

Stuart Fuller
47 Elamang Avenue
KIRRIBILLI NSW 2061

D118/18
GJY (CIS)

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 118/18/2 – APPROVAL

Development Consent Number: 118/18/2

Land to which this applies: 47 Elamang Avenue, Kirribilli
Lot No.: 2, DP: 912899

Applicant: Stuart Fuller

Proposal: Modification of consent for: Alterations and additions to an existing dwelling including upgrade works to the existing verandah over Council's footpath on Willoughby Street (Modification of Condition C8)

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. **118/18** and registered in Council's records as Application No. **118/18/2** relating to the land described as **47 Elamang Avenue, Kirribilli**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 18 June 2018, has been determined in the following manner: -

1. Condition C8 to be amended as follows:

Heads of Agreement

C8. The applicant is required to enter into a heads of Agreement for the registration of an easement over the existing balcony airspace and other encroaching structures over the public footpath in the road reserve of Willoughby Street and Elamang Avenue. The heads of agreement must include the following terms:

- a) The Council agrees to proclaim Willoughby Street and Elamang Avenue as public roads, the cost of which will be borne by the owners of 47 Elamang Avenue, Kirribilli.
- b) The executed Heads of Agreement is to be returned to Council with a bond of \$10,000 including an accompanying letter granting Council permission to draw on the bond. The unused funds will be refunded to the owner. A further amount is to be lodged if the funds are insufficient.

- c) All terms and conditions of the Heads of Agreement and Easement documents must be in accordance with the terms of Council's Encroachment Management Policy, unless otherwise negotiated and agreed to.
- d) No further action will be taken until the bond has been secured.
- e) A draft easement and a current identification survey prepared by a Registered Surveyor must be submitted to Council by the applicant for review as soon as practicable and no later than 5 months from the date of determination of this application (or such other time as may be agreed by the Council) with the 'Total Area of the Encroachment' identified and noted in the plan in m2. Upon review, Council's surveyor will determine the depth of the easement, the costs of which will be paid by the owners of 47 Elamang Avenue, Kirribilli. The plan must be accompanied by a letter from the Surveyor confirming the area in m2.
- f) The easement is to be created for the airspace of the existing balcony and other encroaching structures.
- g) Under the terms of the easement, the applicant will be responsible for all maintenance and insurance.
- h) A Plan of Subdivision is to be prepared to enable a separate title to be created.
- i) The compensation payable to Council for the grant of an easement shall be determined in accordance with Section 4.2.7.1(d) of Council's Encroachment Management Policy. The draft easement Plan will be used to determine the compensation payable to Council. Council will pay the initial costs for the assessment of the compensation. In the event the parties cannot agree on the amount of compensation, either party may refer the matter to a person appointed by the Chairperson of the Australian Valuers Institute (NSW), who shall make a binding determination of the valuation, with the applicant thereafter meeting the costs of such determination.
- j) The applicant shall pay all costs associated with the easement, including the costs of Council in relation to the grant of an easement. The costs include, but are not limited to, surveyor fees (searches, identification survey s.88B instrument, Plan of Subdivision, Land Registry Services fees) legal fees, and other related fees, charges and expenses.
- k) All documentation relating to the easement must be executed by both parties and lodged for registration at the NSW Land Registry Services immediately after a Certificate of Practical Completion is issued and before an Occupation Certificate is issued.

Reason for approval:

The development application has been assessed against the North Sydney Local Environmental Plan 2013 and the North Sydney Development Control Plan 2013 and all relevant EPIs and policies and found to be satisfactory.

The conditions recommended by Council's Property Officer will be included on the consent.

Having regard to the provisions of sections 4.55 and 4.15 of the EP&A Act 1979 the application is considered to be satisfactory and is therefore recommended for **approval** subject to conditions of consent.

How community views were taken into account:

The application was not notified to surrounding property owners and no submissions were received.

The conditions attached to the original consent for Development Application No. 118/18 by endorsed date of 18 June 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 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
**GEORGE YOUHANNA
EXECUTIVE PLANNER**