

Caroline Spring
53 Brightmore Street
CREMORNE NSW 2090

D186/18
MS3 (CIS)

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 186/18/2 – APPROVAL

Development Consent Number: 186/18/2

Land to which this applies: 53 Brightmore Street, Cremorne
Lot No.: A, DP: 384553

Applicant: Caroline Spring

Proposal: To modify consent for alterations and additions to dwelling including first floor and carport relating to fencing, retaining walls and associated works

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. **186/18** and registered in Council's records as Application No. **186/18/2** relating to the land described as **53 Brightmore Street, Cremorne**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 3 August 2018, has been determined in the following manner: -

1. To insert the following new conditions, namely:

Development in Accordance with Plans (S4.55 Amendments)

A3. The development being carried out in accordance with plans identified in Condition A1 of the consent and endorsed with Council's approval stamp, except as modified by the modifications shown by clouding on:

Plan No	Issue	Title	Dated	Prepared	Received
LPDA 18-233	D	Fence Elevations	17/12/2020	Conzept Landscape Architects	18/12/2020
a2001	C	Site plan	30/11/2020	rfa Architects	30/11/2020
a2201	C	Ground floor plan	30/11/2020	rfa Architects	30/11/2020
a3100	C	Proposed elevations (West)	30/11/2020	rfa Architects	30/11/2020
a3101	C	Proposed elevations (North & East)	30/11/2020	rfa Architects	30/11/2020

except as amended by the following conditions and this consent.

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

Front Boundary Fence

C15 The front fence design is to be amended to:

- (a) Be located wholly within the subject site (Lot A, DP 384553) and Lot 2 DP1126847 and not encroach the road reserve (including the footpath).
- (b) The gate incorporated into the front fence which extends over Lot 2 DP 1126847 is not to swing out over the footpath. A pair of side hung gates, or a removable panel is acceptable.
- (c) The gate is not to be lockable and must allow Council to maintain access to the Council Reserve. Council is to be provided with details as to how the fence can be removed or opened prior to the issue of the relevant Construction Certificate

The Certifying Authority must ensure that the building plans and specifications submitted, fully satisfy the requirements of this condition, prior to the issue of the relevant Construction Certificate for the front fence.

(Reason: Encroachment condition, maintain overland flow path)

Common Boundary Fencing and retaining walls

C16 The approved fencing, retaining walls and associated drainage adjacent to the common boundary with No. 51 Brightmore Street are to be located wholly within the subject site and not encroach the adjoining property.

The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the relevant issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: Owner's Consent)

Unimpeded Council Access

I1 Unrestricted access is to be retained to Council land. The approved gate extending over Lot 2 DP 1126847 must not be locked at any time.

(Reason: To ensure Council maintains access to all Council owned land)

No Approval for Exclusive Use

I2. No approval is granted or implied by this consent to the exclusive use of Council's Drainage Reserve, identified as Lot 2 DP1126847, by the owner's or occupiers of 53 Brightmore Street, Cremorne.

(Reason: To ensure clarity in the intent of this consent)

Maintenance

- I3. The owner of 53 Brightmore Street remains responsible for the maintenance of the front fence, including the portion that extends over Lot 2 DP1126847.

(Reason: To ensure that the encroachment is satisfactorily maintained.)

Engineer Certificate

- G4. A certificate from an appropriately qualified engineer is to be provided to confirm that the front fence constructed over Lot 2 DP1126847 is structurally sound.

(Reason: To ensure that the encroachment is satisfactorily constructed.)

The development, as proposed to be modified, is considered substantially the same development and has regard to the reasons for approval of the original application. The modification has been assessed against the matters for consideration as outlined in section 4.15(1) of the Act which have been satisfied. The proposed development is permissible, meets the development standards and relevant provisions of NSLEP 2013 and is generally in accordance with the objectives of the NSDCP 2013.

Reason for approval:

The proposed modifications would allow the replacement of the existing fencing and would be consistent with the character of the area. The proposed fencing would not adversely impact the overland floor path that adjoins the site as it is an open design. The proposed fencing encroaches on Council's land, being the adjoining drainage reserve and is to be constructed to allow Council to maintain access to the reserve area. The encroachment has been approved by the Director of Engineering and Property Services.

The proposed fencing, retaining walls and associated drainage adjacent to the common boundary with No. 51 Brightmore Street is to be constructed wholly within the subject site and would not encroach on the neighbour's land.

The proposed modification is therefore considered reasonable and is recommended for approval.

How community views were taken into account:

The application was not formally notified as Council's Community Engagement Protocol does not require the notification of section 4.55 applications where Council is satisfied that the proposed modification or amendment has no or only minimal impact on the environment. Nevertheless, the adjoining owner was notified directly given the proposed works located along the common boundary and a condition of consent is imposed to ensure that the proposed development does not affect the neighbour's property.

The conditions attached to the original consent for Development Application No. 186/18 by endorsed date of 3 August 2018 still apply.

ADVISINGS

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