

Original signed by: Luke Donovan on: 3/9/19

Saul Moran
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D368/18
LD (CIS)

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 368/18/3 – APPROVAL

Development Consent Number: 368/18/3

Land to which this applies: 86-88 Walker Street, North Sydney
Lot No.: 1, DP: 1247547

Applicant: Saul Moran

Proposal: Section 4.55(1A) application to modify DA No. 368/18 regarding internal and external amendments to the rear of the Firehouse Hotel at No. 86 Walker Street.

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. **368/18** and registered in Council's records as Application No. **368/18/3** relating to the land described as **86-88 Walker Street, North Sydney**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 13 February 2019, has been determined in the following manner: -

1. Add Condition A6 as follows:

Development in Accordance with Plans (S4.55 Amendments)

A6. The development being carried out in accordance with plans identified in Condition A1 of the consent and endorsed with Council's approval stamp, except as modified by the modifications shown by clouding on:

Plan No.	Issue/Revision	Title	Drawn by	Dated
s.4.55 2.01	A	Proposed Ground Floor Plan	Design studio group	17/04/19
s.4.55 2.02	A	Proposed First Floor Plan	Design studio group	17/04/19
s.4.55 2.03	A	Proposed Roof Plan	Design studio group	17/04/19
s.4.55 3.01	A	East Elevation	Design studio group	17/04/19
s.4.55 3.02	A	West Elevation	Design studio group	17/04/19
s.4.55 3.03	D	South Elevation	Design studio group	16/08/19

s.4.55 4.01	A	Section 1	Design studio group	17/04/19
s.4.55 4.02	A	Section 2	Design studio group	17/04/19
SK 1.01	A	Section 1	Design studio group	16/08/19

except as amended by the following conditions and this consent.

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

2. Add Condition C35 as follows:

Lease agreement for the encroachment structures

C35 Prior to the issue of the **relevant sub-construction certificate**, the applicant is to enter into the following lease agreement with Council:

- (a) The applicant is to agree in writing to enter into a Lease Agreement with Council in accordance with Clause 4.2.3.5(i)(a) of the Encroachment Management Policy to enable the encroachment of 53.67m² relating to the encroaching artwork over Spring Street to be regularised, before a Construction Certificate is issued. A draft lease will be provided.
- (b) The rental will be \$1.00 per annum. A registered surveyor is required to provide an as-built survey plan identifying the encroachments. The total 'area' in sqm is to be noted on the Survey Plan. The Plan is to be attached to the Lease Agreement when the lease is finalised.
- (c) The commencement date of the lease shall be the Date of Practical Completion.
- (d) If the applicant does not concur with the conditions of the Agreement, the applicant may lodge a Section 4.55 Application to modify the conditions prior to the Construction Certificate being issued.
- (e) The lessee will be responsible for all maintenance and insurance.
- (f) Written consent will be issued to the Private Certifying Authority (PCA) on receipt of a valid Insurance Certificate together with the executed Lease Agreement and a copy of the Certificate of Practical Completion.
- (g) The encroachment will be notated on a Section 10.7 Certificate.

Insurance Terms

" In the event 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 proposed 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 **condition C35**, 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."

Maintenance

Maintenance Responsibility

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

Owners Consent is required to undertake any additional works, other than general maintenance, to the encroaching structures."

Costs

All associated costs in relation to the encroachment will be borne by the property owners of **86-88 Walker Street, North Sydney.**

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

(Reason: To ensure consistency with the terms of this consent)

Reason for approval:

The proposed modifications are considered to be consistent with the originally approved development application and s.4.55 of the EP & A Act 1979.

The loading and unloading for the Fire House Hotel will occur via the conveyor belt that will connect to the consolidated loading dock at No. 88 Walker Street which will assist in minimising impacts on the surrounding road system.

The internal reconfiguration of the ground level of the Fire House Hotel is acceptable noting that there are no changes to the number of gaming machines and the number of sanitary facilities is compliant with the BCA.

Artwork zone 2 will encroach 50mm over Council's land. The extent of encroachment is no greater than the existing architectural nib that encroaches 50mm over Council's land. Artwork zone 2 is a minimum of 1960mm above footpath level and as such will not adversely impact public safety. Artwork zone 1 will be fixed directly to the existing southern wall and/or fixed to the new louvred surround frame and extend no more than 10mm from the existing wall. Owner's consent was granted for these encroachments.

Given the constraints of the site and the fact that the existing southern wall will be retained, the two artwork zones is considered a reasonable planning outcome that achieves the intent of the objective which is to provide different options for public artwork while maintaining public safety and minimising the extent of encroachment over Council's land.

The proposed modifications are consistent with the reasons for the granting 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 application is therefore recommended for **approval**.

How community views were taken into account:

Notification was not required under Council's policy.

The conditions attached to the original consent for Development Application No. 368/18 by endorsed date of 13 February 2019 still apply.

ADVISINGS

- (a) Council is always prepared to discuss its decisions and in this regard, please do not hesitate to contact **Luke Donovan**. 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
LUKE DONOVAN
SENIOR ASSESSMENT OFFICER