

Edward Malcolm James
29 Wheatleigh Street
CROWS NEST NSW 2065

D17/20
KRR (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 17/20/2 – APPROVAL**

Development Consent Number: 17/20/2

Land to which this applies: 29 Wheatleigh Street, Crows Nest
Lot No.: 46, DP: 11773

Applicant: Edward Malcolm James

Proposal: Modification to approved development to alter method of stormwater disposal.

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. **17/20** and registered in Council's records as Application No. **17/20/2** relating to the land described as **29 Wheatleigh Street, Crows Nest**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 30 July 2020, has been determined in the following manner: -

1. To amend Condition A1, C15, C16, C19, C21, G6 and G7 as follows:

Development in Accordance with Plans (Section 4.55 Amendments)

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

DA17/20 Approved Plan list (Deferred Commencement Completed List)

Plan No.	Dated	Issue	Title	Drawn by	Received
DA01	7 January 2020	A	Site and Roof Plan	Corben Architects	23 January 2020
DA02	20 March 2020	B	Level 1 Basement	Corben Architects	30 March 2020
DA03	20 March 2020	B	Level 2 Ground Floor	Corben Architects	30 March 2020
DA04	20 March 2020	B	Level 3 First Floor	Corben Architects	30 March 2020

DA05	7 January 2020	A	Section AA	Corben Architects	23 January 2020
DA06	7 January 2020	A	Section BB	Corben Architects	23 January 2020
DA07	7 January 2020	A	North Elevation	Corben Architects	23 January 2020
DA08	7 January 2020	A	East Elevation	Corben Architects	23 January 2020
DA09	7 January 2020	A	South Elevation	Corben Architects	23 January 2020
DA10	7 January 2020	A	West Elevation	Corben Architects	23 January 2020

DA17/20/2 Approved Plan list

Plan No.	Dated	Issue	Title	Drawn by	Received
DA02	16 September 2020	D	Level 1 Basement	Corben Architects	10 November 2020
DA03	16 September 2020	D	Level 2 Ground Floor	Corben Architects	10 November 2020

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

Required Infrastructure Works –Roads Act 1993

C15. Prior to issue of any Construction Certificate engineering design plans and specifications must be prepared by a qualified civil design engineer. An application must be made to Council on the “To Satisfy DA Consent Condition” application form with payment of the adopted assessment/inspection fees. The plans and specifications must be to a detail suitable for construction issue purposes and must provide detail and specification for the following infrastructure works to be completed as part of the development:

Road Works

- a) construction of a fully new replacement concrete footpath is required across the entire site frontage in Wheatleigh Street. A longitudinal section is required along the footpath property boundary at a scale of 1:50 extending 5m past the property boundary lines. The footpath shall be designed (at a single straight grade of maximum 3% falling to grass verge) so that it is uniform without showing signs of dipping or rising particularly at entrances.
- b) reconstruction of the carriageway shoulder will be required, extending out minimum 600mm from the gutter lip in AC10 - 50mm thick, adjacent to all new kerb/gutter and layback works.
- c) construction of a fully new kerb and gutter is required across the entire site frontage in Wheatleigh Street. A longitudinal section is required along the gutter line (existing and proposed levels), at a scale of 1:50 extending 5m past the property boundary line.
- d) cross sections at a scale of 1:50 along the centre-line of each access point to the building must be provided and are to show the calculated clearance to the underside of any overhead structure. All the entry points are to comply with the Building Code of Australia (BCA), including disability requirements. The Council approved footpath levels must be accommodated at the building entry points.

