

Corey Taylor
Level 2, 41 McLaren Street
NORTH SYDNEY NSW 2060

D296/13
LH (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 296/13/2 – APPROVAL**

Development Consent Number: 296/13/2

Land to which this applies: 563-565 Pacific Highway, St Leonards
Lot No.: 1, DP: 1096026

Applicant: Corey Taylor

Proposal: To modify development consent DA296/13 for various modifications to an approved shop top housing development

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. **296/13** and registered in Council's records as Application No. **296/13/2** relating to the land described as **563-565 Pacific Highway, St Leonards**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 11 December 2013, has been determined in the following manner: -

1. To modify Condition A1 as follows:

Development in accordance with Plans/Documentation

A1. The development being carried out in accordance with the following drawings and documentation and endorsed with Council's approval stamp:

Plan No.	Issue	Date	Drawn by	Received
A100, A101, A102, A103, A104, A105, A106, A107, A108, A109, A110, A150, A151, A152, A153, A160, A161, A600	G	5/9/2013	PD Mayoh Pty Ltd	5/9/2013

except where modified in highlighting on the following plans:

Plan	Rev	Title	Dated	Prepared by	Received
A100	7	General arrangement Basement 1 & 2 plans	26/10/2018	PD Mayoh Pty Ltd	1/11/2018
A104	9	General arrangement common room & roof floor plans	26/10/2018	PD Mayoh Pty Ltd	1/11/2018
A150	7	Elevations South-west & north-east	26/10/2018	PD Mayoh Pty Ltd	1/11/2018
A151	7	Elevation south-east	26/10/2018	PD Mayoh Pty Ltd	1/11/2018
A152	6	Elevation north-west	26/10/2018	PD Mayoh Pty Ltd	1/11/2018
A160	8	Section A-A	26/10/2018	PD Mayoh Pty Ltd	1/11/2018
A161	11	Section B-B	14/12/2018	PD Mayoh Pty Ltd	19/12/2018
A162	8	Section CC, DD & EE	26/10/2018	PD Mayoh Pty Ltd	1/11/2018

except where amended by the following conditions of this consent.

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

2. To insert new Condition A4:

No change to any residential level is approved under this modification DA296/13/2

A4. No change is approved under Modification DA296/13/2 to any residential level. The floorplans and layouts of the residential levels shall be constructed in accordance with approved plans under Condition A1 of Development Consent DA 296/13 approved on 11 December 2013, other than the change in RL levels detailed under modification DA296/13/2.

(Reason: To clarify the terms of the modification application DA296/13/2)

3. To modify Condition C22 as follows:

Location of Plant

C22. All plant and equipment other than the plan detailed on the approved plans (including but not limited to air conditioning equipment), is to be located within the basement of the building and is not to be located on balconies on the roof. 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 minimise impact on surrounding properties, improved visual appearance and amenity for locality)

4. *To modify Condition C25 as follows*

Acoustic Privacy (Residential Apartments)

C25. Noise levels in sole occupancy units of residential apartments must not exceed the following:

Location	Maximum
Habitable Rooms other than Sleeping Areas	40 LAeq (1hr)
Sleeping Areas	35 LAeq (1hr)

The “Maximum” limits are to apply in any hour of a 24 hour period with the windows of the sole occupancy unit closed.

“habitable room” has the same meaning as in the Building Code of Australia.

A floor separating sole occupancy units shall have a weighted standardised impact sound pressure level $L'_{nT,w}$ not more than 55dB when measured in-situ in accordance with AS ISO 140.7-2006 “Field measurements of impact sound insulation of floors” and rated to AS ISO 717.2-2004 “Rating of sound insulation in buildings and of building elements. Part 2: Impact sound insulation”. This clause shall not apply to the floor of a kitchen, bathroom, toilet or laundry in a residential sole occupancy unit.

Mechanical equipment such as lift plant, air conditioning plant servicing the building and pumps shall not be located immediately adjacent bedrooms.

A statement from an appropriately qualified acoustical consultant eligible for membership of the Association of Australian Acoustic Consultants, certifying that the acoustic mitigation measures outlined above have been satisfied, must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

(Reason: To comply with best practice standards for residential acoustic amenity)

5. *To modify Condition C36 as follows: -*

Driveway Crossing and associated road works permit in Clark Lane

C36. Prior to the issue of the Construction Certificate, North Sydney Council must issue the applicant with a driveway crossing and road infrastructure works permit to suit the approved off-street parking facilities. To obtain the permit, an application must be made to Council on a ‘*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 permit issue. The civil design drawings shall detail the following infrastructure construction requirements of Council in relation to the consent:

- a) The proposed vehicular access ways shall comply with AS 2890.1, Council’s current Vehicular Access Application Guidelines and Specification (gutter bridges not permitted) and Council’s Public Domain Style Manual for Special Areas: A. St Leonards, to ensure that a B85 vehicle will not scrape/strike the surface of the carriageway, layback, vehicular crossing or parking floor.

