

Original signed by: George Youhanna Dated: 28/5/2019

ABC Planning Pty Ltd
Shop 4, 500 Elizabeth Street
SURRY HILLS NSW 2010

D460/16
GJY(CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.56 MODIFICATION 460/16/5 – APPROVAL**

Development Consent Number: 460/16

Land to which this applies: 18 Illiliwa Street, Cremorne
Lot No. 5, DP 900582

Applicant: ABC Planning Pty Ltd

Proposal: Modification of consent for demolition of existing residential flat building and erection of replacement residential flat building with basement car parking – Modify width of drainage easement from 1.0m to 0.9m in part.

Pursuant to Section 4.56 of the Act notice is hereby given of the determination by the consent authority of your request for a modification to Development Consent No. **460/16** and registered in Council's records as Application No. **460/16/5** relating to the land described as **18 Illiliwa Street, Cremorne**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 13 May 2019, has been determined in the following manner: -

Condition AA1 to be modified as follows:

Drainage Easement (Deferred Commencement)

- AA1 a) A drainage easement at least 0.9m wide and extending through to Brightmore Street is to be created in order to satisfactorily drain stormwater from No. 18 Illiliwa Street.
- b) A Positive Covenant (under the provisions of the Conveyancing Act 1919) is to be created over the affected downstream property to ensure the ongoing maintenance of stormwater drainage facilities related to the development at No. 18 Illiliwa Street. Details are to be submitted to Council for approval before registration with the Land Titles Office.

The Positive Covenant and any associated documentation shall be prepared and registered at the sole cost of the applicant, including the reasonable costs of Council in obtaining legal advice on the restriction terms, the cost and expense of negotiating the terms and conditions of the restriction, producing documents or otherwise facilitating the preparation and registration of the requirement documents, which shall bind all successors in title and shall only be subject to variation at the discretion of the Council.

(Reason: To provide satisfactory stormwater management that does not rely on a pump-out system)

Reason for approval:

The applicant seeks modification of the subject development under S 4.56 of the Environmental Planning and Assessment Act 1979. The application has been assessed against the relevant statutory controls and with regard to the merits of the application and submissions, in the context of a site enjoying existing use rights.

The proposed modification is very minor in nature and is considered satisfactory with regard to an assessment under S4.15 of the Environmental Planning and Assessment Act 1979. Council's Drainage Engineer has raised no objection to the proposed modification.

How community views were taken into account:

The application was not required to be notified due to the nature of the proposed modification. Despite not being notified, one submission was received.

The conditions attached to the original consent for Development Application No. 460/16 as set out in the Land and Environment Court Judgement dated 4 January 2018 still apply.

ADVISINGS

- (a) Council is always prepared to discuss its decisions and in this regard, please do not hesitate to contact **the undersigned**. However, if you wish to pursue your rights of appeal in the Land and Environment 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 4.56 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 4.56 of the Environmental Planning & Assessment Act.

Endorsed for and on behalf of North Sydney Council

DATE

Signature on behalf of consent authority
**GEORGE YOUHANNA
EXECUTIVE PLANNER**