Drainage Works

Proposed easement via property no. 31 Wheatleigh Street (rear). Connection of the site stormwater system via easement must be made directly to a newly constructed grated kerb inlet pit (with lintel) at Donnelly Road. To accommodate this requirement, the following drainage infrastructure works must be carried out on Council property at the Applicant's expense:

- a) construction of a standard grated kerb inlet pit (with 1.8m lintel) in the kerb fronting Donnelly Road. The pit must be constructed in accordance with Councils "Infrastructure Specification for Roadworks, Drainage and Miscellaneous Works".
- b) construction of a new in-ground drainage line under the kerb and gutter at standard depth. The drainage line must connect between the new kerb inlet pit to the existing Council pit located downstream of the Donnelly Road. The drainage pipelines within the road reserve are to be reinforced concrete Class 4 with a minimum 375mm diameter and have bedding in accordance with Australian Standard AS 3725 – (Loads on buried concrete pipes). The developer shall be responsible for carrying out any service investigations to allow a gravity connection.
- c) construction of a new in-ground drainage line under the footpath and grass verge is between north east corner of 31 Wheatleigh Street and the new kerb inlet pit on Donnelly Road. The line must connect between the new kerb inlet pit to a new isolation pit which located entirely within the boundaries of 31 Wheatleigh Street. The pipe is to be reinforced concrete Class 2 with a minimum 225mm diameter and have bedding in accordance with Australian Standard AS 3725 – (Loads on buried concrete pipes). The developer shall be responsible for carrying out any service investigations to allow a gravity connection.

Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

Certifying Authorities must not issue a Construction Certificate without the formal written approval of Council (as Roads Authority) under the Roads Act 1993.

The required plans and specifications are to be designed in accordance with North Sydney Council's current documents Infrastructure Specification for Road Works, Drainage and Miscellaneous Works and Performance Guide for Engineering Design and Construction. The drawings must detail existing utility services and trees affected by the works, erosion control requirements and traffic management requirements during the course of works.

A detailed survey must be undertaken as required. Traffic management is to be certified on the drawings as being in accordance with the documents SAA HB81.1 – 1996 – Field Guide for Traffic Control at Works on Roads – Part 1 and RMS Traffic Control at Work Sites (1998). Construction of the works must proceed only in accordance with any conditions attached to the Council Roads Act 1993 approval.

Note: A minimum of 21 days will be required for Council to assess Roads Act submissions. Early submission is recommended to avoid any delays in obtaining a Construction Certificate. A fee to cover cost of assessment (set out in Council's adopted fees and charges) is payable and Council will withhold any consent and approved plans until full payment of the correct fees. Plans and specifications must be marked to the attention of Council's Development Engineers. In addition, a copy of this condition must be provided, together with a covering letter stating the full address of the property and the accompanying DA number.

(Reason: To ensure infrastructure works are designed and constructed to appropriate standards and requirements of the Roads Act 1993)

Drainage Works

C16. Connection of the site stormwater system **via easement** must be made directly to a newly constructed grated gully pit (with lintel) at Donnelly Road. To accommodate this requirement, the following drainage infrastructure works must be carried out on Council property at the Applicants expense: -

- a) Construction of a standard grated gully pit with extended kerb inlet (1.8m lintel) in the kerb fronting Donnelly Road. The pit must be constructed in accordance with Councils "Infrastructure Specification for Roadworks, Drainage and Miscellaneous Works".
- b) The standard gully pit (referenced in (a)) shall connect to the existing 375 mm diameter pipe that connects to the existing Council pit located downstream of the site on Donnelly Road and as provided by submitted drawings. The developer shall be responsible for carrying out any service investigations to allow gravity connection.
- c) Construction of a new in-ground drainage line under the footpath and grass verge for any work to be undertaken in Donnelly Road and the new gully pit. The line must connect the new gully pit to the new isolation pit to be located in Donnelly Street. The pipe is to be reinforced concrete Class 2 with a minimum 225mm diameter and have bedding in accordance with Australian Standard AS 3725 – (Loads on buried concrete pipes). The developer shall be responsible for carrying out any service investigations to allow a gravity connection.

Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. Certifying Authorities must not issue a Construction Certificate without the formal written approval of Council (as Roads Authority) under the Roads Act 1993. The required plans and specifications are to be designed in accordance with North Sydney Council's current documents Infrastructure Specification for Road Works, Drainage and Miscellaneous Works and Performance Guide for Engineering Design and Construction. The drawings must detail existing utility services and trees affected by the works, erosion control requirements and traffic management requirements.

during the course of works. A detailed survey must be undertaken as required. Traffic management is to be certified on the drawings as being in accordance with the documents SAA HB81.1 – 1996 – Field Guide for Traffic Control at Works on Roads – Part 1 and RMS Traffic Control at Work Sites (1998).

