

Lorraine Michelle Kay
46 Jeffreys Street
KIRRIBILLI NSW 2061

D5/16
RT (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 5/16/4 – APPROVAL**

Development Consent Number: 5/16/4

Land to which this applies: 46 Jeffreys Street, Kirribilli
Lot No.: C, DP: 377418

Applicant: Lorraine Michelle Kay

Proposal: Section 4.55 (1A) modifications to Condition G4.

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. **5/16** and registered in Council's records as Application No. **5/16/4** relating to the land described as **46 Jeffreys Street, Kirribilli**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 6 July 2016, has been determined in the following manner: -

1. To modify Condition G4 as follows:

Damage to Adjoining Properties

- G4. On completion of the development the subject of this consent and prior to the issue of the Occupation Certificate, a report is to be prepared by an appropriately qualified consultant and is to be provided to the Certifying Authority (and a copy to Council if it is not the Certifying Authority) certifying:
- a) whether any damage to adjoining properties has occurred as a result of the development;
 - b) the nature and extent of any damage caused to the adjoining property as a result of the development;
 - c) the nature and extent of works required to rectify any damage caused to the adjoining property as a result of the proposed development;

- d) the nature and extent of works carried out to rectify any damage caused to the adjoining property as a result of the development; and
- e) the nature and extent of any agreements entered into for rectification of any damage caused to the adjoining property as a result of the development.

The report and certification must reference the dilapidation survey and reports required to be provided to the Certifying Authority in accordance with this consent.

All costs incurred in achieving compliance with this condition shall be borne by the developer.

(Reason: To ensure adjoining owner's property rights are protected in so far as possible)

2. To insert a new condition no. A6 as follows:

Terms of Consent (D5/16/4)

A6. Approval is granted for modifications to Condition G4 only.

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)

Reason for approval:

The proposed modifications satisfy the provisions of Section 4.55(1A) in that the proposal is considered to be substantially the same development as that which was originally approved by Council.

The proposed modifications to Condition G4 would not involve physical changes to the approved development and there would be no change to the level of compliance with the relevant LEP development standards and DCP controls.

In summary, the proposed modifications were found to be acceptable because the intent of the original condition would be maintained with the minor change to Condition G4. It is recommended that the subject Section 4.55(1A) application be approved by Council.

How community views were taken into account:

The views of the community have been taken into account in the consideration of the application including the notification of the original S4.55 proposal to the adjoining properties between 18 February and 4 March 2019. The issues raised in the submissions received by Council have been addressed in the assessment of the application.

The conditions attached to the original consent for Development Application No. 5/16 by endorsed date of 6 July 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 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 & 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.

Endorsed for and on behalf of North Sydney Council

DATE

Signature on behalf of consent authority
ROBYN PEARSON
TEAM LEADER ASSESSMENTS