

**Original signed by: Robyn Pearson Dated: 14/2/2020.**

Helm No. 16 Pty Ltd  
PO Box 99  
NORTHBRIDGE NSW 1560

D252/19  
LK(CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 MODIFICATION 252/19/2 – APPROVAL**

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**Development Consent Number:** 252/19/2

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**Land to which this applies:** 96-100 Spofforth Street, Cremorne  
Lot No.: 1, DP: 957949

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**Applicant:** Helm No. 16 Pty Limited

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**Proposal:** Section 4.55 (1A) modification to DA 252/19, which permitted a residential flat building containing 12 apartments.

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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. **252/19** and registered in Council's records as Application No. **252/19/2** relating to the land described as **96-100 Spofforth Street, Cremorne**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 6 November 2019, has been determined in the following manner: -

**1. To modify Condition C4 (Contribution for Affordable Housing) as follows:-**

**Contribution for Affordable Housing**

C4. Prior to the issue of any Construction Certificate, the proponent shall make a monetary contribution of **\$81,600.00** to North Sydney Council as a contribution towards providing affordable housing pursuant to Section 7.32(2) of the Environmental Planning & Assessment Act, 1979, as calculate by clause 51 of State Environmental Planning Policy (Affordable Housing) 2009.

The contribution **MUST BE** paid prior issue of any Construction Certificate.

The above amount will be adjusted for inflation by reference to the Consumer Price (All Ordinaries) Index applicable at the time of the payment of the contribution.

(Reason: To mitigate the loss of low-rental accommodation within the State).

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**Reason for approval:**

The proposed modification to Condition C4 (Contribution for Affordable Housing) satisfies the provisions of Section 4.55 (1A) in that the proposed development is substantially the same as what was approved by DA252/19 and the proposed modification will not alter the use or the form of the development as originally approved.

The proposed modification would not change the level of compliance with the relevant development standards and controls as contained in SEPP 65 and the ADG, North Sydney LEP 2013 and North Sydney DCP 2013, and as the physical development is unchanged there would be no undue impacts on the residential amenity of any adjoining properties, or on the character of the locality. Whilst the law of probability would suggest that it is likely the development would result in the loss of eight affordable units, officers have been unsuccessful in finding rental evidence extending all the way back to 28 January 2000 for six of these dwellings.

In the absence of any conclusive evidence regarding the affordability of six of the eight existing dwellings which are captured by ARHSEPP, the proposal for a reduced affordable housing contribution was found to be acceptable on balance. Consequently, it is recommended that the subject Section 4.55(1A) modification to the relevant condition be approved.

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

Notification of the subject application was waived in accordance with Section 4.5.1 in Part A of North Sydney DCP 2013 given the proposed modification to Condition C4 (affordable housing contribution) will have negligible to no environmental impact.

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The conditions attached to the original consent for Development Application No. 252/19 by endorsed date of 6 November 2019 still apply.

**ADVISINGS**

- (a) Council is always prepared to discuss its decisions and in this regard, please do not hesitate to contact **Lisa Kamali**. 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  
**ROBYN PEARSON  
TEAM LEADER (ASSESSMENTS)**