

David Scobie Architects Pty Ltd
1/177A Sailors Bay Road
NORTHBRIDGE NSW 2063

D78/11
LH (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 78/11/7 – APPROVAL**

Development Consent Number: 78/11/7

Land to which this applies: 463 Miller Street, Cammeray
Lot No.: A, DP: 442393

Applicant: David Scobie Architects Pty Ltd

Proposal: To modify a Development Consent DA78/11 to amend
Condition A4 (Works wholly within the Subject Site).

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. **78/11** and registered in Council's records as Application No. **78/11/7** relating to the land described as **463 Miller Street, Cammeray**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 13 September 2011, has been determined in the following manner: -

1. To modify Condition A4:

All Works wholly within the Subject Site

A4. All works shall be located wholly within the boundaries of the subject site, other than the encroachments detailed in colour on the following plans:

No.	Title	Dated	Prepared	Received
101	Site and roof plan / ground floor plan	19/12/2018	David Scobie Architects Pty Ltd	21/1/2019
201	Elevation	19/12/2018	David Scobie Architects Pty Ltd	21/1/2019
202	Elevations	19/12/2018	David Scobie Architect Pty Ltd	21/1/2019

Other than the abovementioned encroachments, no other works shall occur to any common wall or any adjoining property. No other projections or encroachments are permitted to occur over Council's footpath. The architectural elements on the front (west) façade and the rear (east) façade that encroach on Council's land shall be deleted.

The Certifying Authority must ensure that the building plans and specifications submitted by the Applicant, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

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

2. To impose additional Condition G10:

Encroachments: Conditions of Consent for formalising a Deed of Agreement for Minor Encroachments

Property Address: 463 Miller Street, Cammeray

G10. The applicant and Council must enter into a Deed of Agreement to enable the 'minor encroachments' detailed in Condition A4 that have been constructed within Council's road reserve, to be regularised.

- (a) A draft Deed of Agreement will be issued to the applicant once the Development Conditions are approved and the applicant must agree in writing to entering into the Deed of Agreement with Council prior to the issue of an Occupation Certificate.
- (b) The lessee will be responsible for all maintenance and insurance.
- (c) Written consent will be issued to the Private Certifying Authority (PCA) on receipt of a valid Insurance Certificate and the executed Deed of Agreement by the encroaching owner.
- (d) The encroachment will be notated on a Section 149(5) Certificate.

(a) Insurance

"Where that part of the proposed development encroaches upon or over Council land, the land owner must defend and hold harmless, indemnify and keep indemnified, Council and its employees, officers, agents and contractors from and against all claims, expenses, losses including consequential losses, damages and costs (including costs on a solicitor and client basis and whether incurred by or awarded against Council) that Council may sustain or incur as a result, whether directly or indirectly, of the encroachment by the development on Council land, including:

- (a) any injury or death to any person including any injury or death to the general public, employees, officers, agents and contractors, or invitees, or other entity of the Council; or
- (b) damage to or loss of any property; and
- (c) arising out of performance by the land owner of its obligations under the Conditions of Consent including claims by a person who is not a party to this development, except to the extent caused or contributed to by Council, its contractors, employees and agents.

Without limiting the generality of this condition, the land owner must ensure that:

- (a) the processes and methods to be used for carrying out the development will be completely suitable for the purposes for which they are required;
- (b) the development is carried out in accordance with the Conditions of Consent;
- (c) it will obtain for the benefit of Council all available product and work warranties from any suppliers, contractors and subcontractors in respect of equipment and materials used in the development that encroaches on Council land, and assign such benefit to Council where the warranty is not in favour of Council.

The land owner must provide Council with a copy of its Certificate of Insurance on an annual basis so that Council can satisfy itself that the land owner holds adequate public liability insurance in relation to the development that encroaches on Council land.

The encroaching owner is required to maintain public liability insurance of \$20 million, noting Council's interest on the Certificate of Currency."

(b) Maintenance

Maintenance Responsibility

The Benefited Authority is responsible for the maintenance, repair and upkeep of the encroachment.

- (i) Owners Consent is required to undertake any additional works, other than general maintenance, to the encroachments."

(c) Costs

All associated costs in relation to the encroachment will be borne by the property owners of 463 Miller Street, Cammeray.

All other terms as Conditions are to be in accordance with the Encroachment Management Policy.

(Reason: To ensure the proper management of land)

Reason for approval:

The s.4.55(1a) application has been assessed against all applicable environmental planning instruments and Council policies and was found to be generally satisfactory, including in relation to the North Sydney LEP 2013 and North Sydney DCP 2013, subject to conditions of consent.

Having regard to the provisions of Section 4.15 of the EP&A Act 1979, the application is considered to be satisfactory as detailed in the assessment report.

How community views were taken into account:

The proposal was not required to be notified and advertised in accordance with Part A, Section 4 *Notification of Applications* of North Sydney DCP 2013 and no submissions were received.

The conditions attached to the original consent for Development Application No. 78/11 by endorsed date of 13 September 2011 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