

Bardia Housman
30 Awaba Street
MOSMAN NSW 2088

D215/14
KRR (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 215/14/5 – APPROVAL**

Development Consent Number: 215/14/5

Land to which this applies: 3 Bay View Street, Lavender Bay
Lot No.: 1, DP: 167089

Applicant: Bardia Housman

Proposal: Section 4.55(1A) modification application to remove/
modify Condition G11 as imposed upon the original
consent notice.

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. **215/14** and registered in Council's records as Application No. **215/14/5** relating to the land described as **3 Bay View Street, Lavender Bay**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 1 April 2015, has been determined in the following manner: -

- *To modify condition G11 so as to read as follows:*

Damage to Adjoining Properties and Heritage Seawall

G11. On completion of the development the subject of this consent and prior to the issue of the Occupation Certificate, 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:

- a) whether any damage to adjoining properties, and/or the heritage seawall and crane on the subject site, has occurred as a result of the development;
- b) the nature and extent of any damage caused to the adjoining property, and/or the heritage seawall and crane on the subject site, as a result of the development;

- c) the nature and extent of works required to rectify any damage caused to the adjoining property, and/or the heritage seawall and crane on the subject site, as a result of the proposed development;
- d) the nature and extent of works carried out to rectify any damage caused to the adjoining property, and/or the heritage seawall and crane on the subject site, as a result of the development; and
- e) 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 survey and reports required to be provided to the Certifying Authority in accordance with this consent.

Where works required to rectify any damage caused to the seawall and crane on the subject site, the reparation works are to be to the satisfaction of Council.

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

(Reason: To ensure adjoining owner's property rights and heritage item are protected in so far as possible)

Furthermore, the modifications do not result in any new material amenity impact to adjoining properties or the surrounding area. The proposed modifications are consistent with the reasons for the granted of development consent to the originally approved development and is considered to be acceptable.

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 is substantially the same development as originally consented to. The application is therefore recommended for **approval** subject to the alteration to the condition as recommended.

How community views were taken into account:

Given the minor nature of the request, the proposal was not notified in accordance with Council policy. Notwithstanding this, the following submissions are noted as being received relating to the proposal:

The conditions attached to the original consent for Development Application No. 215/14 by endorsed date of 1 April 2015 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