



Ms Kate Bartlett
Level 16, 175 Pitt Street
SYDNEY NSW 2000

D237/18
RT (PE)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 237/18/4 - APPROVAL**

Development Consent Number: 237/18

Land to which this applies: 11 Bennett Street, Cremorne
Lot No.: B, DP: 350785
Lot No.:1, DP:1110849

Applicant: Kate Bartlett

Proposal: Section 4.55(1A) modification to DA 237/18 for changes to Condition J5

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. **237/18** and registered in Council's records as Application No. **237/18/4** relating to the land described as **11 Bennett Street, Cremorne**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **16 November 2018**, has been determined in the following manner:

1. To modify Condition J5 to read as follows:

New Drainage Easement

- J5. An Instrument pursuant to Section 88B of the *Conveyancing Act 1919* and one copy must be submitted to Council in registrable form, providing for:
- a. A drainage easement 1 metre wide in favour of lot 2 over the newly constructed stormwater pipeline, burdening lot 1.
 - b. The easement shall be at no cost to Council;
 - c. North Sydney Council being nominated in the Instrument as the only party authorised to release, vary or modify the Instrument.

Upon Council being satisfied as to the terms of the Instrument, North Sydney Council's official seal will be affixed to these documents, prior to submission to the Land & Property Information Office for registration.

The Instrument creating the easement required by this condition of consent must be registered on the Title of the development site prior to the issue of an Occupation Certificate or commencement of use of the site, whichever is the earlier. Evidence of registration of the easement must be provided to Council prior to issue of any Subdivision Certificate.

All costs associated with the preparation, approval and registration of the Instrument required by this condition of consent must be borne by the person acting on this consent including the reasonable costs of Council in obtaining advice, negotiating the terms or otherwise facilitating the execution and registration of the required Instrument.

(Reason: To ensure future provision for maintenance of the drainage system)

Reasons for Approval:

The proposed modification to DA 237/18 for modifying the wording of Condition J5 is considered to be acceptable and would not alter the nature of the previously approved development. The proposed modification would not change the level of compliance with the relevant development standards and controls as contained in North Sydney LEP 2013 and North Sydney DCP 2013.

Furthermore, there would be no impacts on the residential amenity of the subject site and the adjoining properties as well as the character of the locality.

The proposal was found to be acceptable in the site circumstances and is recommended that the subject Section 4.55(1A) application be approved.

How community views were taken into account:

The application was notified between 19 April to 3 May 2024. Council received no submissions at the close of the notification period.

The conditions attached to the original consent for Development Application No. **237/18** by endorsed date of **16 November 2018** still apply.

ADVISINGS

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

7 May 2024

DATE



Signature on behalf of consent authority
ROBIN TSE
SENIOR ASSESSMENT OFFICER