

Original signed by Peter Jeuken on 19/01/04

Date of determination: 16/01/04; date from which consent operates: 19/01/04; date consent lapses: 19/01/07

Doug Lawton
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SURREY HILLS NSW 2010

D638/03
(AJS) (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. **638/03** proposing internal and external alterations and additions to existing dwelling on land described as **114A High Street, North Sydney** 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 DA 01 Issue A, drawn by Lawton Hurley Design, and received by Council on 28 November 2003, except where amended by the following conditions.

(Reason: Statutory)

Plans on Site

- A2. A copy of all approved certified plans, specifications and documents incorporating conditions of approval certification 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 compliance with approved plans)

- A2A. A copy of the required Construction Certificate shall be provided on site from the commencement of works so as to be available for the perusal of any Officer of the Council or the Principal Certifying Authority.

(Reason: To ensure compliance with the approved plans)

C. Conditions that Require Subsidiary Matters to be Completed to Satisfaction of Council or Accredited Certifier Prior to Issue of a Construction Certificate

Retractable Awning

- C1. The material to be used for the retractable awning must be permeable to allow water and light infiltration. Details demonstrating compliance with this condition must be submitted to Council or the Accredited Certifier prior to the issue of any Construction Certificate.

(Reason: To ensure solar access is maintained to No.116 High Street)

Colours

- C2. Colours to all external finishes shall complement the existing building. Details must be submitted to Council or the Accredited Certifier prior to the issue of any Construction Certificate.

(Reason: Reflect and reinforce existing character of the locality, heritage conservation)

Damage to Public Infrastructure

- C3. The applicant shall bear the cost of all restoration works to Council's property damaged during the course of this development. The applicant shall advise Council, in writing, of any existing damage to Council property before commencement of the development. A dilapidation survey of Council's assets, including photographs and written record, must be prepared by a suitably qualified person and submitted to Council prior to the submission of an application for Construction Certificate.

Note: This documentation will be used to resolve any dispute over damage to infrastructure. It is in the applicant's interest for it to be as full and detailed as possible.

(Reason: Protection of existing built public infrastructure)

Damage to Adjoining Properties

- C4. All precautions must be taken to prevent any damage likely to be sustained to adjoining properties. Adjoining owner property rights must be observed at all times. 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 occupation of the development or issue of a building certificate.

(Reason: Structural Safety)

Structural Stability

C5. A detailed report prepared by an appropriately qualified and independent Structural Engineer, shall separately certify the structural stability of, and the means of support during construction of, all components to be retained and/or altered, having regard to the overall development proposed. This shall accompany the Construction Certificate Application.

(Reason: Heritage Conservation)

D. Conditions That Must Be Complied With Prior To Any Demolition

Plant & Equipment

D1. 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.

(Reason: Protection of the Environmental Health and Safety)

Excavation/Demolition

D2. No demolition or excavation shall be carried out until a Construction Certificate has been issued.

(Reason: Information/Statutory/Structural safety)

Inspection Fees

D3. 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 (Form 7). This condition applies regardless of whether a Compliance Certificate fee is also payable.

NOTE: The submission of a 'Form 7' to Council is a statutory requirement prior to the commencement of any works on site.

(Reason: Compliance with Section 608 (6) of the Local Government Act 1993)

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

Materials

- E1. The colour, texture and substance of all external materials shall be as detailed in the application. An application to modify the consent pursuant to S96 will be required to change any external finish or material substance.

(Reason: Compliance & Heritage Conservation)

Progress Inspections

- E2. Council or the Principal Certifying Authority SHALL BE given five (5) days notice for inspection of the following:

- (a) Damp-proofing and flashing prior to covering.
- (b) Timber framing prior to lining.
- (c) On completion of building works.

Notes:

- 1. The appointed Principal Certifying Authority has a discretion to determine additional inspections which are required to ensure compliance or otherwise with relevant codes and standards.
- 2. Where North Sydney Council is acting as the Principal Certifying Authority for the project, notice is to be given by telephone to the Inspection Services Administration Officer and an appointment made for the relevant inspection.

(Reason: Compliance, Health and Safety)

'Final' Compliance Certificate

- E3. Within seven (7) days of completion of the building works a Certificate of Compliance under Section 109C (1) (a) of the Environmental Planning and Assessment Act 1979 must be provided by the Principal Certifying Authority. This Compliance Certificate must certify that the completed work complies with the relevant Plans and Specifications and with the following conditions of this development consent: A1, C1, F1.

(Reason: Statutory)

Removal of Extra Fabric

- E4. Should any portion of the existing building which is indicated on the approved plans to be retained be damaged for whatever reason, all the works in the area of the damaged portion are to cease and written notification given to Council. No work is to resume until the written approval of Council is obtained. Failure to comply with the provisions of this condition will result in the Council institute immediate legal proceedings.

(Reason: Compliance)

Noise

- E5. Noise emissions must comply with applicable standards under the Protection of the Environment Operations Act 1997. Vibration from the works must not be felt on any adjoining property.

(Reason: Amenity)

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: Amenity, Health and Safety)

Asbestos Conditions

- E7. All asbestos must be removed by a licensed asbestos contractor in compliance with the Work Safe Australia Asbestos Code of Practice and guidance notes.

(Reason: Health and Safety)

Health and Safety

- E8. The work must satisfy applicable occupational health and safety and construction safety regulations, including any WorkCover Authority requirements to prepare a health and safety plan. Site fencing must be installed sufficient to exclude the public from the site. Safety signs must be erected that; warn the public to keep out of the site, and provide a contact telephone number for enquiries.

(Reason: Protection of the environment)

Cigarette Butt Receptacle

- E9. That provision be made for cigarette butt receptacles on the site to minimise littering during construction.

(Reason: Environment Protection)

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.

(Reason: Prescribed - Statutory)

Site Sign

- F3. (1) A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
 - (a) stating that unauthorised entry to the work site is prohibited, and
 - (b) showing the name of the owner of the premises and of the person in charge of the work site, and a telephone number at which that person may be contacted outside working hours.
- (2) Any such sign is to be removed when the work has been completed.
- (3) This clause does not apply to:
 - (a) building work carried out inside an existing building, or
 - (b) building work carried out on premises that are to be occupied continuously (both during and outside working hours) while the work is being carried out.

(Reason: Prescribed - Statutory)

K. Advisings

Special Permits

K1. Unless otherwise specifically approved 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 Unit 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 applicants, owners and builders responsibilities to take whatever steps are necessary to ensure that the use of any equipment does not violate adjoining property owners rights.

(Reason: Safety)

(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: Safety)

(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.

(Reason: Safety)

(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: Safety)

BUILDING CODE OF AUSTRALIA CLASSIFICATION: CLASS 1a, 10a

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 Antonia Stuart. 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 1 100 (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
PETER JEUKEN, TEAM LEADER