

Original signed by David Hoy on 18 March 2022

Shannon Keough
Motivo Design Studio
Level 1, 51 Willoughby Road
CROWS NEST NSW 2065

D102/21
DWH (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 102/21/2 - APPROVAL**

Development Consent Number: 102/21/2

Land to which this applies: 51 Willoughby Road, Crows Nest
Lot No.: 6, DP: 1265

Applicant: Shannon Keough

Proposal: Modification of DA 102/21 to amend conditions A1, C1 & C5 relating to acoustic measures.

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. **102/21** and registered in Council's records as Application No. **102/21/2** relating to the land described as **51 Willoughby Road, Crows Nest**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 18 June 2021, has been determined in the following manner:

1. To amend Condition A1 to read as follows:

Development in Accordance with Plans/Documentation

A1. The development must be carried out in accordance with the following drawings and documentation and endorsed with Council's approval stamp, except where amended by the following conditions of this consent.

Plan No.	Issue date/Rev	Description	Prepared by	Dated
01	B	Cycle Bar	Motivo Design Studio	08.04.2021
02	B	Cycle Bar Signage	WASP	28.04.2021
A01	-	Acoustic Barrier plans	MPN	3.02.2022

Description	Prepared by	Dated
Operational Noise Emission Statement	Acoustic Dynamics	21.05.2021
Addendum Acoustic report	Acoustic Dynamics	24.01.2022

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

2. To amend Condition C1 and C5 to read as follows:

Acoustic Screening

C1. The applicant/owner is to provide details of the acoustic screen to the existing roof top air conditioning plant located on the roof adjacent to the Zig Zag Lane frontage. The required acoustic screen is to comply with the requirements of the acoustic consultants report prepared by Acoustic Dynamics dated 21 May 2021, and the addendum report dated 24 January 2022 and the plans referred to in condition A1 of this consent. The certifying authority must be satisfied with the design and operation of the acoustic screening achieves the requirements of the Acoustic Report prior to the issue of the Construction Certificate.

(Reason: To minimise noise impact arising from the change of use and to ensure appropriate amenity for adjoining land uses)

Compliance with Acoustic Report

C5. The recommendations contained in the acoustic report prepared by Acoustic Dynamics dated 21 May 2021, and the addendum report dated 24 January 2022, must be implemented during construction and use of the development.

A statement from an appropriately qualified acoustical consultant eligible for membership of the Association of Australian Acoustic Consultants, certifying that the acoustic mitigation measures outlined in the above stated report have been suitably incorporated into the development and that relevant noise criteria have been satisfied, must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

The Principal 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 maintain an appropriate level of amenity for adjoining land uses)

Reason for Approval:

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.

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 can therefore be approved.

How community views were taken into account:

On 18 February 2022, Council notified adjoining properties and the Holtermann precinct committee of the proposed development seeking comments between 18 February and 3 March 2022. Council did not receive any submissions.

The conditions attached to the original consent for Development Application No. 102/21 by endorsed date of 18 June 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 and 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 and Assessment Act.

Endorsed for and on behalf of North Sydney Council

DATE

Signature on behalf of consent authority
DAVID HOY
TEAM LEADER ASSESSMENTS