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D432/21  
MS3 (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 MODIFICATION 432/21/2 - APPROVAL**

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**Development Consent Number:** 432/21

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**Land to which this applies:** 2 Sutherland Street, Cremorne  
Lot No.: 1, DP: 528502

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**Applicant:** AP Development No 1 Pty Ltd

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**Date of Determination:** 25 January 2023

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**Proposal:** Section 4.55(1A) modification relating to the demolition of an existing residential flat building and construction of a part 4, part 5 storey residential flat building containing 11 apartments with basement parking for 18 vehicles, and landscaping and associated works

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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. **432/21** and registered in Council's records as Application No. **432/21/2** relating to the land described as **2 Sutherland Street, Cremorne**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **3 August 2021**, has been determined in the following manner:

To amended the following conditions:

**Sediment Control**

**C6. Prior to the issue of a construction certificate, an erosion and sediment control plan must be prepared by a suitably qualified person in accordance with the following documents and provided to the Certifying Authority:**

- a) Council's relevant development control plan,
- b) the guidelines set out in the NSW Department of Housing manual 'Managing Urban

- Stormwater: Soils and Construction Certificate' (the Blue Book) (as amended from time to time), and
- c) the 'Do it Right On-Site, Soil and Water Management for the Construction Industry' (Southern Sydney Regional Organisation of Councils and the Natural Heritage Trust) (as amended from time to time).

(Reason: To ensure no substance other than rainwater enters the stormwater system and waterways)

### Skylight(s)

- C8. Skylight flashing(s) and frame(s) to be coloured to match the roof material. Skylight(s) to sit no higher than 200 mm above roof plane when in a closed position. Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of **the relevant** Construction Certificate.

The Certifying Authority must ensure that the building plans and specifications submitted fully satisfy the requirements of this condition.

(Reason: To minimise the visual impact of the skylight(s) on the roof plane)

### Reflectivity Index of Glazing

- C10. The reflectivity index (expressed as a per centum of the reflected light falling upon any surface) of external glazing for windows, walls or roof finishes of the proposed development is to be no greater than 20%. Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of **the relevant** Construction Certificate. The 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.

Note: The reflectivity index of glazing elements can be obtained from glazing manufacturers. Glass with mirrored or reflective foil finishes is unlikely to achieve compliance with this requirement.

(Reason: To ensure that excessive glare or reflectivity nuisance from glazing does not occur as a result of the development)

### Roofing Materials - Reflectivity

- C11. Roofing materials must be factory pre-finished with low glare and reflectivity properties to be compatible with the colours of neighbouring buildings. The selected roofing material must not cause a glare nuisance or excessive reflectivity to adjoining or nearby properties. Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of **the relevant** Construction Certificate. The 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 ensure that excessive glare or reflectivity nuisance from roofing materials does not occur as a result of the development)

**No External Service Ducts**

- C12. Service ducts must be provided within the building to keep external walls free of plumbing, drainage or any other utility installations. Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of **the relevant** Construction Certificate. The 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 ensure quality built form of the development)

**Maintain Property Boundary Alignment Levels**

- C14. Except where otherwise approved by Council, the property boundary alignment levels must match the levels which existed prior to the commencement of works. Plans and specifications which document existing and proposed levels adjacent to the site boundaries and which comply with the requirements of this condition must be submitted to the Certifying Authority for approval prior to the issue of **the relevant** Construction Certificate.

The 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 ensure interface between property and public land remains uniform)

**Bicycle Storage and Parking**

- C15. The bicycle storage area must accommodate a minimum of 11 bicycles, and a visitor parking bicycle rail shall be provided for 4 bicycles. The bicycle storage lockers and bicycle rail shall be designed in accordance with the applicable Australian Standards. Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of **the relevant** Construction Certificate. The Certifying Authority must ensure that the building plans and specifications, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To promote and provide facilities for alternative forms of transport)

**Accessible Parking Spaces to be Provided**

- C16. A total of 3 accessible parking spaces shall be provided as part of the total car-parking requirements. Consideration must be given to the means of access from the car-parking spaces to adjacent buildings, to other areas within the building and to footpath and roads. All details shall be prepared in consideration of, and construction completed in accordance with applicable Australian Standards to achieve compliance with the Disability Discrimination Act. Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of **the relevant** Construction Certificate.

