

Original signed by:

Robyn Pearson

Dated: 22/10/2021

Filmer Architects P/L
17 Taringa Street
ASHFIELD NSW 2131

D398/19
RT (CIS)

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 APPLICATION 398/19/2 - APPROVAL

Development Consent Number: 398/19/2

Land to which this applies: 45 Willoughby Street, Kirribilli
Lot No.: 1, DP: 115096

Applicant: Filmer Architects

Proposal: Section 4.55(2) application seeking modifications to Development Consent (D398/19) involving changes to pedestrian access arrangements to a heritage item and the relocation of a skylight.

The 4.55 application was considered by the **North Sydney Local Planning Panel (NSLPP)** on 6 October 2021.

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. **398/19** and registered in Council's records as Application No. **398/19/2** relating to the land described as **45 Willoughby Street, Kirribilli**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 4 March 2020, has been determined in the following manner: -

1. *To modify the development consent (D398/19) and modify conditions A1, A4, C4, C5, C13 and C26 to read as follows:*

Development in Accordance with Plans (S4.55 Amendments)

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

Drawing number	Rev	Title	Drawn by	Dated
DA 1.1.1	E	Proposed Site + Roof	Filmer Architects	27/08/2020
DA 1.1.2	F	Proposed Lower Ground Floor	Filmer Architects	27/08/2020
DA 1.1.3	F	Proposed Ground Floor	Filmer Architects	27/08/2020
DA 1.1.4	E	Proposed First Floor	Filmer Architects	27/08/2020
DA 1.1.5	F	Proposed Terrace Floor	Filmer Architects	27/08/2020
DA 2.1.1	G	North-West Elevation	Filmer Architects	27/08/2020
DA 2.1.2	F	South-East Elevation	Filmer Architects	27/08/2020
DA 2.1.3	D	North-East Elevation	Filmer Architects	27/08/2020
DA 2.1.4	F	South-West Elevation	Filmer Architects	27/08/2020
DA 2.2.1	E	Section A - A	Filmer Architects	27/08/2020
DA 2.2.2	F	Section B - B	Filmer Architects	27/08/2020
DA 4.1.2	F	Landscape Plan Lower Ground Floor	Filmer Architects	27/08/2020
DA 4.1.3	G	Landscape Plan Ground Floor	Filmer Architects	27/08/2020
DA 4.1.4	D	Landscape Plan Roof	Filmer Architects	27/08/2020
DA 6.1.1	C	Material Sample Board	Filmer Architects	27/08/2020
SK1A			Filmer Architects	02/09/2020

and endorsed with Council's approval stamp, except as modified by highlighting on the following drawings for D398/19/2:

Plan Nos.	Rev No	Description of works	Prepared by	Dated
DA 1.1.1	G	Proposed Site + Roof	Filmer Architects	20.07.21
DA 1.1.2	K	Prop. Lower Ground Floor	Filmer Architects	20.07.21
DA 1.1.3	K	Prop. Ground Floor	Filmer Architects	20.07.21
DA 1.1.4	G	Prop. First Floor	Filmer Architects	20.07.21
DA 1.1.5	H	Prop. Terrace Floor	Filmer Architects	20.07.21
DA 2.1.1	L	North-west Elevation	Filmer Architects	20.07.21
DA 2.1.2	H	South-east Elevation	Filmer Architects	20.07.21
DA 2.1.3	G	North-east Elevation	Filmer Architects	20.07.21
DA 2.1.4	K	South-west Elevation	Filmer Architects	22.09.21
DA 2.2.1	G	Section A - A	Filmer Architects	20.07.21
DA 2.2.2	L	Section B – B	Filmer Architects	20.07.21
DA 4.1.2	G	Landscape Plan Prop. Lower Ground Floor	Filmer Architects	20.07.21
DA 4.1.3	H	Landscape Plan Prop. Ground Floor	Filmer Architects	20.07.21
DA 4.1.4	E	Landscape Plan Prop. Terrace Floor	Filmer Architects	20.07.21

DA 6.1.1	E	Material Sample Board (1 of 2)	Filmer Architects	20.07.21
DA 6.1.2	A	Material Sample Board (2 of 2)	Filmer Architects	20.07.21
SK 1A	D	Proposed Gates & Entry Portal	Filmer Architects	20.07.21

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

External Finishes & Materials

- A4. External finishes and materials must be in accordance with those specified within the approved drawings listed within Condition A1 of this consent (D398/19/2), unless as otherwise modified by Council in writing.

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

Council Embankment and Retaining Wall

- C4. The applicant must provide structural certification to Council prior to issue of any Construction Certificate that the proposed works to the sandstone rock face and wall will not undermine the embankment and stability of the rest of wall. If the proposed cut-in does impact upon the structural viability of the wall and embankment, the applicant must undertake all necessary works (design and construction) to ensure the wall is structurally sound.

The applicant must engage a Structural and Geotechnical Engineer to design the wall in accordance with current Australian standards and submit documentation to Council prior to issue of any Construction Certificate. The design shall be consistent with the plans/documentation submitted including the approved plans, Geotechnical Report, dated July 2020, prepared by WITT Consulting and the Excavation Methodology Statement, dated 14 August 2020, prepared by WITT Consulting and the additional geotechnical report required by Condition C13 in this consent. All costs associated with any design and construction work must be borne by the applicant.

