

Aqualand North Sydney Developments Pty Ltd
Level 47, 100 Barangaroo Avenue
BARANGAROO NSW 2000

D486/15
GM (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 486/15/4 – APPROVAL**

Development Consent Number: 486/15/4

Land to which this applies: 168 Walker Street, North Sydney
Lot No.: 100, DP: 1172241

Applicant: Aqualand North Sydney Developments Pty Ltd

Proposal: To modify consent for demolition of existing office building and the construction of a mixed-use development comprising basement levels, retail/commercial floor space, and residential apartments

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. **486/15** and registered in Council's records as Application No. **486/15/4** relating to the land described as **168 Walker Street, North Sydney**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 12 July 2016, has been determined in the following manner: -

- *To delete condition C3 of the consent and insert in lieu thereof the following new condition namely:*

Dilapidation Report – Adjacent Private Property

- C3. A photographic survey and dilapidation report on each of the properties at 39 McLaren Street; 41 McLaren Street; 45 McLaren Street; 185 Walker Street; 191-195 Walker Street and 199 Walker Street, SHALL BE submitted to the Certifying Authority prior to the issue of the relevant Construction Certificate. The dilapidation reports will cover the physical condition of those properties, both internally and externally, including, but not limited to, such items as walls, ceilings, roof, structural members and other similar items.

The survey and report is to be prepared by an appropriately qualified person and a copy is to be provided to the owner of affected adjoining property. A copy of the report is to be provided to Council, if Council is not the Certifying Authority, prior to the issue of the relevant Construction Certificate.

All costs incurred in achieving compliance with this condition shall be borne by the person entitled to act on this Consent.

In the event that access for undertaking the photographic survey and dilapidation report is denied by an adjoining owner, the applicant **MUST DEMONSTRATE**, in writing, to the satisfaction of Council that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed. Written concurrence must be obtained from Council in such circumstances.

Note: This documentation is for record keeping purposes only and may be used by an applicant or affected property owner to assist in any action required to resolve any dispute over damage to adjoining properties arising from the works. It is in the applicant's and adjoining owner's interest for it to be as full and detailed as possible.

(Reason: To record the condition of properties prior to the commencement of construction)

The proposed modification is considered to be generally consistent with the originally approved development application and s.4.55 of the EP & A Act 1979. Furthermore, the modification would 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.

Reason for approval:

The variation to the excavation zone of influence to 1:1 is not supported but it may be under the required 2:1 zone of influence. The 2:1 requirement is a standard requirement for all major developments where excavation is involved to cater for different soil conditions. The excavation for basements on the subject site is quite deep due to the density of development proposed, the site has long frontages on a corner and therefore the number of properties impacted may be more than usual. The properties opposite may or may not be affected by the construction but they are close enough to have dilapidation reports but not structural certification. It is in the interests of all parties to have an agreed baseline condition of the adjoining and opposite structures and in this way can be used to protect the builder against claims for pre-existing damage or provide a baseline condition report against which possible future claims for damage arising from the works may be assessed.

The recommended modification to the condition has regard to the community concerns.

How community views were taken into account:

The owners of adjoining properties and the Stanton Precinct were notified of the proposed development on 19 July 2019. The notification resulted in six submissions which were addressed in the delegated report.

The conditions attached to the original consent for Development Application No. 486/15 by endorsed date of 12 July 2016 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
**GEOFF MOSSEMENEAR
EXECUTIVE PLANNER**