(Reason: To ensure equity of access and appropriate facilities are available for people with disabilities in accordance with Federal legislation)

**Basement Car Park to comply with relevant standards**

- C17. Sightlines for pedestrian safety are to be provided as per Figure 3.2 of AS 2890.1 for the driveway access to Grasmere Lane.

An internal traffic signal system must be provided to accommodate vehicles entering and existing the carpark via the single driveway. The internal traffic signal system shall be designed by a suitably qualified consultant. The design should include the waiting bay line marking and signposting arrangements.

The basement layout must comply with all requirements of Australian Standard AS2890.1. Certification from a suitably qualified and practicing Civil Engineer that the basement design will comply with the requirements of the Australian Standard must be provided to the Certifying Authority for approval prior to issue of **the relevant** Construction Certificate.

(Reason: To ensure the basement layout complies with relevant standards)

**Stormwater Management and Disposal Design Plan - Construction Issue Detail**

- C18. Prior to issue of **the relevant** Construction Certificate, the applicant shall have a site drainage management plan prepared by a qualified drainage design engineer. The site drainage management plan must detail the following requirements of North Sydney Council:

- a) Compliance with BCA drainage requirements, Councils Engineering Performance guide and current Australian Standards and guidelines, such as AS/NZ3500.3.2 1998, National Plumbing and Drainage Code.
- b) Stormwater runoff and subsoil drainage generated by the approved dwellings must be conveyed in a controlled manner by gravity via a direct connection to Council's stormwater gully pit in Grasmere Lane which has to be reconstructed. When a direct connection to the pit option is implemented then the pipeline within the footpath area shall have a minimum cover of 300mm.
- c) All civil and drainage works within the road reserve must be designed and built in accordance with Council's current "Infrastructure Specification". Prior to issue of the Construction Certificate the applicant must have engineering plans and specifications, prepared by a qualified civil drainage design engineer. Council must approve the plans and specifications, in writing, prior to issue of any Construction Certificate by the Certifying Authority. The documentation must provide engineering construction detail for the following public infrastructure works that must be completed as part of the approved development. Council reserve the right of keeping all bonds on infrastructure works for twelve-month defects liability period.
- d) All redundant stormwater pipelines within the footpath area shall be removed and the footpath and kerb reinstated.
- e) Any footpath panel on Grasmere Lane disturbed for the purpose of stormwater connection shall be reconstructed as whole panel.
- f) All sub-soil seepage drainage shall be discharged via a suitable silt arrester pit, directly to Council's nearest stormwater drainage line. Details of all plans certified as being adequate for their intended purpose and compliant with the provisions of AS3500.3.2 by an appropriately qualified and practising civil engineer, shall be submitted with the application for a Construction Certificate.
- g) The design and installation of the Rainwater Tanks shall comply with Basix and **Sydney Water** requirements. Overflow from tank shall be connected by gravity to the stormwater disposal system.
- h) Prevent any stormwater egress into adjacent properties by creating physical barriers and surface drainage interception.
- i) Provide subsoil drainage to all necessary areas with pump out facilities if required.

Details demonstrating compliance are to be submitted with the Construction Certificate.

The Certifying Authority issuing the Construction Certificate must ensure that the approved drainage plan and specifications, satisfying the requirements of this condition, is referenced on and accompanies the issued Construction Certificate.

