

Ingham Planning Pty Ltd
PO Box 251
ARTARMON NSW 1570

D74/19
AB7 (CIS)

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 74/19/6 – APPROVAL

Development Consent Number: 74/19/6

Land to which this applies: 14-16B Thrupp Street, Neutral Bay
Lot No.: 3, DP: 309227

Applicant: Ingham Planning Pty Ltd

Proposal: Section 4.55(2) modification to DA74/19 involving changes to the approved plans with regard to air conditioning systems, mechanical exhaust, landscaping, an additional window to Unit 3.01 and other associated internal changes.

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. **74/19** and registered in Council's records as Application No. **74/19/6** relating to the land described as **14-16B Thrupp Street, Neutral Bay**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 7 August 2019, has been determined in the following manner: -

1. To modify Condition A1 as follows: -

Development in Accordance with Plans (S4.55 Amendments)

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

Drawing number	Issue/Revision	Title	Drawn by	Dated
DA 000	C	Cover Sheet	PBD Architects	19/07/19
DA 001	C	Project Summary	PBD Architects	19/07/19
DA 003	B	Site Plan	PBD Architects	29/05/19
DA 004	A	Demolition Plan	PBD Architects	05/03/19
DA 100	B	Basement Plan	PBD Architects	05/03/19
DA 101	C	Lower Ground Floor Plan	PBD Architects	19/07/19
DA 102	C	Ground Floor Plan	PBD Architects	19/07/19

DA 103	B	Level 1 Floor Plan	PBD Architects	29/05/19
DA 104	C	Level 2 Floor Plan	PBD Architects	19/07/19
DA 105	C	Level 3 Floor Plan	PBD Architects	19/07/19
DA 106	D	Roof Plan	PBD Architects	19/07/19
DA 200	D	East Elevation	PBD Architects	19/07/19
DA 201	D	South Elevation	PBD Architects	19/07/19
DA 202	D	West Elevation	PBD Architects	19/07/19
DA 203	D	North Elevation	PBD Architects	19/07/19
DA 300	D	Section AA	PBD Architects	19/07/19
DA 301	D	Section BB	PBD Architects	19/07/19
DA 400	D	Material Schedule East	PBD Architects	19/07/19
DA 401	D	Material Schedule South	PBD Architects	19/07/19
DA 402	D	Material Schedule West	PBD Architects	19/07/19
DA 403	D	Material Schedule North	PBD Architects	19/07/19
DA 800	B	3D Perspectives	PBD Architects	29/05/19
DA 801	B	3D Perspectives	PBD Architects	29/05/19
DA 802	B	3D Perspectives	PBD Architects	29/05/19
DA 900	B	Photomontage 1	PBD Architects	29/05/19
002	E	Lower Ground Floor	Habit8	07/06/19
003	E	Ground Floor	Habit8	07/06/19
004	E	Level 1,2 3 Planters	Habit8	07/06/19
005	E	Communal Open Space	Habit8	07/06/19
006	E	Tree Retention Plan	Habit8	07/06/19
007	E	Irrigation Plan	Habit8	07/06/19
008	E	Specifications and Maintenance	Habit8	07/06/19
009	E	Planting Palette	Habit8	07/06/19

Except as modified and clouded as such on the following drawings for DA74/19/2:

Drawing number	Issue/Revision	Title	Drawn by	Dated
DA 000	D	Cover Sheet	PBD Architects	10/09/19
DA 001	D	Project Summary	PBD Architects	10/09/19
DA 100	D	Basement Floor Plan	PBD Architects	10/09/19
DA 101	E	Lower Ground Floor Plan	PBD Architects	10/09/19
DA 102	E	Ground Floor Plan	PBD Architects	10/09/19
DA 103	D	Level 1 Floor Plan	PBD Architects	10/09/19

And further modified and clouded as such on the following drawings for DA74/19/4:

Drawing number	Issue/Revision	Title	Drawn by	Dated
DA 000	G	Cover Sheet	PBD Architects	20/03/20
DA 100	F	Basement Floor Plan	PBD Architects	17/03/20
DA 101	G	Lower Ground Floor Plan	PBD Architects	17/03/20
DA 102	H	Ground Floor Plan	PBD Architects	05/03/20
DA 103	E	Level 1 Floor Plan	PBD Architects	05/03/20
DA 104	G	Level 2 Floor Plan	PBD Architects	05/03/20
DA 105	F	Level 3 Floor Plan	PBD Architects	05/03/20
DA 106	G	Roof Plan	PBD Architects	05/03/20
DA 200	G	East Elevation	PBD Architects	05/03/20
DA 201	G	South Elevation	PBD Architects	05/03/20
DA 202	G	West Elevation	PBD Architects	05/03/20
DA 203	G	North Elevation	PBD Architects	05/03/20
DA 300	G	Section AA	PBD Architects	05/03/20
DA 301	G	Section BB	PBD Architects	05/03/20
DA 700	D	Adaptable Unit Type A	PBD Architects	20/03/20
DA 701	D	Adaptable Unit Type B	PBD Architects	05/03/20

And further modified and clouded as such on the following drawings for DA74/19/6:

Drawing number	Issue/Revision	Title	Drawn by	Dated
DA 100	L	Basement Floor Plan	PBD Architects	11/03/2021
DA 101	L	Lower Ground Floor Plan	PBD Architects	11/03/2021
DA 102	L	Ground Floor Plan	PBD Architects	11/03/2021
DA 103	L	Level 1 Floor Plan	PBD Architects	11/03/2021
DA 104	L	Level 2 Floor Plan	PBD Architects	11/03/2021
DA 105	L	Level 3 Floor Plan	PBD Architects	11/03/2021
DA 106	L	Roof Plan	PBD Architects	11/03/2021
DA 200	L	East Elevation – Thrupp Street	PBD Architects	11/03/2021
DA 201	L	South Elevation	PBD Architects	11/03/2021
DA 202	L	West Elevation	PBD Architects	11/03/2021
DA 203	L	North Elevation	PBD Architects	11/03/2021
DA 570	L	AC Enclosure Diagram	PBD Architects	11/03/2021
L-1001	K	Landscape Plan 01 – Lower Ground Floor	Habit 8	19/03/2021
L-1002	K	Landscape Plan 02 – Ground Level	Habit 8	19/03/2021
L-2001	K	Landscape Planting Plan 01 – LG	Habit 8	19/03/2021
L-2002	K	Landscape Planting Plan 02 – G	Habit 8	19/03/2021
L-2003	K	Landscape Planting Plan 03 – Level 01	Habit 8	19/03/2021
L-2004	K	Landscape Planting Plan 04 – Level 02	Habit 8	19/03/2021
L-2005	K	Landscape Planting Plan 05 – Level 03	Habit 8	19/03/2021

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

2. Condition C19 is modified as follows:

Tree Protection Measures to be shown on Construction Drawings

C19. The tree protection measures contained in the Arboricultural Impact Appraisal and Method Statement prepared by Redgum Horticultural dated 20 March 2017 and revised 30 May 2019 (Ref.2770.4) shall be shown clearly on the Construction Certificate drawings.

The installation of Fire Hydrants and the private power pole at the street frontage shall be carried out using sensitive construction techniques including hand excavation, boring as required within the TPZ of protected street trees, no roots greater than 40mm shall be cut, and all such works shall be carried out under the strict supervision of the project arborist.

Plans and specifications showing the said tree protection measures must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure the construction plans and specifications submitted, referenced on, and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure that appropriate tree protection measures are shown on construction drawings)

3. Condition C25 is modified as follows:

C25. The use of all plant and equipment installed on the premises including the car lift must not:

- (a) Contribute an LAeq(15min) which will cause the total LAeq(15min) from all plant and equipment operating contemporaneously on the site or in the strata scheme or in the mixed strata schemes to exceed the RBL by more than 5dB when measured at the boundary of any affected receiver. The modifying factor adjustments in Section 4 of the EPA Industrial Noise Policy shall be applied.
- (b) Cause “offensive noise” as defined in the Protection of the Environment Operations Act 1997.

“affected receiver” includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation, schools, hospitals, places of worship and parks and such other affected receiver as may be notified by the Council in writing.

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

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

(Reason: To maintain an appropriate level of amenity for adjoining land uses)

4. Condition C26 is modified as follows:

Air Conditioners in Residential Premises

C26. 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 2017 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 Noise Policy for Industry 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 Noise Policy for Industry published by the NSW Environment Protection Authority.

(Reason: To maintain residential amenity)

5. *Condition E12 is modified as follows:*

Protection of Trees

E12. All trees required to be retained, as part of this consent must be protected from any damage during construction works in accordance with AS4970-2009.

The tree protection measures contained in the Arboricultural Impact Appraisal and Method Statement prepared by Redgum Horticultural dated 20 March 2017 and revised 30 May 2019 (Ref.2770.4) must be implemented for the duration of the works.

The installation of Fire Hydrants and the private power pole at the street frontage shall be carried out using sensitive construction techniques including hand excavation, boring as required within the TPZ of protected street trees, no roots greater than 40mm shall be cut, and all such works shall be carried out under the strict supervision of the project arborist.

In the event that any tree required to be retained is damaged during works on the site, notice of the damage must be given to Council forthwith.

Notes:

- 1) If the nominated tree is damaged to a significant degree or removed from the site without prior written approval being obtained from Council, the issuing of fines or legal proceedings may be commenced for failure to comply with the conditions of this consent.
- 2) An application to modify this consent pursuant to Section 4.55 of the Environmental Planning and Assessment Act 1979 will be required to address the non-compliance with any of the conditions of consent relating to the retention of nominated trees, and Council may require tree replenishment.

(Reason: Protection of existing environmental infrastructure and community assets)

The proposed modifications satisfies the provisions of Section 4.55 (2) in that the proposed development remains substantially the same as what was approved by DA74/19. The proposed modifications will not alter the use of the development as originally approved and amenity impacts remain acceptable.

Reason for approval:

The proposed modifications would not significantly change the level of compliance with the relevant development standards and controls as contained in SEPP 65, North Sydney LEP 2013, and North Sydney DCP 2013. The non-compliances with Landscaped Area and Unbuilt-upon area that result from the modification are considered to be relatively minor, will not result in any significant visual or amenity impacts, and are acceptable within the site circumstances.

There would be no undue impacts on the residential amenity of any adjoining properties, or on the character of the locality. The proposal also remains consistent with the objectives of the R4 (High Density Residential) Zone and the original reasons for granting consent.

The proposal was found to be acceptable in the site circumstances and is recommended that the subject Section 4.55(2) application be approved.

How community views were taken into account:

The subject application was notified to adjoining properties and the Neutral Precinct Committee seeking comment and no submissions were received. Nevertheless, it is considered that the proposed modifications will provide improved amenity for the residents and visitors of the subject site without having any adverse impact upon the streetscape, the amenity of adjoining properties and the character of the locality.

The conditions attached to the original consent for Development Application No. 74/19 by endorsed date of 7 August 2019 still apply.

ADVISINGS

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