

Original signed by: Luke Donovan Dated: 9/1/2020

Areti Pty Ltd
19 Robertson Road
CENTENNIAL PARK NSW 2021

D287/15
LD(CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 287/15/2 – APPROVAL**

Development Consent Number: 287/15/2

Land to which this applies: 25-27 Myrtle Street, North Sydney
Lot No. 8, DP 32899

Applicant: Areti Pty Ltd

Proposal: A Section 4.55(2) application to modify DA 287/15 with regards to façade modifications, internal reconfigurations and roof mounted air conditioning units.

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. **287/15** and registered in Council's records as Application No. **287/15/2** relating to the land described as **25-27 Myrtle Street, North Sydney**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 3 February 2016, has been determined in the following manner: -

1. Add Condition A4 to read 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 modifications shown in colour on:

Dwng No.	Revision/Issue	Date	Title	Drawn By	Received
01-S96-2-01	E	5/9/2019	Site & Ground Floor Plan	Nexus Architecture P/L	24 September 2019
02-S9-2-02	E	5/9/2019	First Floor Plan	Nexus Architecture P/L	24 September 2019
03-S96-2-03	E	509/2019	Second Floor Plan	Nexus Architecture P/L	24 September 2019

04-S96-2-04	E	5/9/2019	Third Floor Plan	Nexus Architecture P/L	24 September 2019
05-S96-2-05	E	5/9/2019	Roof Plan	Nexus Architecture P/L	24 September 2019
08-S96-08	E	5/9/2019	East Elevation	Nexus Architecture P/L	24 September 2019
09-S96-2-09	E	5/9/2019	North & South Elevations Schedule of External Finishes	Nexus Architecture P/L	24 September 2019

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. Delete Conditions C8 ‘Skylights’ and C26 ‘Location of Plant’

The proposed modification has been assessed against Section 4.55(2) of the Environmental Planning and Assessment Act 1979, and found to be generally acceptable in the site circumstances.

The proposed modification will result in a further reduction in the non-residential floor space ratio as a consequence of construction constraints given it was an adaptive reuse of the building as well as the requirement to comply with National Construction Code (NCC) and ensuring equitable access which were only foreshadowed at the Construction Certificate Stage. The non-residential component at ground level has been reduced to 112.80m² in comparison with the approved 126m². This equates to a floor space ratio of 0.436:1 of a non-residential use which remains non-compliant with minimum control 0.5:1 (129.5m²) as required by Clause 4.4A(2) in NSLEP 2013.

Reason for approval:

The proposed variation to the non-residential floor space ratio control is considered to achieve the objective of the control despite the numerical non-compliance. The proposed modification will continue to provide two commercial tenancies at ground level which are capable of accommodating various sized retail and business uses while continuing to activate Eden and Myrtle Street.

An acoustic statement was prepared by GHD Pty Ltd dated 8 April 2019 confirming that the relocation of the nine (9) air conditioning condenser units to the roof of the building will comply with the ‘night time’ noise criteria at the nearest residential receivers, thereby ensuring reasonable acoustic amenity is maintained for these properties.

The internal reconfiguration of the tenancies and residential apartments was required to achieve compliance with the access requirements in the NCC. The internal reconfigurations will ensure a high level of amenity is provided to the apartments.

The sun control device to the northern elevation will provide sun protection and ensure compliance with the fire separation requirements in the NCC. The changes to the glazing to the commercial tenancies will improve casual surveillance while maintaining good activation at street level at Myrtle and Eden Streets.

Consequently, the Section 4.55(2) application is considered to be reasonable in the circumstances and it is recommended for **approval** subject to changes to the conditions of consent.

How community views were taken into account:

The S4.55 application was notified to the Hayberry Precinct Committee and surrounding properties between 4 October and 18 October 2019 in accordance with Section 3.4.2 of the Community Participation Plan. No submissions were received.

The conditions attached to the original consent for Development Application No. 287/15 by endorsed date of 3 February 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
ACTING TEAM LEADER (ASSESSMENTS)