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Billbergia Pty Ltd  
101/25 Angas Street  
MEADOWBANK NSW 2114

D368/18  
DWH (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED**  
**SECTION 4.55 MODIFICATION 368/18/9 - APPROVAL**

<b>Development Consent Number:</b>	<b>368/18</b>
<b>Land to which this applies:</b>	86-88 Walker Street North Sydney Lot No.: 1, DP: 1247547
<b>Applicant:</b>	North Walker Property Pty Ltd Locked Bag 1400 Meadowbank NSW 2114
<b>Proposal:</b>	Modification of DA 368/18 to provide for installation and use of back-up power generator and amendment of conditions to enable early occupation of pub premises

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. **368/18** and registered in Council's records as Application No. **368/18/9** relating to the land described as **86-88 Walker Street North Sydney**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **28 March 2019**, has been determined in the following manner:

**1. Condition C19 of the consent shall be amended to read as follows:**

**Noise from Plant and Equipment**

**C19.** The use of all plant and equipment installed on the premises must **comply with the following:**

- a) Equipment run during normal operation of the building (excluding any emergency equipment) must not:**
- i)** 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 Noise Policy for Industry ~~Industrial Noise Policy~~ shall be applied.
  - ii)** Cause "offensive noise" as defined in the Protection of the Environment Operations Act 1997.

- b) *Emergency equipment such as generators are exempt from compliance with (a) when run for testing and in an emergency. Any scheduled testing of the emergency equipment is to occur outside night-time hours as defined in the NSW EPA Noise Policy for Industry (2017).*

*“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, ~~commercial premises~~ 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 ~~Industrial Noise Policy~~ Noise Policy for Industry published by the NSW Environment Protection Authority.*

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

**2. Condition Nos. G1, G2, G3 and G4 shall be amended to read as follows:**

***Infrastructure Repair and Completion of Works - Office Tower and Hotel***

G1. *Prior to the issue of the **relevant** Occupation Certificate any and all works relating to the development:*

- a. *in the road reserve must be fully completed; and*
- b. *to repair and make good any damaged public infrastructure caused as a result of any works relating to the development (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete vehicles) must be fully repaired;*

*To the satisfaction of Council Engineers at no cost to Council.*

*(Reason: Maintain quality of Public assets)*

***Certification - Civil Works - Office Tower and Hotel***

G2. a) *An appropriately qualified and practising Civil Engineer must certify to the Certifying Authority that the stormwater drainage system is constructed in accordance with this consent and the provisions of the applicable Australian Standard. A copy of the certificate must be submitted to Council (if it is not the Certifying Authority) upon completion of the development works and prior to the issue of ~~an~~ the relevant Occupation Certificate.*

- b) *An appropriately qualified and practicing Civil Engineer must certify to the Certifying Authority that the vehicular crossing and associated works and road works were constructed in accordance with this consent and any approval for works in the road reserve issued by the Council. A copy of the certificate must be submitted to Council (if it is not the Certifying Authority), upon completion of the development works and prior to the issue of ~~an~~ **the relevant** Occupation Certificate.*

*(Reason: Compliance with the Consent)*

- 3. The following additional conditions shall be imposed in relation to the completion of works to the Fire House Hotel**

***Infrastructure Repair and Completion of Works - Firehouse Hotel***

- G5. *Prior to the issue of the relevant Occupation Certificate the work shown clouded and highlighted within the public domain on drawings numbered C102, prepared by Taylor Thompson Whitting, and dated 21 January 2022 shall be carried out and finished in a safe condition to the satisfaction of Council's Engineers.*

*The area of work within the public domain nominated on the above drawings is to be maintained in a satisfactory standard at all times, at the cost of the developer, until such time as the public domain works required by the main consent are completed to the written satisfaction of Council's Engineers.*

*(Reason: To ensure public safety)*

***Utility Services - Firehouse Hotel***

- G6. *All utility services to the Firehouse Hotel shall be adjusted to the correct levels and/or location/s required by this consent, prior to issue of the relevant occupation certificate for works to the Firehouse Hotel. This shall be at no cost to Council.*

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

***Completion of Works - Firehouse Hotel***

- G7. *For the purposes of any Occupation Certificate relating to works to the Fire House Hotel, and to enable the use of the Firehouse Hotel premises to recommence whilst construction work associated with the Office Tower and Hotel continues, the requirements of Conditions G1, G2, G3, G4 and G4A need not be demonstrated. The Certifying Authority must be satisfied that the works to the Fire house premises have been carried out in accordance with the requirements of the relevant Construction Certificate and the provisions of the National Construction Code.*

*(Reason: To enable the reasonable early use of the Firehouse Hotel premises and for clarity)*

**Reasons for Approval:**

The proposed modification is considered to be consistent with the originally approved development application and s.4.55 of the EP&A Act 1979. The proposed modification is consistent with the reasons for the granted of development consent to the originally approved development.

Having regard to the provisions of section 4.55 and 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 proposed modification to conditions is supported on the basis that the amendments proposed would provide for appropriate staging and registration of lots to facilitate the development. Subject to compliance with amended conditions of consent the modifications would reasonably protect the public interest to ensure that the road dedication will proceed in accordance with the original consent.

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

In accordance with the provisions of the Clause 3.4.2 of the North Sydney Community Participation Plan 2019, the subject application was not required to be notified. Therefore, no submissions have been received.

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The conditions attached to the original consent for Development Application No. 368/18 by endorsed date of **28 March 2019** still apply.

**ADVISINGS**

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

**20 May 2022**

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DATE

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Signature on behalf of consent authority  
DAVID HOY  
**TEAM LEADER - ASSESSMENTS**