

Original signed by Kim Rothe on 28/8/2019
Date determined: 20/8/2019
Date operates: 27/8/2019
Date lapses: 27/8/2024

Dobikin Pty Ltd
C/- Redgen Mathieson
Attention: Declan Burn
102/16-28 Foster Street
SURRY HILLS NSW 2010

D139/19
KRR (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
NOTICE OF DETERMINATION – Approval**

Development Application Number: 139/19

Land to which this applies: 106 Kirribilli Avenue, Kirribilli
Lot No.: 7, DP: 1219161

Applicant: Dobikin Pty Ltd

Proposal: Strata Subdivision and new hydrant location.

Determination of Development Application: Subject to the provisions of Section 4.17 of the Environmental Planning and Assessment Act 1979, approval has been granted subject to conditions in the notice of determination.

Date of Determination: 20 August 2019

Reason for approval: In general, the subject strata subdivision is considered acceptable against the relevant provisions within Section 4.15 of the Environmental Planning and Assessment Act 1979, North Sydney Local Environmental Plan 2013 and North Sydney Development Control Plan 2013. As such, the development application is recommended for approval subject to appropriate conditions.

Consent to operate from: 27 August 2019

Consent will lapse on: 27 August 2024

Period of Consent

Subject to Section 4.20 of the Act, this consent becomes effective and operates from the date listed above. The consent lapses five years after the date of consent in accordance with Section 4.53 of the Act and cannot be extended. To activate this consent, works must physically commence onsite by 27 August 2024.

How community views were taken into account:

In accordance with Notifications Section of NSDCP 2013, given the minor nature of the application with no physical works, notification was not considered necessary. As such, no submissions were received at Council regarding the proposed strata subdivision.

Review of determination and right of appeal:

Within 6 months after the date of notification of the decision, a review of this determination can be requested under Division 8.2 of the Act or an appeal to the Land and Environment Court made pursuant to the provisions of Section 8.7 of the Act. A review of determination should be lodged as soon as possible, and preferably no later two months after the date of notification of the decision to enable the review to be completed within the six-month period.

Plans endorsed by the consent authority – please refer to condition A1.

Endorsed for and on behalf of North Sydney Council

DATE

Signature on behalf of consent authority
DAVID HOY
TEAM LEADER ASSESSMENTS

(i) Conditions

Consent is granted subject to the following conditions imposed pursuant to Section 4.17 of the Environmental Planning & Assessment Act 1979 (“the *Act*”) and the provisions of the Environmental Planning & Assessment Regulation 2000 (“the *Regulation*”) such conditions being reasonable and relevant to the development as assessed pursuant to Section 4.17 of the Act.

(ii) Definitions

Unless specified otherwise, words have the same meaning as defined by the *Act*, the *Regulation* and the *Interpretation Act* 1987 as in force at the date of consent.

Applicant means the applicant for this consent.

Approved Plans means the plans endorsed by Council referenced by this consent as amended by conditions of this consent.

AS or ***AS/NZS*** means Australian Standard® or Australian/New Zealand Standard®, respectively, published by Standards Australia International Limited.

NCC means the National Construction Code as published by the Australian Building Codes Board as in force at the date of issue of any *Construction Certificate*.

Council means North Sydney Council.

Court means the Land and Environment Court.

Local Native Plants means species of native plant endemic to North Sydney LGA.

Stormwater Drainage System means all works, facilities and documentation relating to:

- The collection of stormwater,
- The retention of stormwater,
- The reuse of stormwater,
- The detention of stormwater,
- The controlled release of stormwater; and
- Connections to easements and public stormwater systems.

Owner means the owner of the *site* and successors in title to the *site*.

Owner Builder has the same meaning as in the *Home Building Act* 1989.

Principal Certifier for building or subdivision work means the certifier appointed as the principal certifier for the building work under section 6.6 (1) or for the subdivision work under section 6.12 (1).

Principal Contractor for building work means the person responsible for the overall coordination and control of the carrying out of the building work.

Note: If any residential building work is involved, the principal contractor must be the holder of a contractor licence under the *Home Building Act 1989*.

Professional Engineer has the same meaning as in the *NCC*.

Public Place has the same meaning as in the *Local Government Act 1993*.

Road has the same meaning as in the *Roads Act 1993*.

SEE means the final version of the Statement of Environmental Effects lodged by the *Applicant*.

Site means the land being developed subject to this consent.

