

**Original signed by Geoff Mossemear on 8/03/04**  
**Date of determination: 2/3/04; date from which consent operates: 8/03/04; date**  
**consent lapses: 8/03/07**

Clive Lucas, Stapleton & Partners Pty Ltd  
155 Brougham Street  
KINGS CROSS NSW 2011

D289/03  
(GM) (PDS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED**  
**ROADS ACT 1993, AND LOCAL GOVERNMENT ACT 1993 AS APPLICABLE**

**Notice to Applicant of Determination of a Development Application**

Pursuant to Section 81 of the Act, notice is given that Development Application No. **289/03** proposing addition to dwelling at first floor to provide walk-in robe for main bedroom on land described as **11 Bayview Street, McMahons Point** was determined under delegated authority by the granting of consent subject to the conditions below. Where indicated, approval is also granted for works on public roads under the provisions of Section 138 of the Roads Act 1993 and Section 68 of the Local Government Act 1993. The reason for the imposition of the conditions is to protect the existing and future amenity of the neighbourhood.

**A. *Conditions that Identify Approved Plans***

**Development in Accordance with Plans**

A1. The development being carried out in accordance with drawings numbered 96660/10/E and 96660/11/G, dated September 2003, drawn by Clive Lucas, Stapleton & Partners, and received by Council on 10 February 2004, except where amended by the following conditions.

(Reason: Statutory)

**Plans on Site**

A2. A copy of all stamped approved plans, specifications and documents (including the Construction Certificate if required for the work incorporating certification of conditions of approval) shall be kept on site at all times so as to be readily available for perusal by any officer of Council or the Principal Certifying Authority.

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

**C. *Conditions that Require Subsidiary Matters to be Completed Prior to Issue of a Construction Certificate***

**Structural Adequacy of Existing Building**

- C1. A Certificate prepared by an appropriately qualified and practising structural engineer, certifying the structural adequacy of the property and its ability to withstand the proposed additional, or altered structural loads shall be submitted with the Construction Certificate application.

(Reason: To ensure the structural integrity of the building is maintained)

**D. *Conditions That Must Be Addressed Prior To Any Commencement***

**Excavation/Demolition**

- D1. No demolition or excavation shall be carried out until a Construction Certificate has been issued.

(Reason: To ensure compliance with statutory provisions)

**Inspection Fees**

- D2. Where Council is acting as the Principal Certifying Authority and where an inspection of building, civil or landscape work is required by these conditions, inspection fees and component certification fees must be paid to Council before Council will undertake any inspections. These fees may be paid at the time of submission of the required Notice of Commencement of works. This condition applies regardless of whether a Certificate fee is also payable.

**NOTE:** The submission of a Notice of Commencement of works form to Council at least two (2) days prior commencing works is a statutory requirement prior to the commencement of any works on site.

(Reason: Information)

**Cigarette Butt Receptacle – Residential**

- D3. A cigarette butt receptacle is to be provided on the site for the duration of demolition/construction process, for convenient use of site workers.

(Reason: To ensure adequate provision is made for builders' waste)

**E. *Conditions that Must be Complied With During Demolition and Building Work***

**Approved Materials**

- E1. The colour, texture and substance of all external materials shall be generally as detailed in the application.

(Reason: To ensure compliance with the terms of this development consent)

**Progress Inspections (Class 1 and 10 Buildings)**

- E2. The Principal Certifying Authority (PCA) SHALL BE given a minimum of forty-eight (48) hours notice for mandatory inspection of the following, where applicable:
- (a) At the commencement of work.
  - (b) After excavation for, and prior to the placement of any footings.
  - (c) Prior to pouring any in-situ reinforced concrete building element.
  - (d) Prior to covering of the framework for any floor, wall roof or other building element.
  - (e) Prior to covering waterproofing in any wet areas.
  - (f) Prior to covering stormwater drainage connections.
  - (g) After the building work has been completed and prior to any occupation certificate being issued in relation to the building.

The appointed Principal Certifying Authority **MUST** do the first inspection at the commencement of building work, and at completion of building work.

**Notes:**

1. The appointed Principal Certifying Authority has a discretion to determine additional inspections, or nominate other Accredited Certifiers to undertake inspections other than the first and last inspections, which are required to ensure compliance or otherwise with relevant codes and standards. In any event, the Principal Certifying Authority **MUST** be advised at all of the stages of construction identified above.
2. The PCA must advise the person with the benefit of the consent of the mandatory critical stage inspections referred to in the EP & A Regulations.
3. Where North Sydney Council is acting as the Principal Certifying Authority for the project, notice is to be given by telephone to a Planning and Development Services Administration Officer and an appointment made for the relevant inspection. Failure to advise Council at the stages of construction identified above will result in fines being imposed.
4. Failure to advise the Principal Certifying Authority of the need for **MANDATORY INSPECTIONS** at the critical stages of construction detailed above may result in fines being imposed, works being required to be demolished, or delays experienced in obtaining final certification and occupation of the development in order to resolve issues.

