

Original signed by: Robyn Pearson Dated: 7/12/2020

Bart Jaworski  
C/- Bart Strata Pty Ltd  
PO Box 95  
ALEXANDRIA NSW 1435

D319/19  
RP(CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 MODIFICATION 319/19/2 – APPROVAL**

**Development Consent Number:** 319/19/2

**Land to which this applies:** Unit 4, 61 Kirribilli Avenue Kirribilli  
Lot No.: 0, SP: 20043

**Applicant:** Bart Jaworski  
C/- Bart Strata Pty Ltd

**Proposal:** Modifications to existing windows within Unit 4 – minor changes to size, column removal, modification to Condition C8.

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. **319/19** and registered in Council's records as Application No. **319/19/2** relating to the land described as **Unit 4, 61 Kirribilli Avenue, Kirribilli**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 17 March 2020, has been determined in the following manner: -

1. **Conditions A1 and C8 to be amended to reflect the requested changes as follows:**

The development must be carried out in accordance with the following drawings and documentation and endorsed with Council's approval stamp, except where amended by the following conditions of this consent.

Drawing Number	Title	Drawn by	Dated	Received
DA3-01	Level 2 floor plan	Architelle	8 October 2019	9 October 2019
DA3-02	South Elevation (Harbour Façade)	Architelle	8 October 2019	9 October 2019
DA03-03	East Elevation	Architelle	8 October 2019	9 October 2019

**As amended by the following plans**

Drawing Number	Title	Drawn by	Dated	Received
DA3-01	Level 2 floor plan	Architelle	20 July 2020	11 August 2020
DA3-02	South Elevation (Harbour Façade)	Architelle	20 July 2020	11 August 2020
DA03-03	East Elevation	Architelle	20 July 2020	11 August 2020

**Heritage Amendments**

C8 *The following amendments must be made to the plans to maintain the significance of the conservation area:*

- i. The works to the window (W42) to be deleted from the plans.*
- ii. The brick window sills must be maintained for the windows to be modified on the plans (W43, W44, W45, W46)*
- iii. ~~The operable window to be provided within window (W43) must be in the form of a aluminium window with no horizontal mullion.~~*

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 structural integrity of the subject site and adjoining sites during the excavation process)

2. A new condition is imposed to confirm that no approval is granted for a new window (W48) and no additional changes to window (W44).

**Terms of the Consent**

A4 No approval is granted for a new window in the bedroom/ensuite of unit 4. No further changes are approved to window (W44) in the kitchen other than what was approved under the original application (DA319/19).

(Reason: To confirm any works not approved under the current s4.55 application)

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The proposed changes to the plans and condition C8 (Heritage Amendments) do not change the nature of the application for alterations to a residential flat building so the application remains “substantially the same” as required under section 4.55 of the EPA Act.

**Reason for approval:**

The proposed changes to condition C8 (Heritage Amendments) are acceptable in the site circumstances having regard to the relevant planning instruments and policies in particular North Sydney Local Environmental Plan 2013 and North Sydney Development Control Plan 2013 because the changes would have no impact upon the character of the Kirribilli Conservation Area.

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The applicant has withdrawn their request for changes to the window (W44) and a new window (W48) in the bedroom/ensuite (in writing) so there would be no additional loss of visual and/or aural privacy arising from the changes.

The proposal would not cause any view loss, overshadowing and/or any impacts to the public domain given that the proposal would be contained within the existing footprint of the building with no new floor area and/or bulk and scale.

Having regard to the provisions of Section 4.55 of the EPA Act 1979, the application is satisfactory and recommended for approval subject to changes to the appropriate conditions of consent for the original application

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

On 14 August 2020, the plans were notified to adjoining properties and the Bradfield Precinct between 21 August and 14 September 2020. One (1) submission was received that raised issues in relation to the potential loss of visual and aural privacy. However, the owners of unit 4 have withdrawn their request for changes to the windows under the current s 4.55 application so there would be no loss of privacy arising from the current modification application

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The conditions attached to the original consent for Development Application No. 319/19 by endorsed date of 17 March 2020 still apply.

**ADVISINGS**

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

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DATE

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Signature on behalf of consent authority  
ROBYN PEARSON  
**TEAM LEADER (ASSESSMENTS)**