

Nick Marston  
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SYDNEY NSW 2000

D68/19  
LD (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 MODIFICATION 68/19/2 – APPROVAL**

**Development Consent Number:** 68/19/2

**Land to which this applies:** 173 Pacific Highway & 116 Miller Street, North Sydney  
Lot No.: 22, DP: 809571

**Applicant:** Nick Marston

**Proposal:** Section 4.55 (2) application to modify DA68/19 with regards to substation relocation, addition of a building maintenance unit to the roof, changes to building entrance to Pacific Highway and through site link and changes to facades.

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. **68/19** and registered in Council's records as Application No. **68/19/2** relating to the land described as **173 Pacific Highway and 116 Miller Street, North Sydney**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 27 November 2019, has been determined in the following manner: -

**1. To add Conditions A7 and G14 as follows:**

**Development in Accordance with Plans (S4.55 Amendments)**

A7. The development being carried out in accordance with plans identified in Condition A1 of the consent and endorsed with Council's approval stamp, except as modified by the modifications shown clouded on:

DRAWING LIST - SECTION 4.55				
Sheet Number	Sheet Name	Current Revision	Current Revision Date	Current Revision Description
A-DA-11010	SITE PLAN	3	06/07/20	ISSUED FOR SECTION 4.55
A-DA-22021	BASEMENT 01 FLOOR PLAN	3	06/07/20	ISSUED FOR SECTION 4.55
A-DA-22031	GROUND FLOOR PLAN-ZONE 1	4	23/11/20	ISSUED FOR SECTION 4.55

A-DA-22131	LEVEL 10 FLOOR PLAN (TYPICAL LOW RISE)	3	06/07/20	ISSUED FOR SECTION 4.55
A-DA-22231	LEVEL 20 FLOOR PLAN (TYPICAL HIGH RISE)	3	06/07/20	ISSUED FOR SECTION 4.55
A-DA-22341	ROOF PLAN	3	06/07/20	ISSUED FOR SECTION 4.55
A-DA-22400	THROUGH SITE LINK-LOWER GROUND	3	23/11/20	ISSUED FOR SECTION 4.55
A-DA-22401	THROUGH SITE LINK-GROUND	3	23/11/20	ISSUED FOR SECTION 4.55
A-DA-32011	WEST ELEVATION	3	06/07/20	ISSUED FOR SECTION 4.55
A-DA-32021	SOUTH ELEVATION	3	06/07/20	ISSUED FOR SECTION 4.55
A-DA-32031	EAST ELEVATION	3	06/07/20	ISSUED FOR SECTION 4.55
A-DA-32041	NORTH ELEVATION	3	06/07/20	ISSUED FOR SECTION 4.55
A-DA-32101	CROSS SECTION	3	06/07/20	ISSUED FOR SECTION 4.55
A-DA-32111	LONGITUDINAL SECTION THROUGH CORE	3	06/07/20	ISSUED FOR SECTION 4.55
A-DA-32121	LONGITUDINAL SECTION THROUGH OFFICE	3	06/07/20	ISSUED FOR SECTION 4.55
A-DA-42021	DETAIL ELEVATION AND SECTION-WEST	3	06/07/20	ISSUED FOR SECTION 4.55
A-DA-42031	DETAIL ELEVATION AND SECTION-EAST	3	06/07/20	ISSUED FOR SECTION 4.55
A-DA-42042	ELEVATION AND SECTION-LINK	3	23/11/20	ISSUED FOR SECTION 4.55
A-DA-65011	SCHEDULE OF EXTERNAL FINISHES	2	23/11/20	ISSUED FOR SECTION 4.55

except as amended by the following conditions and this consent.

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

### **Building Management Unit Easements**

G14 Prior to the issue of an Occupation Certificate, an easement must be established over the airspace of 100 Miller Street to enable the building management unit to maintain and clean the southern façade of the building.

The easement shall be prepared, executed and registered by the proponent prior to the issue of an Occupation Certificate. Any variation to the terms of the easement must be to the written agreement of the affected property owners. The easement shall be for the life of the development.

(Reason: To ensure compliance with the terms of this consent).

