

Jonathan Glenn Bennett
38 Fitzroy Street
KIRRIBILLI NSW 2061

D159/16
RT (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 159/16/4 – APPROVAL**

Development Consent Number: 159/16/4

Land to which this applies: 38 Fitzroy Street, Kirribilli
Lot No.: 3, SEC: C; DP: 1537

Applicant: Jonathan Glenn Bennett

Proposal: Section 4.55(2) modifications to D159/16 for various modifications to the approved development

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. **159/16** and registered in Council's records as Application No. **159/16/4** relating to the land described as **38 Fitzroy Street, Kirribilli**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 2 November 2016, has been determined in the following manner: -

- 1. To modify the development consent (D159/16) and modify conditions A1, C3, C23 and G6 to read as follows:***

Development in accordance with Plans

- A1** The development must be carried out in accordance with the following drawings and documentation and endorsed with Council's approval stamp,

Plan No.	Issue	Date	Drawn by	Received
DA101	C	24.01.2017	2RKS Architecture + Design	31 January 2017
DA103	C	24.01.2017	2RKS Architecture + Design	31 January 2017
DA104	C	24.01.2017	2RKS Architecture + Design	31 January 2017
DA105	C	24.01.2017	2RKS Architecture + Design	31 January 2017
DA106	C	24.01.2017	2RKS Architecture + Design	31 January 2017
DA107	C	24.01.2017	2RKS Architecture + Design	31 January 2017

except where amended by the following drawings and conditions of this consent (**D159/16/3**);
and

Plan No.	Issue	Date	Drawn by	Received
DA101	F	25.09.2017	2RKS Architecture + Design	25 September 2017
DA103	F	25.09.2017	2RKS Architecture + Design	25 September 2017
DA104	F	25.09.2017	2RKS Architecture + Design	25 September 2017
DA105	F	25.09.2017	2RKS Architecture + Design	25 September 2017
DA106	F	25.09.2017	2RKS Architecture + Design	25 September 2017

except where amended by the following drawings and conditions of this consent (**D159/16/4**):

Drawing No.	Rev	Date	Drawn by	Received
CC101	G	17.05.2019	2RKS Architecture + Design	23 May 2019
CC103	G	17.05.2019	2RKS Architecture + Design	23 May 2019
CC104	G	17.05.2019	2RKS Architecture + Design	23 May 2019
CC105	G	17.05.2019	2RKS Architecture + Design	23 May 2019
CC106	F	17.05.2019	2RKS Architecture + Design	23 May 2019
CC107	G	17.05.2019	2RKS Architecture + Design	23 May 2019

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

Landscape Plan (D159/16/4)

C3. The applicant shall submit a landscape plan for the subject site, based on drawing numbered CC107G dated 17.05.2019 and prepared by 2RKS Architecture + Design, identifying the species of plants to be planted, their numbers and their mature heights to ensure appropriate landscaping treatments within the rear yard between the rear (northern) building line of the service wing and the car spaces at the rear. The landscape plan shall include the following:

- (a) Retention of the existing mango tree on the eastern side of the rear yard;
- (b) Construction of a pedestrian pathway, 7.6m long and 1m wide, to provide pedestrian connection between the northern building line of the service wing and the southern edge of the covered car spaces at the rear. The remaining ground area must be soft natural ground cover with plant species suitable for a shady area; and
- (c) Provision of screen planting of up to 3m high along planter adjacent to the western property boundary with No.36 Fitzroy Street.

The Certifying Authority must ensure that the building plans and specifications submitted by the Applicant, referenced and accompanying the issued Construction Certificate, fully satisfy the requirement of this condition.

(Reason: To ensure appropriate landscaping treatments and amenity for the subject site and the adjoining properties)

Design Modifications (D159/16/4)

C23. The design of proposed development must be modified as follows:

- (a) The first floor balustrade to the east beyond the north-east corner of bedroom 3 must be deleted and form no part of this consent;
- (b) The first floor breezeway to the east of the service wing must be accessed for maintenance and repairs only;
- (c) The balustrade along the eastern edge of the first floor bedroom balcony at the rear of the service wing must provide a lockable gate and fitted with self-closing device to allow maintenance access only to the breezeway;
- (d) The gate must be constructed with no opening greater than 125mm, and be at least 1 metre in perpendicular height and have no horizontal surfaces or projections on the face of the barrier between 150mm - 760mm from finished floor level that facilitates climbing;
- (e) Anchorage points must be provided on the roof over the service wing to allow maintenance/repair works to the solar panels. The design and installation of the anchorage points must comply with the relevant Australian Standards and NSW Work Health and Safety Requirements.

