

Ingham Planning Pty Ltd
Attention: Brett Brown
19/303 Pacific Highway
LINDFIELD NSW 2070

D404/17
LK (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 404/17/2 – APPROVAL**

Development Consent Number: 404/17/2

Land to which this applies: 1 Lower Bent Street, Neutral Bay
Lot No.: 1, DP: 656458

Applicant: Ingham Planning Pty Ltd

Proposal: Section 4.56 modification to DA404/17 for internal and external changes to Court approved development including a reduction in bedrooms, amended building footprint and amendments to the external appearance.

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. **404/17** and registered in Council's records as Application No. **404/17/2** relating to the land described as **1 Lower Bent Street, Neutral Bay**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 23 August 2018, has been determined in the following manner: -

- To modify the development consent (D404/17) and modify condition A1 to include the revised plans:*

Development in Accordance with Plans (S 4.56 Amendments)

- A1. The development must be carried out in accordance with the following drawings and documentation and endorsed with Council's approval stamp, except where amended by the following conditions of this consent.

Drawing Number	Issue/Revision	Title	Dated	Drawn by
DA000	A	Cover Sheet	15/03/2019	PBD Architects
DA001	A	Project Summary	15/03/2019	PBD Architects

DA002	A	Site Analysis Plan	15/03/2019	PBD Architects
DA003	A	Demolition Plan	15/03/2019	PBD Architects
DA101	B	Lower Ground Floor Plan	29/05/2019	PBD Architects
DA102	B	Ground Floor Plan	29/05/2019	PBD Architects
DA103	B	Level 1 Floor Plan	29/05/2019	PBD Architects
DA104	B	Level 2 Floor Plan	29/05/2019	PBD Architects
DA105	B	Roof Plan	29/05/2019	PBD Architects
DA201	B	North Elevation	29/05/2019	PBD Architects
DA202	B	South Elevation	29/05/2019	PBD Architects
DA203	B	East Elevation	29/05/2019	PBD Architects
DA204	B	West Elevation	02/7/2019	PBD Architects
DA301	A	Section AA	15/03/2019	PBD Architects
DA302	A	Section BB	15/03/2019	PBD Architects
DA303	A	Section CC	15/03/2019	PBD Architects
DA304	B	Section DD	29/05/2019	PBD Architects
DA305	B	Section EE	29/05/2019	PBD Architects
DA306	A	Section FF	15/03/2019	PBD Architects
DA401	A	Material Schedule East	15/03/2019	PBD Architects
DA402	A	Material Schedule West	15/03/2019	PBD Architects
DA403	A	Material Schedule North	15/03/2019	PBD Architects
DA404	A	Material Schedule South	15/03/2019	PBD Architects
L000	C	Cover Sheet and Site Plan	13/03/2019	Habit8
L001	C	Ground Level	13/03/2019	Habit8
L002	C	Lower Ground Level	13/03/2019	Habit8
L003	C	First Floor	13/03/2019	Habit8
L004	C	Planting Schedule	13/03/2019	Habit8

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

2. *To modify Conditions A3 (External Finishes and Materials), C4 (Amended Plans), C5 (Eastern Boundary Fence and Western Boundary Privacy Hedge), C21 (Section 7.11 Contributions), C22 (security deposit/guarantee schedule), and C23 (BASIX Certificate) as follows to reflect the amended application.*

External Finishes & Materials

- A3. External finishes and materials must be in accordance with those specified on the approved plans listed in Condition A1 of this consent.

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

Amended Plans

- C4. Amended architectural plans shall be provided prior to the release of the Construction Certificate and approved by the PCA showing the following:
- a) Clarification of whether retaining walls, and fences on top, at the boundaries with adjoining properties are to be retained or reconstructed, and;
 - b) The location of the proposed western wall of the development with regard to the retained/reconstructed retaining wall and the boundary location.

(Reason: To ensure clarity of plans).

Eastern Boundary Fence and Western Boundary Privacy Hedge

- C5. The eastern boundary fence shall be detailed on the Construction Certificate plans and information provided on the method of protecting the retaining wall or reconstructing the retaining wall shall be provided to the owner of 3 Lower Bent Street. Confirmation shall be provided with the Construction Certificate as to whether the existing fence is to be removed, stored and reused or reconstructed to match existing. Retention/reconstruction of the fence shall occur in consultation with the owner of 3 Lower Bent Street.