- b) The redundant parts of the existing layback crossing on Clark Lane must be reconstructed as upright kerb/gutter and the footpath from precast concrete unit pavers in accordance with Council's Public Domain Style Manual for Special Areas: A. St Leonards.
- c) The width of the vehicular layback shall be 5.0 m - including the wings.
- d) The vehicular access way shall be built from precast concrete unit pavers in accordance with Council's Public Domain Style Manual for Special Areas: A. St Leonards and designed to comply with AS 2890.1 to ensure that a B85 vehicle will not scrape/strike the surface of the carriageway, layback, vehicular crossing or garage floor.
- e) deleted.
- f) The gutter invert levels shall match the existing levels and shall not be altered unless agreed to by Council.
- g) The footpath levels at the 1.5m set back line shall be no more than 160 mm higher than the existing gutter invert levels at any point. Any twisting of driveway access to ensure vehicles do not scrape shall occur entirely within the subject property.
- h) The Certifying Authority must ensure that the internal property levels at the boundary and at the setback line matches council's required levels.
- i) Full property frontage for the full width road carriage way shall be reconstructed in concrete at 200 mm thickness.
- j) An easement shall be created pursuant to Section 88B instruments under the Conveyance Act 1919 to provide for public rights of access within the setback areas as follows:
 - The 1.5m setback (not dedication) to Clark Lane frontage placed as footpath pavement and the easement shall extend down to a minimum of 1.5m below the invert level of the gutter and extend up to 3m above the footpath level.
 - Such easement shall be created and lodged with NSW Land and Property Information prior to the occupation of the building or the issue of a certificate for strata subdivision whichever comes first.
- k) Construction of a fully new replacement footpath is required across the entire site frontage in Clark Lane. The footpath pavement shall be full width constructed of precast concrete unit pavers in accordance with Council's Public Domain Style Manual for Special Areas: A. St Leonards, placed adjacent to the front boundary of the property. The footpath shall be designed (at a single straight grade of 3% falling to top of kerb) so that it is uniform without showing signs of dipping or rising particularly at entrances.
- l) Construction of a fully new concrete kerb and gutter is required across the entire site frontage in Clark Lane. A longitudinal section is required along the gutter line (existing and proposed levels), at a scale of 1:50 extending 5m past the property boundary line.

- m) All inspection openings, utility services shall be adjusted to match the proposed footpath and driveway levels.
- n) The design detail has to be provided with vehicular access application and must include sections along centre-line and extremities of the crossing at a scale of 1:25. Sections are to be taken from the centre of the roadway through to the car - lift platform/parking area itself and shall include all changes of grade and levels, both existing and proposed.
- o) A longitudinal section along the gutter line of Clark Lane at a scale of 1:50 showing how it is intended to transition the layback with the existing gutter levels.
- p) A longitudinal section along the footpath property boundary at a scale of 1:50 is required.
- q) The sections shall show the calculated clearance to the underside of any overhead structure.
- r) All details of car lift and turn table facility are required.
- s) A swept path analysis is required demonstrating that an 85th percentile vehicle can manoeuvre in and out of the parking spaces and loading dock in accordance with AS 2890.1 2004 "Off Street Parking".

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

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

6. To modify Condition C37 as follows:

Required Infrastructure Works in Pacific Highway – Roads Act 1993

C37. Prior to issue of the Construction Certificate the applicant must have engineering design plans and specifications prepared by a qualified civil design engineer. The plans and specifications must be to a detail suitable for construction issue purposes and must provide detail and specification for the following infrastructure works to be completed as part of the development:

Road Works in Pacific Highway

- a) Construction of a fully new replacement footpath is required across the entire site frontage in Pacific Highway. The footpath pavement shall be full width constructed of precast concrete unit pavers in accordance with Council's Public Domain Style Manual for Special Areas: A. St Leonards, placed adjacent to the front boundary of the property. The footpath shall be designed (at a single straight grade of 3% falling to top of kerb) so that it is uniform without showing signs of dipping or rising particularly at entrances.

- b) The Certifying Authority must ensure that the internal property levels at the boundary matches Council's required boundary levels.
- c) The Applicant must note that in order to accommodate suitable gutter grades and transitions, Council's development engineer may request further technical engineering details for assessment of the above application, and may also require upstream/downstream gutter level and/or footpath transitioning works as well as road shoulder reconstruction. The Applicant must further note that the levels issued by Council may impact upon design levels within the site. Early submission of the permit application is desirable to avoid any delay in obtaining a Construction Certificate. The formal approval from Council must be provided as part of the supporting documentation lodged with the Certifying Authority to gain approval of the Construction Certificate application.
- d) Cross sections at a scale of 1:50 along the centre-line of each access point to the building must be provided and are to show the calculated clearance to the underside of any overhead structure. All the entry points are to comply with the Building Code of Australia (BCA), particularly disability requirements. The Council approved footpath levels must be accommodated at the building entry points.

Private Certifying Authorities must not issue a Construction Certificate without the formal written approval of Council (as Roads Authority) under the Roads Act 1993.

