northern windows of Levels 3, 4 and 5 must be fixed and at an angle of 45-degree to the wall, facing in a north-east direction.

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 an adequate level of privacy is provided to north facing apartments located at No.1 East Crescent Street, McMahon's Point and to the south facing apartments at No. 5 East Crescent Street)

BASIX Certificate

- C34. Under clause 97A(3) of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments used in BASIX Certificate No. 714499M_05 dated 16 October 2018 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)

Amendments to the Landscape Plan

- C38. The landscape plans (*LPDA 16 – 390 pg. 1, Rev J, titled Landscape Plan – Level 1-3 & Ground Level, LPDA 16 – 390 pg. 2, Rev J, titled Hardscape Plan Level 1-3 & Ground Level, LPDA 16 390 pg. 3, Rev A, titled Landscape Plan Level 6 & & prepared by Conzept Landscape dated Sept 2018 and LPCC – 390 pg. 4, Rev C, titled Details prepared by Conzept Landscape dated Sept 2017*) must be amended as follows to provide an appropriate landscaped setting:

- One (1) additional evergreen Tuckeroo tree (or similar) in the rear common area on the subject site

An amended landscape plan 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 amended landscape plan and other plans and specifications submitted fully satisfy the requirements of this condition.

(Reason: To offset the removal of the tree that previously existed in the rear part of the site and to assist in softening the built form and improving the landscape character of the locality.)

Landscaping

G16. The landscaping shown in the approved landscape plan numbered LPDA 16 – 390 pg. 1, Rev J, titled Landscape Plan – Level 1-3 & Ground Level, LPDA 16 – 390 pg. 2, Rev J, titled Hardscape Plan Level 1-3 & Ground Level, LPDA 16 390 pg. 3, Rev A, titled Landscape Plan Level 6 & & prepared by Conzept Landscape dated Sept 2018 and LPCC – 390 pg. 4, Rev C, titled Details prepared by Conzept Landscape dated Sept 2017, CD121 Rev oo, titled East side landscaping sections drawn by Max Wessels dated 11/2/19 **AND** as modified by **Condition C38** of this consent must be completed prior to the issue of any Occupation Certificate.

(Reason: To ensure compliance)

Building Identification Signage

I4. No approval in given or implied under this consent for the new stone logo on the western façade of the building, above the car lift entry.

(Reason: Signage of this scale on residential building is not characteristic of the streetscape)

Add Condition G25 to read as follows:

Required Tree Planting

G25. On completion of works and prior to the issue of an Occupation Certificate trees in accordance with the schedule hereunder must be planted on the site: -

Schedule

Tree Species	Location	Pot Size
Tuckeroo tree or similar	Rear (eastern) common area on the subject site	100L

The installation of this tree, its current health and its 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 landscaped amenity of the locality).

Reason for approval

The proposed modifications do not alter the approved building height, setbacks or number of apartments within the development. The internal changes are considered to improve the amenity of the apartments. The provision of horizontal louvres to the living/dining room (Level 5) and office (Level 6) will be required to be fixed at an upward angle of 45 degrees to ensure reasonable privacy is maintained with the apartments at No. 1 East Crescent Street.

The deletion of the louvres to the southern bedroom window (Level 5) and southern ensuite window (Level 4) are considered acceptable as these windows service low and non-habitable rooms and given a compliant building separation of over 10m there are unlikely to be any unreasonable privacy impacts with the apartments at No. 1 East Crescent Street.

The minor changes to the external cladding to the roof and at Level 3 (northern elevation) and Level 4 (western elevation) are considered satisfactory as they generally reflect the character of the locality.

A condition is recommended requiring the planting of a replacement tree in the rear common area to offset the removal of the tree that previously existed in the rear yard of the site.

A further condition is recommended that no approval is given to the signage on the western façade of the building as signage of this scale on residential building is not characteristic of the streetscape.

How were community views taken into account in making the decision

The owners of surrounding properties in addition to those that made submissions to the original application were notified of the proposal between 23 November and 7 December 2018. Five (5) submissions were received against the application. The issues raised in the submissions are summarised in the delegated report and where appropriate, conditions recommended to address the issues raised in the submissions.

In accordance with Part A, Section 4.5 in NSDCP 2013, the amended plans were not formally re-notified to adjoining properties as the amendments will likely reduce the adverse effect on adjoining properties.

The conditions attached to the original consent for Development Application No. 102/16 by endorsed date of 19 September 2016 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 4.56 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 4.56 of the Environmental Planning & Assessment Act.

DATE

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