

**Original signed by: Robyn Pearson Dated: 13/4/2020.**

Alison Wilson  
C/- Corben Architects  
PO Box 1021  
NEUTRAL BAY NSW 2089

D203/19  
LK(CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 MODIFICATION 203/19/2 – APPROVAL**

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**Development Consent Number:** 203/19/2

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**Land to which this applies:** 117 Carabella Street, Kirribilli  
Lot No.: 1, DP: 926773

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**Applicant:** Alison Wilson  
C/- Corben Architects

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**Proposal:** Section 4.55(2) modification to DA203/19 for alterations to an approved development for additions and alterations to an existing residential flat building.

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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. **203/19** and registered in Council's records as Application No. **203/19/2** relating to the land described as **117 Carabella Street, Kirribilli**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 31 October 2019, has been determined in the following manner: -

- 1. To modify the development consent (DA203/19) and modify condition A1 to include the revised plans:***

**Development in Accordance with Plans (S 4.55 Amendments)**

A1. The development shall be carried out in accordance with the following drawings:

<b>Drawing Number</b>	<b>Revision</b>	<b>Title</b>	<b>Drawn by</b>	<b>Dated</b>
DA03	A	Site Plan	Corben Architects	12/07/2019
DA04	A	Level 1	Corben Architects	12/07/2019
DA05	B	Level 2	Corben Architects	01/10/2019
DA06	C	Level 3	Corben Architects	01/10/2019

DA07	C	Roof Plan	Corben Architects	01/10/2019
DA08	C	North East Elevation	Corben Architects	01/10/2019
DA09	C	South West Elevation	Corben Architects	01/10/2019
DA10	C	North West Elevation	Corben Architects	01/10/2019
DA11	C	South East Elevation	Corben Architects	01/10/2019
DA12	C	Carabella Street Elevation	Corben Architects	01/10/2019
DA13	C	Section AA	Corben Architects	01/10/2019
DA14	C	Section BB	Corben Architects	01/10/2019
DA22	C	External View	Corben Architects	01/10/2019
DA23	C	External View	Corben Architects	01/10/2019

and endorsed with Council's approval stamp, except as modified and highlighted as such in colour on the following drawings for DA 203/19/2:

Drawing Number	Revision	Title	Drawn by	Received by Council
DA04	B	Level 1	Corben Architects	05/03/2020
DA05	C	Level 2	Corben Architects	05/03/2020
DA08	D	North East Elevation	Corben Architects	05/03/2020
DA10	D	North West Elevation	Corben Architects	05/03/2020
DA11	D	South East Elevation	Corben Architects	05/03/2020
DA22	D	External View	Corben Architects	05/03/2020

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

**2. To modify Condition C14 (Heritage) as follows:**

**Heritage**

C14. The following shall be applied to the development:

- a) The upper roof extensions (comprising the northwest side dormer, rear northeast roof extension and front southwest roof extension) shall match the roof of the existing dwelling.
- b) The new works are to match the existing exterior colour scheme, or, any new colour scheme, shall use a Federation period heritage colour scheme or neutral tones sympathetic to the character of the conservation area.
- c) The new windows to the Level 2 study, Level 2 bathroom and northwest dormer shall be timber-framed and shall be multi-paned to match existing windows on the dwelling. The new front door shall be the existing front door salvaged and reused or shall be timber and detailed in the Federation style.
- d) The balustrades of the reconstructed Deck (Level 1) and Terrace (Level 2) shall match the existing balustrades.

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 conserve heritage assets and to be sympathetic to the Conservation Area).

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**Reason for approval:**

This application which seeks minor amendments to the approved development at 117 Carabella Street, Kirribilli, satisfies the provisions of Section 4.55(2) in that the proposed development is substantially the same as what was approved under DA203/19, and the proposed modifications will not materially alter the use or the form of the development as originally approved.

The site benefits from existing use rights, and the amended proposal has been assessed against the planning principles as stated by Senior Commissioner Roseth in *Fodor Investments v Hornsby Shire Council (2005)* for developments which benefit from existing uses rights and was found to be satisfactory.

Whilst the LEP/DCP controls do not apply to this proposal, consideration has been given to the relevant controls in order to measure the performance of this development. It is concluded that 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 proposal was found to be acceptable in the site circumstances and is recommended that this subject Section 4.55(2) application be approved.

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**How community views were taken into account:**

The proposal was notified and advertised in accordance with Section 3 of the North Sydney Community Engagement Protocol. No submissions were received, however, neighbour amenity has been considered in the assessment of this application and the impacts are satisfactory.

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The conditions attached to the original consent for Development Application No. 203/19 by endorsed date of 31 October 2019 still apply.

**ADVISINGS**

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