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 protection of existing public infrastructure)

Compliance with Geotechnical Report and Excavation Methodology Statement

- C5. The recommendations, implementation program, monitoring program, contingency plans, mitigation measures, design details and the like for the natural rock features along the Willoughby Street (north-eastern) property boundary as contained in the approved plans, Geotechnical Report, dated July 2020, prepared by WITT Consulting and the Excavation Methodology Statement, dated 14 August 2020, prepared by WITT Consulting and the additional geotechnical report required by Condition C13 in this consent must be implemented in full during the relevant stages of demolition, excavation and construction.

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 protection of existing natural rock features)

Geotechnical Report

- C13. Prior to issue of any Construction Certificate a Geotechnical/Civil Engineering report for the proposed development, including additional works relating to D398/19/2, must be prepared which addresses at a minimum (but is not limited to) the following:-
- a) The type and extent of substrata formations by the provision of a minimum of four (4) representative bore hole logs which are to provide a full description of all material from ground surface to 1.0m below the finished basement floor level and include the location and description of any anomalies encountered in the profile. The surface and depth of the bore hole logs must be related to Australian Height Datum;
 - b) The appropriate means of excavation/shoring in light of point (a) above and proximity to adjacent property and structures. Potential vibration caused by method of excavation and potential settlements affecting nearby footings/foundations must be discussed and mechanisms to ameliorate any such impacts recommended;
 - c) The proposed method to temporarily and permanently support the excavation for the basement adjacent to adjoining property, structures and road reserve if nearby (full support must be provided within the subject site);
 - d) The existing groundwater levels in relation to the basement structure, where influenced;
 - e) The drawdown effects on adjacent properties (including road reserve), if any, the basement excavation will have on groundwater together with the appropriate construction methods to be utilized in controlling groundwater. Where it is considered there is the potential for the development to create a "dam" for natural groundwater flows, a groundwater drainage system must be designed to transfer groundwater through or under the proposed development without a change in the range of the natural groundwater level fluctuations. Where an impediment to the natural flow path is constructed, artificial drains such as perimeter drains and through drainage may be utilized; and

- f) Recommendations to allow the satisfactory implementation of the works. An implementation program is to be prepared along with a suitable monitoring program including control levels for vibration, shoring support, ground level and groundwater level movements during construction. The implementation program is to nominate suitable hold points at the various stages of the works for verification of the design intent before sign-off and before proceeding with subsequent stages.

The geotechnical report must be prepared by an appropriately qualified consulting geotechnical/ hydro geological engineer or suitable qualified expert with previous experience in such investigations and reporting.

It is the responsibility of the consulting geotechnical/ hydrological specialist to undertake the appropriate investigations, reporting and specialist recommendations to ensure a reasonable level of protection to adjacent property and structures both during and after construction. The report must contain site-specific geotechnical recommendations and shall specify the necessary hold/inspection points by relevant professionals as appropriate.

The design principles for the geotechnical report are as follows:

- a) no ground settlement or movement is to be induced which is sufficient enough to cause an adverse impact to adjoining property and/or infrastructure;
- b) no changes to the ground water level are to occur as a result of the development that are sufficient enough to cause an adverse impact to the surrounding property and infrastructure;
- c) no changes to the ground water level are to occur during the construction of the development that are sufficient enough to cause an adverse impact to the surrounding property and infrastructure;
- d) vibration is to be minimized or eliminated to ensure no adverse impact on the surrounding property and infrastructure occurs, as a result of the construction of the development;
- e) appropriate support and retention systems are to be recommended and suitable designs prepared to allow the proposed development to comply with these Design Principles; and
- f) An adverse impact can be assumed to be crack damage as identified within the relevant Australian Standard for determining such damage.

The Geotechnical Report must be prepared in accordance with the recommendations within the Geotechnical Report, dated July 2020, prepared by WITT Consulting, Excavation Methodology Statement, dated 14 August 2020, prepared by WITT Consulting, and in particular the use of rock saws and vibration limits, except for the recommended removal of the whole retaining wall fronting Willoughby Street, which shall not be permitted.

The report, satisfying the requirements of this condition, must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

The professional recommendations, implementation program, monitoring program, mitigation measures and the like contained in the report must be implemented in full during the relevant stages of excavation and construction.

(Reason: To ensure the structural integrity of the subject site and adjoining sites during the excavation process)

BASIX Commitments

C26. 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. A359270_02 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 A7 to read as follows:

Terms of Consent (D398/19/2)

A7. Approval is granted for the following modifications only:

- (a) Construction of a new pedestrian access through a new opening on the approved retaining wall on the eastern side of the approved entrance courtyard on the lower ground floor;
- (b) Construction of a staircase along the front boundary to provide pedestrian access between the lower ground floor entrance courtyard and the ground floor front garden; and
- (c) Deletion of an approved skylight near the south-eastern (rear) of the approved two storey addition and the repositioning of an approved skylight (SK 3) over the first floor bathroom.

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)

Reason for approval:

The amendment enhances access to the original front entrance of the Heritage Item.

How community views were taken into account:

The application was notified to adjoining properties and the Milson Precinct under section 3.6 of the North Sydney Community Engagement Protocol inviting comment on the proposed modifications. Council received one (1) submission in support of the application.

The conditions attached to the original consent for Development Application No. 398/19 by endorsed date of 4 March 2020 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)