NSLEP 2013 means *North Sydney Local Environmental Plan 2013*

NSDCP 2013 means *North Sydney Development Control Plan 2013*

Work for the purposes of this consent means:

- the use of land in connection with development,
- the subdivision of land,
- the erection of a building,
- the carrying out of any work,
- the use of any site crane, machine, article, material, or thing,
- the storage of any waste, materials, site crane, machine, article, material, or thing,
- the demolition of a building,
- the piling, piercing, cutting, boring, drilling, rock breaking, rock sawing or excavation of land,
- the delivery to or removal from the *site* of any machine, article, material, or thing, or
- the occupation of the *site* by any person unless authorised by an *occupation certificate*.

Note: **Interpretation of Conditions** – Where there is any need to obtain an interpretation of the intent of any condition this must be done in writing to Council and confirmed in writing by Council.

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A. Conditions that Identify Approved Plans

Development in Accordance with Plans/documentation

A1. The development must be carried out in accordance with the following drawings and documentation and endorsed with Council's approval stamp, except where amended by the following conditions of this consent.

Title	Drawn by	Received
Draft Strata Plan Form 1 (A3) Sheets 1 to 5	Surveyor and Surveyors reference Gregory Jon Frith 78865, Dated 20 March 2019	27 May 2019
Plan of Encroachment	Reference 78580_council dated 13 February 2019	27 May 2019

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

K. Prior to the Issue of any Strata Certificate

Strata Subdivision

K1. A Strata Certificate pursuant to the Strata Schemes (Freehold Development) Act 1973, that authorises registration of the strata plan, strata plan of subdivision or notice of conversion at NSW Land and Property Information Office must be obtained. If the Strata Certificate is obtained from an Accredited Certifier, other than the Council, the certifier is to provide Council with a copy of the endorsed Strata Certificate within 7 days of issuing the same, pursuant to the Strata Schemes (Freehold Development) Regulation 2002.

NOTES: For approval of the Strata Certificate by North Sydney Council, the following must be submitted to Council: -

- a) the original strata plans or strata plans of subdivision and administration sheets plus two (2) copies of each, and any original Instrument (including but not limited to any section 88B or 88E instruments) to be endorsed, all **enclosed in a protective cardboard tube** (to prevent damage during transfer);
- b) 2 additional copies of the strata plans or strata plans of subdivision and any relevant Instrument for submission to Council Customer Services and records department for electronic database scanning and copying;
- c) a completed Subdivision or Strata Certificate Application form together with payment of fee current at lodgement;
- d) written evidence that all applicable conditions of consent required to be satisfied, prior to issue of the Strata Certificate, have been satisfied. Council will check the consent conditions on the relevant consent(s). Failure to submit the required information will delay endorsement of the Strata Certificate, and may require payment of rechecking fees;
- e) **plans of subdivision and copies must not be folded; and**

f) council will not accept bonds in lieu of completing subdivision works.

(Reason: To ensure compliance with relevant legislative requirements and maintenance of up to date Council records)

Sydney Water

K2. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained.

The Section 73 Certificate must be submitted to the Certifying Authority or North Sydney Council with the documentation to enable the issue of the Strata Certificate.

Notes:

1. Application must be made through an authorised Water Servicing Co-ordinator, for details see the Sydney Water web site www.sydneywater.com.au or telephone 13 20 92.
2. Following application, a 'Notice of Requirements' will be forwarded detailing water and sewer extensions to be built and charges to be paid. Please make early contact with the Coordinator since building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design.

(Reason: To ensure compliance with Sydney Water requirements)

Release of Strata Certificate

K3. The Strata Certificate that authorises registration of the Strata Plan, Strata Plan of Subdivision or Notice of Conversion at NSW Land and Property Information shall not be issued until bounding walls, floors and ceilings between proposed strata lots have been constructed in accordance with the approved plans identified under DA115/2011 and subsequent modifications of this Consent.

(Reason: To ensure that the registered strata plan relates to approved development)

Allocation of Parking and Visitor Parking

K4. Car-parking provided must only be used in conjunction with the units and tenancies contained within the development. Any car parking for strata lots for residential purposes must be individually allocated to its corresponding residential strata lot as part of each lot's unit entitlement.

The car parking spaces are to be identified on-site by line-marking and numbering upon the completion of the works and prior to issue of the final Occupation Certificate. Car parking spaces provided must only be used in conjunction with the approved uses contained within the development.

In the case of Strata subdivision any car parking for strata lots for residential purposes must be individually allocated to its corresponding residential strata lot as part of each lot's unit entitlement.

Visitor parking facilities must be designated as common property on the strata plan. Visitor parking facilities must not at any time be allocated, sold, licensed or leased for the exclusive use of any occupier or owner and must be retained as common property by the Owners Corporation for use by building visitors.