(Reason: To ensure controlled stormwater management and disposal without nuisance)

**Required Infrastructure Works - Roads Act 1993**

C19. Prior to issue of **the relevant** Construction Certificate engineering design plans and specifications must be prepared by a qualified civil design engineer. The plans and specifications must be to a detail suitable for construction issue purposes and must provide detail and specification for the following infrastructure works to be completed as part of the development:

Drainage Works

Connection of the site stormwater system must be made directly to the existing grated gully pit (with lintel to be added), to front the site on Grasmere Lane. To accommodate this requirement, the following drainage infrastructure works must be carried out on Council property at the Applicants expense:-

- a) Replacement of the existing grated gully pit with standard grated gully pit with extended kerb inlet (1.8m lintel) in the kerb fronting the subject site in Grasmere Lane. The pit must be constructed in accordance with Councils "Infrastructure Specification for Roadworks, Drainage and Miscellaneous Works".
- b) The connection pipeline within the footpath area shall have a minimum cover of 300mm.

Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of the relevant Construction Certificate.

Certifying Authorities must not issue a Construction Certificate without the formal written approval of Council (as Roads Authority) under the Roads Act 1993.

The required plans and specifications are to be designed in accordance with North Sydney Council's current documents Infrastructure Specification for Road Works, Drainage and Miscellaneous Works and Performance Guide for Engineering Design and Construction. The drawings must detail existing utility services and trees affected by the works, erosion control requirements and traffic management requirements during the course of works. A detailed survey must be undertaken as required. Traffic management is to be certified on the drawings as being in accordance with the documents SAA HB81.1 - 1996 - Field Guide for Traffic Control at Works on Roads - Part 1 and RMS Traffic Control at Work Sites (1998).

**Construction of the works must proceed only in accordance with any conditions attached to the Council Roads Act 1993 approval.**

Note: A minimum of 21 days will be required for Council to assess Roads Act submissions. Early submission is recommended to avoid any delays in obtaining a Construction Certificate. A fee to cover cost of assessment (set out in Council's adopted fees and charges) is payable and Council will withhold any consent and approved plans until full payment of the correct fees. Plans and specifications must be marked to the attention of Council's Development Engineers. In addition, a copy of this condition must be provided, together with a covering letter stating the full address of the property and the accompanying DA number.

(Reason: To ensure infrastructure works are designed and constructed to appropriate standards and requirements of the Roads Act 1993)

### Foundations Adjacent to Drainage Easements

C21. The foundations for building structures and walls adjacent to the drainage easement are to be constructed in such a manner that does not affect stormwater drainage lines. Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of **the relevant** Construction Certificate. The 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 allow maintenance without affecting the building and to ensure there is no damage to public assets)

### Pump-Out System Design for Stormwater Disposal

C22. The design of the pump-out system for stormwater disposal will be permitted for drainage of basement areas only, and must be designed in accordance with the following criteria:

- a) The pump system shall consist of two pumps, connected in parallel, with each pump being capable of emptying the holding tank at the rate equal to the rate of inflow for the one-hour duration storm. The holding tank shall be capable of holding one hour's runoff from a one-hour duration storm of the one in 20-year storm;
- b) The pump system shall be regularly maintained and serviced, every six (6) months; and
- c) Any drainage disposal to the street gutter from a pump system must have a stilling sump provided at the property line, connected to the street gutter by a suitable gravity line.

Engineering details demonstrating compliance with these criteria and certified by an appropriately qualified and practicing civil engineer shall be provided to the Certifying Authority for approval prior to the issue of **the relevant** Construction Certificate.

(Reason: To ensure adequate provision is made for the discharge of sub-surface stormwater from the excavated parts of the site)

### Footpath, Entries and Fire Exit Details (Mixed-Use/Commercial/Apartments)

C27. Footpaths, entries and exits and fire exits for the development must be designed by an appropriately qualified and practising Civil Engineer and submitted to the Certifying Authority for approval prior to the issue of **the relevant** Construction Certificate. The design must include (but is not limited to) the following:

- a) cross section along the centre-line of each access point to the building including fire exits at a scale of 1:50 to be taken from the centre of the road and shall include all changes of grade both existing and proposed;
- b) the sections must show all relevant levels and grades (both existing and proposed) including those levels stipulated as boundary levels;
- c) the sections must show the calculated clearance to the underside of any overhead structure;

