

Ann Kells
14/40 Yeo Street
NEUTRAL BAY NSW 2089

D445/18
RT(CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 445/18/2 – APPROVAL**

Development Consent Number: 445/18/2

Land to which this applies: 8 Bertha Road, Cremorne
Lot No.: 22, DP: 1260567

Applicant: Ann Kells

Proposal: Section 4.55(1) modifications to Conditions G5 and G6.

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. **445/18** and registered in Council's records as Application No. **445/18/2** relating to the land described as **8 Bertha Road, Cremorne**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 9 May 2019, has been determined in the following manner: -

1. To modify Conditions G5 and G6 in Development Consent (D445/19) as follows:

Covenant & Restriction (Stormwater Control Systems)

G5. *An Instrument pursuant to Sections 88B and 88E of the Conveyancing Act 1919 and one copy must be submitted to Council in registrable form, providing for:*

- a. a restriction as to user and positive covenant as to user as appropriate in favour of North Sydney Council and burdening Lot 22 DP 1260567 (No.8 Bertha Road) requiring the ongoing retention, maintenance and operation of the stormwater facility (on-site detention);*
- b. North Sydney Council being nominated in the Instrument as the only party authorised to release, vary or modify the Instrument;*
- c. the wording on the Instrument making reference to the Council file/s which hold:*

- (a) the Construction plans; and*
- (b) the "Work-as-Executed" (as built) plans;*

Upon Council being satisfied as to the terms of the Instrument, North Sydney Council's official seal will be affixed to these documents, prior to submission to the Land & Property Information Office for registration

The Instrument creating the restriction and/or covenant under ss 88B and 88E required by this condition of consent must be registered on the Title of the development site prior to the issue of an Occupation Certificate or commencement of use of the site, whichever is the earlier.

Evidence of the registration of the instrument referred to in this condition is to be provided to Council prior to the issue of an Occupation Certificate.

All costs associated with the preparation, approval and registration of the Instrument required by this condition of consent must be borne by the person acting on this consent including the reasonable costs of Council in obtaining advice, negotiating the terms or otherwise facilitating the execution and registration of the required Instrument.

(Reason: Compliance and adequate maintenance of drainage system)

New Drainage Easement (Relocated Pipeline)

G6. *An Instrument pursuant to Section 88A of the Conveyancing Act 1919 and one copy must be submitted to Council in registrable form, providing for:*

- 1) a drainage easement in favour of North Sydney Council and burdening Lot 22 DP 1260567 (No.8 Bertha Road) varying in width between over the newly constructed stormwater pipeline.*
- 2) The easement shall be at no cost to Council;*
- 3) North Sydney Council being nominated in the Instrument as the only party authorised to release, vary or modify the Instrument.*

Upon Council being satisfied as to the terms of the Instrument, North Sydney Council's official seal will be affixed to these documents, prior to submission to the Land & Property Information Office for registration

The Instrument creating the easement required by this condition of consent must be registered on the Title of the development site prior to the issue of an Occupation Certificate or commencement of use of the site, whichever is the earlier.

Evidence of registration of the easement must be provided to Council prior to issue of any Occupation Certificate.

All costs associated with the preparation, approval and registration of the Instrument required by this condition of consent must be borne by the person acting on this consent including the reasonable costs of Council in obtaining advice, negotiating the terms or otherwise facilitating the execution and registration of the required Instrument.

(Reason: To ensure future provision for maintenance of the drainage system)

Reason for approval:

The proposed modifications to Conditions G4 and G5 relating to the legal description of the subject properties, satisfy the provisions of Section 4.55(1) in that the proposed development is substantially the same as what was approved under DA 445/19 as the proposed modifications will not alter the use and the general form of the development as originally approved

In addition, the proposed modifications would not change the level of compliance with the relevant development standards and controls as contained in North Sydney LEP 2013 and North Sydney DCP 2013.

The proposed modifications are acceptable because the proposal only involves changes to the legal descriptions of the subject site in two (2) engineering conditions.

The proposal was found to be acceptable in the site circumstances and is recommended that the subject Section 4.55(1) 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. 445/18 by endorsed date of 9 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

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