

Thirdi Kurraba Point Pty Ltd
343 Pacific Highway
NORTH SYDNEY NSW 2060

D255/19
RT (CIS)

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 255/19/2 – APPROVAL

Development Consent Number: 255/19/2

Land to which this applies: 147, 151 and 153 Kurraba Road, Kurraba Point
Lot No.: 0, SP: 22851

Applicant: Thirdi Kurraba Point Pty Ltd

Proposal: Section 4.55(2) application (D255/19) seeking various design modifications to an approved development for demolition of existing buildings, excavation, and construction of a part 4/part 6 storey residential flat building.

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. **255/19** and registered in Council's records as Application No. **255/19/2** relating to the land described as **147, 151 and 153 Kurraba Road, Kurraba Point**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 11 March 2020, has been determined in the following manner: -

- To modify the development consent (D255/19) and modify conditions A1, C11, C25, E10, G21 and I7 to read as follows:*

Development in Accordance with Plans (S4.55 Amendments)

A1. The development being carried out in accordance with the following drawings

Drawing No.	Rev	Title	Drawn by	Dated
DA-0101	22	Site Plan	SJB Architects	10/03/2020
DA-0201	22	Floor Plan Basement 3	SJB Architects	27/11/2019
DA-0202	22	Floor Plan Basement 2	SJB Architects	27/11/2019
DA-0203	22	Floor Plan Basement 1	SJB Architects	27/11/2019
DA-0204	23	Floor Plan Level 1	SJB Architects	26/11/2019

DA-0205	23	Floor Plan Level 2	SJB Architects	27/11/2019
DA-0206	22	Floor Plan Level 3	SJB Architects	27/11/2019
DA-0207	22	Floor Plan Level 4	SJB Architects	27/11/2019
DA-0208	22	Floor Plan Level 5	SJB Architects	27/11/2019
DA-0209	22	Floor Plan Level 6	SJB Architects	27/11/2019
DA-0210	22	Floor Plan Roof	SJB Architects	27/11/2019
DA-0501	22	Elevations North	SJB Architects	27/11/2019
DA-0502	22	Elevations East	SJB Architects	27/11/2019
DA-0503	22	Elevations South	SJB Architects	27/11/2019
DA-0504	22	Elevations West	SJB Architects	27/11/2019
DA-0601	22	Section A	SJB Architects	27/11/2019
DA-0602	22	Section B	SJB Architects	27/11/2019
DA-0603	22	Section C	SJB Architects	27/11/2019
DA-0604	22	Section D	SJB Architects	27/11/2019
-	02	Section Setouts	SJB Architects	August 2019
-	02	Section 1	SJB Architects	August 2019
-	02	Section 2	SJB Architects	August 2019
-	02	Section 3	SJB Architects	August 2019
-	02	Section 5	SJB Architects	August 2019
DA-1401	22	Adaptable Layout	SJB Architects	27/11/2019
DA-2501	23	Demolition Plan	SJB Architects	27/11/2019
-	-	Finishes Board	SJB Architects	Received by Council 27/11/2019
LP01-D4619	J	DA Cover	Dangar Barin Smith	22/11/2019
LP02-D4619	J	Level 1	Dangar Barin Smith	22/11/2019
LP03-D4619	J	Level 2	Dangar Barin Smith	22/11/2019
LP04-D4619	J	Level 5	Dangar Barin Smith	22/11/2019
LP05-D4619	J	Roof	Dangar Barin Smith	22/11/2019

and endorsed with Council's approval stamp, except as modified by highlighting on the following drawings for D255/19/2:

Plan No. /Issue/Rev	Title	Prepared by	Date
DA-0101/28	Overall Plans Site Plan	SJB	10.12.20
DA-0201/28	Floor Plan Basement 3	SJB	10.12.20
DA-0202/28	Floor Plan Basement 2	SJB	10.12.20
DA-0203/28	Floor Plan Basement 1	SJB	10.12.20
DA-0204/28	Floor Plan Level 1	SJB	10.12.20
DA-0205/28	Floor Plan Level 2	SJB	10.12.20
DA-0206/28	Floor Plan Level 3	SJB	10.12.20
DA-0207/28	Floor Plan Level 4	SJB	10.12.20
DA-0208/28	Floor Plan Level 5	SJB	10.12.20
DA-0209/28	Floor Plan Level 6	SJB	10.12.20
DA-0210/28	Floor Plan Roof	SJB	10.12.20
DA-0501/27	Elevations North	SJB	09.12.20
DA-0504/28	Elevations West	SJB	11.12.20
DA-0601/27	Section A	SJB	09.12.20
DA-0602/27	Section B	SJB	09.12.20
DA-0603/28	Section C	SJB	11.12.20
DA-0604/27	Section D	SJB	09.12.20
LP01 Issue 01 Rev A	S4.55 Cover Page	Danger Barin Smith	27.11.2020
LP02 Issue 01 Rev A	Level 1	Danger Barin Smith	27.11.2020
LP03 Issue 01 Rev A	Level 2	Danger Barin Smith	27.11.2020

