

Geen Hong Walsh  
Squillace Architects  
1/80 Albion Street  
SURRY HILLS NSW 2010

D363/17  
RT (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 MODIFICATION 363/17/2 – APPROVAL**

**Development Consent Number:** 363/17/2

**Land to which this applies:** 105 Kirribilli Avenue, Kirribilli  
Lot No.: 4, DP: 13064

**Applicant:** Geen Hong Walsh

**Proposal:** Section 4.55(2) modifications to D363/17 for various modifications to the approved apartment development

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. **363/17** and registered in Council's records as Application No. **363/17/2** relating to the land described as **105 Kirribilli Avenue, Kirribilli**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 4 April 2018, has been determined in the following manner: -

- To modify the development consent (D363/17) and modify conditions A1, C28, C30, C31 and C34 to read as follows:*

**Development in Accordance with Plans (S4.55 Amendments)**

A1. The development being carried out in accordance with the following drawings,

<b>Drawing No.</b>	<b>Issue</b>	<b>Drawn by</b>	<b>Dated</b>
DA-101	C	Squillace	11.01.2018
DA-102	C	Squillace	11.01.2018
DA-103	C	Squillace	11.01.2018
DA-104	C	Squillace	11.01.2018
DA-105	C	Squillace	11.01.2018
DA-106	B	Squillace	13.12.2017
DA-201	C	Squillace	11.01.2018

DA-202	C	Squillace	11.01.2018
DA-203	C	Squillace	11.01.2018
DA-204	C	Squillace	11.01.2018
DA-301	A	Squillace	30.08.2017
DA-303	A	Squillace	11.01.2018
DA-309	A	Squillace	11.01.2018

and endorsed with Council's approval stamp, except as modified by highlighting on the following drawings for D363/17/2:

Drawing No.	Issue	Date	Drawn by	Received
DA-011	A	08.07.2019	Squillace Architects	9 August 2019
DA-012	A	08.07.2019	Squillace Architects	9 August 2019
DA-101	B	10.12.2019	Squillace Architects	10 December 2019
DA-102	C	10.12.2019	Squillace Architects	10 December 2019
DA-103	B	10.12.2019	Squillace Architects	10 December 2019
DA-104	B	10.12.2019	Squillace Architects	10 December 2019
DA-105	B	10.12.2019	Squillace Architects	10 December 2019
DA-106	C	10.12.2019	Squillace Architects	10 December 2019
DA-201	C	10.12.2019	Squillace Architects	10 December 2019
DA-202	C	10.12.2019	Squillace Architects	10 December 2019
DA-203	C	10.12.2019	Squillace Architects	10 December 2019
DA-204	C	10.12.2019	Squillace Architects	10 December 2019
DA-301	B	19.11.2019	Squillace Architects	27 November 2019
DA-303	A	08.07.2019	Squillace Architects	9 August 2019
DA-309	A	08.07.2019	Squillace Architects	9 August 2019

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

### Section 7.11 Contributions

C28. A monetary contribution pursuant to the provisions of Section 7.11 of the Environmental Planning and Assessment Act 1979, in accordance with the North Sydney Council Section 94 Contribution Plan for the public amenities/ services detailed in column A below and, for the amount detailed in column B below, must be paid to Council.

<b>A</b>	<b>B (\$)</b>
Administration	\$442.65
Child Care Facilities	\$766.73
Community Centres	\$2,009.55
Library Acquisition	\$374.92
Library Premises & Equipment	\$1,159.58
Multi-Purpose Indoor Sports Facility	\$316.63
Open Space Acquisition	\$12,638.71
Open Space Increased Capacity	\$25,052.19
Olympic Pool	\$1,031.36
Public Domain Improvements	\$990.29
Traffic Improvements	\$1,215.61
<b>The total contribution is</b>	<b>\$45,998.22</b>

The contribution MUST BE paid prior issue of any Construction Certificate.

The above amount, will be adjusted for inflation by reference to the Consumer Price (All Ordinaries) Index applicable at the time of the payment of the contribution.