The western boundary privacy hedge located on and along the retaining wall of 1B Lower Bent Street shall be detailed in the Construction Certificate plans and information provided on the method of protecting the hedge to the owner of 1B Lower Bent Street.

(Reason: To ensure the boundary fence and retaining wall protect the amenity of 1 B and 3 Lower Bent Street).

Section 7.11 Contributions

- C21. A monetary contribution pursuant to the provisions of Section 7.11 of the Environmental Planning and Assessment Act 1979, in accordance with the North Sydney Council Section 94 Contribution Plan for the public amenities/ services detailed in column A below and, for the amount detailed in column B below, must be paid to Council.

A	B (\$)
Administration	\$561.18
Child Care Facilities	\$971.96
Community Centres	\$2,547.51
Library Acquisition	\$475.31
Library Premises & Equipment	\$1,470.04
Multi Purpose Indoor Sports Facility	\$401.43
Open Space Acquisition	\$16,022.19
Open Space Increased Capacity	\$31,758.95
Olympic Pool	\$1,307.47
Public Domain Improvements	\$1,255.42
Traffic Improvements	\$1,541.01
The total contribution is	\$ 58,312.47

The contribution MUST BE paid prior issue of any Construction Certificate.

The above amount, will be adjusted for inflation by reference to the Consumer Price (All Ordinaries) Index applicable at the time of the payment of the contribution.

A copy of the North Sydney Section 7.11 Contribution Plan can be viewed at North Sydney Council's Customer Service Centre, 200 Miller Street, North Sydney or downloaded via Council's website at www.northsydney.nsw.gov.au

(Reason: To retain a level of service for the existing population and to provide the same level of service to the population resulting from new development).

Security Deposit/Guarantee Schedule

C22. All fees and security deposits/ guarantees in accordance with the schedule below must be provided to Council prior to the issue of any Construction Certificate:

Security deposit/ guarantee	Amount (\$)
Potential Infrastructure Damage Bond	\$54,000.00
Civil (roads) Engineering Construction Bond	\$10,000.00
Civil (drainage) Engineering Construction Bond	\$50,000.00
Bond for Retaining Wall on Lower Bent Street	\$5,000.00
TOTAL BONDS	\$144,000.00

Note: The following fees applicable

Fees	
Section 7.11 Contribution	\$58,312.47
TOTAL FEES	\$58,312.47

The security required by the above schedule must be provided by way of a deposit with the Council; or other such guarantee that is satisfactory to Council (such as a bank guarantee). Any guarantee provided as security must name North Sydney Council as the nominated beneficiary and must not be subject to an expiry date.

(Reason: Compliance with the development consent).

BASIX Certificate

C23. Under clause 97A(3) of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. 871061M_04 dated 18 March 2019 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).

2. To add a further condition relating to garbage storage, as follows

Garbage and Recycling Facilities

C24. Adequate provision must be made for the storage of waste and recyclable material generated by the premises. Plans and specifications which comply 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 provision of appropriate waste facilities and to ensure efficient collection of waste by collection contractors)

Reason for approval:

The proposed modifications for internal and external changes including a reduction in bedrooms, amended building footprint and amendments to the external appearance, satisfy the provisions of Section 4.56 in that the proposed development is substantially the same as what was approved by the Court under DA 404/17 and the proposed modifications will not alter the use or the form of the development as originally approved.

The proposed modifications would not substantially change the level of compliance with the relevant development standards and controls as contained in North Sydney LEP 2013 and North Sydney DCP 2013. There would be no undue impacts on the residential amenity of any adjoining properties, or on the character of the locality, and the proposal remains consistent with the objectives of the R3 (Medium Density Residential) Zone, and the reasons for granting consent originally.

The proposal was found to be acceptable in the site circumstances and is recommended that the subject Section 4.56 application be approved with modifications to the relevant conditions and imposition of new conditions as required.

How community views were taken into account:

The application was notified to adjoining properties and Anderson Precinct between 29 March and 12 April 2019. Three (3) submissions against the application were received. The issues raised in the submissions are summarised in the delegated report.

The conditions attached to the original consent for Development Application No. 404/17 by endorsed date of 23 August 2018 still apply.

ADVISINGS

- (a) Council is always prepared to discuss its decisions and in this regard, please do not hesitate to contact **Lisa Kamali**. 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
ROBYN PEARSON
TEAM LEADER ASSESSMENTS