LP04 Issue 01 Rev A	Level 5	Danger Barin Smith	27.11.2020
LP05 Issue 01 Rev A	Roof	Danger Barin Smith	27.11.2020

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

Geotechnical Report

C11. Prior to issue of any Construction Certificate a Geotechnical/Civil Engineering report must be prepared which addresses at a minimum (but is not limited to) the following:-

- a) The type and extent of substrata formations by the provision of a minimum of four (4) representative bore hole logs which are to provide a full description of all material from ground surface to 1.0m below the finished basement floor level and include the location and description of any anomalies encountered in the profile. The surface and depth of the bore hole logs must be related to Australian Height Datum;
- b) The appropriate means of excavation/shoring in light of point (a) above and proximity to adjacent property and structures. Potential vibration caused by method of excavation and potential settlements affecting nearby footings/foundations must be discussed and mechanisms to ameliorate any such impacts recommended;
- c) The proposed method to temporarily and permanently support the excavation for the basement adjacent to adjoining property, structures and road reserve if nearby (full support must be provided within the subject site);
- d) The existing groundwater levels in relation to the basement structure, where influenced;
- e) The drawdown effects on adjacent properties (including road reserve), if any, the basement excavation will have on groundwater together with the appropriate construction methods to be utilized in controlling groundwater. Where it is considered there is the potential for the development to create a “dam” for natural groundwater flows, a groundwater drainage system must be designed to transfer groundwater through or under the proposed development without a change in the range of the natural groundwater level fluctuations. Where an impediment to the natural flow path is constructed, artificial drains such as perimeter drains and through drainage may be utilized; and
- f) Recommendations to allow the satisfactory implementation of the works. An implementation program is to be prepared along with a suitable monitoring program including control levels for vibration, shoring support, ground level and groundwater level movements during construction. The implementation program is to nominate suitable hold points at the various stages of the works for verification of the design intent before sign-off and before proceeding with subsequent stages.

The Geotechnical Report must be prepared in accordance with all the recommendations within the Geotechnical Investigation from Douglas Partners (Ref. 86447.00) dated August 2019 and the Geotechnical Comments prepared by Douglas Partners (Ref.86447.08) dated 14 December 2020.

The geotechnical report must be prepared by an appropriately qualified consulting geotechnical/ hydro geological engineer or suitable qualified expert with previous experience in such investigations and reporting.

It is the responsibility of the consulting geotechnical/ hydrological specialist to undertake the appropriate investigations, reporting and specialist recommendations to ensure a reasonable level of protection to adjacent property and structures both during and after construction. The report must contain site-specific geotechnical recommendations and shall specify the necessary hold/inspection points by relevant professionals as appropriate.

The design principles for the geotechnical report are as follows:

- a) no ground settlement or movement is to be induced which is sufficient enough to cause an adverse impact to adjoining property and/or infrastructure;
- b) no changes to the ground water level are to occur as a result of the development that are sufficient enough to cause an adverse impact to the surrounding property and infrastructure;
- c) no changes to the ground water level are to occur during the construction of the development that are sufficient enough to cause an adverse impact to the surrounding property and infrastructure;
- d) vibration is to be minimized or eliminated to ensure no adverse impact on the surrounding property and infrastructure occurs, as a result of the construction of the development;
- e) appropriate support and retention systems are to be recommended and suitable designs prepared to allow the proposed development to comply with these Design Principles; and
- f) An adverse impact can be assumed to be crack damage as identified within the relevant Australian Standard for determining such damage.

The report, satisfying the requirements of this condition, must be submitted to Council for independent geotechnical assessment and approval prior to the issue of any Construction Certificate. All costs shall be borne by the applicant.

The professional recommendations, implementation program, monitoring program, mitigation measures and the like contained in the report must be implemented in full during the relevant stages of excavation and construction.

(Reason: To ensure the structural integrity of the subject site and adjoining sites during the excavation process)

BASIX Certificate

C25. Under clause 97A(3) of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. 980997M_08 dated 11 December 2020 for the development are fulfilled. Plans and specifications complying 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 the proposed development will meet the Government's requirements for sustainability and statutory requirements)

Geotechnical Stability During Works

- E10. A contractor with specialist excavation experience must undertake the excavations for the development and a suitably qualified and consulting geotechnical engineer must oversee the excavation procedure.

