

**Original signed by George Youhanna on 28/9/2020**

118 Alexander Street Pty Ltd  
C/- Architecture Urbaneia Pty Ltd  
1/53 Hume Street  
CROWS NEST NSW 2065

D90/16  
GJY (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 MODIFICATION 90/16/3 – APPROVAL**

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**Development Consent Number:** 90/16/3

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**Land to which this applies:** 118 Alexander Street, Crows nest  
Lot No.: 100, DP: 700092

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**Applicant:** 118 Alexander Street Pty Ltd

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**Proposal:** Modification of consent to demolish existing buildings and construct a 4 storey mixed use development with basement parking and a rooftop communal room.

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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. **90/16** and registered in Council's records as Application No. **90/16/3** relating to the land described as **118 Alexander Street, Crows Nest**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 5 October 2016, has been determined in the following manner: -

*1. Conditions A1 and A4 to be amended 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
A100	B	Basement 2	Architecture Urbaneia	20/7/16
A101	J	Basement	Architecture Urbaneia	20/7/16
A102	J	Ground Floor	Architecture Urbaneia	20/7/16
A103	J	Level 1	Architecture Urbaneia	20/7/16

A104	I	Level 2 + 3	Architecture Urbaneia	20/7/16
A105	J	Common Roof Top	Architecture Urbaneia	7/10/16
A150	H	Long Section	Architecture Urbaneia	20/7/16
A151	H	Cross Section	Architecture Urbaneia	7/10/16
A152	C	Cross Section (Lobby Area)	Architecture Urbaneia	7/10/16
A160	H	North Elevation	Architecture Urbaneia	7/10/16
A161	H	East & West Elevations	Architecture Urbaneia	20/7/16
A180	D	Material Finishes	Architecture Urbaneia	7/10/16
A400	G	Adaptable Unit	Architecture Urbaneia	20/7/16
L/01	-	Landscape Plan - Ground & Level 1	A Total Concept	20/7/16
L/02	-	Landscape Plan - Roof Top Garden	A Total Concept	20/7/16
L/03	-	Irrigation Plan - Level 1 & Roof Top Garden	A Total Concept	20/7/16
L/04	-	Landscape Specification Notes and Details	A Total Concept	20/7/16
16MB6986/ C01 1 of 2	C	Civil Plan Sheet 1	United Consulting Engineers	26/9/16
16MB6986/ C02 2 of 2	B	Civil Plan Sheet 2	United Consulting Engineers	20/9/16
16MB6986/ D01 1 of 3	B	Level 1, 2, 3. Roof Level Drainage Plans	United Consulting Engineers	20/9/16
16MB6986/ D02 2 of 3	B	Ground Floor & Basement Drainage Plan	United Consulting Engineers	20/9/16
16MB6986/ D03 3 of 3	B	Ground Floor & Basement Drainage Plan	United Consulting Engineers	20/9/16

all as amended by s.4.55 modification DA90/16/2 and the following plans:

<b>Plan No.</b>	<b>Issue</b>	<b>Title</b>	<b>Drawn by</b>	<b>Received</b>
A.100	B	Basement 2	Architecture Urbaneia	21/6/19
A.101	B	Basement 1	Architecture Urbaneia	21/6/19
A.102	B	Ground Level	Architecture Urbaneia	21/6/19
A.103	B	Level 1	Architecture Urbaneia	21/6/19
A.104	B	Level 2+3	Architecture Urbaneia	21/6/19
A.105	C	Common Rooftop	Architecture Urbaneia	21/6/19
A.150	B	Long Section A-A	Architecture Urbaneia	21/6/19
A.151	C	Cross Section BB	Architecture Urbaneia	21/6/19
A.152	C	Cross Section (Lobby Area)CC	Architecture Urbaneia	21/6/19
A.160	B	North Elevation	Architecture Urbaneia	21/6/19
A.161	C	East & West Elevation	Architecture Urbaneia	21/6/19
A.2103	A	Detail Wall Section	Architecture Urbaneia	23/7/19

all as amended by s.4.55 modification DA90/16/3 and the following plans:

<b>Plan No.</b>	<b>Issue</b>	<b>Title</b>	<b>Drawn by</b>	<b>Received</b>
A.100	D	Basement 2	Architecture Urbaneia	15/7/20
A.101	D	Basement 1	Architecture Urbaneia	15/7/20
A.102	D	Ground Level	Architecture Urbaneia	2/9/20
A.103	C	Level 1	Architecture Urbaneia	11/6/20

A.104	C	Level 2+3	Architecture Urbaneia	11/6/20
A.105	C	Common Rooftop	Architecture Urbaneia	11/6/20
A.106	C	Common Rooftop	Architecture Urbaneia	11/6/20
A.150	C	Long Section A-A	Architecture Urbaneia	11/6/20
A.151	C	Cross Section BB	Architecture Urbaneia	11/6/20
A.152	D	Cross Section (Lobby Area)CC	Architecture Urbaneia	11/6/20
A.160	C	North Elevation	Architecture Urbaneia	11/6/20
A.160A	A	North Elevation Detail	Architecture Urbaneia	15/7/20
A.161	D	East & West Elevation	Architecture Urbaneia	11/6/20
A.2101	A	Detail Wall Section AA	Architecture Urbaneia	15/7/20
A.2102	A	Detail Wall Section EE	Architecture Urbaneia	15/7/20

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

### **Amended Plans**

A4. The landscape plans and all engineering plans referred to in Condition A1 are to be amended to be consistent with the architectural plans approved under modification application DA90/16/3.