**2. To modify Conditions G11, G12 and L1 as follows:**

**South glazing covenant**

G11. All glazing adjacent to the southern boundary of the site must comply with the BCA prior to the construction of any building abutting, adjoining or adjacent to such glazing on land at 100 Miller Street. Prior to the final Occupation Certificate being issued, a documentary restrictive covenant is to be registered on the Title of all office tenancies facing the southern boundary. The covenant is to be created appurtenant to Council and at no cost to Council.

(Reason: To ensure compliance with the terms of this consent)

**Construction of Through Site Link**

G12. The staging of the through-site link shall be in accordance with the Staged Construction Diagram dated **6 July 2020** as referenced in Condition A1 of this consent and must be completed prior to the issue of the final Occupation Certificate.

(Reason: To provide for public access along the through site link)

**Airports (Protection of Airspace)**

- L1. 1. The building **must not exceed** a maximum height of **193.8 metres AHD**, this **includes all** lift over-runs, vents, chimneys, aerials, antennas, lightning rods, any roof top garden plantings, exhaust flues etc.
2. Separate approval **must be sought** under the Regulations for any equipment (i.e. cranes) required to construct the building. Construction cranes may be required to operate at a height significantly higher than that of the proposed controlled activity and, consequently, may not be approved under the Regulations. Therefore, it is advisable that approval to operate construction equipment (i.e. cranes) be obtained prior to any commitment to construct.
3. The Proponent **must advise** Airservices Australia at least three business days prior to the controlled activity commencing by emailing <*ifp@airservicesaustralia.com*> and quoting YSSY-CA-178 P2.
4. The Proponent **must report** all permanent obstacles 100 metres or more above ground level or that penetrate the OLS to the Aeronautical Information Service provider, Airservices Australia, by emailing <*vod@airservicesaustralia.com*> or telephoning (02) 6268 5622.
5. On completion of construction of the building, the Proponent **must provide** the airfield design manager with a written report from a certified surveyor on the finished height of the building.

**Breaches of approval conditions are subject to significant penalties** under Section 185 and 187 of the Act.

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 granted of development consent to the originally approved development and is considered to be acceptable.

The proposed changes to the eastern and western facades, specifically relating to the spaces of the rounded battens on the curtain wall will not result in any material changes to the design of the building as viewed from the public domain. The materials and finishes will remain as approved ensuring that the building provides for a vertical definition and appropriate articulation to the massing of the building.

The changes to the through site link will improve accessibility through the site without compromising its public benefit. The entrance on Miller Street has been increased to double height to improve its sense of address.

The addition of a lift to the Pacific highway frontage is required for DDA reasons. The width of the entry stair to Pacific Highway is increased under this application which will improve access without compromising servicing requirements.

**Reason for approval:**

The relocation of the substation to below the entry to Pacific Highway is considered an improved outcome as it will allow for the retention of the existing level 1 and 2 office spaces at the southern end of the building at 116 Miller Street.

The removal of the fire drenchers above level 10 (southern façade) will improve the appearance of this façade when viewed from the public domain.

The recommended change to Condition G11 relating to restrictions on façade treatment, in the event that the building to the south at 100 Miller Street is redeveloped to the boundary, is considered acceptable as it provides a higher degree of flexibility in terms of the treatment of this façade while still ensuring compliance with the BCA.

The addition of the BMU will change the appearance of the building at roof level and will be located above the maximum height control that applies to this part of the site. However, the impacts are negligible noting that it will not be highly visible and/or create additional overshadowing. The cradle for the unit will be stationed wholly within the confines of the site at roof level. When operating the cradle, it will need to extend over the boundary to allow for maintenance of the façade. Given the cradle will extend over the boundary and within the airspace of 100 Miller Street it is considered appropriate that an easement be established for access over this adjoining property. This can be resolved via way of a condition of consent prior to the issue of an occupation certificate.

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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.

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

The subject application was notified to adjoining properties and the relevant Precinct Committees inviting comment between 25 September and 9 October 2020. No submissions were received.

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The conditions attached to the original consent for Development Application No. 68/19 by endorsed date of 27 November 2019 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**

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DATE

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Signature on behalf of consent authority  
LUKE DONOVAN  
**SENIOR ASSESSMENT OFFICER**