

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 102/16/10 – APPROVAL**

Development Consent Number: 102/16/10

Land to which this applies: 3 East Crescent Street, McMahons Point
SP: 95847

Applicant: Modog Pty Ltd

Proposal: Section 4.56 Application to modify DA 102/16 with regards to an amendment to Condition G17 to allow for rectification of neighbouring apartments and/or agreement to be entered into 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. **102/16/10** 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 G17 to read as follows:

Damage to Adjoining Properties (Recording)

G17. On completion of the development the subject of this consent and prior to the issue of the Occupation Certificate for the whole of the building, a report is to be prepared by an appropriately qualified consultant and is to be provided to the Certifying Authority (and a copy to Council if it is not the Certifying Authority) certifying:

1. whether any damage to adjoining properties has occurred as a result of the development;
2. the nature and extent of any damage caused to the adjoining property as a result of the development;

3. the nature and extent of works required to rectify any damage caused to the adjoining property as a result of the proposed development;
4. the nature and extent of works carried out to rectify any damage caused to the adjoining property as a result of the development; and
5. the nature and extent of any agreements entered into for rectification of any damage caused to the adjoining property as a result of the development.

The report and certification must reference the dilapidation surveyed and reports required to be provided to the Certifying Authority in accordance with this consent.

The report must document whether access has been granted to adjoining properties. In circumstances where access has been denied all reasonable attempts must be made to obtain access to adjoining properties for the purposes of compliance with this condition. These reasonable attempts must be documented in the report and be to the satisfaction of Council prior to the issue of the occupation certificate for the whole of the building.

All costs incurred in achieving compliance with this condition shall be borne by the developer.

(Reason: To document damage to adjoining properties and facilitate appropriate civil arrangements to be made to rectify damage arising from the development)

Reason for approval:

The requirement for an agreement to be entered into between the developer and an adjoining property owner for any rectification works is ultimately a civil matter and not one in which can be enforceable by Council. It is therefore recommended that Condition G17 be amended to require the report to be prepared prior to occupation certificate for the whole of the building and that the report documents any instances where access is denied that reasonable steps to gain access have been demonstrated.

How community views were taken into account:

The issues raised in the submissions were addressed in the delegated report.

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 4.56 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 4.56 of the Environmental Planning & Assessment Act.

Endorsed for and on behalf of North Sydney Council

DATE

Signature on behalf of consent authority
DAVID HOY
TEAM LEADER ASSESSMENTS