

Ho-Group North Sydney Pty Ltd
GPO Box 2578
SYDNEY NSW 2000

D392/16
LD (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 392/16/7 – APPROVAL**

Development Consent Number: 392/16/7

Land to which this applies: 99 Mount Street, North Sydney
Lot No.: 112, DP: 632759

Applicant: Ho-Group North Sydney Pty Ltd

Proposal: Section 4.55 (2) application to modify DA392/16 with regards to an amendment to Condition I18, an increase to the size of pergola on the level 4 podium, relocation of signage, deletion of security gates and other minor amendments.

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. 392/16 and registered in Council's records as Application No. **392/16/7** relating to the land described as **99 Mount Street, North Sydney**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 7 August 2017, has been determined in the following manner: -

1. Modify conditions A1, I1, I17 and I18 to read as follows:

Development in Accordance with Plans/documentation

A1. The development must be carried out in accordance with the following drawings and documentation and endorsed with Council's approval stamp, except where amended by the following conditions of this consent

Plan No.	Issue	Title	Drawn by	Received
4613_DA012	A	Level 2 – Demolition Plan	Nettleton Tribe	17/11/16
4613_DA013	A	Level 3 – Demolition Plan	Nettleton Tribe	17/11/16
4613_DA014	C	Level 4 – Demolition Plan	Nettleton Tribe	17/11/16

4613_DA021	B	Level 1 Plan	Nettleton Tribe	17/11/16
4613_DA022	F	Level 2 Plan	Nettleton Tribe	7/6/17
4613_DA023	<i>F</i>	Level 3 Plan	Nettleton Tribe	28/3/18
4613_DA024	<i>K</i>	Level 4 Plan	Nettleton Tribe	28/3/18
4613_DA025	F	Level 4 Roof Plan	Nettleton Tribe	7/6/17
4613_DA034	<i>I</i>	Proposed Elevations	Nettleton Tribe	28/3/18
4613_DA046	E	Podium Sections & Elevations	Nettleton Tribe	7/6/17

Except as amended in ‘red cloud’ on the following plans:

Plan No.	Rev/Issue	Title	Drawn by:	Date
4613_DA001	C	Site Plan	Nettletontribe	13/11/18
4613_DA013	B	Level 3 Demolition Plan	Nettletontribe	13/11/18
4613_DA021	C	Level 1 Plan	Nettletontribe	13/11/18
4613_DA022	H	Level 2 Plan	Nettletontribe	13/11/18
4613_DA023	G	Level 3 Plan	Nettletontribe	13/11/18
4613_DA024	L	Level 4 Plan	Nettletontribe	13/11/18
4613_DA025	G	Level 4 Roof Plan	Nettletontribe	13/11/18
4613_DA034	J	Proposed Elevations	Nettletontribe	13/11/18
4613_DA046	G	Podium Section & Elevations	Nettletontribe	13/11/18

Except as amended in ‘red cloud’ on the following plans:

Plan No.	Rev/Issue	Title	Drawn by:	Date
4613_DA022	I	Level 2 Plan	Nettletontribe	6/11/18
4613_DA024	O	Level 4 Plan	Nettletontribe	26/11/19
4613_DA025	H	Level 4 Roof Plan	Nettletontribe	6/11/18
4613_DA034	L	Proposed Elevations	Nettletontribe	17/12/19
Sheet 1 of 2 and 2 of 2	A	Sketches - bench	Spark	7/02/2020

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

First Use of Premises – Further consent required

- II. A separate development application for the fitout and use of “Proposed Retail 11” and pergola area on podium Level 4 must be submitted to and approved by Council prior to use of the premises commencing unless it satisfies the relevant provisions of SEPP (Exempt and Complying Development) 2008.

(Reason: To ensure development consent is obtained prior to uses commencing)

Through Site Link

- I17. Pedestrian access between Mount Street and Hill Street bridge across the Level 4 podium shall be maintained unimpeded to a minimum width of 1.8m for all members of the public at all times.

(Reason: Maintain safe public access to the through-site pedestrian link).

Publicly Accessible Podium

- I18. The western side of the Level 4 podium from western awning eave of “Proposed Retail 11” excluding the pergola area, shall be available for public access during approved business hours of tenancies on the podium level and not used for the purpose of, or in association with, “Proposed Retail 11”, except as detailed in drawing 4613_DA024 ‘Level 4 Plan’, Revision O dated 26/11/19 drawn by Nettleton tribe .

(Reason: Provide opportunities for suitably sized and covered outdoor seating for a retail tenancy while maintaining publicly accessible open space at podium level).

2. Add Conditions I23 and I24 to read as follows:

Furniture within the area below the pergola – Level 4 podium

- I23. Any furniture located within the area below the pergola on the level 4 podium must be temporary furniture that is not permanently fixed. At the close of the outdoor dining, that is in association with retail tenancy 11, the temporary furniture located within the area below the pergola must be relocated inside tenancy 11 or alternatively securely stored within the area below the pergola.

(Reason: To ensure public safety and amenity)

Use of the area under the pergola - Level 4 podium

- I24. The use of the area under the pergola is for outdoor seating for the retail tenancy.

The number of tables and/or chairs within the area below the pergola is to be subject to a separate application, whether that be a Complying Development Application or Development Application.

(Reason: To clarify the terms of the consent)

Reason for approval:

The application proposes the extension of the pergola and the exclusive use of the area under the pergola for retail use rather than public use. Whilst this will reduce some of the publicly accessible areas on the level 4 podium there are unlikely to be any adverse impacts for the public noting that a minimum 1.8m wide publicly accessible path will be provided around the pergola to ensure the through site pedestrian link, at podium level, is maintained.

The amendments to the landscape bench/stepped seating in front of JB Hi Fi will provide opportunities for additional public seating on the site. The re-design of the water feature alongside the Mount Street staircase will provide visual interest to the entry of the publicly accessible podium.

The retrospective consent for the minor relocation of the projecting Aldi blade sign (sign 22) is considered acceptable as it will allow the sign to be fixed to the façade of the building without adversely impacting the streetscape given it remains small scale and effectively at ground level by virtue of the design of the building.

How community views were taken into account:

The application was not notified in accordance with Section 3.4.2 in the North Sydney Community Participation Plan

The conditions attached to the original consent for Development Application No. 392/16 by endorsed date of 7 August 2017 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