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D102/16
LD (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.56 MODIFICATION 102/16/6 – APPROVAL**

Development Consent Number: 102/16/6

Land to which this applies: 3 East Crescent Street, McMahons Point
Lot No.: 2A, DP: 34155

Applicant: Modog Pty Ltd

Proposal: Section 4.56 Application to modify DA 102/16 with regards to the conversion of the communal open space to private open space for Unit 1 and the deletion of the external staircase in the south eastern corner of the site and replace with landscaped planter.

Pursuant to Section 4.56 of the Act notice is hereby given of the determination by the consent authority of your request for a modification to Development Consent No. **102/16** and registered in Council's records as Application No. **102/16/6** relating to the land described as **3 East Crescent Street, McMahons Point**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 19 September 2016, has been determined in the following manner: -

1. Modify Conditions A4 and G16 to read as follows:

Development in Accordance with Plans (Modification applications)

A4. The development being carried out in accordance with plans identified in **Condition A1** of the consent, except as modified by the modifications shown in colour on the plans that formed part of modification No. 102/16/2:

Drawing No.	Revision	Title	Drawn by	Dated
S96 01	C	Site and roof plan	Max Wessels	13/12/2016
S96 02	C	Level 6 and Level 7 Plans	Max Wessels	13/12/2016
S96 03	C	Elevations	Max Wessels	13/12/2016
S96 04	C	Elevation and Section	Max Wessels	13/12/2016

And except as amended by the modifications shown in colour on the plans that formed part of modification No. 102/16/4:

Drawing No.	Revision	Title	Drawn by	Dated
S96/01	B	Car Park B3	Max Wessels	19/6/17
S96/02	B	Car Park B2	Max Wessels	19/6/17
S96/03	B	Car Park B1	Max Wessels	19/6/17
S96/04	B	Level 1 L1	Max Wessels	19/6/17
S96/05	B	Level 2 L2	Max Wessels	19/6/17
S96/06	B	Level 3 L3	Max Wessels	19/6/17
S96/07	B	Ground Floor GF	Max Wessels	19/6/17
S96/08	B	Level 5 L5	Max Wessels	19/6/17
S96/09	B	Level 6 L6	Max Wessels	19/6/17
S96/10	B	Level 7 L7	Max Wessels	19/6/17
S96/11	B	Elevations	Max Wessels	19/6/17
S96/12	B	Elevations	Max Wessels	19/6/17
S96/13	B	Sections	Max Wessels	19/6/17
S96/14	B	Site and Roof Plan	Max Wessels	19/6/17

And except as modified by the modifications shown in colour on the plans that formed part of modification No. 102/16/5:

Drawing No.	Revision	Title	Drawn by	Dated
S96 01	C	Site & Roof Plan	Max Wessels	16/10/18
S96 02	C	B1 & B2 Plans	Max Wessels	16/10/18
S96 03	C	B3 & L1 Plan	Max Wessels	17/10/18
S96 04	C	LG.L2 & LG.L3 Plans	Max Wessels	16/10/18
S96 05	C	Ground Floor & Level 5 Plan	Max Wessels	16/10/18
S96 06	C	Level 6 & 7 Plan	Max Wessels	16/10/18
S96 07	C	Elevations	Max Wessels	5/11/18
S96 08	C	Elevations & Section	Max Wessels	16/10/18
S96/14	B	Site and Roof Plan	Max Wessels	19/6/17
CD80d	oo	Louvre details	Max Wessels	1/2/19
CD121	oo	East side landscaping sections	Max Wessels	11/2/19

And except as modified by the modifications shown in colour on the plans below:

Drawing No.	Revision	Title	Drawn by	Dated
S4.55-01	B	Site & Roof Plan	Max Wessels	8/10/19
S4.55-02	B	L1 & L2 Plan	Max Wessels	8/10/19
S4.55-03	B	Elevations	Max Wessels	8/10/19
S4.55-04	B	Elevations & Section	Max Wessels	8/10/19
LPS4.55 16 – 390 pg.1	L	Landscape Plan Level 1-3 & Ground Level	Conzept Landscape Architects	10/10/19
LPS4.55 16 – 390 pg.2	L	Hardscape Plan Level 1-3 & Ground Level	Conzept Landscape Architects	10/10/19
LPDA 16 – 390 pg.3	C	Landscape Plan Level 6 & 7	Conzept Landscape Architects	11/10/19
LPDA 16 – 390 pg.4	E	Details & Specification	Conzept Landscape Architects	11/10/19

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

Landscaping

G16. The landscaping shown in the approved landscape plans indicated in Condition A4 of this consent must be completed prior to the issue of any Occupation Certificate.

(Reason: To ensure compliance)

2. *Add Condition G26 to read as follows:*

Certification of Tree Condition

G26. Prior to the issue of an Occupation Certificate, a report prepared by an appropriately qualified person (being an arborist or the like) must be submitted to the Certifying Authority upon completion of the works, describing the health of the tree(s) located at 2A Henry Lawson Avenue, McMahons Point, adjacent to the eastern boundary of the subject site, and certifying that the tree(s) has/have not been significantly damaged during the works on the site, and have reasonable prospects for survival.

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

The proposed modifications have been assessed against Section 4.56 of the Environmental Planning and Assessment Act 1979 (as amended), and found to be generally acceptable in the site circumstances.

The deletion of the communal open space at the rear of the site is supported given the small number (7) of apartments within the development, in addition to, the fact that there is sufficient private open space for the apartments. The private open space of a majority of the apartments exceeds the minimum private open space requirements in the ADG. The amenity of unit 1 will be improved with the additional private open space. The deletion of the stairs to the public walkway and replacement with planters will further improve security and amenity for unit 1.

Reason for approval:

The proposed modifications do not involve any additional excavation or works to the approved retaining walls along the eastern boundary of the site therefore the trees on the adjoining property at 2A Henry Lawson Avenue are unlikely to be adversely affected. Notwithstanding, given the issues raised in the public submissions, and the proximity of the works to the adjoining property and the public footpath, an additional condition is recommended requiring certification from an Arborist prior to the issue of the occupation certificate that the trees located on the adjoining property at 2A Henry Lawson have not been significantly damaged during works.

Consequently, the Section 4.56 application is considered to be reasonable in the circumstances and it is recommended for **approval** subject to conditions of consent.

How community views were taken into account:

The owners of surrounding properties in addition to those that made submissions to the original application were notified of the proposal between 30 August and 13 September 2019. Ten (10) submissions were received against the application. The issues raised in the submissions are summarised in the delegated report and, where appropriate, conditions recommended to address the issues raised in the submission.

In accordance with Part A, Section 4.5 in NSDCP 2013, the amended plans involving the addition of a staircase from unit 1 to the garden area as well as clarification on the materials of the boundary fence adjacent to public walkway were not notified to adjoining properties as these amendments will not adversely impact adjoining properties.

The conditions attached to the original consent for Development Application No. 102/16 by endorsed date of 19 September 2016 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 4.56 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 4.56 of the Environmental Planning & Assessment Act.

Endorsed for and on behalf of North Sydney Council

DATE

Signature on behalf of consent authority
DAVID HOY
TEAM LEADER ASSESSMENTS