

**Original signed by Robyn Pearson on 7 April 2021**

**Date determined: 1 April 2021**

**Date operates: 7 April 2021**

**Date lapses: 7 April 2026**

Sam Johnson  
C/- Corben Architects  
PO Box 1021  
NEUTRAL BAY NSW 2089

ATTN Mohit Keni

D231/19  
HS1 (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 (2) MODIFICATION 231/19/3 - APPROVAL**

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**Development Consent Number:** 231/19/3

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**Land to which this applies:** 18 Queens Avenue, McMahons Point  
Lot No.: 1, DP: 936013

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**Applicant:** Sam Johnson

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**Proposal:** Section 4.55 (2) modifications to DA231/19 for alterations to a swimming pool.

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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. **231/19** and registered in Council's records as Application No. **231/19/3** relating to the land described as **18 Queens Avenue, McMahons Point**.

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

**1. To amend Conditions A1 as follows:**

**Development in Accordance with Plans (Section 4.55 Amendments)**

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

**DA231/19 Approved Plan List**

Plan No.	Issue	Dated	Title	Drawn by	Received
DA01	C	19/11/19	Cover sheet	Corben Architects	25/11/19
DA02	C	19/11/19	Level 1 plan	Corben Architects	25/11/19
DA03	C	19/11/19	Level 2 plan	Corben Architects	25/11/19
DA04	C	19/11/19	Roof and site plan	Corben Architects	25/11/19
DA05	C	19/11/19	North and south elevations	Corben Architects	25/11/19
DA06	C	19/11/19	Queens Ave, east and west elevations	Corben Architects	25/11/19
DA07	C	19/11/19	Section A and section B	Corben Architects	25/11/19
DA08	C	19/11/19	Section C, section D and area calculations	Corben Architects	25/11/19
DA22	-	28/11/19	North & west boundary fence elevations	Corben Architects	2/12/19
L101	D	21/11/19	Landscape concept plan, finishes and landscape details	Spirit Level Designs	25/11/19
L100	J	21/11/19	Landscape concept plan	Spirit Level Designs	25/11/19

Except where amended by the following plans below:

Plan No.	Issue	Dated	Title	Drawn by	Received
DA02	D	14.10.20	Level 1 plan	Corben Architects	7.12.2020
DA03	D	14.10.20	Level 2 plan	Corben Architects	7.12.2020
DA04	D	14.10.20	Roof and site plan	Corben Architects	7.12.2020
DA05	D	14.10.20	North and south elevations	Corben Architects	7.12.2020
DA06	D	14.10.20	Queens Avenue, east and west elevations	Corben Architects	7.12.2020
DA07	D	14.10.20	Section A and section B	Corben Architects	7.12.2020
DA08	D	14.10.20	Section C, section D and area calculations	Corben Architects	7.12.2020

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

2. *Condition C1 and C3 in DA231/19 are to be amended and read as follows:*

C. *Prior To The Issue Of A Construction Certificate (and ongoing, where indicated)*

Condition C1(f) is to be deleted as shown below:

(f) ~~Roofing to Western Deck~~

~~Roofing to deck is to be deleted, however the existing ground floor verandah transoms and overhead hanging balustrades are to be retained.~~

Condition C3(c) is to be deleted as shown below:

(c) ~~The western waterline of the pool shall be reduced by 1m, and the southern waterline reduced by 500mm, and the pool area (including coping and balance trough) reduced in turn.~~

3. *The following additional conditions to DA231/19 are to be included:*

**Further Landscaping Requirements**

C35 The following is to be provided to Council prior to the issue of a Construction Certificate:

- The location of the sewer is in the exact location as indicated in the root mapping report prepared by B&B Gardenscapes.
- Further detail of the extent of excavation and construction required by Sydney Water is made available to Council, and is further assessed by an AQ5 arborist on behalf of the applicant, and such a report is lodged with Council and satisfactorily assessed by Council's Landscape Development Officer.

Plans and specifications complying with this condition are to be submitted to the PCA prior to the issue of the construction certificate.

(Reason: To maintain the existing landscaped setting and protect and retain existing trees)

***D. Prior To The Commencement Of Any Works (And Continuing Where Indicated)***

**Updated Landscaping Information**

- D10 An updated arborist report must assess the negative impact to T4, based on the more detailed information regarding sewer encasement, as having no more than the previously assessed encroachment of 9.5%, and contains a revised Tree Protection and Management Plan in response to such updated information.

Plans and specifications complying with this condition are to be submitted to the PCA prior to the issue of the construction certificate.

(Reason: To maintain the existing landscaped setting and protect and retain existing trees)

***E. During Demolition And Building Work***

**Landscaping Protection Works**

- E27 No excavation to the south or west of Trenches 1, 2 and 3 (as detailed on diagram on page 2 of the root mapping report prepared by B+B) is to be undertaken. Sensitive construction techniques are to be used within the TPZ of any protected trees, under direct supervision of an AQ5 qualified arborist.

Plans and specifications complying with this condition are to be submitted to the PCA prior to the issue of the construction certificate.

(Reason: To maintain the existing landscaped setting and protect and retain existing trees)

**Pool Excavation under supervision of an Arborist.**

- E13 (A) A consulting level AQ5 arborist is to be engaged and is to be present on site for the duration of any excavation associated with the construction of the approved pool. The arborist must ensure that tree protection required by this consent are implemented at all times during excavation and construction work.

(Reason: To ensure appropriate supervision during construction and excavation to protect trees.)

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The development application has been assessed against *North Sydney Local Environmental Plan 2013* and *North Sydney Development Control Plan 2013*.

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

**Reason for approval:**

Having regard to the provisions of section 4.55 and 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 in 2020. The application is therefore recommended for approval.

The proposal is satisfactory subject to recommended amendments and conditions. Having regard to the provisions of Section 4.15 of the *Environmental Planning & Assessment Act 1979*, the application is considered to be satisfactory and therefore can be approved

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

The owners of adjoining properties and the local community precinct committee were notified of the proposed development for a 14-day period in accordance with the North Sydney Community Participation Plan 2019. **One (1)** submission was received during the notification period.

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The conditions attached to the original consent for Development Application No. 231/19 by endorsed date of 11 February 2020 still apply.

**ADVISINGS**

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

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Signature on behalf of consent authority  
ROBYN PEARSON  
**TEAM LEADER (ASSESSMENTS)**