Construction of the works must proceed only in accordance with any conditions attached to the Council Roads Act 1993 approval.

Note: A minimum of 21 days will be required for Council to assess Roads Act submissions. Early submission is recommended to avoid any delays in obtaining a Construction Certificate. A fee to cover cost of assessment (set out in Council's adopted fees and charges) is payable and Council will withhold any consent and approved plans until full payment of the correct fees. Plans and specifications must be marked to the attention of Council's Development Engineers. In addition, a copy of this condition must be provided, together with a covering letter stating the full address of the property and the accompanying DA number.

(Reason: To ensure infrastructure works are designed and constructed to appropriate standards and requirements of the Roads Act 1993)

Stormwater Management and Disposal Design Plan – Construction Issue Detail

C19. Prior to issue of any Construction Certificate, a site drainage management plan must be prepared by a qualified drainage design engineer. The site drainage management plan must detail the following requirements of North Sydney Council:

- a) compliance with BCA drainage requirements, Council's Engineering Performance guide and current Australian Standards and guidelines, such as AS3500:2003, National Plumbing and Drainage Code.;
- b) stormwater runoff and subsoil drainage generated by the approved development must be conveyed in a controlled manner by gravity to Donnelly Road;
- c) the stormwater drainage system shall be designed for an average recurrence interval (A.R.I) of 1 in 20 years.
- d) all redundant stormwater pipelines within the footpath area shall be removed and footpath and kerb shall be reinstated;
- e) any proposed fence/building structure is to be constructed so as not to impede the natural overland flow;
- f) provision is to be made for the collection and disposal in an approved manner of any overland flow entering the subject property or concentrated as a result of the proposed works.
- g) surface inlet pits shall be located to catch surface flows and shall be provided at all pipe junctions, changes in pipe direction exceeding 45 degrees, prior to connection to the public drainage system and shall be of sufficient size to accept the flow.
- h) all sub-soil seepage drainage shall be discharged via a suitable silt arrester pit. Details of all plans certified as being adequate for their intended purpose and compliant with the provisions of AS3500:2003 by an appropriately qualified and practising civil engineer shall be submitted with the application for a Construction Certificate.

- i) all stormwater collected within the subject property must be directed to an isolation pit located entirely within the boundaries of the property no. 31 Wheatleigh Street, Crows Nest;
- j) all stormwater collected in the isolation pit in the rear yard at 31 Wheatleigh Street, Crows Nest must be conveyed in a controlled manner by gravity via a private underground pipeline with a direct connection to the newly constructed grated inlet gully pit fronting the Donnelly Street portion of the corner site of 31 Wheatleigh Street;
- k) the proposed isolation pits must have a solid fixed lid;
- l) all stormwater discharging from the proposed isolation pit within the property into the private underground pipeline must be at a maximum discharge rate of 22 l/s;
- m) prevent any stormwater egress into adjacent properties by creating physical barriers and surface drainage interception.
- n) provide subsoil drainage to all necessary areas with pump out facilities as required.

A site drainage management plan which complies with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure controlled stormwater management and disposal without nuisance)

Stormwater Management and Disposal Design Plan – Construction Issue Detail

- C21. Prior to issue of any Construction Certificate, a site drainage management plan must be prepared by a qualified drainage design engineer. The site drainage management plan must detail the following requirements of North Sydney Council:
- a) compliance with BCA drainage requirements, Council's Engineering Performance guide and current Australian Standards and guidelines, such as AS/lt{23500.3.2 2003, National Plumbing and Drainage Code.;
 - b) stormwater runoff and subsoil drainage generated by the approved development must be conveyed in a controlled manner by gravity to Donnelly Road;
 - c) the stormwater drainage system shall be designed for an average recurrence interval (A.R.I) of 1 in 20 years.
 - d) all redundant stormwater pipelines within the footpath area shall be removed and footpath and kerb shall be reinstated;
 - e) any proposed fence/building structure is to be constructed so as not to impede the natural overland flow;

