

Procorp Developments Pty Ltd  
3/31A Fitzroy Street  
KIRRIBILLI NSW 2061

D305/18  
LK (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 MODIFICATION 305/18/2 – APPROVAL**

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**Development Consent Number:** 305/18/2

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**Land to which this applies:** 31A Fitzroy Street, Kirribilli  
Lot No.: 3, DP: 908369

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**Applicant:** Procorp Developments Pty Ltd

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**Proposal:** Section 4.55(1) modifications to DA 305/18 to modify  
Condition K1.

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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. **305/18** and registered in Council's records as Application No. **305/18/2** relating to the land described as **31A Fitzroy Street, Kirribilli**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 11 December 2018, has been determined in the following manner: -

**1. To modify the development consent (305/18) and modify condition K1 to read as follows:**

**Encroachments**

K1. The Strata Certificate that authorises registration of the Strata Plan at NSW Land Registry Services shall not be issued until the applicant and Council have entered into a Deed of Agreement which formalises the existing balcony encroachments which protrude into Councils airspace over the public footpath in the road reserve of Fitzroy and Jeffreys Streets, in accordance with the Roads Act 1993. The required particulars of this agreement are as follows:

1. A current Plan of Survey prepared by a Registered Surveyor must be submitted with the 'Total Area of the Encroachment' identified and noted in the Plan in m<sup>2</sup>, prior to the Deed of Agreement being issued. The Plan must be accompanied by a letter from the Surveyor confirming the area in m<sup>2</sup>.
2. Prior to the issue of any strata subdivision, the Deed of Agreement must be executed by both Council and the encroaching owner.

3. The effective date of the Agreement shall precede the release of the Strata Subdivision Certificate.
4. The encroaching property owner shall be responsible for all maintenance and insurance and the Certificate of Currency will note Council as an interested party.”

(Reason: To ensure that the existing encroachments over Council’s land are regularised, insured and properly managed)

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**Reason for approval:**

The proposed modification of Condition K1, which relates to a Deed of Agreement which formalises the existing balcony encroachments, the proposed development is substantially the same as what was approved under DA 305/18 as the proposed modifications will not alter the use or the form of the development as originally approved

In addition, 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(1) application be approved with modifications to the relevant conditions.

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**How community views were taken into account:**

Notification of the subject application was waived in accordance with Section 4.5.1 in Part A of North Sydney DCP 2013.

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The conditions attached to the original consent for Development Application No. 305/18 by endorsed date of 11 December 2018 still apply.

**ADVISINGS**

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

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Signature on behalf of consent authority  
ROBIN TSE  
**A/TEAM LEADER ASSESSMENTS**