(Reason: Prescribed mandatory inspections under legislation)

**Replacement of Principal Certifying Authority**

- E3. If the person exercising the benefits of a development consent changes or replaces the Principal Certifying Authority (PCA) during works on the site, the replacement PCA must notify North Sydney Council within two (2) days of appointment.

(Reason: Statutory requirement)

**Replacement of Builder- (Class 1, 2, 3 and 4 buildings)**

- E4. If the builder is replaced while residential building work is being carried out, the Principal Certifying Authority (PCA) must give North Sydney Council written notice of the name, licence number, and insurer of head contractor (or name and permit number of the owner-builder within two (2) days of their appointment/replacement.

(Reason: Statutory requirement)

**Special Permits**

- E5. Unless otherwise specifically approved in writing by Council, all works, processes, storage of materials, loading and unloading associated with the development are to occur entirely on the property. The applicant, owner or builder must apply for specific permits available from Council's Customer Service Centre for the undermentioned activities on Council's property pursuant to S138 of the Roads Act. A minimum of forty-eight (48) hours notice is required for any permit:-

(1) **On-street mobile plant**

Eg. cranes, concrete pumps, cherry-pickers, etc. - restrictions apply to the hours of operation, the area of operation, etc. Separate permits are required for each occasion and each piece of equipment. It is the applicant's, owner's and builder's responsibilities to take whatever steps are necessary to ensure that the use of any equipment does not violate adjoining property owner's rights.

(Reason: Proper management of public land)

(2) **Hoardings**

Permits are required to erect Class A and Class B hoardings. If an 'A' Class hoarding is to alienate a section of Council's property, that section will require a permit for the occupation of Council's property.

(Reason: Proper management of public land)

(3) **Storage of building materials and building waste containers (skips) on Council's property**

Permits to utilise Council property for the storage of building materials and building waste containers (skips) are required for each location. Failure to obtain the relevant permits will result in the building materials or building waste containers (skips) being impounded by Council with no additional notice being given. Storage of building materials and waste containers on open space reserves and parks is prohibited.

(Reason: Proper management of public land)

(4) **Kerbside restrictions, construction zones**

The applicant's attention is drawn to the existing kerbside restrictions adjacent to the development. Should the applicant require alteration of existing kerbside restrictions, or the provision of a construction zone, the appropriate application must be made and the fee paid. **Applicants should note that the alternatives of such restrictions may require referral to Council's Traffic Committee and may take considerable time to be resolved. An earlier application is suggested to avoid delays in construction programs.**

(Reason: Proper management of public land)

### **Construction Hours**

E6. Building construction shall be restricted to within the hours of 7.00 am to 5.00 pm Monday to Friday and on Saturday to within the hours of 8.00 am to 1.00 pm inclusive, with no work on Sundays and Public Holidays.

Demolition and excavation works shall be restricted to within the hours of 8.00 am to 5.00 pm Monday to Friday only. (Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

The builder and excavator shall display, on-site, their twenty-four (24) hour contact telephone number which is to be clearly visible and legible from any public place adjoining the site.

(Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community)

**Prohibition on Use of Pavements**

- E7. Building materials shall not be placed on Council's footpaths, roadways, parks or grass verges and a suitable sign to this effect shall be erected adjacent to the street alignment.

(Reason: To ensure public safety and amenity on public land)

**Plant & Equipment Kept Within Site**

- E8. All plant and equipment used in the erection of the building, including concrete pumps, wagons, lifts, mobile cranes, etc, shall be situated within the boundaries of the site and so placed that all concrete slurry, water, debris and the like shall be discharged onto the building site, and is to be contained within the site boundaries.

(Reason: To ensure public safety and amenity on public land)

***F. Operational Conditions imposed under EP&A Act and Regulations and other relevant Legislation***

**Building Code of Australia**

- F1. All building work must be carried out in accordance with the provisions of the Building Code of Australia.

(Reason: Prescribed - Statutory)

**Home Building Act**

- F2. (1) Building work that involves residential building work (within the meaning of the Home Building Act 1989) must not be carried out unless the Principal Certifying Authority for the development to which the work relates:

(a) in the case of work to be done by a licensee under that Act:

(i) has been informed in writing of the licensee's name and contractor licence number, and

(ii) is satisfied that the licensee has complied with the requirements of Part 6 of that Act, or

(b) in the case of work to be done by any other person:

(i) has been informed in writing of the person's name and owner-builder permit number, or

- (ii) has been given a declaration, signed by the owner of the land, that states that the reasonable market cost of the labour and materials involved in the work is less than the amount prescribed for the purposes of the definition of owner-builder work in section 29 of that Act, and is given appropriate information and declarations under paragraphs (a) and (b) whenever arrangements for the doing of the work are changed in such a manner as to render out of date any information or declaration previously given under either of those paragraphs.

**Note:** The amount referred to in paragraph (b)(ii) is prescribed by regulations under the Home Building Act 1989. As at the date on which this Regulation was Gazetted, that amount was \$3,000. As those regulations are amended from time to time, so that amount may vary.

