

Original signed by Robyn Pearson on 9/6/2020

Wilma Leahy
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NEUTRAL BAY NSW 2089

D53/19
RT (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 53/19/4 – APPROVAL**

Development Consent Number: 53/19/4

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 internal layout changes on Level 3 to provide a 3 bedroom unit and a 2 bedroom unit on this level and associated fenestration changes on the southern elevation.

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. **53/19/4** 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: -

- To modify the development consent (D53/19) and modify conditions A1 and C36 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

and endorsed with Council's approval stamp, except as modified by highlighting on the following drawings for D53/19/4:

Plan No.	Date	Drawn by	Received
TP01.05	2020.04.27	Rothe Lowman	29 April 2020
TP02.01	2020.04.27	Rothe Lowman	29 April 2020
TP02.02	2020.04.27	Rothe Lowman	29 April 2020

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

BASIX Certificate

C36. 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. 993638M_04 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)

2. To insert new condition A5 as follows:

Terms of Consent (D53/19/4)

A5. Approval is granted for the following works as shown on drawing numbered TP01.05, TP02.01, TP02.02, dated 2020.04.27, prepared by Rothe Lowman and received by Council on 29 April 2020 drawings:

- (a) Internal layout changes on Level 3 of the approved residential flat building to provide 1 x 3 bedroom unit (U301) and 1 x 2 bedroom unit (U302);
- (b) Changes to the internal area of the units to 125.5sqm for U301 and 101.04sqm for U302;
- (c) Fenestration changes on the southern elevation on Level 3 with the deletion of two (2) windows.

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)

Reason for approval:

The proposed modification seeks changes to the internal layout on Level 3 to provide a 3 bedroom and a 2 bedroom unit and the deletion of two (2) windows on the southern elevation. The proposal satisfies the provisions of Section 4.55(1A) in that the development would be substantially the same as what was approved under DA 53/19 as the proposed modifications 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, envelope and appearance of the approved apartment building, landscaping treatments. It would have no material impacts on the amenity of the surrounding properties.

In addition, the proposed modifications would not change the provision of a designated visitor's parking space within the basement.

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.

How community views were taken into account:

Adjoining property owners and the Brightmore Precinct were notified between 15 and 29 May 2020. The notification of the application has attracted no submissions.

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