



Geen Hong Walsh
C/- Squillace Architects
1/80 Albion Street
SURRY HILLS NSW 2010

D363/17
RT (PE)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 363/17/4 - APPROVAL**

Development Consent Number: 363/17

Land to which this applies: 105 Kirribilli Avenue, Kirribilli
Lot No.: 4, DP: 13064

Applicant: Geen Hong Walsh

Proposal: Section 4.55(2) modifications to D363/17 for various modifications to the approved apartment development

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. **363/17** and registered in Council's records as Application No. **363/17/4** relating to the land described as **105 Kirribilli Avenue, Kirribilli**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **2 May 2018**, has been determined in the following manner:

- To modify the development consent (D363/17) and modify conditions A1, C30, C34 and C35 to read as follows:***

Development in Accordance with Plans (S4.55 Amendments)

A1. The development being carried out in accordance with the following drawings

Drawing No.	Issue	Drawn by	Dated
DA-101	C	Squillace Architects	11/01/2018
DA-102	C	Squillace Architects	11/01/2018
DA-103	C	Squillace Architects	11/01/2018
DA-104	C	Squillace Architects	11/01/2018
DA-105	C	Squillace Architects	11/01/2018
DA-106	B	Squillace Architects	11/01/2018
DA-201	C	Squillace Architects	11/01/2018
DA-202	C	Squillace Architects	11/01/2018
DA-203	C	Squillace Architects	11/01/2018

DA-204	C	Squillace Architects	11/01/2018
DA-301	A	Squillace Architects	30/08/2017
DA-303	A	Squillace Architects	11/01/2018
DA-309	A	Squillace Architects	11/01/2018

and endorsed with Council's approval stamp, except as modified by highlighting on the following drawings for D363/17/2:

Drawing No.	Issue	Date	Drawn by	Received
DA-011	A	08/07/2019	Squillace Architects	9/08/2019
DA-012	A	08/07/2019	Squillace Architects	9/08/2019
DA-101	B	10/12/2019	Squillace Architects	10/12/2019
DA-102	C	10/12/2019	Squillace Architects	10/12/2019
DA-103	B	10/12/2019	Squillace Architects	10/12/2019
DA-104	B	10/12/2019	Squillace Architects	10/12/2019
DA-105	B	10/12/2019	Squillace Architects	10/12/2019
DA-106	C	10/12/2019	Squillace Architects	10/12/2019
DA-201	C	10/12/2019	Squillace Architects	10/12/2019
DA-202	C	10/12/2019	Squillace Architects	10/12/2019
DA-203	C	10/12/2019	Squillace Architects	10/12/2019
DA-204	C	10/12/2019	Squillace Architects	10/12/2019
DA-301	B	19/11/2019	Squillace Architects	27/11/2019
DA-303	A	08/07/2019	Squillace Architects	9/08/2019
DA-309	A	08/07/2019	Squillace Architects	9/08/2019

and endorsed with Council's approval stamp, except as modified by highlighting on the following drawings for D363/17/4:

Plan No./Issue	Description	Prepared by	Dated
DA-011 Issue C	Site Plan	Squillace Architects	5/02/2024
DA-012 Issue C	Demolition Plan	Squillace Architects	5/02/2024
DA-101 Issue E	Basement Floor Plan	Squillace Architects	5/02/2024
DA-102 Issue F	Lower Ground Floor Plan	Squillace Architects	5/02/2024
DA-103 Issue E	Ground Floor Plan	Squillace Architects	5/02/2024
DA-104 Issue E	Level 1 Floor Plan	Squillace Architects	5/02/2024
DA-105 Issue E	Level 2 Floor Plan	Squillace Architects	5/02/2024
DA-106 Issue F	Roof Plan	Squillace Architects	5/02/2024
DA-201 Issue E	North Elevation	Squillace Architects	5/02/2024
DA-202 Issue E	South Elevation	Squillace Architects	5/02/2024
DA-203 Issue E	East Elevation	Squillace Architects	5/02/2024
DA-204 Issue E	West Elevation	Squillace Architects	5/02/2024
DA-301 Issue E	Long Section	Squillace Architects	5/02/2024
DA-303 Issue C	Short Section	Squillace Architects	5/02/2024
DA-309 Issue B	Carlift Section and Gate	Squillace Architects	5/02/2024

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

BASIX Certificate

C30. Under clause 75 of the Environmental Planning and Assessment Regulation 2021, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. **830542M_05** for the development are fulfilled. Plans and specifications complying with this condition must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The Principal Certifier 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 the proposed development will meet the Government's requirements for sustainability and statutory requirements)