- (2) A certificate purporting to be issued by an approved insurer under Part 6 of the Home Building Act 1989 that states that a person is the holder of an insurance policy issued for the purposes of that Part is, for the purposes of this clause, sufficient evidence that the person has complied with the requirements of that Part.
- (3) If arrangements for doing residential building work are changed while the work is in progress so that the information submitted to Council is out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council), has given the Council written notice of the updated information.

(Reason: Prescribed - Statutory)

### **Support for Neighbouring Buildings**

- F3. (1) If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made:-
  - (a) must preserve and protect the building from damage;
  - (b) if necessary, must underpin and support the adjoining building in an approved manner; and
  - (c) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
- (2) The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

(3) In this clause, allotment of land includes a public road and any other public place.

(Reason: To ensure adjoining owner's property rights are protected and protect adjoining properties from potential damage)

***G. Conditions which Must be Complied With Prior to Issue of Occupation Certificate***

**Damage to Adjoining Properties**

G1. All precautions must be taken to prevent any damage likely to be sustained to adjoining properties. Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works. Where damage occurs to adjoining property all necessary repair or suitable agreement for necessary repairs are to be undertaken by the applicant in consultation with and with the consent of the affected property owner prior to the issue of an Occupation Certificate.

(Reason: To ensure adjoining owner's property rights are protected)

BUILDING CODE OF AUSTRALIA CLASSIFICATION: CLASS 1a

DATE OF DETERMINATION:

DATE FROM WHICH CONSENT OPERATES:

DATE CONSENT LAPSES:

Council further resolved that pursuant to Section 95(2) of the Environmental Planning and Assessment Act 1979, it vary the provisions of Section 95(1) and advise the applicant that the consent will lapse 3 years from the date from which the consent operates, in accordance with Section 83.

**ADVISINGS**

**Notes**

(a) Council is always prepared to discuss its decisions, and in this regard please do not hesitate to contact **Geoff Mossemeneer**. However, if you wish to pursue your rights of appeal in the Land and Environment Court pursuant to Section 97 of the Act, 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. The use of the Section 34 Conference approach requires the appellant to agree, in advance and in writing, that the Court appointed assessor will be given the full authority to completely determine the matter at the conference.

- (b) 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 modification under Section 96 of the Environmental Planning & Assessment Act 1979. Any such changes warranting a State Environmental Planning Policy No. 1 objection (where no objection was previously required) may not be able to be determined under Section 96 of the Act but may need to be subject of a separate Development Application.

Please bear this in mind before preparing documentation in support of a Construction Certificate application. 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 96 of the Environmental Planning & Assessment Act.

- (c) Section 82A of the Environmental Planning and Assessment Act 1979 provides that the applicant may request the Council to review the determination. The request must be made in writing (or on the review application form) within twelve (12) months *after receipt of this Notice of Determination*, together with payment of the appropriate fees. It is recommended that the applicant discuss any request for a review of the determination with Council Officers before lodging such a request.
- (d) 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) Relevant approvals must be obtained under the provisions of Section 138 of the Roads Act, 1993 for any works on public roads which are not the subject of this consent.
  - (ii) A Construction Certificate is to be obtained in accordance with Section 81A(2)(a) of the Act.
  - (iii) A Principal Certifying Authority is to be appointed and Council is to be notified of the appointment in accordance with Section 81A(2)(b) of the Act.
  - (iv) Council is to be notified at least two (2) days of the intention to commence building works, in accordance with Section 81A(2)(c) of the Act.
- (e) The applicant may apply to the Council or an Accredited Certifier for the issuing of a Construction Certificate and to be the Principal Certifying Authority to monitor compliance with the approval and issue necessary documentary evidence or certificate/s.
- (f) **Telecommunications**

Prior to the installation of any telephone cabling contact is to be made with Construction Research Australia Pty Ltd on telephone 1800 180 118 or Sydney 9428 1254.

**(g) Dial before you dig**

Before you dig call “Dial before you dig” on 1100 (listen to the prompts) or facsimile 1300 652 077 (with your street no./name, side of street and the distance to the nearest cross street) for underground utility services information for any excavation areas.

Council’s officers can provide these services, and further information, including a copy of the terms of agreement and fee schedule, can be obtained by telephoning Council’s Customer Service Centre on **9936 8471**.

*Please note that all building work must be carried out fully in accordance with the development consent and conditions of approval and it is an offence to carry out unauthorised building work or building work that is not in accordance with Council’s approval.*

*An offence under the Environmental Planning and Assessment Act 1979 and Regulations is subject to a penalty up to \$110,000 and \$11,000 respectively.*

*Council may also serve a notice and an order to require the demolition/removal of unauthorised building work or to require the building to be erected fully in accordance with the development consent.*

*On the spot penalties will be imposed for works which are carried out in breach of this consent, or without consent.*

*An amended development application is required to be submitted to and approved by Council, and a Construction Certificate is to be obtained from the Council or an Accredited Certifier, prior to commencement of any variations from the approved plans and conditions of approval.*

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Signature on behalf of consent authority  
GEOFF MOSSEMENEAR  
EXECUTIVE ASSESSMENT PLANNER