

Jonathan Glenn Bennett
38 Fitzroy Street
KIRRIBILLI NSW 2061

D159/16
(RT) (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. **159/16** and registered in Council's records as Application No. **159/16/3** relating to the land described as **38 Fitzroy Street, Kirribilli**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 2 November 2016, has been determined in the following manner:-

To modify conditions A1, C9, C16 and C22 to read as follows:

Development in accordance with Plans

A1. The development must be carried out in accordance with the following drawings and documentation and endorsed with Council's approval stamp:

Plan No.	Issue	Date	Drawn by	Received
DA101	C	24.01.2017	2RKS Architecture + Design	31 January 2017
DA103	C	24.01.2017	2RKS Architecture + Design	31 January 2017
DA104	C	24.01.2017	2RKS Architecture + Design	31 January 2017
DA105	C	24.01.2017	2RKS Architecture + Design	31 January 2017
DA106	C	24.01.2017	2RKS Architecture + Design	31 January 2017
DA107	C	24.01.2017	2RKS Architecture + Design	31 January 2017

except where amended by the following conditions of this consent (**D159/16/3**):

Plan No.	Issue	Date	Drawn by	Received
DA101	F	25.09.2017	2RKS Architecture + Design	25 September 2017
DA103	F	25.09.2017	2RKS Architecture + Design	25 September 2017
DA104	F	25.09.2017	2RKS Architecture + Design	25 September 2017
DA105	F	25.09.2017	2RKS Architecture + Design	25 September 2017
DA106	F	25.09.2017	2RKS Architecture + Design	25 September 2017

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

Structural Adequacy (Semi Detached and Terrace Buildings)

- C9. A report from an appropriately qualified and practising structural engineer must, certifying the structural adequacy of the adjoining properties No's. 36 and 40 Fitzroy Street, Kirribilli and their ability to withstand the proposed works, including the works approved under D159/16/3, and outlines any measures required to be implemented to ensure that no damage will occur to adjoining premises during the course of the works, must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The measures outlined in the certified report must be complied with at all times.

Under no circumstances shall the party or common wall be extended or altered without the prior written consent of the adjoining owner. Any such extension of the party wall shall be noted on title by way of appropriate easement or Section 88B instrument.

(Reason: To ensure the protection and structural integrity of adjoining properties, and that common law property rights are recognised)

Stormwater Disposal

- C16. Stormwater runoff generated by the approved development, including water collected along the eastern property boundary, must be conveyed by gravity to the existing stormwater drainage disposal system. A licensed tradesman shall install plumbing components to achieve this requirement in accordance with the BCA and current plumbing standards and guidelines.

Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of any 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 appropriate provision for disposal and stormwater management arising from the development)

BASIX Certificate

C22. Under clause 97A(3) of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. (A238868_04) for the development are fulfilled. Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any 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 the proposed development will meet the Government's requirements for sustainability and statutory requirements)

Compliance with Certain Conditions

G6. Prior to issue of any Occupation Certificate, Conditions C1, C2, C3, C4, C23, C24, C25, C26, C27, C28 and G7 must be certified as having been implemented on site and complied with.

(Reason: To ensure the development is completed in accordance with the requirements of this consent)

To insert the following additional conditions A4, C23, C24, C25, C26, C27, C28, G7 and I1 so far as to read:

Terms of Consent (D159/16/3)

A4. Approval is granted for the following works as shown on drawings numbered DA101F, DA103F, DA104F, DA105F, DA106F, dated 25.09.2017, drawn by 2RKS Architecture + Design, and received by Council on 25 September 2017:

- (a) Excavation within the undercroft area on lower ground level to provide access to the proposed lift shaft;
- (b) Construction of a glazed lift shaft at the southern end of the breezeway;
- (c) Installation of a lift serving the lower ground, ground and the first levels;
- (d) Installation of solar panels on the roof over the service wing;
- (e) New windows for the first floor bedroom (Bedroom 3) including two (2) windows on the rear (northern) elevation and one (1) new window on the eastern elevation.

No approval is given or implied in this consent for any other works, both internal and external, within the subject property.

(Reason: To clarify the terms of the consent)

Design Modifications (D159/16/3)

C23. The design of proposed development must be modified as follows to provide a non-trafficable area within the breezeway and the roof over the service wing:

- (a) All balustrades within the breezeway, the service ladder on the eastern elevation of the service wing and the galvanised steel walkway adjacent to the east of the solar panels on the roof of the service wing are to be deleted and form no part of this consent; and
- (b) The provision of anchorage points on the roof over the service wing to allow maintenance/repair works to the solar panels. The design and installation of the anchorage points must comply with the relevant Australian Standards and NSW Work Health and Safety requirements.

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 the breezeway and the roof over the service wing will be non-trafficable)

Balustrades - Rear (Northern) Elevation

C24. New balustrades to the new balconies on the rear (northern) elevation must be made of Victorian cast iron style panels and timber or cast iron posts.

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 be sympathetic to the terrace and to clarify the drawings)

First floor Bedroom 3 Door and Windows – Rear (Northern) Elevation

C25. New doors and windows on the rear (northern) elevation must be timber framed.

The proposed windows on each side of the doorway to first floor rear balcony must be relocated to provide 350mm separation from the frame of the new doorway.

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 be sympathetic to the character of the original dwelling)

Solar Panels

C26. All solar panels must be laid flat onto the roof plane.

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 minimise the visual impact to the group of heritage items)

Noise from Plant and Equipment

C27. The use of all plant and equipment, including the approved lift, installed on the premises must not:

(a) 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 Industrial Noise Policy shall be applied.

(b) Cause “offensive noise” as defined in the *Protection of the Environment Operations Act 1997*.

“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 published by the NSW Environment Protection Authority.

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

Vibration from Plant and Equipment

C28. The use of all plant and equipment to be installed on the premises must comply with the vibration limits specified in “Assessing Vibration: a technical guideline” issued by the NSW Environment Protection Authority, at the boundary of any affected receiver.

A certificate from an appropriately qualified acoustical consultant eligible for membership of the Association of Australian Acoustic Consultants must be submitted to the Certifying Authority, certifying that all plant and equipment on the site, together with the proposed plant and equipment, operating contemporaneously will comply with the requirements of this condition.

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.

“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 and commercial premises and such other affected receiver as may be notified by the Council in writing.

“boundary” includes any window or elevated window of an affected residence.

“contemporaneously” means *existing at or occurring in the same period of time* (Macquarie Dictionary 3rd rev. ed. 2004).

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

Noise Certification

G7. Prior to issue of the any Occupation Certificate a certificate from an appropriately qualified acoustical consultant eligible for membership of the Association of Australian Acoustic Consultants is to be submitted to, and approved by, the Certifying Authority certifying that the noise and vibration from use of the development complies with the conditions of consent here-in.

(Reason: To ensure acoustic amenity)

Non-Trafficable Areas

II. The first floor breezeway and the roof over the service wing must be non-trafficable. Access to these areas must be for the purpose of maintenance/repairs only.

(Reason: To ensure that the breezeway and the roof over the service wing are non-trafficable areas)

The conditions attached to the original consent for Development Application No. 159/16 by endorsed date of 2 November 2016 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 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
ROBYN PEARSON
TEAM LEADER (ASSESSMENTS)