The required plans and specifications are to be designed in accordance with North Sydney Council's current documents Public Domain Style Manual for Special Areas: A. St Leonards Infrastructure Specification for Road Works, Drainage and Miscellaneous Works and Performance Guide for Engineering Design and Construction. The drawings must detail existing utility services and trees affected by the works, erosion control requirements and traffic management requirements during the course of works. Detailed survey must be undertaken as required. Traffic management is to be certified on the drawings as being in accordance with the documents SAA HB81.1 – 1996 – Field Guide for Traffic Control at Works on Roads – Part 1 and RTA Traffic Control at Work Sites (1998). Construction of the works must proceed only in accordance with any conditions attached to the Council Roads Act 1993 approval.

A minimum of 21 days will be required for Council to assess Roads Act submissions. Early submission is recommended to avoid any delays in obtaining a Construction Certificate. A fee to cover cost of assessment (set out in Council's adopted fees and charges) is payable and Council will withhold any consent and approved plans until full payment of the correct fees. Plans and specifications must be marked to the attention of Council's Development Engineers. In addition, a copy of this condition must be provided, together with a covering letter stating the full address of the property and the accompanying DA number.

(Reason: To ensure infrastructure works are designed and constructed to appropriate standards and requirements of the Roads Act 1993)

7. To modify Condition G13 as follows:

Height

G13. Upon completion of the works and prior to the issue of any Occupation Certificate the RL of the development measured at the highest point of the rooftop plant, must be surveyed and certified by an appropriately qualified and practising surveyor as compliant with the maximum approved level being RL117.580 AHD. This survey and certification must be submitted to the Certifying Authority with the application for an 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)

8. To modify Condition G19 as follows

Allocation of Spaces

G19. Car parking spaces must be provided and maintained at all times on the subject site. The spaces shall be allocated to uses within the building in accordance with the following table:

9 x Residential
1 x Commercial

The car parking spaces are to be allocated on-site by line-marking and numbering upon the completion of the works and prior to issue of Occupation Certificate. Car parking spaces provided must only be used in conjunction with the approved uses contained within the development.

In the case of Strata Subdivision any car parking for strata lots for residential purposes must be individually allocated to its corresponding residential strata lot as part of each lot's unit entitlement.

Visitor parking facilities must be designated as common property on the strata plan. Visitor parking facilities must not at any time be allocated, sold, licensed or leased for the exclusive use of any occupier or owner and must be retained as common property by the Owners Corporation for use by building visitors.

(Reason: To ensure that adequate parking facilities to service the development are provided on site).

9. To add new Conditions M1-M3 as follows:

Conditions imposed by NSW Government Sydney Metro

Sydney Metro Condition

M1. One month prior to the commencement of works, the applicant must consult with Sydney Metro regarding their program and methodology for the works.

(Reason: Sydney Metro requirement)

Sydney Metro Condition

- M2. Sydney Metro or Transport for NSW (TfNSW), and persons authorised by those entities for the purpose of this condition, are entitled to inspect the site of the development and all structures to enable it to consider whether those structures have been or are being constructed and maintained in accordance with the approved plans and these conditions of consent, on giving reasonable notice to the principal contractor for the development or the owner or occupier of the part of the site to which access is sought. Sydney Metro is to be notified by email seven working days prior to concrete pours.

(Reason: Sydney Metro requirement)

Sydney Metro Condition

- M3. Prior to the issuing of an Occupation Certificate the Applicant is to submit as-built drawings to Sydney Metro and Council. The as-built drawings are to be endorsed by a Registered Surveyor confirming that there has been no encroachment into Sydney Metro property or easements, unless agreed to by these authorities. A copy of the corresponding structural certification documentation is to be provided to Sydney Metro. The Principal Certifying Authority is not to issue the final Occupation Certificate until written confirmation has been received from Sydney Metro confirming that this condition has been satisfied.

(Reason: Sydney Metro requirement)

Reason for approval:

The proposed modifications are considered to be generally consistent with the originally approved development application and s.4.55 of the EP & A Act 1979. Furthermore, the modifications do not result in any material amenity impact to adjoining properties or the surrounding area. The proposed modifications are consistent with the reasons for the granted of development consent to the originally approved development and is considered to be acceptable.

Having regard to the provisions of section 4.55 & 4.15(1) of the Environmental Planning and Assessment Act 1979, the proposed development as modified is substantially the same development as originally consented to. The application is therefore recommended for **approval**.

How community views were taken into account:

Adjoining properties and the Holtermann Precinct were notified of the proposed development between 16-30 November 2018. A notice was placed in the Mosman Daily on 15 November 2018. No submissions were received.

The conditions attached to the original consent for Development Application No. 293/13 by endorsed date of 11 December 2013 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.
- (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 Certifier 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.

Endorsed for and on behalf of North Sydney Council

DATE

Signature on behalf of consent authority
**LARA HUCKSTEPP
EXECUTIVE PLANNER**