Geotechnical aspects of the development work associated with the original DA and subsequent modifications to the original development consent, namely appropriate excavation method and vibration control, support and retention of excavated faces, and hydro geological considerations must be undertaken in accordance with the recommendations of the submitted geotechnical reports and the Geotechnical Engineer and all subsequent geotechnical inspections carried out during the excavation and construction phase.

Approval must be obtained from all affected property owners, including North Sydney Council where rock anchors (both temporary and permanent) are proposed below adjacent private or public property.

(Reason: Ensure appropriate professional are engaged at appropriate stages during construction)

Allocation of Parking Spaces

- G21. Car parking spaces must be provided and maintained at all times on the subject site. The spaces shall be allocated to uses within the building in accordance the following table:

No. spaces	Use
29 spaces	Residential
4 spaces	Residential - Adaptable
6 spaces	Residential – Visitors

In the case of Strata subdivision any car parking for strata lots for residential purposes must be individually allocated to its corresponding residential strata lot as part of each lots' unit entitlement.

Visitor parking facilities must be designated as common property on the strata plan. Visitor parking facilities must not at any time be allocated, sold, licensed or leased for the exclusive use of any occupier or owner and must be retained as common property by the Owners Corporation for use by building visitors.

(Reason: To ensure that adequate parking facilities to service the development are provided on site)

Allocation of Parking Spaces

- I7. The allocation of Carparking spaces within the development must be maintained at all times in accordance with the terms of this consent. The allocation of spaces must be maintained in accordance with the following table:

No. spaces	Use
29 spaces	Residential
4 spaces	Residential - Adaptable
6 spaces	Residential – Visitors

(Reason: To ensure that adequate parking facilities to service the development are provided on site)

2. To insert new condition A4 as follows:

Terms of Consent (D255/19/2)

- A4. Approval is granted for the following works as shown on the drawings for D255/19/2 as referenced in Condition A1 of this consent:
- (a) Minor increase in total site area (i.e. 13sqm) following a revised survey, resulting in a minor increase to the boundary setbacks (i.e. variable 5mm – 210mm increase);
 - (b) Modification to approved vehicular crossover and access ramp, including relocation and alterations to length and gradient of ramp;
 - (c) Modification to the approved layout of all three (3) basement levels, including re-arrangement of car parking spaces with a reduction in the total number of parking spaces from 41 to 39, relocation of mechanical plant and storage, reconfiguration of garbage room, and deletion of one (1) unisex WC;
 - (d) Modification to approved layout of Level 1, including reconfiguration of central landscaped courtyard, relocation of mechanical plant, addition of letterboxes, and replacement of wellness centre with hydraulic plant/switch room and condenser room;
 - (e) Reconfiguration of internal layout of Units 1.03, 2.06, 3.06, and 4.06;
 - (f) Amalgamation of Unit 5.02 and Unit 5.03 at Levels 5 and 6, including reconfiguration of internal layout, removal of one (1) approved pool and decking, and alterations to brickwork and glazing on northern and western façades. The total number of units within the development will be twenty-four (24) comprising 6 x 2 Bedroom units, 17 x 3 Bedroom units and 1 x 4 Bedroom unit; and
 - (g) Infilling of a void on northern building façade.

No approval is given or implied in this consent for any other works, both internal and external, within the subject property.

(Reason: To ensure the terms of the consent are clear)

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.

The proposed modifications would result in a development which is substantially the same development as originally approved because the proposed modifications would not change the development outcome in terms of height, bulk and scale, building envelope nor its appearance as a residential flat building development.

Reason for approval:

The modified development would result in a small reduction in site coverage. The increase in unbuilt upon area resulting from the proposed relocation of the underground access ramp to the basement car park would have no adverse impacts on the overall landscape quality of the development with adequate soft landscaping including significant planting.

The proposed earthworks associated with the relocation of the access ramp to the basement car park is considered to be acceptable subject to the modifications to conditions relating to geotechnical aspects of the development.

The proposed modifications would have no material impacts on the amenity for the subject site and the adjoining properties given the minor nature of the external changes with no significant changes to the design of the approved development.

The subject S4.55 application was referred to the Department of Planning, Industry and Environment because the original DA was determined by SNPP. On 19 February 2021, the Planning Panel Secretariat confirmed that the application did not meet the criteria for determination by the SNPP and returned the application to Council for determination.

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:

The subject application was notified to adjoining properties and Kurraba and Hayes Precinct inviting comment between 15 January and 29 January 2021. There were two (2) submissions (from one household) that have been addressed in the planning report.

The conditions attached to the original consent for Development Application No. 225/19 by endorsed date of 11 March 2020 still apply.

ADVISINGS

- (a) Council is always prepared to discuss its decisions and in this regard, please do not hesitate to contact **Robin Tse**. 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
ROBYN PEARSON
TEAM LEADER (ASSESSMENTS)