

118 Mount St Pty Ltd  
CARE CBRE Global Investors  
Level 21, 357-363 George Street  
SYDNEY NSW 2000

D70/18  
DWH (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 MODIFICATION 70/18/5 – APPROVAL**

---

**Development Consent Number:** 70/18/5

---

**Land to which this applies:** 118 Mount Street, North Sydney  
Lot No.: 1, DP: 1261243

---

**Applicant:** 118 Mount St Pty Ltd

---

**Proposal:** Modification of Development Consent 70/18 relating to changes to wording of Conditions G5 and G10.

---

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. **70/18** and registered in Council's records as Application No. **70/18/5** relating to the land described as **118 Mount Street, North Sydney**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 13 September 2018, has been determined in the following manner: -

**1. To Modify Condition G5 & G10 to read as follows:**

**Covenant & Restriction (Stormwater Control Systems)**

- G5. An Instrument pursuant to Sections 88B and 88E of the *Conveyancing Act* 1919 and one copy must be submitted to Council in registrable form, providing for:
- a. a restriction as to user and positive covenant as to user as appropriate in favour of North Sydney Council burdening 118 Mount Street requiring the ongoing retention, maintenance and operation of the stormwater facility (on-site detention, pump-out, charged lines);
  - b. North Sydney Council being nominated in the Instrument as the only party authorised to release, vary or modify the Instrument;

- c. the wording on the Instrument making reference to the Council file/s which hold:
- (a) the Construction plans; and
  - (b) the “Work-as-Executed” (as built) plans;

Upon Council being satisfied as to the terms of the Instrument, North Sydney Council’s official seal will be affixed to these documents, prior to submission to the Land & Property Information Office for registration

The Instrument creating the restriction and/or covenant under ss 88B and 88E required by this condition of consent must be registered on the Title of the development site prior to the issue of **the final** Occupation Certificate.

Evidence of the registration of the instrument referred to in this condition is to be provided to Council prior to the issue of **the final** Occupation Certificate.

All costs associated with the preparation, approval and registration of the Instrument required by this condition of consent must be borne by the person acting on this consent including the reasonable costs of Council in obtaining advice, negotiating the terms or otherwise facilitating the execution and registration of the required Instrument.

(Reason: Compliance and adequate maintenance of drainage system)

#### **Deed of Agreement – Public Access**

G10. Prior to issue of **the final** Occupation Certificate, the applicant shall enter into a Deed of Agreement with Council with regard to **the land in front of the building in Mount Street, Little Walker Street and at the corner of Arthur Street** as shown on drawing numbered DA2-2000, dated February 2018, drawn by fjmt Studio which achieves the objectives of:

- enabling the land in front of the building in Mount Street, Little Walker Street and at the corner of Arthur Street within the property boundary at ground level to be at grade with Council’s footpath and used for public access (footway) at all times and
- ensure the rights are not subject to change or variation except with the prior consent of Council

The Deed of Agreement shall be for the life of the building and not in perpetuity.

The applicant shall be responsible for the maintenance of the area and public liability insurance for a policy in the amount of not less than \$20 million in respect of any property damage, personal injury and loss of life caused by or in connection with the provision and use of the area.

The Deed of Agreement shall allow for public access at all times and shall include details on the design and finishes of materials, levels of light and security.

The Deed must also make provision for a Covenant on title to be registered with NSW Department of Lands prior to the issue of **the final** Occupation Certificate for the building. The Covenant must note the matters contained in the Deed to ensure that the areas are maintained as public access for the life of the building.

The Deed and any associated documentation shall be prepared, executed and registered at the sole cost of the applicant, including the reasonable costs of Council in obtaining advice, the cost and expense of negotiating the terms and conditions of the agreement, producing documents or otherwise facilitating the preparation, execution and registration of the required documents, shall bind all successors in title and shall only be subject to variation at the discretion of the Council.

(Reason: Public access and amenity)

---

**Reason for approval:**

The proposed modifications are considered to be generally consistent with the originally approved development application and s.4.55 of the EP & A Act 1979. Furthermore, the modifications do not result in any material amenity impact to adjoining properties or the surrounding area. The proposed modifications are consistent with the reasons for the granting of development consent to the originally approved development and is considered to be acceptable.

Having regard to the provisions of section 4.55 & 4.15(1) 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**.

---

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

Notification was not required as the works are internal with no external impacts.

---

The conditions attached to the original consent for Development Application No. 70/18 by endorsed date of 13 September 2018 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

\_\_\_\_\_  
Signature on behalf of consent authority  
DAVID HOY  
**TEAM LEADER (ASSESSMENTS)**