

Original signed by: David Hoy Dated: 2/9/2020

Bay 9 Middlemiss Street Pty Ltd
Attention: Mark Davidson
Bay 10, Middlemiss Street
NORTH SYDNEY NSW 2060

D271/14
HS1(CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 271/14/2 – APPROVAL**

Development Consent Number: 271/14/2

Land to which this applies:

Bay 10 Middlemiss Street, Lavender Bay (aka No's 32-76 Pacific Highway)
Lot No.: 1, DP: 87564

Applicant:

Bay 9 Middlemiss Street Pty Ltd

Proposal:

Section 4.55(1A) modification to delete Condition I3 from the original consent.

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. **271/14** and registered in Council's records as Application No. **271/14/2** relating to the land described as **Bay 10 Middlemiss Street Lavender Bay (aka No's 32-76 Pacific Highway)**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 16 October 2014, has been determined in the following manner: -

- 1. Delete Condition I3 from the consent.**
- 2. Add the following additional conditions.:**

Liquor License

- A9. A liquor license issued by the NSW Office of Liquor and Gaming is to be obtained in order to activate this consent. A liquor license is required given the sale of alcohol on the site.

(Reason: To ensure terms of consent are clear)

Noise Control (Licensed Premises)

C1. The use of the premises must comply with the following:

- (a) The LA10 noise level emitted from the use of the premises must not exceed the background noise level (LA90) in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) by more than 5dB between the hours of 7.00am and 12.00 midnight when assessed at the boundary of any affected residence.
- (b) The LA10 noise level emitted from the use must not exceed the background noise level (LA90) in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) between the hours of 12.00 midnight and 7.00am when assessed at the boundary of any affected residence.
- (c) Notwithstanding compliance with (a) and (b) above, the noise from the use must not be audible within any habitable room or sleeping area in any affected residence between the hours of 12.00 midnight and 7.00am.
- (d) The LA10 noise level emitted from the use must not exceed the background noise level (LA90) in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) by more than 3dB when assessed indoors at any affected commercial premises with windows closed.
- (e) The use of the premises must be controlled so that any emitted noise is at a level so as not to create an “*offensive noise*” as defined in the *Protection of the Environment Operations Act 1997*.

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

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

LA10 is the average maximum A-weighted Fast Response sound level emitted from the premises.

LA90 shall be measured in the absence of all noise from the premises (including mechanical plant noise).

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 the amenity of surrounding land uses)

I. On-Going / Operational Conditions

Primary Use – Café

I18. The primary use of the premises is to remain a food service and is to be available at all times during the operation of the café. The use of the tenancy as a restaurant or bar must require separate consent to be obtained.

(Reason: To clarify the approved development)

The proposed modifications satisfy Section 4.55(1A) in that the proposal is considered to be substantially the same development as that which was originally approved by Council.

The proposed deletion of conditions would not result in significant changes to the form, bulk and scale of the approved development.

Reason for approval:

The proposed modifications to delete conditions would not cause adverse material amenity impacts on the adjoining properties in terms of visual privacy/amenity loss or overshadowing.

In summary, the proposal was found to be acceptable in the site circumstances and is recommended that the subject Section 4.55(1A) application be approved with modifications to the relevant conditions.

How community views were taken into account:

The development application, due to the minor nature of the proposal, was not required to be notified nor advertised pursuant to Part A Section 4 of the North Sydney Development Control Plan 2013. The development will not have a material impact on surrounding buildings. The public interest will be served through the assessment of the application against the applicable controls

The conditions attached to the original consent for Development Application No. 271/14 by endorsed date of 16 October 2014 still apply.

ADVISINGS

- (a) Council is always prepared to discuss its decisions and in this regard, please do not hesitate to contact **Hugh Shouldice**. 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)