

Andrew James Sales
Unit 4 10-18 Cliff Street
MILSONS POINT NSW 2061

335/11
(DWH) (CIS)

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (AS AMENDED)

**Notice to Applicant of Determination of Request
to Modify a Development Consent**

Pursuant to Section 96 of the Act notice is hereby given of the determination by the consent authority of your request for a modification to Development Consent No. **335/11** and registered in Council's records as Application No. **335/11/3** relating to the land described as **4/10-18 Cliff Street, Milsons Point**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 22 November 2011, has been determined in the following manner:-

1. To amend Condition A1 of the consent to read as follows:

Development in Accordance with Plans

A1. The development being carried out in accordance with drawings numbered 24/2011-A2, sheets 1-6, dated 25/6/2011, drawn by Eco-Space Design and received by Council on 18 August 2011; and section drawing dated 30/10/2011, drawn by Eco-Space Design, received by Council on 31 October 2011 and endorsed with Council's approval stamp, as amended by the following:

- Drawings numbered 22-02/2013, sheets 2 to 6 inclusive, dated February 2013, drawn by Eco-space Design, and received by Council on 9 April 2013;
- Drawings numbered S.96 5/2016, sheets 1 to 6 inclusive, dated April 2016, drawn by Eco-space Design, and received by Council on 13 May 2016.

except where amended by the following conditions.

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, and public information)

2. The proposal to delete Condition G1 (Covenant to Windows on southern façade) from the consent is not approved on the following grounds:

Particulars

- a.** The purpose of the condition is to inform any future purchaser of the potential for future development on adjoining properties to adversely impact on the approved windows and to ensure adequate legal registration is maintained on the title.
- b.** The requirement to create a covenant that the premises be restricted is reasonable and would inform future purchasers of appropriate restrictions on title.
- c.** The requirement for a covenant is reasonable given the location of the approved windows on the common property boundary at nil setback.
- d.** The future development of adjoining land could not unreasonably be restricted by the existence of the subject windows.
- e.** Council must have regard for the future potential for development controls to be altered in the future which may affect the right to light and views of the subject premises.
- f.** The condition is lawful, relates to the nature of the development consent issued by Council, has been applied in accordance with Section 80A of the EP & A Act 1979 and satisfies the objects of the Act to ensure the orderly development of land.

The conditions attached to the original consent for Development Application No. 335/11 by endorsed date of 22 November 2011 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 97 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. 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) Pursuant to Section 96AB, an applicant is able to request Council to review its determination. An application for a review under Section 96AB 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 81A(2)(a) of the Act.
 - (ii) A Principal Certifying Authority is to be appointed and Council is to be notified of the appointment in accordance with Section 81A(2)(b1)(i) 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 81A(2)(c) 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 96 of the Environmental Planning & 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 96 of the Environmental Planning & Assessment Act.

DATE

Signature on behalf of consent authority
DAVID HOY
TEAM LEADER ASSESSMENTS