

Minto Planning Services
PO Box 424
BEROWRA NSW 2081

D144/20
LD (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 144/20/2 – APPROVAL**

Development Consent Number: 144/20/2

Land to which this applies: Unit 3, 73 Bay Road, Waverton
Lot No.: 3, SP: 11401

Applicant: Minto Planning Services

Proposal: To modify DA144/20 with regards to the deletion of Condition C3 and an amendment to Condition C11 of the consent.

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. **144/20** and registered in Council's records as Application No. **144/20/2** relating to the land described as **Unit 3, 73 Bay Road, Waverton.**

Your request for the modification of the Development Consent as set out in Notice of Determination dated 7 October 2020, has been determined in the following manner: -

- To modify Condition C3 'Dilapidation Survey Private Property (Neighbouring Buildings)' and Condition C11 'Upgrade of existing building – Fire Spread and Safe Egress' as follows:***

Dilapidation Survey Private Property (Neighbouring Buildings)

- C3. A photographic survey and dilapidation report of adjoining properties (Nos. 75 and 69-71 Waverton) detailing the physical condition of those properties, only in so far as the following:
- No 75 Bay Road – North eastern external wall of the building/s on this site including roof cladding; and,**
 - No 69-71 Bay Road – Driveway along the south western side of this building, south western external wall, south western windows and garage door/s .**

This survey SHALL BE submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The survey and report is to be prepared by an appropriately qualified person agreed to by both the applicant and the owner of the adjoining property. A copy of the report is to be provided to Council, if Council is not the Certifying Authority, prior to the issue of any Construction Certificate.

All costs incurred in achieving compliance with this condition shall be borne by the person entitled to act on this Consent. In the event that access for undertaking the photographic survey and dilapidation report is denied by an adjoining owner, the applicant MUST DEMONSTRATE, in writing, to the satisfaction of Council that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed. Written concurrence must be obtained from Council in such circumstances.

Note: This documentation is for record keeping purposes only, and may be used by an applicant or affected property owner to assist in any action required to resolve any dispute over damage to adjoining properties arising from the works. It is in the applicant's and adjoining owner's interest for it to be as full and detailed as possible.

(Reason: Proper management of records)

Upgrade of building – Fire Spread and Safe Egress

C11. The upgrade works to the building are to occur in accordance with the Actions/Recommendations detailed in the BCA Report prepared by BCA Vision and dated 27th July 2020.

Plans and specifications showing the upgrading works which must be carried out under this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

Notes:

- 1) The Certifying Authority must be satisfied that the plans and specifications submitted prior to the issue of any Construction Certificate comply with the requirements of this condition.
- 2) The Certifying Authority issuing the Construction Certificate has no power to remove the requirements to upgrade the existing building as required by this condition.
- 3) Where this condition specifies compliance with the performance requirements of the BCA, the Certifying Authority, subject to their level of accreditation, may be satisfied as to such matters.

(Reason: Application of Regulations relating to Fire and Life Safety)

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 original proposal involved demolition works to the rear roof and the construction of a new attic and roof form. As such Condition C3 'Dilapidation Survey Private Property (Neighbouring Buildings)' was imposed on the consent. This was not imposed in error as there is the possibility that some damage may potentially occur to the adjoining properties at 69-71 Bay Road and 75 Bay Road.

Reason for approval:

It is likely that construction vehicles will access the site via the concrete driveway that is on the title of 69-71 Bay Road, however it is acknowledged that there is a right of access over this driveway for the subject site. There is the potential for damage to this driveway and to the south western wall of this building including window/garage door openings. These external elements of the building at 69-71 Bay Road should remain as part of Condition C3.

Further, scaffolding may need to be setup on the adjoining heritage listed property at 75 Bay Road to enable the recladding of the rear part of the roof given the existing minimal setback to this boundary. There is the potential for damage to the north eastern wall and part of the roof of this heritage listed building. These external elements of 75 Bay Road should also remain as part of Condition C3.

It is recommended that Condition C11 be amended to reference BCA Report prepared by BCA Vision and dated 27 July 2020 and submitted as part of the original application, to ensure that the new works comply with the relevant provisions of the BCA.

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 not required to be notified in accordance with the North Sydney Community Participation Plan. Whilst the application seeks to delete Condition C3 which provides some safeguarding of adjoining properties, it is recommended that external parts of the adjoining properties at 69-71 and 75 Bay Road be retained as part of the condition given potential damage to these properties.

The conditions attached to the original consent for Development Application No. 144/20 by endorsed date of 7 October 2020 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
LUKE DONOVAN
A/TEAM LEADER (ASSESSMENTS)