- d) a longitudinal section along the boundary line showing how it is intended to match the internal levels of the building with the boundary footpath levels. The footpath must be designed (at a single straight grade of 3% falling to top of kerb) so that it is smooth without showing signs of dipping or rising particularly at entrances; and

Details, plans and specifications complying with this condition are to be certified as complying with the Building Code of Australia (BCA) and Council's standard footpath specifications, and the certification, details, plans and specifications must be provided to the Certifying Authority for approval prior to the issue of any Construction Certificate. Written concurrence confirming there will be no change to existing boundary and footpath levels is to be provided to the Certifier and North Sydney Council, prior to issue of **the relevant** Construction Certificate.

(Reason: To facilitate suitable pedestrian and disabled access to private sites, and to ensure that internal levels reflect footpath boundary levels)

### **Garbage and Recycling Facilities**

C31. An appropriate area must be provided within the premises for the storage of garbage bins and recycling containers and all waste and recyclable material generated by this premises. The following requirements must be met:

- a) all internal walls of the storage area must be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained with a tap in close proximity to facilitate cleaning;
- b) provision for the separation and storage in appropriate categories of material suitable for recycling;
- c) the storage area must be adequately screened from the street, with the entrance to the enclosures no more than 2 m from the street boundary of the property;
- d) if a storage facility is to be provided at another suitable location within the building, a complementary garbage bin holding bay must be provided no more than 2 m from the street boundary of the property;
- e) garbage enclosures serving residential units are not to be located within areas designated for non-residential uses; and
- f) garbage enclosures serving non-residential uses are not to be located within areas designated for dining purposes.

Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of **the relevant** Construction Certificate.

The 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.

Note: The applicant may wish to discuss bin storage requirements and location with Council's Environmental Services prior to finalisation of the required detail, and a copy of Council's Waste Handling Guide should be obtained for reference purposes before the design is finalised.

(Reason: To ensure the provision of appropriate waste facilities for residents and protect community health, and to ensure efficient collection of waste by collection contractors)

**Location of Plant**

C33. All plant and equipment (including but not limited to air conditioning equipment) is to be located within the basement of the building and is not to be located on balconies or the roof. Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of **the relevant** Construction Certificate. The 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: Minimise impact on surrounding properties, improved visual appearance and amenity for locality)

**Acoustic Privacy (Residential Apartments)**

C37. Noise levels in sole occupancy units of residential apartments must not exceed the following:

<b>Location</b>	<b>Maximum</b>
Habitable Rooms other than Sleeping Areas	40 LAeq (1hr)
Sleeping Areas	35 LAeq (1hr)

The "Maximum" limits are to apply in any hour of a 24-hour period with the windows of the sole occupancy unit closed.

"habitable room" has the same meaning as in the Building Code of Australia.

A floor separating sole occupancy units shall have a weighted standardised impact sound pressure level  $L'_{nT,w}$  not more than 55dB when measured in-situ in accordance with AS ISO 140.7-2006 "Field measurements of impact sound insulation of floors" and rated to AS ISO 717.2-2004 "Rating of sound insulation in buildings and of building elements. Part 2: Impact sound insulation". This clause shall not apply to the floor of a kitchen, bathroom, toilet or laundry in a residential sole occupancy unit. Mechanical equipment such as lift plant, air conditioning plant servicing the building and pumps shall not be located immediately adjacent bedrooms.

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 above have been satisfied, must be submitted to the Certifying Authority for approval prior to the issue of **the relevant** Construction Certificate.

(Reason: To comply with best practice standards for residential acoustic amenity)

**Noise and Vibration Compliance Certification Prior to Issue of Construction Certificate**

- C38. A certificate from an appropriately qualified acoustical consultant eligible for membership of the Association of Australian Acoustic Consultants, certifying that suitable measures have been incorporated into the development and that the noise criteria contained in the conditions herein have been satisfied, must be provided to the Certifying Authority for approval prior to the issue of **the relevant** 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)

**Provision of Accessible Paths of Travel**

- C41. The building must be designed and constructed to provide access and facilities in accordance with the Building Code of Australia and Disability (Access to Premises - Buildings) Standards 2010. Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of **the relevant** Construction Certificate. The 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.

