

Development Consent No. 392/16

Section 4.55 Application

Applicant's Name

Napier & Blakeley Pty Ltd

Land to which this applies

99 Mount Street, North Sydney
Lot No.: 112, DP: 632759

Proposal

Section 4.55 (1A) application to modify DA392/16 with regards to the rewording of conditions to permit Interim Occupation Certificates.

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. **392/16** and registered in Council's records as Application No. **392/16/5** relating to the land described as **99 Mount Street, North Sydney**.

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

Modify conditions G1, G2, G3, G5, G7, G8, G9, G10, G11, G12 and G13 to read as follows:

Infrastructure Repair and Completion of Works

- G1. Prior to the issue of a final Occupation Certificate any and all works relating to the development:
- a. in the road reserve must be fully completed; and
 - b. to repair and make good any damaged public infrastructure caused as a result of any works relating to the development (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete vehicles) must be fully repaired;

to the satisfaction of Council Engineers at no cost to Council.

(Reason: Maintain quality of Public assets)

Access to Premises

- G2. Prior to the issue of the relevant Occupation Certificate, a certificate must be prepared by an appropriately qualified and practising Civil Engineer or suitably qualified access consultant certifying that access and facilities for persons with a disability in accordance with the Building Code of Australia and AS Disability (Access to Premises – buildings) Standards 2010 (Premises Standards) has been provided. This certificate must be submitted to, and approved by, the Certifying Authority prior to issue of the relevant Occupation Certificate.

(Reason: Equitable access and facilities for people with a disability)

Certification- Civil Works

- G3. a) An appropriately qualified and practising Civil Engineer must certify to the Certifying Authority that the stormwater drainage system is constructed in accordance with this consent and the provisions of the applicable Australian Standard. A copy of the certificate must be submitted to Council (if it is not the Certifying Authority) upon completion of the development works and prior to the issue of the final Occupation Certificate.
- b) An appropriately qualified and practicing Civil Engineer must certify to the Certifying Authority that the vehicular crossing and associated works and road works were constructed in accordance with this consent and any approval for works in the road reserve issued by the Council. A copy of the certificate must be submitted to Council (if it is not the Certifying Authority), upon completion of the development works and prior to the issue of the final Occupation Certificate.

(Reason: Compliance with the Consent)

Utility Services

- G5. All utility services shall be adjusted, to the correct levels and/or location/s required by this consent, prior to issue of the final occupation certificate. This shall be at no cost to Council.

(Reason: To ensure compliance with the terms of this consent)

Certification of Tree Condition

- G7. Prior to the issue of the final Occupation Certificate, a report prepared by an appropriately qualified person (being an arborist or the like) must be submitted to the Certifying Authority, describing the health of the tree(s) specifically nominated below: -

3 x London Plane trees on Mount Street
3 x London Plane trees on Walker Street

The report must detail the condition and health of the nominated tree(s) upon completion of the works, and shall certify that the tree(s) has/have not been significantly damaged during the works on the site, and has/have reasonable prospects for survival.

(Reason: To ensure compliance with the terms of this consent)

Height

G8. Upon completion of the works and prior to the issue of the final Occupation Certificate the RL of the development must be surveyed and certified by an appropriately qualified and practising surveyor as compliant with the maximum approved level **RL62.85 (AHD) at the roof parapet of the podium addition (“Proposed Retail 11”)**. This survey and certification must be submitted to the Certifying Authority with the application for the final Occupation Certificate and a copy provided to Council (if it is not the Certifying Authority).

(Reason: To ensure compliance with the terms of this development consent)

Landscaping

G9. The landscaping shown in the approved landscape plans must be completed prior to the issue of the final Occupation Certificate.

- (a) In relation to the **ground level corner splay at Walker & Mount Streets**, in accordance with Landscape Masterplan Ground Level – Public Domain (Rev.02), Landscape Sections Ground Level – Public Domain (Rev.02) & Setout + Grading – Ground Level – Public Domain (Rev.02) and received by Council on 17/7/17; and
- (b) In relation to the **podium additions**, in accordance with landscape drawings numbered 103, 104 & 107 (Rev.B) prepared by Arcadia Landscape Architecture dated October 2016 and received by Council on 17/11/16 as amended by condition **A1** *Development in Accordance with Plans/documentation*.

(Reason: To ensure compliance)

Damage to Adjoining Properties

G10. On completion of the development the subject of this consent and prior to the issue of the final Occupation Certificate, a report is to be prepared by an appropriately qualified consultant and is to be provided to the Certifying Authority (and a copy to Council if it is not the Certifying Authority) certifying:

- a) whether any damage to adjoining properties has occurred as a result of the development;
- b) the nature and extent of any damage caused to the adjoining property as a result of the development;

- c) the nature and extent of works required to rectify any damage caused to the adjoining property as a result of the proposed development;
- d) the nature and extent of works carried out to rectify any damage caused to the adjoining property as a result of the development; and
- e) the nature and extent of any agreements entered into for rectification of any damage caused to the adjoining property as a result of the development.

The report and certification must reference the dilapidation survey and reports required to be provided to the Certifying Authority in accordance with this consent.

Where works required to rectify any damage caused to adjoining property as a result of the development identified in the report and certification have not been carried out, a satisfactory agreement for rectification of the damage is to be made with the affected person/s as soon as possible prior to the issue of the final Occupation Certificate. All costs incurred in achieving compliance with this condition shall be borne by the developer.

(Reason: To ensure adjoining owner's property rights are protected in so far as possible)

Verification Statement (External Finishes and Materials)

- G11. Prior to the issue of the final Occupation Certificate, a verification statement from a qualified designer or architect (preferably the original designer), must be submitted to Council and the Certifying Authority certifying that the external finishes and materials are in accordance with the approved schedule of finishes and materials identified in this consent.

“qualified designer” means a person registered as an architect in accordance with the Architects Act 2003 cf 50(1A) EP & A Regs 2000.

(Reason: To ensure the design quality and finishes for residential flat development)

Railway Contributions Deed

- G12. The Railway Contributions Deed shall be executed prior to issue of the final Occupation Certificate.

(Reason: Required infrastructure contributions)

Implementation of Works

- G13. All works in relation to awnings and pedestrian circulation at ground/street level at the splay on the corner of Walker & Mount Streets, shall be implemented prior to the issue of the final Occupation Certificate.

(Reason: To maintain pedestrian amenity)

Reason for approval

Clause 6.9 of the Act (as amended on 1 March 2018) does not come into effect until 1 September 2019. Clause 109H of the Act (prior to March 1 2018) remain in force in respect of restriction on occupation certificates. Clause 109H of the Act permits Interim Occupation Certificates, and Clause 109I of the Act states that “A *final occupation certificate for the whole of a building revokes any earlier occupation certificate for that building.*”.

In the case of this modification application, it is therefore appropriate to change the relevant wording of the conditions (**G1, G2, G3, G5, G7, G8, G9, G10, G11, G12 and G13**) to “*prior to the issue of the final occupation certificate*”. By changing the relevant wording of the conditions to this effect will give assurances to Council that the works will ultimately be complied with before a Final Occupation Certificate, but allow Interim Occupation Certificates to be issued so that tenancies that are extended can operate.

How were community views taken into account in making the decision

The application was not required to be notified to surrounding property owners in accordance with Part A, Section 4.4.9 in NSDCP 2013.

The conditions attached to the original consent for Development Application No. 392/16 by endorsed date of 7 August 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)