

Original signed by: Robyn Pearson Dated: 8/9/2020.

Jenny Elizabeth Coolican and Myles Raphael James Coolican  
C/- David Boyle Architect  
17 Como Parade  
PRETTY BEACH NSW 2257

D427/18  
RT(CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 MODIFICATION 427/18/3 – APPROVAL**

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**Development Consent Number:** 427/18/3

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**Land to which this applies:** 45 McDougal Street, Kirribilli  
Lot No.: 3, DP: 9250

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**Applicant:** Jenny Elizabeth Coolican and Myles Raphael James Coolican  
C/- David Boyle Architects

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**Proposal:** Section 4.55(2) modifications to D427/18 for internal changes, fenestration changes, extensions within the basement and the addition of a pizza oven at the rear covered terrace.

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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. **427/18** and registered in Council's records as Application No. **427/18/3** relating to the land described as **45 McDougal Street, Kirribilli**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 27 May 2019, has been determined in the following manner: -

- To modify the development consent (D427/18) and modify conditions A1, C3 C10 and C33 to read as follows:*

**Development in Accordance with Plans (S4.56 Amendments)**

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

Plan No.	Issue	Date	Drawn by	Received
DA02	F	1 April 2019	David Boyle Architect	5 April 2019
DA03	G	1 April 2019	David Boyle Architect	5 April 2019

DA04	F	1 April 2019	David Boyle Architect	5 April 2019
DA05	F	1 April 2019	David Boyle Architect	5 April 2019
DA06	F	1 April 2019	David Boyle Architect	5 April 2019
DA08	F	1 April 2019	David Boyle Architect	5 April 2019
DA09	F	1 April 2019	David Boyle Architect	5 April 2019
DA10	F	1 April 2019	David Boyle Architect	5 April 2019
L100F	F	4 April 2019	Spirit Level Designs Pty Ltd	12 April 2019

and endorsed with Council's approval stamp, except as modified by highlighting on the following drawings for D427/18/3:

Plan No.	Issue	Date	Drawn by	Received
DA03	K	15 June 2020	David Boyle Architect	25 June 2020
DA06	K	15 June 2020	David Boyle Architect	25 June 2020
DA05	K	15 June 2020	David Boyle Architect	25 June 2020
DA08	K	15 June 2020	David Boyle Architect	25 June 2020
DA09	K	15 June 2020	David Boyle Architect	25 June 2020
DA10	K	15 June 2020	David Boyle Architect	25 June 2020

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

### **External Finishes and Materials**

- C3. External finishes and materials must be in accordance with the submitted schedule Issue G dated 18 May 2020, prepared by David Boyle Architect and received by Council on 25 June 2020 unless otherwise modified by Council in writing. 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 ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information)

### **Geotechnical Report**

- C10. A geotechnical report prepared by an appropriately qualified Geotechnical Engineer 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, 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.

The report must consider the findings and recommendations of the Geotechnical Investigation dated 29 November 2018 and the geotechnical comments for Section 4.55 dated 9 June 2020, both prepared by White Geotechnical Group.

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)

### **BASIX Certificate**

- C33. 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. 972704S\_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)

### **2. To insert a new condition A4, C34 and I4 to read as follows:**

#### **Terms of Consent (D427/18/3)**

- A4. Approval is granted for the following modifications only:

*Basement:*

- (a) Infilling of a recess on the south-eastern (side) elevation to facilitate the reconfiguration of the lift shaft and the creation of a new equipment room;
- (b) Modifications to the internal layout including the reconfiguration of the cellar, and laundry/W.C., a new workshop and a new service area on the south-eastern side of the main dwelling;

- (c) Additional excavation at the rear of the basement to provide a storage area; and
- (d) Modifications to fenestration on the south-eastern (side) elevation including the relocation of a highlight laundry window (W17) and a new W.C. window (W20).

*Ground Floor:*

- (a) Infilling of a recess on the south-eastern (side) elevation to facilitate the reconfiguration of the W.C. and the lift shaft;
- (b) Modifications to fenestration on the south-eastern elevation involving the butlers room window (W04) and the W.C. window (W05); and
- (c) The addition of a wood fire pizza oven adjacent to the approved BBQ under the covered terrace at the rear.

*Schedule of External Materials and Finishes:*

- (a) External Materials changes as shown on the revised Schedule of External Materials and Finishes Issue G dated 18.05.2020

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

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

**Windows W04 and W05**

- C34. Frosted/opaque glazing must be fitted to the modified ground floor windows (W04 and W05) to ensure visual privacy protection for the adjoining property. 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 protect visual privacy for the adjoining property)

**Pizza Oven**

- I4. The use of the proposed pizza oven, including the fuel to be use for cooking, must comply with Clause 12 in Part 3 Division 3 of Protection of the Environment Operations (Clean Air) Regulation 2010.

(Reason: Compliance and protection of environment.)

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**Reason for approval:**

The proposed modifications satisfy the provisions of Section 4.55 (2) in that the proposed development is substantially the same as what was approved under DA 427/18 as the proposed modifications will not alter the use, height, scale and built form of the development as originally approved.

The proposed modifications would not affect the height of the approved dwelling and the overall bulk and scale of the approved development. The proposed modifications would not maintain the site coverage, unbuilt upon area and landscaped area as originally approved.

The proposed modifications would not cause material impacts on the amenity of the adjoining properties subject to the imposition/modifications of appropriate conditions.

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

The proposal was found to be acceptable in the site circumstances and is recommended that the subject Section 4.55(2) application be approved with modifications to the relevant conditions.

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

The adjoining properties and the Milson Precinct were notified about the proposed development for the period between 10 and 24 July 2020. The notification resulted in one (1) submission and the issues raised have been addressed earlier in this report.

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The conditions attached to the original consent for Development Application No. 427/18 by endorsed date of 27 May 2019 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)**