

Original signed by: Lara Huckstepp Dated: 9/4/2021

MODOG Pty Ltd
PO Box 222
CAMMERAY NSW 2062

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 APPLICATION 204/18/3 - APPROVAL**

LH(CIS)

Development Consent Number: **204/18/3**

Land to which this applies: 35 Myrtle Street, North Sydney
Lot No.: 4, Sec. 1, DP: 975388

Applicant: MODOG Pty Ltd

Proposal: Section 4.55(2) modification application to modify development consent DA 204/18 with regards to various amendments including installation of mechanical turntable, provision of an additional car parking space, air-conditioning units and various internal and external changes.

The 4.55 application was considered by the **North Sydney Local Planning Panel (NSLPP)** on 7 April 2021.

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. **204/18** and registered in Council's records as Application No. **204/18/3** relating to the land described as **35 Myrtle Street, North Sydney**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 7 April 2021, has been determined in the following manner: -

1. Condition A1 is amended as follows:

Development in accordance with Plans

A1. The development must be carried out in accordance with the following drawings and documentation and endorsed with Council's approval stamp.

Plan No.	Rev	Title	Dated	Prepared by	Received on
DA101	C	Ground floor plan	16/1/2019	Cracknell & Lonergan	24/1/2019
DA102	C	First floor plan	16/1/2019	Cracknell & Lonergan	24/1/2019
DA103	C	Second floor plan	16/1/2019	Cracknell & Lonergan	24/1/2019
DA104	C	Third floor plan	16/1/2019	Cracknell & Lonergan	24/1/2019
DA105	C	Roof floor plan	16/1/2019	Cracknell & Lonergan	24/1/2019
DA201	C	Elevation east and west	16/1/2019	Cracknell & Lonergan	24/1/2019
DA202	C	Elevation north and south	16/1/2019	Cracknell & Lonergan	24/1/2019
DA301	C	Cross Section A	16/1/2019	Cracknell & Lonergan	24/1/2019
DA302	C	Cross Section B	16/1/2019	Cracknell & Lonergan	24/1/2019
DA303	C	Cross Section C	16/1/2019	Cracknell & Lonergan	24/1/2019
DA304	C	Cross Section D	16/1/2019	Cracknell & Lonergan	24/1/2019
DA305	C	Cross Section E	16/1/2019	Cracknell & Lonergan	24/1/2019
DA306	C	Longitudinal Cross Section F	16/1/2019	Cracknell & Lonergan	24/1/2019

Except as amended in highlighting on the following plans:

Plan No.	Rev	Title	Dated	Prepared by	Received on
S4.55 01	E	Site & roof plan	20/7/2020	Max Wessels	20/7/2020
S4.55 02	E	Ground and first floor plan	20/7/2020	Max Wessels	20/7/2020
S4.55 03	E	Second floor plan	20/7/2020	Max Wessels	20/7/2020
S4.55 04	E	Third floor plan	20/7/2020	Max Wessels	20/7/2020
S4.55 05	E	Roof floor plan	20/7/2020	Max Wessels	20/7/2020

Except as amended in highlighting on the following plans:

Plan Nos.	Revision No	Title	Received	Prepared by	Dated
S4.5501	G	Floor plans	25/3/2021	Max Wessels	25/3/2021
S4.5502	G	Floor plan and elevations	25/3/2021	Max Wessels	25/3/2021
-	O	Images	8/2/2021	Max Wessels	8/2/2021

2. Add new Condition C36 as follows:

Air Conditioners in Residential Premises

C36. The use of any air conditioner installed on the premises must comply with the requirements of the Protection of the Environment Operations (Noise Control) Regulations 2008 and State Environmental Planning Policy (Infrastructure) 2007 and must not:

- (a) emit a noise that is audible within a habitable room in any affected residence (regardless of whether any door or window to that room is open);
 - (i) before 8.00am and after 10.00pm on any Saturday, Sunday or Public Holiday; or
 - (ii) before 7.00am or after 10.00pm on any other day
- (a) cause an LAeq(15min) which exceeds the RBL background noise level by more than 5dB when measured at the boundary of any affected residence. The modifying factor adjustments in Section 4 of the EPA Industrial Noise Policy will be applied.

“affected residence” includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation and hospitals.

“boundary” includes any window or elevated window of an affected residence.

Terms in this condition have the same meaning as in the Noise Guide for Local Government and the Industrial Noise Policy published by the NSW Environment Protection Authority.

