

Original signed by: Luke Donovan Dated: 17/12/2020

Union Street Developer Pty Ltd
343 Pacific Highway
NORTH SYDNEY NSW 2060

D47/20
LD(CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 47/20/3 – APPROVAL**

Development Consent Number: 47/20/3

Land to which this applies: 2-4 Blue Street and 1-5 William Street, North Sydney
Lot No.: 0, DP: 18103

Applicant: Union Street Developer Pty Ltd

Proposal: Section 4.55(1a) application to modify consent to DA47/20 specifically in relation to the deletion of Condition B2 'Affordable Housing Contribution'.

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. **47/20** and registered in Council's records as Application No. **47/20/3** relating to the land described as **2-4 Blue Street and 1-5 William Street, North Sydney**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 22 July 2020, has been determined in the following manner: -

1. To delete Condition B2 'Affordable Housing Contribution' of DA 47/20.

The proposed modifications relate only to the deletion of Condition B2 'Affordable Housing Contribution'.

Reason for approval:

Whilst the original assessment report for the DA considered whether these buildings were low rental as advanced by Moore J in *Hampstead*, the conclusion reached as to whether they were low rental was based on a "reasonable assumption". This reasonable assumption was absent evidence to demonstrate compliance with Clause 49(a) of the ARHSEPP.

A further review of Council's property files does not provide evidence in the form of rental records or the like that indicate that the buildings were low-rental residential buildings as at 28 January 2000. In more recent times it can be proven that they were/are low rental residential buildings, however, that is not the test under Clause 49 of the SEPP. They must be low rental residential buildings as at 28 January 2000. Council's records do not prove that they were. Therefore, the ARHSEPP does not apply, and a contribution cannot be imposed. Condition B2 should therefore, be deleted.

How community views were taken into account:

The application does not required notification under Section 3.4.2 of the North Sydney Community Participation Plan.

The conditions attached to the original consent for Development Application No. 47/20 by endorsed date of 22 July 2020 still apply.

ADVISINGS

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