

Simon Rosewell Pty Ltd
1/136 Willoughby Road
CROWS NEST NSW 2065

D384/14
RT (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 384/14/2 – APPROVAL**

Development Consent Number: 384/18/2

Land to which this applies: 41 Ben Boyd Road, Neutral Bay
Lot No.: 2, DP: 33304

Applicant: Simon Rosewell Pty Ltd

Proposal: Section 4.55(1A) modifications to D384/14 for
modifications to consent conditions in relation to
stormwater management

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. **384/18** and registered in Council's records as Application No. **384/18/2** relating to the land described as **41 Ben Boyd Road, Neutral Bay**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 5 August 2015, has been determined in the following manner: -

1. To modify Conditions C13 and G1 of the development consent (D384/14) as follows:

Stormwater Management and Disposal Design Plan – Construction Issue

C13. Prior to issue of the Construction Certificate, the applicant shall have a site drainage management plan prepared by a qualified drainage design engineer. The site drainage management plan must detail the following requirements of North Sydney Council:

- (a) Compliance with BCA drainage requirements, Councils Engineering Performance guide and current Australian Standards and guidelines, such as AS/NZ3500.3.2 1998, National Plumbing and Drainage Code.

- (b) Stormwater runoff drainage generated by roof area at the front of the dwelling must be conveyed by charged system to Council's kerb in Ben Boyd Road. There must be a minimum difference in height between the most remote section of the roof gutter and the discharge pit at the property boundary of 1.8 metres. In addition, all local and friction losses must be taken into account and therefore, functionality of the system must be supported by hydraulic calculation which must be presented with hydraulic grade line (HGL). There must be a gravity flow across the footpath from an isolating sealed and lid-bolted pit within the property. All pipes must be a minimum of 100 mm and all joints must be solvent welded. A cleaning eye must be provided at the low point in the system within a pit that can be drained to an on-site dispersal system. Gutter guards must be installed on all gutters to minimize debris entering the system.
- (c) All gutters and pipes in the system must be designed for a 1 in 100 year ARI storm event.
- (d) A Positive Covenant will be required to be placed on the title of the property to inform owners of their responsibility in maintaining the system.
- (e) Stormwater runoff drainage generated from rear roof area and terraced areas of the dwelling must be conveyed to the absorption trenches system in the rear yard. The size of proposed trench system shall be determined from the catchment area that is draining into it and from the soil absorption rate. The minimum depth of each absorption trench must not be less than 1 metre. A distance of absorption trench from any building structure or property boundary shall be minimum 2 metres and they shall be placed in parallel to the site contours.
- (f) If there are any redundant stormwater pipelines within the footpath area, they shall be removed and the footpath and kerb reinstated.
- (g) Pipelines within the footpath area shall be hot dipped galvanized steel rectangular hollow section with a minimum wall thickness of 4.0 millimetres and a section height of 100 millimetres.
- (h) Any footpath panel on Ben Boyd Road disturbed for the purpose of stormwater connection shall be reconstructed as whole panel.
- (i) The design and installation of the Rainwater Tanks shall comply with Basix and **Sydney Water** requirements. Overflow from tank shall be connected by gravity to the stormwater disposal system.

Details demonstrating compliance are to be submitted with the Construction Certificate.

The Certifying Authority issuing the Construction Certificate must ensure that the approved drainage plan and specifications, satisfying the requirements of this condition, is referenced on and accompanies the Construction Certificate.

(Reason : To ensure controlled stormwater management and disposal without nuisance)

Infrastructure Repair and Completion of Works

- G1. Prior to the issue of any Occupation Certificate any and all works relating to the development:
- a. in the road reserve must be fully completed; and
 - b. to repair and make good any damaged public infrastructure caused as a result of any works relating to the development (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete vehicles) must be fully repaired;

To the satisfaction of Council Engineers at no cost to Council.

(Reason: Maintain quality of Public assets)

2. To insert Condition G9

Covenant & Restriction (Stormwater Control Systems)

- G9. An Instrument pursuant to Sections 88B and 88E of the Conveyancing Act 1919 and one copy must be submitted to Council in registrable form, providing for:
- a. a restriction as to user and positive covenant as to user as appropriate in favour of North Sydney Council burdening 41 Ben Boyd Road requiring the ongoing retention, maintenance and operation of the stormwater facility (Absorption system and charged lines);
 - b. North Sydney Council being nominated in the Instrument as the only party authorised to release, vary or modify the Instrument;
 - c. the wording on the Instrument making reference to the Council file/s which hold:
 - (a) the Construction plans; and
 - (b) the “Work-as-Executed” (as built) plans;

Upon Council being satisfied as to the terms of the Instrument, North Sydney Council’s official seal will be affixed to these documents, prior to submission to the NSW Land Registry Services Office for registration

The Instrument creating the restriction and/or covenant under ss 88B and 88E required by this condition of consent must be registered on the Title of the development site prior to the issue of an Occupation Certificate or commencement of use of the site, whichever is the earlier.

Evidence of the registration of the instrument referred to in this condition is to be provided to Council prior to the issue of an Occupation Certificate.

All costs associated with the preparation, approval and registration of the Instrument required by this condition of consent must be borne by the person acting on this consent including the reasonable costs of Council in obtaining advice, negotiating the terms or otherwise facilitating the execution and registration of the required Instrument.

(Reason: Compliance and adequate maintenance of drainage system)

Reason for approval:

The proposed changes to the stormwater management system is considered to be acceptable given that the proposal would improve the management of stormwater within the subject site.

In addition, the proposed modifications would not change the level of compliance with the relevant development standards and controls as contained in North Sydney LEP 2013 and North Sydney DCP 2013.

Council's Senior Development Engineer has raised no objection to the proposal subject to amendments to **Conditions C13 and G1** as well as the addition of a new **Condition G9**.

It is considered that the proposed modifications would not offend the reasons for granting approval for the original DA.

The proposal was found to be acceptable in the site circumstances and is recommended that the subject Section 4.55(1A) application be approved with modifications to the relevant conditions.

How community views were taken into account:

The proposal was notified to adjoining property owners and the Hayes Precinct between 6 and 20 March 2020. The notification attracted no submissions.

The conditions attached to the original consent for Development Application No. 384/14 by endorsed date of 5 August 2015 still apply.

ADVISINGS

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