

**Original signed by: Luke Donovan Dated: 15/11/2019**

HJ Two Pty Ltd  
C/- Corben Architects  
PO Box 1021  
NEUTRAL BAY NSW 2089

D387/16  
LD(CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 MODIFICATION 387/16/3 – APPROVAL**

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**Development Consent Number:** 387/16/3

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**Land to which this applies:** 53 Reynolds Street, Cremorne  
Lot No. 0, SP 98744

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**Applicant:** HJ Two Pty Ltd  
C/- Corben Architects

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**Proposal:** Section 4.55 Application to modify DA387/16 with regards to modifying Condition C27.

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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. **387/16** and registered in Council's records as Application No. **387/16/3** relating to the land described as **53 Reynolds Street, Cremorne**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 1 March 2017, has been determined in the following manner: -

**1. Modify Conditions A4 and C27 as follows:**

**Development in Accordance with Plans (S4.55 Amendments)**

A4 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 purple clouding on the plans that formed part of modification application No. 387/16/2:

<b>Drawing No</b>	<b>Revision</b>	<b>Title</b>	<b>Drawn by</b>	<b>Dated</b>
DA01	E	Site plan	Corben Architects	22/5/2017
DA02	E	Level 1 plan	Corben Architects	22/5/2017
DA03	E	Level 2 plan	Corben Architects	22/5/2017
DA04	E	Level 3 plan	Corben Architects	22/5/2017
DA05	E	Level 4 plan	Corben Architects	22/5/2017
DA06	E	Level 5 plan	Corben Architects	22/5/2017

DA07	E	Roof plan	Corben Architects	22/5/2017
DA08	E	Section A	Corben Architects	22/5/2017
DA09	E	Section B	Corben Architects	22/5/2017
DA10	E	North Elevation Block A	Corben Architects	22/5/2017
DA11	E	South Elevation Block A	Corben Architects	22/5/2017
DA12	E	North and South Elevations Block B	Corben Architects	22/5/2017
DA13	E	East Elevation Blocks A and B	Corben Architects	22/5/2017
DA14	E	West Elevation Blocks A and B	Corben Architects	22/5/2017

Except as amended by the clouding on the following plans:-

Drawing No	Revision	Title	Drawn by	Dated
DA03	G	Level 2 plan	Corben Architects	1/08/19
DA04	G	Level 3 plan	Corben Architects	1/08/19
DA05	G	Level 4 plan	Corben Architects	1/08/19
DA06	G	Level 5 plan	Corben Architects	1/08/19
DA13	G	East Elevation Blocks A and B	Corben Architects	1/08/19
DA14	G	West Elevation Blocks A and B	Corben Architects	1/08/19

And except as amended by other conditions of this consent.

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

## Privacy

C27 The following privacy devices are to be provided:

- a) The vertical timber privacy screens on the nominated balconies and terraces on Level 4 (Building A and B) and Level 5 (Building B) may be adjustable to a maximum of 45 degrees but not cause overlooking into adjoining properties.
- b) Translucent (non-transparent) privacy film that is consistent with 3M Crystal Glass Finishes 7725SE-314 Dusted or similar, must be affixed to the following windows of the development:
  - (i) West facing kitchen/dining/living room windows (Level 5) of House 6. This privacy film is to be to a minimum height of 1800mm above floor level;
  - (ii) West facing bed 1 and entry windows (Level 4) of House 6. This privacy film is to be to a minimum height of 1600mm above floor level;
  - (iii) East facing bed 3 window (Level 3) of House 1. This privacy film is to be to a minimum height of 1600mm above floor level;
  - (iv) West facing bed 1 window (Level 3) of House 3. The northern window within this room. This privacy film is to be to a minimum height of 1800mm above floor level;
  - (v) West facing kitchen window (Level 4) of House 3 to a minimum height of 1600mm;
  - (vi) West facing bed 2 and bed 3 windows (Level 3) of House 2. This privacy film is to be to a minimum height of 1800mm above floor level;

- (vii) West facing frosted kitchen and powder room windows (Level 4) of House 3 to a minimum height of 1600mm;
  - (viii) East facing frosted kitchen and powder room windows (Level 4) of House 4 to a minimum height of 1600mm.
- c) The external louvres to all windows of the development must remain in place. The louvres may only be angled upwards.

(Reason: To ensure a reasonable level of privacy is provided to adjoining properties).

**2. Add Condition I4 as follows:**

**Translucent Privacy Film**

- I4 The translucent privacy film affixed to the windows specified in Condition C27 b) of this consent must remain in place for the life of the development.

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

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The proposed modification has been assessed against Section 4.55 of the *Environmental Planning and Assessment Act 1979*, and found to be generally acceptable in the site circumstances.

The applicant seeks to modify Condition C27(b) of DA387/16. Part (b) of this condition required “*the horizontal louvres to the nominated windows along the side elevations on Levels 2, 3 and 4 (Building A) and Levels 4 and 5 (Building B) must be angled upwards but may be adjustable between 19 degrees and 33 degrees*”

The applicant seeks to modify part b) of this condition to allow for privacy film to be applied to the west facing windows of House 6 fronting Gerard Lane to a height of 1600mm above finished floor level.

**Reason for approval:**

Following this assessment, it is concluded that privacy film to a height of between 1600mm to 1800mm above floor level, depending on location/height of windows and viewing angles, be affixed to a number of the side windows within the houses to avoid direct or close overlooking and ensure a reasonable level of privacy is maintained to the adjoining properties. This privacy film will be in addition to the external louvres which are attached to these windows and only angle upwards.

Whilst the windows are operable, for safety reasons a majority only open a maximum of 125mm and as such will not result in any unreasonable overlooking, as detailed within this report. In instances where adjoining properties have raised objections on privacy grounds, the amended Condition C27 provides for improved privacy.

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Consequently, the Section 4.55 application is considered to be reasonable in the circumstances and it is recommended for **approval** subject to modified and additional conditions of consent.

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

The issues raised within the submissions are considered in detail within the planning report. Condition C27, as modified, ensures a reasonable level of privacy with the adjoining properties.

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The conditions attached to the original consent for Development Application No. 387/16 by endorsed date of 1 March 2017 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

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Signature on behalf of consent authority  
DAVID HOY  
**TEAM LEADER(ASSESSMENTS)**