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 breezeway will be non-trafficable and to be accessed for maintenance/repair only.)

Compliance with Certain Conditions

G6. Prior to issue of any Occupation Certificate, Conditions A5, C1, C2, C3, C4, C23, C24, C25, C26, C27, C28, G7, G8 and G9 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)

2. To insert the following conditions A5, G8 and G9 as follows:

Terms of Consent (D159/16/4)

A5. Approval is granted for the following works as shown on the following drawings:

Drawing No.	Rev	Date	Drawn by	Received
CC101	G	17.05.2019	2RKS Architecture + Design	23 May 2019
CC103	G	17.05.2019	2RKS Architecture + Design	23 May 2019
CC104	G	17.05.2019	2RKS Architecture + Design	23 May 2019
CC105	G	17.05.2019	2RKS Architecture + Design	23 May 2019
CC106	F	17.05.2019	2RKS Architecture + Design	23 May 2019
CC107	G	17.05.2019	2RKS Architecture + Design	23 May 2019

Lower Ground Floor

- (a) Installation of new timber framed glass doors and louvred windows on the northern elevation;
- (b) Reconfiguration of the internal layout to provide a lounge and a storage area and a passageway to the lift.

Ground Floor

- (a) Replacement of the approved posts and balustrades on the northern edge of the balcony with decorative wrought iron panel balustrades and posts;
- (b) Replacement of the approved glass roof over the breezeway by a colorbond steel roof; and
- (c) Installation of a pivot door to replace the approved sliding door on the northern edge of the breezeway enclosure to provide access to the rear balcony.

First Floor

- (a) The proposed first floor balcony and associated balustrades to the east of the eastern building line of the service wing are to be deleted and form no part of this consent;
- (b) Replacement of the approved posts and balustrades on the northern edge of the balcony confront of Bedroom 3 with decorative wrought iron panel balustrades and posts;
- (c) Installation of fixed glazing to windows on each side of the Bedroom 3 doorway on the northern elevation;
- (d) Modification of the profile of the roof over the balcony;
- (e) Installation of AC units and a satellite dish on the colorbond steel roof above the ground floor breezeway enclosure;

Attic Floor

- (a) Retention of the existing dormer windows on the rear (northern) elevation.

Roof

- (a) Repositioning of the solar panels to the northern side of the roof over the service wing;

Others

- (a) Installation of solar panels on the roof of garage at the rear;
- (b) Reconfiguration of the planter boxes and construction of a pedestrian pathway and soft landscaping within the rear yard in accordance with Condition C3 of this development consent.

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)

Landscaping within Rear Yard

G8. The landscaping as required by Condition C3 as modified under D159/16/4, items (a), (b) and (c), must be completed in full prior to the issue of any Occupancy Certificate.

(Reason: To ensure compliance)

Air Conditioners in Residential Premises

G9. The use of any air conditioner installed on the premises must comply with the requirements of the Protection of the Environment Operations (Noise Control) Regulations 2008 and State Environmental Planning Policy (Infrastructure) 2007 and must not:

- (a) emit a noise that is audible within a habitable room in any affected residence (regardless of whether any door or window to that room is open);
 - (i) before 8.00am and after 10.00pm on any Saturday, Sunday or Public Holiday; or
 - (ii) before 7.00am or after 10.00pm on any other day
- (b) cause an LAeq(15min) which exceeds the RBL background noise level by more than 5dB when measured at the boundary of any affected residence. The modifying factor adjustments in Section 4 of the EPA Industrial Noise Policy will be applied.

“affected residence” includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation and hospitals.

“boundary” includes any window or elevated window of an affected residence.

Terms in this condition have the same meaning as in the Noise Guide for Local Government and the Industrial Noise Policy published by the NSW Environment Protection Authority.

(Reason: To maintain residential amenity)

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 159/16 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 change and no material impacts on 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 subject to the imposition of a condition requiring deletion of part of the first floor balcony/balustrade extension (**Condition C23**).

The proposed works, as amended by the conditions of consent, are all located at the rear elevation of the subject semi-detached dwelling/terrace and have been undertaken sympathetically to the character, materials and style of the building. The works have an acceptable level of impact to the heritage item as the subject and the adjoining semi-detached dwellings/terraces are significant for their Fitzroy Street facades and interiors.

The issues raised in the submissions received are addressed by the imposition of appropriate conditions.

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:

The adjoining properties and the Milson/Bradfield Precinct were notified about the proposed development for the period between 7 and 21 June 2019. The notification resulted in one (1) submission. The issues raised in the submissions received have been addressed in the assessment report.

The conditions attached to the original consent for Development Application No. 159/16 by endorsed date of 2 November 2016 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)