

Original signed by: **Robyn Pearson** on: **7/6/18**

Collard Maxwell Architects
Level 2, 97 Pacific Highway
NORTH SYDNEY NSW 2060

D94/14
(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 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. **94/14** and registered in Council's records as Application No. **94/14/5** relating to the land described as **21 Elamang Avenue, Kirribilli**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 11 August 2014, has been determined in the following manner:-

A. To modify conditions A1, C1 and C2 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
DA-02	A	18 March 2014	Collard Maxwell Architects	3 April 2014
DA-03	A	18 March 2014	Collard Maxwell Architects	3 April 2014
DA-04	A	18 March 2014	Collard Maxwell Architects	3 April 2014
DA-05	A	18 March 2014	Collard Maxwell Architects	3 April 2014
DA-06	A	18 March 2014	Collard Maxwell Architects	3 April 2014
DA-07	A	18 March 2014	Collard Maxwell Architects	3 April 2014
DA-08	A	18 March 2014	Collard Maxwell Architects	3 April 2014
DA-09	A	18 March 2014	Collard Maxwell Architects	3 April 2014
DA-10	A	18 March 2014	Collard Maxwell Architects	3 April 2014
DA-01	A	3 April 2014	Collard Maxwell Architects	3 April 2014
DA-11	A	3 April 2014	Collard Maxwell Architects	3 April 2014

except where amended by the following conditions of this consent (D94/14/2):

Plan No.	Issue	Date	Drawn by	Received
DA-01	B	21 August 2014	Collard Maxwell Architects	25 August 2014
DA-02	B	20 August 2014	Collard Maxwell Architects	25 August 2014
DA-03	C	2 October 2014	Collard Maxwell Architects	2 October 2014
DA-04	B	20 August 2014	Collard Maxwell Architects	25 August 2014
DA-05	B	20 August 2014	Collard Maxwell Architects	25 August 2014
DA-06	B	20 August 2014	Collard Maxwell Architects	25 August 2014
DA-07	B	20 August 2014	Collard Maxwell Architects	25 August 2014
DA-08	B	20 August 2014	Collard Maxwell Architects	25 August 2014
DA-09	B	12 August 2014	Collard Maxwell Architects	25 August 2014
DA-12	B	12 August 2014	Collard Maxwell Architects	25 August 2014

except where amended by the following conditions of this consent (D94/14/4):

Plan No.	Issue	Date	Drawn by	Received
DA-01	C	29 January 2015	Collard Maxwell Architects	17 February 2015
DA-05	E	29 January 2015	Collard Maxwell Architects	17 February 2015
DA-07	E	29 January 2015	Collard Maxwell Architects	17 February 2015
DA-33	A	29 January 2015	Collard Maxwell Architects	17 February 2015
DA-34	A	29 January 2015	Collard Maxwell Architects	17 February 2015

except where amended by the following conditions of this consent (D94/14/5):

Plan No.	Issue	Date	Drawn by	Received
DA-01	D	8 September 2017	Collard Maxwell Architects	7 May 2018
DA-03	B	8 September 2017	Collard Maxwell Architects	7 May 2018
DA-04	C	8 September 2017	Collard Maxwell Architects	7 May 2018
DA-05	F	8 September 2017	Collard Maxwell Architects	7 May 2018
DA-06	E	8 September 2017	Collard Maxwell Architects	7 May 2018
DA-07	F	4 June 2018	Collard Maxwell Architects	4 June 2018
DA-08	C	8 September 2017	Collard Maxwell Architects	7 May 2018
DA-09	B	8 September 2017	Collard Maxwell Architects	7 May 2018

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

Landscape Plan

- C1. The applicant shall submit a landscape plan for the area within the subject site affected by the proposed works, ~~including but not limited to the proposed roof terrace~~, identifying the species of plants to be planted, their numbers and their mature heights.

The landscape plan shall provide details including, but not limited to the following:

- (a) The provision of screen planting on a strip of land with a minimum width of 500mm between the new footpath and the common property boundary with No.19 Elamang Avenue, as marked in red on the approved plans, to provide visual privacy protection for the adjoining property; and
- ~~(b) Details of plants to be planted on the roof terrace planters. The overall height of the planters and the planting shall not exceed 1.2m from floor level.~~

The Certifying Authority must ensure that the building plans and specifications submitted by the Applicant, referenced and accompanying the issued Construction Certificate, fully satisfy the requirement of this condition.

(Reason: To ensure appropriate landscaping treatments and amenity protection for adjoining properties)

Upgrade of Existing Building – Fire Spread and Safe Egress

- C2. Pursuant to Clause 94 of the EP&A Regulation 2000, aspects of the existing building must be brought into conformity with the National Construction Code (NCC).

In this respect, the recommendations of Fire Safety Upgrade Report by Holmes Fire dated 21 August 2018 Version F must be carried out as part of the overall development.

Plans and/or specifications showing the upgrading works which must be carried out under this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

Notes:

- 1) The Certifying Authority must be satisfied that the plans and specifications submitted prior to the issue of any Construction Certificate comply with the requirements of this condition.
- 2) The Certifying Authority issuing the Construction Certificate has no power to remove the requirements to upgrade the existing building as required by this condition.
- 3) Where this condition specifies compliance with the performance requirements of the NCC, the Certifying Authority, subject to their level of accreditation, may be satisfied as to such matters.

(Reason: Application of Regulations relating to Fire and Life Safety)

B. To insert the following condition A7, so as to read:

Terms of Consent (D94/14/5)

A7. Approval is granted for the following works as shown on drawings numbered DA-01 Issue D, DA-03 Issue B, DA-04 Issue C, DA-05 Issue F, DA-06 Issue E, DA-07 Issue E, DA-08 Issue C, DA-09 Issue B, all dated 8 September 2017, drawn by Collard Maxwell Architects, and received by Council on 7 May 2018 and drawing numbered DA-07 Issue F, dated 4 June 2018, drawn by Collard Maxwell Architects, and received by Council on 4 June 2018:

1. Delete the approved roof terrace and associated structures on the roof level; and
2. To modify Condition C2 to change the reference to the latest Fire Safety Upgrade Report prepared by Holmes Fire and dated 21 August 2017 (Version F).

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

(Reason: To ensure the terms of the consent are clear)

The conditions attached to the original consent for Development Application No. 94/14 by endorsed date of 11 August 2014 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. 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 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 Certifying Authority 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 & 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 & Assessment Act.

DATE

Signature on behalf of consent authority
ROBYN PEARSON
TEAM LEADER (ASSESSMENTS)