

Winten No. 16 Pty Ltd  
Attention: Chris Ryan  
Level 20, 100 Arthur Street  
NORTH SYDNEY NSW 2060

D327/16  
LH (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 MODIFICATION 327/16/5 – APPROVAL**

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**Development Consent Number:** 327/16/5

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**Land to which this applies:** 31-33 Albany Street, Crows Nest  
Lot No.: 10, DP: 1236793

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**Applicant:** Winten No. 16 Pty Ltd

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**Proposal:** To modify a consent DA327/16 to amend landscaping requirements.

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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. **327/16** and registered in Council's records as Application No. **327/16/5** relating to the land described as **31-33 Albany Street, Crows Nest**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 7 December 2016, has been determined in the following manner: -

**1. To amend Condition G21 as follows:**

**Landscaping**

G21. The landscaping shown in the approved landscape plan numbered DA-1616-03 Revision C prepared by Sturt Noble Associates dated 24/11/2016 and received by Council on 25/11/2016 and **landscape plan numbered DA-1616-01 Revision F prepared by Sturt Noble Associates dated 18/05-2017**, must be completed prior to the issue of any Occupation Certificate. The landscape plan shall be amended as follows:

- The street tree detailed in the Albany Street setback is not required to be replaced with another tree. This area shall instead be provided with pavers in line with Council's Public Domain Style manual, over concrete as appropriate.

(Reason: The applicant has demonstrated that a street tree cannot be provided within the front setback due to the provision of below ground servicing)

2. *To delete Condition G26.*

3. *To add new condition G27 as follows:*

**Forfeit of bond for the provision of a street tree**

G27. The applicant shall forfeit the bond paid of \$5,000 under Condition C31 of DA327/16 and in accordance with Condition G26 of DA327/16/2. No refund of the \$5,000 bond will be provided as the applicant has elected not to provide a replacement tree.

(Reason: A suitable location for a replacement street tree cannot be established adjacent to the site's frontage. The forfeited bond will be used to fund landscape improvements in the immediate area)

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**Reason for approval:**

The proposed modifications are considered to be of minimal environmental impact and are consistent with the originally approved development application and s.4.55(1A) of the EP & A Act 1979. Furthermore, the modifications do not result in any material amenity impact to adjoining properties or the surrounding area. The proposed modification retains the intent of originally approved development and is considered to be acceptable.

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**How community views were taken into account:**

The proposed development involves only a modification to a condition regarding the requirement of replacing a street trees and does not seek the removal of any existing street trees. In accordance with Section 4 NSDC, notification was not required.

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The conditions attached to the original consent for Development Application No. 327/16 by endorsed date of 7 December 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

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Signature on behalf of consent authority  
**LARA HUCKSTEPP  
EXECUTIVE PLANNER**