

AKL Developments Pty Ltd
C/- PBD Architects
Level 2, 62 Albion Street
SURRY HILLS NSW 2010

D331/18
LK (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 331/18/2 – APPROVAL**

Development Consent Number: 331/18/2

Land to which this applies: 74 Merlin Street, Neutral Bay
Lot No.: 0, SP: 20792

Applicant: AKL Developments Pty Ltd C/- PBD Architects

Proposal: Section 4.55(2) modifications to DA331/18, which permitted the demolition of the existing residential flat building, and the construction of a four story residential flat building comprising five dwellings with basement parking for six cars and associated landscaping.

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. **331/18** and registered in Council's records as Application No. **331/18/2** relating to the land described as **74 Merlin Street, Neutral Bay**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 6 February 2019, has been determined in the following manner: -

- 1. To modify the development consent (D331/18) and modify condition A1 to list the revised plans:*

Development in Accordance with Plans (S 4.55 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	Drawn by	Dated
DA 000	D	Cover Sheet	PBD Architects	06/06/19
DA 001	D	Project Summary	PBD Architects	06/06/19
DA 002	D	Site Plan	PBD Architects	06/06/19
DA 003	D	Demolition Plan	PBD Architects	06/06/19
DA 100	D	Basement Plan	PBD Architects	06/06/19
DA 101	D	Ground Floor Plan	PBD Architects	06/06/19
DA 102	D	Level 1 Plan	PBD Architects	06/06/19
DA 103	D	Level 2 Plan	PBD Architects	06/06/19
DA 104	D	Attic Plan	PBD Architects	06/06/19
DA 105	D	Roof Plan	PBD Architects	06/06/19
DA 200	D	Elevations - 02	PBD Architects	06/06/19
DA 201	D	Elevations - 01	PBD Architects	06/06/19
DA 300	D	Sections	PBD Architects	06/06/19
DA 301	D	Sections	PBD Architects	06/06/19
DA 400	D	Material Schedule	PBD Architects	06/06/19
LA 01	C	Cover Sheet/Site Management Plan	Starr Landscapes	30/05/19
LA 02	C	Ground Floor Landscape & Levels	Starr Landscapes	30/05/19
LA 03	C	Ground Floor Planting Plan	Starr Landscapes	30/05/19
LA 04	C	Plant Images	Starr Landscapes	30/05/19
LA 05	C	Plant Schedule, Ground Preparation, Maintenance	Starr Landscapes	30/05/19

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

2. *To modify Conditions C26 (Section 7.11 Contributions), C27 (security deposit/guarantee schedule), and C28 (BASIX Certificate) as follows to reflect the amended application:*

Section 7.11 Contribution

C26 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	\$178.82
Child Care Facilities	\$309.75
Community Centres	\$811.83
Library Acquisition	\$151.46
Library Premises & Equipment	\$468.46
Multi-Purpose Indoor Sports Facility	\$127.91
Open Space Acquisition	\$5,105.85
Open Space Increased Capacity	\$10,120.72
Olympic Pool	\$416.66
Public Domain Improvements	\$400.07
Traffic Improvements	\$491.09
The total contribution is	\$ 18,582.62

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

C27. 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	\$122,000.00
Engineering Construction Bond	\$25,000.00
TOTAL BONDS	\$147,000.00

Note: The following fees are applicable

Fees	
Section 7.11 Contribution	\$ 18,582.62
TOTAL FEES	\$ 18,582.62

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

C28. 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. 955708M_02 dated 30 May 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)

3. To insert a new Condition C29 (Roads and Maritime Services Requirements):

Roads and Maritime Services Requirements

- C29. 1. The subject property abuts a Declared Freeway (Warringah Freeway). All buildings and structures, together with any improvements integral to the future use of the site are to be wholly within the freehold property (unlimited in height or depth), along the Warringah Road boundary.
2. The developer is to submit design drawings and documents relating to the excavation of the site and support structures to Roads and Maritime for assessment, in accordance with Technical Direction GTD2012/001.

The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment by Roads and Maritime. Please send all documentation to development.sydney@rms.nsw.gov.au

If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owner/s of the roadway is/are given at least seven (7) day notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.

3. All permanent foundation support (anchors/ rock bolts) are to be contained wholly within property site boundary.
4. Detailed design plans and hydraulic calculations of any changes to the Roads and Maritime's stormwater drainage system are to be submitted to Roads and Maritime for approval, prior to the commencement of any works. Please send all documentation to development.sydney@rms.nsw.gov.au. A plan checking fee will be payable and a performance bond may be required before Roads and Maritime approval is issued.
5. All works/regulatory signposting associated with the proposed development are to be at no cost to Roads and Maritime.

Furthermore, the proponent should be advised that the subject property is within a broad area currently under investigation for the proposed Western Harbour Tunnel and Beaches Link motorway. A proposed reference design has been released for the road proposal and at present Roads and Maritime advises that the subject property remains within the area of investigation.

The NSW Government has carried out extensive community engagement on the proposed design. Feedback received from all stakeholders will be considered as the design is finalised for the project's environmental assessment, which will include exhibition of environmental impact

statements expected to occur during 2019. Once Roads and Maritime has more certainty on the properties directly impacted by the final road design, it will directly advise the owners of those properties.

(Reason: Compliance and advisory with respect to RMS requirements).

Reason for approval:

The proposed modifications for internal and external changes including a reduction in the number of apartments, deletion of a basement level, slightly amended building footprint and minor internal reconfiguration satisfy the provisions of Section 4.55 (2) in that the proposed development is substantially the same as what was approved by DA 331/18 and the proposed modifications will not materially alter the use or the form of the development as originally approved.

The proposed modifications would not significantly 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 fully consistent with the objectives of the R4 (High 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 4.55(2) application be approved with modifications to the relevant conditions.

How community views were taken into account:

The proposal was notified and advertised in accordance with Part A, Section 4 *Notification of Applications* of North Sydney DCP 2013. One submission against the application was received. The issues raised in the submission have been considered in the assessment of this application.

The conditions attached to the original consent for Development Application No. 331/18 by endorsed date of 6 February 2019 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)