

Neil Schiller & Michelle McKernan
PO Box 7092
MCMAHONS POINT NSW 2060

D287/07
KRR (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 287/07/5 – APPROVAL**

Development Consent Number: **287/07/5**

Land to which this applies: 2 McHatton Street, Waverton
Lot No.: 24, DP: 10730

Applicant: Neil Schiller & Michelle McKernan

Proposal: Section 4.55(2) modification to DA287/07 to relocate
pool pump equipment.

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. **287/07** and registered in Council's records as Application No. **287/07/5** relating to the land described as **2 McHatton Street, Waverton**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 21 November 2007, has been determined in the following manner: -

- *To amend Conditions A1 and I2 as follows: -*

Development in Accordance with Plans (Section 4.55 Amendments)

- A1. The development being carried out in accordance with drawings numbered DA02 to DA14 (inclusive), dated 3 October 2007, drawn by MDA Architects, and received by Council on 4 October 2007, endorsed with Council's approval stamp, except as modified by highlighting on:
- (a) Modified drawings numbered S9601 Revision C to S9614 Revision C (inclusive) and S96013 Revision C, dated 18 February 2008, drawn by MDA Architects, and received by Council on 5 May 2008;
 - (b) Modified drawings numbered S9601 Rev D, S9604 Rev D, S9605 Rev D, S9606 Rev D, S9607 Rev D, S9608 Rev D, S9609 Rev D, S9610 Rev D, S9611 Rev D, S9612 Rev D, dated 18.09.09 drawn by MDA Architects and received by Council on 22 September 2009 and Drawings numbered S9603 Rev D, S9624 Rev D, dated, 18.09.09, drawn by MDA Architects, and received by Council on 9 November 2009.
 - (c) Modified Plans A01 Issue A, dated 26 November 2019 titled Ground Floor Plan drawn by Technik Haus and received by Council on 5 December 2019.

except as amended by the following conditions.

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

Pool Filter

12. The swimming pool pump installed at the premises must not operate so as to:

- (a) emit a noise that is audible within a habitable room in any affected residence (regardless of whether any door or window to that room is open);
 - (i) before 8.00am and after 8.00pm on any Sunday or Public Holiday; or
 - (ii) before 7.00am or after 8.00pm on any other day
- (b) cause an LAeq(15min) which exceeds the RBL background noise level by more than 5dB when measured at the boundary of any affected residence. The modifying factor adjustments in Section 4 of the EPA Industrial Noise Policy shall be applied.

“affected residence” includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation and hospitals.

“boundary” includes any window or elevated window of an affected residence.

Terms in this condition have the same meaning as in the Noise Guide for Local Government and the Industrial Noise Policy published by the NSW Environment Protection Authority.

(Reason: To ensure noise generated by equipment does not result in offensive noise)

The modifications, subject to refinement to the of the as approved condition set relating to Pool requirements, will result in acceptable levels of impact relating to the relocation of pool plant equipment.

Reason for approval:

Having regard to the provisions of section 4.55 & 4.15 of the Environmental Planning and Assessment Act 1979, the proposed development as modified will not result in any adverse ongoing impact to adjoining properties and is supported in this regard.

How community views were taken into account:

The owners of adjoining properties and the Edward Precinct were notified of the proposed development between 17 January 2020 – 31 January 2020. The notification resulted in a total of two (2) submission (from the same submitter) raising concern with the application from adjoining property owners. The public interest is served via the considerations detailed in this report.

The conditions attached to the original consent for Development Application No. 287/07 by endorsed date of 21 November 2007 still apply.

ADVISINGS

- (a) Council is always prepared to discuss its decisions and in this regard, please do not hesitate to contact **Kim Rothe**. 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
DAVID HOY
TEAM LEADER ASSESSMENTS