

Original signed by Robyn Pearson on 9/12/2021

Suttor Architects Pty Ltd
PO Box 93
WAVERLEY NSW 2024

D401/17
AB7 (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 401/17/3 - APPROVAL**

Development Consent Number: 401/17

Land to which this applies:

19 Elamang Avenue, Kirribilli
Lot No.: 28, DP: 4313
Lot No.: B, DP 378256

Applicant: Suttor Architects Pty Ltd

Proposal: Modify DA 401/17 for various modifications to an approved dwelling and associated works

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. **401/17** and registered in Council's records as Application No. **401/17/3** relating to the land described as **19 Elamang Avenue, Kirribilli**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **8 November 2017**, has been determined in the following manner:

1. Condition A4 is amended as follows:

Development in Accordance with Plans (S4.55 Amendments)

- A4. The development being carried out in accordance with plans identified in Condition A1 of the consent and endorsed with Council's approval stamp, except as modified by the modifications shown in colour on the following drawings for DA 401/17/2:

Drawing Number	Revision	Title	Drawn by	Dated
DA01	D	Site Plan	Michael Suttor Architects	23/07/2019
DA02	D	First and Ground Floor Plans	Michael Suttor Architects	23/07/2019
DA03	D	Lower Ground and Foundation Floor Plans	Michael Suttor Architects	23/07/2019
DA04	D	Street and Rear Elevations	Michael Suttor Architects	23/07/2019
DA05	D	North and South Elevations	Michael Suttor Architects	23/07/2019

Except as modified as such on the following drawings for DA 401/17/3:

Drawing Number	Title	Drawn by	Dated	Received
DA06	Level 1, 2 and 3 Floor Plans	Michael Suttor Architects	15/10/2021	19/10/2021
DA07	Level 4, Roof and Site Plans	Michael Suttor Architects	15/10/2021	19/10/2021
DA08	Elevations	Michael Suttor Architects	15/10/2021	19/10/2021
DA09	Sections	Michael Suttor Architects	15/10/2021	19/10/2021
1/2	Amended Schedule of Finishes	Michael Suttor Architects	18/10/2021	19/10/2021
2/2	Amended Schedule of Finishes	Michael Suttor Architects	18/10/2021	19/10/2021

Except as amended by the following conditions and this consent.

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

2. Condition A3 is amended as follows:

External Finishes and Materials

- A3. External finishes and materials must be in accordance with the submitted schedule of colours and finishes dated 5 March 2018, prepared by Michael Suttor Architects, and as amended in the Schedule of Finishes dated 18 October 2021 by Michael Suttor Architects, unless 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)

3. Condition C19 is amended as follows:

BASIX Certificate

- C19. 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. (1192418S_02, dated 28 September 2021) 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)

4. Condition C24 is added as follows:

Amendments to the Landscape Plan

C24. The landscape plan must be amended as follows to provide an appropriate landscaped setting:

- a) A portion of the approved paved areas on site, to a minimum area of 2.4 m² representing approximately 0.31% of the total site area, must be converted into some form of soft landscaping, to demonstrate continued compliance with the landscaped area control.

An amended landscape plan 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 amended landscape plan and other plans and specifications submitted fully satisfy the requirements of this condition.

(Reason: To ensure residential amenity and appropriate landscaped areas on site)

5. Condition C25 is added as follows:

Inconsistency with Development Consent DA107/20

C25. Pursuant to s4.17(1)(b) and s4.17(5) of the *Environmental Planning and Assessment Act 1979*, consent no DA107/20 for the construction of a new swimming pool and landscaping on site, shall be modified in accordance with Clause 97 of the *Environmental Planning and Assessment Regulation 2000* by adding a new condition D3 as follows:

“Development consent DA401/17, and as subsequently modified under DA401/17/2 and DA401/17/3, authorises the construction of a new single dwelling and associated landscaping at 19 Elamang Avenue, Kirribilli. Where there is an inconsistency between this consent and consent no DA107/20, then consent no. DA401/17, and as subsequently modified under DA401/17/2 and DA401/17/3, shall prevail to the extent of the inconsistency.”

(Reason: To provide clarity as to the works approved under both development applications)

Reasons for Approval:

The proposed modifications satisfy the provisions of Section 4.55(2) in that the proposed development remains substantially the same as what was approved by DA 401/17. The proposed modifications will not alter the use of the development as originally approved and amenity impacts remain acceptable. The proposed modifications would not significantly change the level of compliance with the relevant development standards and controls as contained in NSLEP 2013 and NSDCP 2013.

The minor alterations will be sympathetic with the contemporary style of the approved dwelling and the small loss of landscaping as a result on the new utilities and garbage area within the front setback has been conditioned to be recovered elsewhere on site. The proposed works will provide resident amenity without negatively impacting the neighbourhood character, and the Kirribilli Neighbourhood. The proposal also remains consistent with the objectives of the R2 Low Density Residential Zone and the original reasons for granting consent.

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

How community views were taken into account:

The subject application was notified to adjoining properties and the Milson Precinct Committee seeking comment, and no submissions were received. Nevertheless, it is considered that the proposed modifications would not substantially alter the impacts of what has already been approved under the original consent and would not cause any unreasonable impacts to the streetscape and/or adjoining properties.

The conditions attached to the original consent for Development Application No. **401/17** by endorsed date of **8 November 2017** still apply.

ADVISINGS

- (a) Council is always prepared to discuss its decisions and in this regard, please do not hesitate to contact **Andrew Beveridge**. 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 and 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 and Assessment Act.

Endorsed for and on behalf of North Sydney Council

9 December 2021

DATE

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