(Reason: To ensure that adequate parking facilities to service the development are provided on site)

Building and Unit Numbering (Strata Subdivisions)

K5. Prior to issue of the Strata Certificate, the person acting upon this consent must apply to North Sydney Council and receive written confirmation of the allocated street address and unit numbers for the building and the approved strata allotments within the completed project. These are the property addresses that will be recorded in Council records and must be displayed at the property in accordance with the provisions of the applicable Australian Standard (AS/NZS 4819:2011).

To assist Council, a draft proposal for numbering within the strata scheme or street should be submitted for concurrence to Council, as these numbers will be used to maintain Council's property and mapping database.

(Reason: To ensure that Council records are accurate, and that building and unit numbering complies with the requirements of Council's Property Addressing Policy. Proper building and unit numbering also assists emergency services in readily locating properties)

Services within Lots

K6. A report must be provided by a Registered Surveyor certifying that all services (including but not limited to stormwater drainage, gas, electricity, telephone cable) as constructed or to be constructed are/will be contained within each lot or within the necessary easements to accommodate such services. The report must be submitted to the Certifying Authority for approval prior to the issue of any Subdivision Certificate.

(Reason: To ensure adequate servicing of the development)

Deed of Agreement for Minor Encroachment

K7. The owner of 106 Kirribilli Avenue, Kirribilli and North Sydney Council must enter into a Deed of Agreement in accordance with the Encroachment Management Policy to enable the 'minor encroachment' of 2.4 m² in relation to the encroaching Fire Hydrant Booster on Councils' footpath outside **106 Kirribilli Avenue, Kirribilli**. The deed of agreement must be submitted to the Certifying Authority for approval prior to the issue of any Subdivision Certificate.

Details:

(a) A draft Deed of Agreement will be issued to the applicant once the Development Consent is granted and the applicant must agree in writing, within 14 days from the date of the consent to entering into the Deed of Agreement with Council. If the applicant does not concur with the conditions of the Agreement, the applicant may lodge a Section 4.55 Application to modify the conditions.

- (b) The Date of the Deed of Agreement between Council and the applicant will be the Date of Practical Completion. The Certificate of Practical Completion is to be presented to Council immediately upon its receipt.
- (c) The lessee will be responsible for all maintenance and insurance of the encroaching structures in accordance with the Encroachment Management Policy.
- (d) Written consent will be issued to the Private Certifying Authority (PCA) for an Occupation Certificate to be issued on receipt of a valid Insurance Certificate and the executed Deed of Agreement.
- (e) The encroachment will be notated on a Section 10.7 Certificate.

Insurance:

- (a) In the event that part of the proposed development encroaches upon or over Council land, the land owner must defend and hold harmless, indemnify and keep indemnified, Council and its employees, officers, agents and contractors from and against all claims, expenses, losses including consequential losses, damages and costs (including costs on a solicitor and client basis and whether incurred by or awarded against Council) that Council may sustain or incur as a result, whether directly or indirectly, of the encroachment by the proposed development on Council land, including:
 - i. any injury or death to any person including any injury or death to the general public, employees, officers, agents and contractors, or invitees, or other entity of the Council; or
 - ii. damage to or loss of any property; and
 - iii. arising out of performance by the land owner of its obligations under the Conditions of Consent including claims by a person who is not a party to this development, except to the extent caused or contributed to by Council, its contractors, employees and agents.

The land owner must ensure that:

- (a) the processes and methods to be used for carrying out the development will be completely suitable for the purposes for which they are required;
- (b) the development is carried out in accordance with the Conditions of Consent;
- (c) it will obtain for the benefit of Council all available product and work warranties from any suppliers, contractors and subcontractors in respect of equipment and materials used in the development that encroaches on Council land, and assign such benefit to Council where the warranty is not in favour of Council.

The land owner must provide Council with a copy of its Certificate of Insurance on an annual basis so that Council can satisfy itself that the land owner holds adequate public liability insurance in relation to the development that encroaches on Council land.

The encroaching owner is required to maintain public liability insurance of \$20 million, noting Council's interest on the Certificate of Currency.

Maintenance Responsibility:

The Encroaching owner is responsible for the maintenance, repair and upkeep of the Encroaching Structure.

- (a) Owners Consent is required to undertake any additional works, other than the general maintenance and upkeep of the encroaching structure.

Costs:

All associated costs in relation to the encroachment will be borne by the property owners of **106 Kirribilli Avenue, Kirribilli.**

All other terms and Conditions are to be in accordance with the Encroachment Management Policy.

(Reason: To ensure compliance with the terms of Part B Section 20.6 Permitted Encroachments of North Sydney Development Control Plan 2013)