A copy of the North Sydney Section 94 Contribution Plan can be viewed at North Sydney Council's Customer Service Centre, 200 Miller Street, North Sydney or downloaded via Council's website at [www.northsydney.nsw.gov.au](http://www.northsydney.nsw.gov.au)

(Reason: To retain a level of service for the existing population and to provide the same level of service to the population resulting from new development)

### **BASIX Certificate**

C30. Under clause 97A(3) of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. 830542M\_03 for the development are fulfilled. Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure the proposed development will meet the Government's requirements for sustainability and statutory requirements)

### **Design Modifications – Privacy Protection**

C31. The following shall be applied to the approved development to ensure visual privacy for the adjoining properties:

- (a) Frosted glazing must be applied to the first floor bedroom 3 windows (W5 & W6) to protect visual privacy for No.107 Kirribilli Avenue;
- (b) Frosted or textured glazing must be applied to the glazing to bathroom windows on the ground floor (W5), Levels 1 and 2 (W4), the stairwell on the eastern elevation to protect visual privacy for No.107 Kirribilli Avenue.

The Certifying Authority must ensure that the amended landscape plan and other plans and specifications submitted fully satisfy the requirements of this condition.

(Reason: To ensure privacy for the adjoining properties)

### **Amendments to the Landscape Plan**

C34. The landscape plan, based on LPDA18 – 06/1 – 5, dated 22.11.19, prepared by Concept Landscape Architects, must be amended to the satisfaction of Council's Landscape Development Officer as follows to provide an appropriate landscaped setting:

- (a) Retention of *Olea europaea* var *Africana* (African Olive) located within No.107 Kirribilli Avenue;

- (b) Plant species are to be perennials to ensure longevity of the design proposal;
- (c) Plant species are to be correctly labelled as native or exotic;
- (d) Plant common names are to match the Latin name;
- (e) Plant species on the roof top garden are to have a maximum of 300mm mature height;
- (f) One Jacaranda mimosifolia (Jacaranda) street tree is to be planted at 100 L pot size on Council's footpath in alignment with existing plantings between the proposed driveway and proposed pedestrian entry.

Written concurrence that this condition has been satisfied is to be provided to the certifier prior to the issue of any construction certificate.

The Certifying Authority must ensure that the amended landscape plan and other plans and specifications submitted fully satisfy the requirements of this condition.

(Reason: To ensure residential amenity)

**2. To insert new conditions C35 and C36 to read as follows:**

**External Materials, Colours and Materials**

- C35. A detailed schedule of materials, colours and finishes, based on drawing numbered DA700 prepared by Squillance Architects and received by Council on 27 November 2019, must be submitted for the written approval of Council's Team Leader Assessments, in consultant with Council's Conservation Planner.

Written concurrence that this condition has been satisfied is to be provided to the certifier prior to the issue of any construction certificate.

Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: Heritage conservation)

**Solar Panels**

- C36. Solar panels are to be laid flat on the roof surface to minimise the visual impact within the conservation area.

Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To minimise visual impact within the conservation area)

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**Reason for approval:**

The modified development complies with the building height control in Clause 4.3(2) in NSLEP 2013 with no significant changes to the approved building setbacks.

The proposed modifications would not change the character of the approved development (being a four storey scale development with a three storey street frontage).

The non-compliances with the DCP site coverage, unbuilt upon and landscape areas control are considered to be acceptable because the proposed modifications are generally consistent with the site coverage and landscaped area objectives and there are no significant changes to the building footprint and the overall density of the development.

The proposed changes to the external materials, colours and finishes are considered to be acceptable.

The issues raised in the submissions received have been addressed in the assessment report.

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

The adjoining properties and the Bradfield Precinct were notified about the proposal under an incorrect DA number **D331/17/2** for the period between 22 August and 6 September 2019. The same proposal was re-notified under the correct DA number **D363/17/2** between 6 and 20 September 2019. The notifications resulted in a total of six (6) submissions including three (3) submissions from one (1) submitter. The issues raised in the submissions received have been addressed in the assessment report where additional conditions were imposed to address residential amenity.

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The conditions attached to the original consent for Development Application No. 363/17 by endorsed date of 4 April 2018 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

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Signature on behalf of consent authority  
ROBYN PEARSON  
**TEAM LEADER ASSESSMENTS**