

Wilma Leahy
Suite 214, 40 Yeo Street
NEUTRAL BAY NSW 2060

D53/19
RT (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 53/19/5 – APPROVAL**

Development Consent Number: 53/19/5

Land to which this applies: 53-55 Gerard Street, Cremorne
Lot No.: 75, DP: 4785

Applicant: Wilma Leahy

Proposal: Section 4.55(1A) modifications to DA53/19 for changes to the design of the basement parking and associated driveway modifications.

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. **53/19** and registered in Council's records as Application No. **53/19/5** relating to the land described as **53-55 Gerard Street, Cremorne**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 7 August 2019, has been determined in the following manner: -

1. To modify the development consent (D53/19) and modify condition A1 to read as follows:

Development in Accordance with Plans (S4.55 Amendments)

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

Plan No.	Date	Drawn by	Received
TP00.01A	28/05/2019	Rothe Lowman	30 May 2019
TP00.02A	28/05/2019	Rothe Lowman	30 May 2019
TP01.01A	28/05/2019	Rothe Lowman	30 May 2019
TP01.02A	28/05/2019	Rothe Lowman	30 May 2019
TP01.03A	28/05/2019	Rothe Lowman	30 May 2019

TP01.04A	28/05/2019	Rothe Lowman	30 May 2019
TP01.05A	28/05/2019	Rothe Lowman	30 May 2019
TP01.06A	28/05/2019	Rothe Lowman	30 May 2019
TP02.01A	28/05/2019	Rothe Lowman	30 May 2019
TP02.02A	28/05/2019	Rothe Lowman	30 May 2019
TP03.01A	28/05/2019	Rothe Lowman	30 May 2019
TP03.02A	28/05/2019	Rothe Lowman	30 May 2019

and endorsed with Council's approval stamp, except as modified by highlighting on the following drawings for D53/19/3:

Plan No.	Date	Drawn by	Received
A00.01 Rev -	04-10-2019	Rothe Lowman	13 November 2019
A04.01 Rev A	Date 11	Rothe Lowman	13 November 2019
H08 Issue A	25-09-19	Australian Consulting Engineers	13 November 2019

and endorsed with Council's approval stamp, except as modified by highlighting on the following drawings for D53/19/5:

Plan No.	Date	Drawn by	Received
TP01.01	2020.05.07	Rothe Lowman	8 May 2020
TP01.02	2020.05.07	Rothe Lowman	8 May 2020
TP03.01	2020.05.07	Rothe Lowman	8 May 2020
TP03.02A	2020.05.07	Rothe Lowman	8 May 2020

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

2. To insert new condition A4 as follows:

Terms of Consent (D53/19/5)

A4. Approval is granted for the following works as shown on drawing numbered TP01.01, TP01.02, TP03.01, TP03.02 A, dated 2020.05.07, prepared by Rothe Lowman and received by Council on 8 May 2020 drawings:

- (a) Installation of a modified car stacker system to the three spaces on the southern side of the approved basement;
- (b) Excavation within the southern section of the basement to create a 1.9m pit to accommodate the three (3) car stacker spaces; and

- (c) Changes to the levels within the basement and the driveway gradient as detailed on the approved drawings.

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)

The proposed modifications involving basement parking and associated driveway changes, satisfy the provisions of Section 96(1A) in that the proposed development is substantially the same as what was approved under DA 53/19 as the proposed works are primarily internal and will not alter the use and the general form of the development as originally approved.

The proposed modifications would not change the development outcome in terms of height, bulk and scale, building envelope and the appearance of the approved apartment building and/or landscaping treatments.

Reason for approval:

The proposed modifications would facilitate the provision of a designated visitor parking space on site as required by **Condition C39** whilst maintaining compliance with the DCP maximum parking requirement. The proposed excavation is considered to be acceptable given that the works would be limited to an area on the southern side of the approved basement involving three (3) car stacked car spaces and no material loss of amenity for the adjoining properties as the result of such works.

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

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 proposal relates to internal changes within the basement involving minor additional excavation and driveway modifications within the subject site. The proposed changes would have no material impacts for adjoining properties.

The conditions attached to the original consent for Development Application No. 53/19 by endorsed date of 7 August 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

Signature on behalf of consent authority
ROBYN PEARSON
TEAM LEADER ASSESSMENTS