

Original signed by: Luke Donovan Dated: 18/12/2019

Modog Pty Ltd
PO Box 222
CAMMERAY NSW 2062

D102/16
LD(CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.56 MODIFICATION 102/16/9 – APPROVAL**

Development Consent Number: 102/16/9

Land to which this applies: 3 East Crescent Street, McMahons Point
Lot No.: 1, DP: 1246867

Applicant: Modog Pty Ltd

Proposal: Section 4.56 Application to modify DA 102/16 with regards to an amendment to Condition G21 to allow the southern boundary fencing to be completed prior to the Occupation Certificate for the whole of the building.

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. **102/16/9** 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 21 September 2016, has been determined in the following manner: -

1. Modify Condition G21 to read as follows:

Compliance with Certain conditions

G21. Prior to the issue of the Occupation Certificate for the whole of the building **Conditions C1** must be certified as having been implemented on site and complied with.

Prior to the issue of any Occupation Certificate **Condition C31** must be certified as having been implemented on site and complied with.

(Reason: To ensure the development is completed in accordance with the requirements of this consent)

2. Add Condition G27 to read as follows:

Chain wire fence

G27 A chain wire fence, to the height specified in Condition C1 of this consent must be installed along the southern boundary of the site prior to the issue of any partial Occupation Certificate.

The chain wire fence must be certified in writing by an appropriately qualified structural engineer upon installation as compliant with the relevant Australian Standards and National Construction Code. The certification must be provided to the Principal Certifying Authority prior to the issue of any partial Occupation Certificate

Reason: To ensure compliance with the terms of this consent while ensuring safety and security for the occupants of the building and general public).

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 proposed modification does not seek a change to the approved southern boundary fence. The proposed modification only relates to the timing of the installation of the southern boundary palisade fence to permit occupation of the building prior to the installation of the southern boundary fence.

Reason for approval:

A temporary chain wire fence will be constructed along the southern boundary fence, to ensure safety and security for the occupants of the building and general public. An additional condition is recommended that this chain wire fence be constructed at the height specified in Condition C1 and certified by a structural engineer upon installation as compliant with the relevant Australian Standards and National Construction Code.

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

How community views were taken into account:

The application was not required to be notified in accordance with Section 3.4.2 of the North Sydney Community Participation Plan as the proposed amendments to Condition G16 will have no environmental impact as the landscaping works will still be required to be completed prior to the issue of the final Occupation Certificate.

The conditions attached to the original consent for Development Application No. 102/16 by endorsed date of 21 September 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
LUKE DONOVAN
SENIOR ASSESSMENT OFFICER