

Francine Goddard  
C/- Corben Architects  
PO Box 1021  
MOSMAN NSW 2088

D41/19  
RT (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 MODIFICATION 41/19/2 – APPROVAL**

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**Development Consent Number:** 41/19/2

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**Land to which this applies:** 33A Shellcove Road, Kurraba Point  
Lot No.: 1, SP: 21845

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**Applicant:** Francine Goddard

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**Proposal:** Section 4.55(1A) modifications to D41/19 for internal layout changes

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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. 41/19 and registered in Council's records as Application No. **41/19/2** relating to the land described as **33A Shellcove Road, Kurraba Point**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 16 April 2019, has been determined in the following manner: -

- To modify conditions (A1) of the consent and replace with the following revised condition namely:*

**Development in Accordance with Plans (S4.55 Amendments)**

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

Plan No.	Rev	Date	Drawn by	Received
DA02	A	12/12/18	Corben Architects	4 April 2019
DA03	A	12/12/18	Corben Architects	4 April 2019
DA04	A	12/12/18	Corben Architects	4 April 2019
DA05	A	12/12/18	Corben Architects	4 April 2019
DA06	A	12/12/18	Corben Architects	4 April 2019

DA07	A	12/12/18	Corben Architects	4 April 2019
DA08	A	12/12/18	Corben Architects	4 April 2019
DA09	A	12/12/18	Corben Architects	4 April 2019
DA10	A	12/12/18	Corben Architects	4 April 2019

endorsed with Council's approval stamp, except as modified by highlighting on:

(a) The following drawings numbered for D41/19/2:

<b>Plan No.</b>	<b>Rev</b>	<b>Date</b>	<b>Prepared by</b>	<b>Received</b>
DA02	E	26/2/20	Corben Architects	26 February 2020
DA03	B	5/11/19	Corben Architects	30 January 2020
DA04	B	5/11/19	Corben Architects	30 January 2020
DA05	B	5/11/19	Corben Architects	30 January 2020
CD08	C	26/2/20	Corben Architects	26 February 2020

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

**2. To insert conditions of consent (A4, C14, C15 and I1) namely:**

**Terms of Consent (D41/19/2)**

A4. Approval is granted for modifications to the original development consent to provide an internal lift shaft and internal layout changes:

- (a) Level 1 – Removal of an existing internal wall for an existing storeroom and the construction of a lift shaft and use of the remaining area as plant room and conversion of the existing plant room and its use as a store room.
- (b) Level 2 (Unit 1) – Alterations to the layout of the TV room and bathroom to accommodate a linen room and a lift shaft with an opening onto the lobby; deletion of a store room to provide a bathroom and reconfiguration of the laundry.
- (c) Level 3 (Unit 2) – Alterations to the layout of the TV room and bathroom to accommodate a linen room and a lift shaft with an opening onto the lobby; deletion of a store room to provide a bathroom and reconfiguration of the laundry.

**The maximum height of the internal lift shaft must not exceed the height of the existing roof at RL23.00.**

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)

**Noise from Plant and Equipment**

C14 The use of all plant and equipment installed on the premises must not:

- (a) Contribute an LAeq(15min) which will cause the total LAeq(15min) from all plant and equipment operating contemporaneously on the site or in the strata scheme or in the mixed strata schemes to exceed the RBL by more than 5dB when measured at the boundary of any affected receiver . The modifying factor adjustments in Section 4 of the EPA Industrial Noise Policy shall be applied.
- (b) Cause “offensive noise” as defined in the *Protection of the Environment Operations Act 1997*.

“affected receiver” includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation, schools, hospitals, places of worship, commercial premises and parks and such other affected receiver as may be notified by the Council in writing.

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

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 an appropriate level of amenity for adjoining land uses)

### **Vibration from Plant and Equipment**

- C15. The use of all plant and equipment to be installed on the premises must comply with the vibration limits specified in “Assessing Vibration: a technical guideline” issued by the NSW Environment Protection Authority, at the boundary of any affected receiver.

A certificate from an appropriately qualified acoustical consultant eligible for membership of the Association of Australian Acoustic Consultants must be submitted to the Certifying Authority, certifying that all plant and equipment on the site, together with the proposed plant and equipment, operating contemporaneously will comply with the requirements of this condition.

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.

“affected receiver” includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation, schools, hospitals, places of worship and commercial premises and such other affected receiver as may be notified by the Council in writing.

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

“contemporaneously” means *existing at or occurring in the same period of time* (Macquarie Dictionary 3rd rev. ed. 2004).

(Reason: To maintain an appropriate level of amenity for adjoining land uses)

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**Noise and Vibration Impact**

11. The on-going use of the premises approved under this consent must comply with all conditions pertaining to noise and vibration specified in this consent.

(Reason: To ensure compliance with the specified levels of noise and vibration and to maintain the amenity of surrounding land uses)

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The proposed modifications for internal works to facilitate the installation of a lift would not result in changes to the overall design, bulk, scale and building envelope of the approved development and will have negligible environmental impacts on the locality and adjoining properties.

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.

**Reason for approval:**

It is considered that the proposed modifications would be consistent with the reasons for granting approval for the original DA subject to the imposition of Conditions C14 and C15 to ensure the amenity of the adjoining properties.

The proposal was found to be acceptable in the site circumstances and is recommended that the subject Section 4.55(1A) application be approved with modifications to the relevant conditions.

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**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.

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The conditions attached to the original consent for Development Application No. 41/19 by endorsed date of 16 April 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**