

Original signed by: Robyn Pearson Dated: 28/5/2020

Owners Corporation SP 20050
C/- Mark Hurcum Design Practice
Level 2, 271 Alfred Street North
NORTH SYDNEY NSW 2060

D301/07
RT(CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 301/07/3 – APPROVAL**

Development Consent Number: 301/07/3

Land to which this applies: 3 Waruda Street, Kirribilli
SP: 20050; SP: 38043; SP: 43520; SP: 51524

Applicant: Owners Corporation SP 20050
C/- Mark Hurcum Design Practice

Proposal: Section 4.55(2) modifications to D301/07 for changes to the design of the structural support for the approved balconies on the southern and western elevation of an existing residential flat building and deletion of a ground floor balcony on the western elevation.

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. **301/07** and registered in Council's records as Application No. **301/07/3** relating to the land described as **3 Waruda Street, Kirribilli**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 30 May 2008, has been determined in the following manner: -

1. To modify the development consent (D301/17) and modify conditions A1, C2 and E4 to read as follows:

Development in Accordance with Plans (S4.55 Amendments)

A1. The development being carried out in accordance with drawings numbered 99990/11/A, 99990/13/A, 99990/14/-, 99990/15/A, 99990/16/-, 99990/23/-, 99990/24/- and 99990/31/-, dated March 2006 (99990/11/A, 99990/13/A, 99990/14/- and 99990/15/A), May 2006 (99990/16/-), May 2007 (99990/23/- and 99990/24/-) and June 2007 (99990/31/-), drawn by Clive Lucas, Stapleton & Partners, received by Council on 24 July 2007 (99990/14/-, 99990/16/-, 99990/23/-, 99990/24/- and 99990/31/-) and 14 March 2008 (99990/11/A, 99990/13/A and 99990/15/A), and endorsed with Council's approval stamp, except as modified by highlighting on the following drawings for D301/07/3:

Drawing No.	Issue	Date	Drawn by	Received
99990/11	D	May 2020	Mark Hurcum Design Practice	22 May 2020
99990/12	C	Apr 2020	Mark Hurcum Design Practice	17 April 2020
99990/13	C	Apr 2020	Mark Hurcum Design Practice	17 April 2020
99990/14	C	Apr 2020	Mark Hurcum Design Practice	17 April 2020
99990/15	D	May 2020	Mark Hurcum Design Practice	22 May 2020
99990/23	C	Apr 2020	Mark Hurcum Design Practice	17 April 2020

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

Colours Materials and Finishes (Conservation Areas)

- C2. The finishes, materials and exterior colour must be consistent with those as shown on the approved plans, including the modified elements under **D301/17/3**, and complementary to the architectural style of the original building and sympathetic to the character of the Conservation Area.

A schedule of finishes, materials and external colours shall 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 prior to the issue of the Construction Certificate.

(Reason: To ensure that the completed colours, finishes and materials are complementary to the original building and the Conservation Area.)

Noise and Vibration

- E4. The works must be undertaken in accordance with the “Interim Construction Noise Guideline” published by the NSW Environment Protection Authority, to ensure excessive levels of noise and vibration do not occur so as to minimise adverse effects experienced on any adjoining land.

(Reason: To ensure residential amenity is maintained in the immediate vicinity)

2. *To insert conditions A4, C7, E12, E1 and G4 to read as follows:*

Terms of Consent (D301/07/3)

- A4. Approval is granted for the following modifications as highlighted on the approved plans only:
- (a) Addition of structural support columns to the approved balconies on the southern and western elevations of the residential flat building;
 - (b) Deletion of a ground floor bedroom balcony on the western elevation; and
 - (c) Retention of an existing ground floor window (W2) on the western elevation.

No approval is given or implied in this consent for any other works, both internal and external, within the subject property.

Advisory Note:

Further approval from Water NSW is required should the construction of the works approved in D301/07/3 involve extraction/use of underground water.

(Reason: To ensure the terms of the consent are clear.)

Geotechnical Report

- C7. A geotechnical report, based on the report prepared JK Geotechnics, dated 6 April 2020, certifying that the existing rock formations and substrate on the site is capable of:
- a) withstanding the proposed loads to be imposed;
 - b) withstanding the extent of the proposed excavation/earthworks, including any recommendations for shoring works that may be required to ensure the stability of the excavation;
 - c) providing protection and support of adjoining properties; and
 - d) the provision of appropriate subsoil drainage during and upon completion of construction works

must be submitted for approval by the Certifying Authority prior to the issue of any Construction Certificate.

Recommendations made in the certified report must be complied with at all times.

Building plans and specifications submitted for approval with any construction certificate application must comply with (a), (b), (c) and (d) above and the certified report, including any recommendations made in the said certified report.

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 structural integrity of the subject site and adjoining sites during the excavation process)

Dust Emission and Air Quality

E12. The following must be complied with at all times:

- (a) Materials must not be burnt on the site.
- (b) Vehicles entering and leaving the site with soil or fill material must be covered.
- (c) Dust suppression measures must be carried out to minimise wind-borne emissions in accordance with the NSW Department of Housing's 1998 guidelines - Managing Urban Stormwater: Soils and Construction.

(d) Odour suppression measures must also be carried out where appropriate so as to prevent nuisance occurring at adjoining properties.

(Reason: To ensure residential amenity is maintained in the immediate vicinity)

Geotechnical Stability during Works

E13. A contractor with specialist excavation/earthworks experience must undertake the excavations/earthworks for the development and a suitably qualified and consulting geotechnical engineer must oversee the excavation/earthworks procedure.

Geotechnical aspects of the development work, namely appropriate excavation method and vibration control, support and retention of excavated faces, and hydrogeological considerations must be undertaken in accordance with the recommendations of the approved geotechnical report as required in Condition C7 of this consent and all subsequent geotechnical inspections carried out during the excavation and construction phase.

Approval must be obtained from all affected property owners, including North Sydney Council where rock anchors (both temporary and permanent) are proposed below adjacent private or public property.

(Reason: Ensure appropriate professional are engaged at appropriate stages during construction)

Compliance with Certain conditions

G4. Prior to the issue of any Occupation Certificate Conditions C2, C7 must be certified as having been implemented on site and complied with.

(Reason: To ensure the development is completed in accordance with the requirements of this consent)

Reason for approval:

The proposed modifications satisfy the provisions of Section 4.55 in that the proposed development is substantially the same as what was approved under DA 301/07 as the proposed modifications will not alter the use, scale and form of the development as originally approved.

The non-compliance with the LEP maximum building height is considered to be acceptable due to the minor nature of the additional structural columns and no material impacts on the character of the conservation area and the amenity of the adjoining properties.

The proposed modifications would have no adverse impacts in terms of height, bulk/scale and the amenity of the surrounding properties in terms of the loss of significant views, privacy and solar access.

Appropriate conditions have been recommended to minimise the potential impacts of the proposal.

The proposal was found to be acceptable in the site circumstances and is recommended that the subject Section 4.55 application be approved with modifications to the relevant conditions.

How community views were taken into account:

Notification of the subject application was waived in accordance with Section 3.4.2 of Council's Community Engagement Protocol because the proposed works were internal so there would be no impacts for adjoining properties.

The conditions attached to the original consent for Development Application No. 301/07 by endorsed date of 30 May 2008 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

Signature on behalf of consent authority
ROBYN PEARSON
TEAM LEADER(ASSESSMENTS)