(Reason: To maintain residential amenity)

3. Condition G13 is amended as follows:

Damage to adjoining properties

G13. On completion of the development the subject of this consent and prior to the issue of the Occupation Certificate, a report is to be prepared by an appropriately qualified consultant and is to be provided to the Certifying Authority (and a copy to Council if it is not the Certifying Authority) certifying that:

- a) whether any damage to adjoining properties has occurred as a result of the development
- b) the nature and extent of any damage caused to the adjoining property as a result of the development
- c) the nature and extent of works required to rectify any damage caused to the adjoining property as a result of the proposed development
- d) the nature and extent of works carried out to rectify any damage caused to the adjoining property as a result of the development; and
- e) the nature and extent of any agreements entered into for rectification of any damage caused to the adjoining property as a result of the development.

The report and certification must reference the dilapidation survey and reports required to be provided to the Certifying Authority in accordance with this consent.

The report must document whether access has been granted to adjoining properties. In circumstances where access has been denied all reasonable attempts must be made to obtain access to adjoining properties for the purposes of compliance with this condition. These reasonable attempts must be documented in the report and be to the satisfaction of Council prior to the issue of the occupation certificate for the whole of the building.

All costs incurred in achieving compliance with this condition shall be borne by the developer.

(Reason: To document damage to adjoining properties and facilitate appropriate civil arrangements to be made to rectify damage arising from the development)

4. Condition G16 is amended as follows:

Allocation of spaces

G16. 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 with the following:

Five spaces – residential tenancies with a maximum of one space allocated to any one residential apartment

One space – ground level non-residential tenancy

The car parking spaces are to be identified on-site by line-marking and numbering upon the completion of the works and prior to the issue of an Occupation Certificate. Car parking spaces provided must only be used in conjunction with the approved uses contained within the development.

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 lot's unit entitlement and one parking space is to be allocated to the commercial unit.

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

5. Add new Condition G18 as follows:

Covenant for Restriction of Vehicle Access

G18. An instrument pursuant to Section 88E of the Conveyancing Act 1919 and one copy must be submitted to Council in registrable form, providing for:

- a. a covenant and restriction as to user in favour of North Sydney Council burdening 35 Myrtle Street requiring maintenance of the vehicular crossing, layback and garage/parking area and also that car spaces **detailed as Lots 1 & 3** cannot be used by vehicles other than small vehicles, due to the design constraints of the garage/parking; and
- b. North Sydney Council being nominated in the Instrument, North Sydney Council's official seal will be affixed to these documents, prior to lodgement at the Land & Property Information Office for registration.

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 lodgement at the Land & Property Information Office for registration.

The Instrument creating the covenant under s88E 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 on the site, whichever is earlier.

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 requirement Instrument.

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.

(Reason: To ensure owners, or intending owners of the subject property are aware of the limitation of vehicles capable of using the crossing without damage)

6. New Condition G19 is imposed as follows:

Noise Certification (vehicular turntable and air conditioning units)

G19. Prior to issue of the any Occupation Certificate a certificate from an appropriately qualified acoustical consultant eligible for membership of the Association of Australian Acoustic Consultants is to be submitted to, and approved by, the Certifying Authority certifying that the noise and vibration from use of the development complies with the conditions of consent here-in.

In relation to air-conditioning units, the acoustic consultant shall review the selection of air conditioning equipment and shall certify that the air conditioning systems shall meet all relevant noise criteria as well as relevant conditions, with all air conditioning systems operating contemporaneously and at maximum capacity, at all times of the day and night.

In relation to the vehicular turntable, the acoustic consultant shall review the selection of plant and shall certify that the vehicular turntable shall meet all relevant noise criteria as well as relevant conditions, at all times of the day and night.

Appropriate acoustic treatments shall be implemented in consultation with the Acoustic Consultant, as set out in the Acoustic Logic Statement dated 23/2/2021, should compliance be unable to demonstrated.

(Reason: To ensure adequate acoustic amenity)

7. Add new Condition G20 as follows:

Shared Vehicular Access way to be re-surfaced

G20. The shared vehicular access way shall be re-surfaced and all damage repaired prior to the issue of an Occupation Certificate.

(Reason: To ensure that damage that has occurred during construction is appropriately rectified and the shared access way is returned to an acceptable condition)

8. New condition I2 is imposed as follows:

Noise and Vibration Impact

- I2. The on-going use of the premises approved under this consent must comply with all conditions pertaining to noise and vibration specified in this consent.

(Reason: To ensure compliance with the specified levels of noise and vibration and to maintain the amenity of surrounding land uses)

Reason for approval:

The Panel notes the applicant agreed to rectification resurfacing the right of way that serves a number of properties. The Panel considers a Section 88E instrument is appropriate to advise future buyers of the small car spaces as per Condition G18.

How community views were taken into account:

The submissions received by Council were addressed in the NSLPP report (see Council's website: https://www.northsydney.nsw.gov.au/Council_Meetings/Meetings/NSLPP/2021/7_April_2021)

The conditions attached to the original consent for Development Application No. 204/18 by endorsed date of 7 April 2021 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
**LARA HUCKSTEPP
EXECUTIVE PLANNER**