Amendments to the Landscape Plan

C34. The landscape plan, based on LPDA18-06/1-5, dated 22/11/2019, prepared by Conzept Landscape Architects, must be amended as follows to provide an appropriate landscaped setting:

- (a) Retention of *Olea europaea* var *Africana* (African Olive) located within No. 107 Kirribilli Avenue;
- (b) Plant species are to be perennials to ensure longevity of the design proposal;
- (c) Plant species are to be correctly labelled as native or exotic;
- (d) Plant common names are to match the Latin name;
- (e) Plant species on the roof top garden are to have a maximum of 300mm mature height;
- (f) One Jacaranda mimosifolia (Jacaranda) street tree is to be planted at 100 L pot size on Council's footpath in alignment with existing plantings between the proposed driveway and proposed pedestrian entry.

The revised landscape plan, demonstrating compliance with the above requirements, must be submitted for the written approval from Council's Team Leader Assessments in consultation with Council Landscape Development Officer.

Council's written approval must be provided to the certifier prior to the issue of any construction certificate.

The Principal Certifier must ensure that the amended landscape plan and other plans and specifications submitted fully satisfy the requirements of this condition.

(Reason: To ensure landscape quality and residential amenity)

External Materials, Colours and Finishes

C35. A detailed schedule of materials, colours and finishes, based on drawings numbered DA700 prepared by Squillace Architects and received by Council on 27 November 2019, must be submitted for the written approval of Council's Team Leader Assessments, in consultant with Council's Conservation Planner.

The grey render finish (item 6) as indicated on the architectural drawings submitted with D363/17/4 (DA-201 Issue E, DA-202 Issue E, DA-203 Issue E, and DA-204 Issue E, prepared by Squillace Architects, and received by Council on 5 February 2024) is not approved and must not be applied to the southern, eastern and western elevations of the approved apartment building.

An alternative mid to dark tone is to be selected that complies with Policy 2.2 of the Sydney Opera House Conservation Management Plan and shall be incorporated in a detailed schedule of materials, colours and finishes, that is based on drawing numbered DA700, prepared by Squillace Architects, and received by Council on 27 November 2019.

The schedule of materials, colours and finishes demonstrating compliance with the above requirements must be submitted for the written approval of Team Leader Assessments in consultation with the Council Conservation Planner.

Council's written approval must be provided to the certifier prior to the issue of any construction certificate.

Plans and specifications which comply with this condition must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The Principal Certifier 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: Heritage conservation)

Reasons for Approval:

The proposed modifications satisfy the provisions of Section 4.55 in that the proposed development is substantially the same as what was approved under DA 363/17 as the proposed modifications will not alter the use, scale and form of the development as originally approved.

The modified development complies with the building height control in Clause 4.3(2) in NSLEP 2013 and no significant changes to the approved building setbacks.

The proposed modifications would not change the character of the approved development (being a four-storey scale of the development with a three storey street frontage).

The non-compliances with the DCP site coverage, unbuilt upon and landscape areas control are considered to be acceptable because the proposed modifications are generally consistent with the site coverage and landscaped area objectives and no significant changes to the building footprint and the overall density of the subject site. The retention of an existing tree along the eastern property boundary would maintain the landscaping quality of the subject site and the locality.

The proposed modifications are acceptable on heritage grounds subject to amendments to require a darker colour to be applied to the eastern, western and southern elevations to minimise any visual impacts on the Sydney Opera House buffer zone.

The issues raised in the submissions received have been addressed in the assessment report.

The proposal was found to be acceptable in the site circumstances and is recommended that the subject Section 4.55 application be approved with modifications to the relevant conditions.

How community views were taken into account:

The subject application was notified to adjoining properties and the Bradfield Precinct inviting comment between 4 and 18 November 2022. This notification attracted two (2) submissions.

Following the submission of the amended plans, the property owner of No. 107 Kirribilli Avenue was notified about the submission of the amended plans because of the retention of an existing tree located along the common property boundary of the subject site and No. 107 Kirribilli Avenue between 26 February and 11 March 2024. No further submission was received.

The issues raised in the submissions received have been addressed in this assessment report.

The conditions attached to the original consent for Development Application No. **363/17** by endorsed date of **2 May 2018** still apply.

ADVISINGS

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

24 April 2024

DATE



Signature on behalf of consent authority
ROBIN TSE
SENIOR ASSESSMENT OFFICER