- f) provision is to be made for the collection and disposal in an approved manner of any overland flow entering the subject property or concentrated as a result of the proposed works.
- g) surface inlet pits shall be located to catch surface flows and shall be provided at all pipe junctions, changes in pipe direction exceeding 45 degrees, prior to connection to the public drainage system and shall be of sufficient size to accept the flow.
- h) all sub-soil seepage drainage shall be discharged via a suitable silt arrester pit. Details of all plans certified as being adequate for their intended purpose and compliant with the provisions of AS3500.3.2 by an appropriately qualified and practising civil engineer shall be submitted with the application for a Construction Certificate.
- i) all stormwater collected within the subject property must be directed to an isolation pit located entirely within the boundaries of the property or no. 31 Wheatleigh Street, Crows Nest.
- j) all stormwater collected in the isolation pit to Donnelly Road must be conveyed in a controlled manner by gravity via a private underground pipeline with a direct connection to the newly constructed grated inlet gully pit fronting the Donnelly Street portion of the corner site of 31 Wheatleigh Street;
- k) the proposed isolation pits must have a solid fixed lid;
- l) all stormwater discharging from the proposed isolation pit within the property into the private underground pipeline must be at a maximum discharge rate of 22 l/s;
- m) prevent any stormwater egress into adjacent properties by creating physical barriers and surface drainage interception.
- n) provide subsoil drainage to all necessary areas with pump out facilities as required.

A site drainage management plan which complies with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure controlled stormwater management and disposal without nuisance)

Covenant & Restriction (Stormwater Control Systems)

- G6. 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 31 Wheatleigh Street, Crows Nest requiring the ongoing retention, maintenance and operation of the stormwater facility (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:
 - i) the Construction plans; and
 - ii) 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 an Occupation Certificate or commencement of use of the site, whichever is the earlier. Typical wording for the Instrument can be sourced from Council’s “Specification for the Management of Stormwater”.

Evidence of the registration of the instrument referred to in this condition is to be provided to Council prior to the issue of an 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)

New Drainage Easement (Drainage Pipeline)

G7. An Instrument pursuant to Section 88A of the *Conveyancing Act* 1919 and one copy must be submitted to Council in registrable form, providing for:

- a) a drainage easement in favour of Council over the newly constructed stormwater pipeline in 31 Wheatleigh Street, Crows Nest;
- b) The easement shall be at no cost to Council;
- c) access rights for Council personnel and equipment to inspect and maintain and/or replace the drainage pipeline;
- d) North Sydney Council being nominated in the Instrument as the only party authorised to release, vary or modify the Instrument.

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 easement required by this condition of consent must be registered on the Title of the development site prior to the issue of an Occupation Certificate or commencement of use of the site, whichever is the earlier.

Evidence of registration of the easement must be provided to Council prior to issue of any 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: To ensure future provision for maintenance of the drainage system)

2. To insert the following new condition C40 as follows:

Staged Construction

C40. The construction certificate may be issued in two parts comprising

Stage 1: Construction Certificate 1 for demolition, excavation, and structural works for the development.

Stage 1	Conditions to be satisfied
All conditions relevant to demolition, excavation, structural and stormwater preparatory works	All CC conditions not referred to below

Stage 2: Construction of Balance of works

Stage 2	Conditions to be satisfied
Balance of works	C9, C10, C11, C18, C27, C31, C32, C33, C34, C35, C39

Unless identified above, a condition that must be satisfied prior to the issue of a construction certificate must be satisfied prior to the first construction certificate.

(Reason: To provide for staged construction certificates)

Reason for approval:

The proposed modifications are considered to be of no unacceptable impact and are 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 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.

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.

How community views were taken into account:

The application was not notified to adjoining properties or local precinct committee. The public interest is served via the considerations detailed in this report.

The conditions attached to the original consent for Development Application No. 17/20 by endorsed date of 30 July 2020 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