Plans and/or details clearly demonstrating the above are to be provided to the Certifying Authority for approval prior to issue of any Construction Certificate.

(Reason: Consistency of plans)

### **2. Condition G15 to be added:**

#### **Deed Of Agreement For Minor Encroachments**

G15. The owner of **118 Alexander Street, Crows Nest** must enter into a Deed of Agreement with North Sydney Council, in accordance with the Encroachment Management Policy to enable the ‘minor encroachment’ of 4.1m<sup>2</sup> comprising the following encroachments over Councils’ road outside **118 Alexander Street, Crows Nest**, to be regularised:

- Louvred screens and metal supports (privacy/shading structures) for privacy and amenity purposes

#### **Details:**

- (a) A draft Deed of Agreement will be issued to the applicant upon request once the Development Consent is granted and the applicant must agree in writing, within 14 days from the date of the issue of the Deed of Agreement to entering into the Deed of Agreement with Council. If the applicant does not concur with the conditions of the Agreement, the applicant may lodge a Section 4.55 Application to modify the conditions to enable the encroachments to be removed.
- (b) The Date of the Deed of Agreement between Council and the applicant will be the Date of Practical Completion. The Certificate of Practical Completion is to be presented to Council immediately upon its receipt, together with the required documents as indicated in Clause 4.2.2.4 of Council’s Encroachment Management Policy.

- (c) The lessee will be responsible for all maintenance and insurance of the encroaching structures in accordance with the Council's Encroachment Management Policy.
- (d) Written consent will be issued to the Private Certifying Authority (PCA) for the relevant Certificate/Certificates, such as the (Strata / Construction / Subdivision / Construction / Occupation Certificate), whichever is applicable, to be issued on receipt of a valid Insurance Certificate and the executed Deed of Agreement.
- (e) The encroachment will be notated on a Section 10.7 Certificate.

**Additional Clauses**

**(a) Insurance**

*"In the event that part of the proposed development encroaches upon or over Council land, the land owner must defend and hold harmless, indemnify and keep indemnified, Council and its employees, officers, agents and contractors from and against all claims, expenses, losses including consequential losses, damages and costs (including costs on a solicitor and client basis and whether incurred by or awarded against Council) that Council may sustain or incur as a result, whether directly or indirectly, of the encroachment by the proposed development on Council land, including:*

- (a) any injury or death to any person including any injury or death to the general public, employees, officers, agents and contractors, or invitees, or other entity of the Council; or*
- (b) damage to or loss of any property; and*
- (c) arising out of performance by the land owner of its obligations under the Conditions of Consent including claims by a person who is not a party to this development, except to the extent caused or contributed to by Council, its contractors, employees and agents.*

*Without limiting the generality of this condition, the land owner must ensure that:*

- (a) the processes and methods to be used for carrying out the development will be completely suitable for the purposes for which they are required;*
- (b) the development is carried out in accordance with the Conditions of Consent;*
- (c) it will obtain for the benefit of Council all available product and work warranties from any suppliers, contractors and subcontractors in respect of equipment and materials used in the development that encroaches on Council land, and assign such benefit to Council where the warranty is not in favour of Council.*

*The land owner must provide Council with a copy of its Certificate of Insurance on an annual basis so that Council can satisfy itself that the land owner holds adequate public liability insurance in relation to the development that encroaches on Council land.*

*The encroaching owner is required to maintain public liability insurance of \$20 million, noting Council's interest on the Certificate of Currency."*

**(b) Maintenance**

**Maintenance Responsibility**

The Encroaching owner is responsible for the maintenance, repair and upkeep of the Encroaching Structures.

**(i)** Owners Consent is required to undertake any additional works, other than the general maintenance and upkeep of the encroaching structure.

**(ii) Costs**

All associated costs in relation to the encroachment will be borne by the property owners of **118 Alexander Street, Crows Nest.**

All other terms and Conditions are to be in accordance with the Encroachment Management Policy.

(Reason: Ensure development is consistent with the Encroachment Management Policy)

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**Reason for approval:**

The proposed development remains an appropriate infill mixed use development on a small site of 389.7m<sup>2</sup>. The design was previously refined to address concerns raised by Council and the Design Excellence Panel and the proposal as modified is considered to be satisfactory, subject to conditions of consent. Additionally, the proposal remains substantially the same development and is not inconsistent with the reasons for the grant of consent by the North Sydney Independent Planning Panel (NSIPP)

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**How community views were taken into account:**

The owners of adjoining properties and the Holterman Precinct were notified of the proposed modifications on 26 June 2020. No submissions were received.

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The conditions attached to the original consent for Development Application No. 90/16 by endorsed date of 5 October 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 4.55 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

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Signature on behalf of consent authority  
**GEORGE YOUHANNA  
EXECUTIVE PLANNER**