Notes:

1. If, in complying with this condition, amendments to the development are required, the design changes must be submitted for the approval of Council prior to a Construction Certificate being issued. Approval of a modification application may be required.
2. It is not within Council's power to set aside National legislation which requires the upgrade of buildings to meet modern access standards. Such decisions remain the jurisdiction of the Building Professionals Board Access Advisory Committee who may grant an exemption in certain exceptional circumstances.
3. Information on making an application for an "unjustifiable hardship exemption" under the accessibility standards can be found in the website of the NSW Building Professional Boards at <http://www.bpb.nsw.gov.au/page/premises-standards>.

(Reason: To ensure the provision of equitable and dignified access for all people in accordance with disability discrimination legislation and relevant Australian Standards)

**Underground Electricity and Other Services**

- C42. All electricity and telecommunication provision to the site is to be designed in conjunction with Energy Australia and any other relevant authority so that it can be easily connected underground when the street supply is relocated underground. Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of **the relevant** Construction Certificate. The 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 provide infrastructure that facilitates the future improvement of the streetscape by relocation of overhead lines below ground)

### Adaptable Housing

C43. Prior to the issue of the relevant construction certificate, a report prepared by a suitably qualified consultant must be obtained that demonstrates, to the certifier's satisfaction, that the three adaptable dwellings specified in the approved plans or documents comply with the provisions of AS 4299 Adaptable Housing Standards.

(Reason: To ensure adaptable units are designed in accordance with the Australian Standard)

### Outdoor Lighting

C47. All outdoor lighting must comply with, where relevant AS/NZ1158.3:1999 Pedestrian Area (Category P) Lighting and AS4282:1997 Control of the Obtrusive Effects of Outdoor lighting. Details demonstrating compliance with these requirements must be submitted to the Certifying Authority for approval prior to the issue of **the relevant** Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted fully satisfy the requirements of this condition.

(Reason: To maintain the amenity of adjoining land uses)

### Amendments to the Landscape Plan

C48. The landscape plan must be amended as follows to provide an appropriate landscaped setting:

- The proposed sloping bank of gravel in proximity to T19 is to be substituted with turf and only minimal paved stepping stones provided to limit pedestrian traffic.
- To reflect the reduction in paving shown in drawing Revision D in Condition A1.
- Tree T4 located within the south eastern corner of the site is to be retained. The retaining walls in proximity to the tree are to be adjusted to reflect drawings Revision D in Condition A1.

An amended landscape plan complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of **the relevant** Construction Certificate. The Certifying Authority must ensure that the amended landscape plan and other plans and specifications submitted fully satisfy the requirements of this condition.

(Reason: To ensure residential amenity)

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The modification application meets the requirements of section 4.55(1A) and has been assessed with regard to the original reasons for approval and the matters for consideration as outlined in section 4.15(1) of the Act, which have been satisfied. The proposed development is permissible, meets the development standards and relevant provisions of NSLEP 2013 and is generally in accordance with the objectives of the NSDCP 2013.

### Reasons for Approval:

The proposed modifications are considered substantially the same development and of minimal environmental impact. The proposed modifications are administrative in nature and would provide greater flexibility to allow the construction certification to be staged. The wording of the proposed modified conditions is consistent with the recently adopted model conditions produced by Department of Planning and Environment, dated August 2022.

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The proposed modification application is therefore considered reasonable and is recommended for approval.

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

The application was notified in accordance with section 3.4.2 of Council's Community Engagement Protocol because the application was lodged under section 4.55(1A) *Modification of minimal environmental impact* of the Act and is not considered to have the potential to adversely impact surrounding properties. The proposed modifications relate to the staging of the construction certificate and are administrative in nature.

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The conditions attached to the original consent for Development Application No. **432/21** by endorsed date of **3 August 2021** still apply.

**ADVISINGS**

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

27 January 2023

DATE

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