

C/- COSO Architecture  
Studio 4.04  
56 Bowman Street  
PYRMONT NSW 2009

D163/17  
MS3 (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 MODIFICATION 163/17/6 - APPROVAL**

**Development Consent Number:** 163/17/6

**Land to which this applies:** 211 Military Road, Cremorne  
Lot No.: 0 DP: 30908

**Applicant:** COSO Architecture

**Proposal:** Section 4.55(2) Application to modify DA163/2017 relating to the as built relocation of the central lift and staircase layout and angled front balconies to units 7, 13 and substitution of the on-site detention system for rain-water tanks

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. **163/17** and registered in Council's records as Application No. **163/17/6** relating to the land described as 211 Military Road, Cremorne.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 6 December 2017, has been determined in the following manner:-

**A. Impose Condition A4, as follows:**

**A4 Section 4.55 Plans**

Plan No	Issue	Title	Dated	Prepared	Received
S4.55 01	A	Site Plan	18/02/2021	COSO Architecture	6/05/2021
S4.55 02	A	Lower Basement Plan	18/02/2021		6/05/2021
S4.55 03	B	Basement Plan	18/02/2021		27/05/2021
S4.55 04	B	Ground Floor Plan	18/02/2021		27/05/2021
S4.55 05	A	First Floor Plan	18/02/2021		6/05/2021
S4.55 06	A	Second Floor Plan	18/02/2021		6/05/2021
S4.55 07	A	Third Floor Plan	18/02/2021		6/05/2021
S4.55 08	B	Roof Plan	03/05/2021		6/05/2021

S4.55 09	A	Front Elevation North Facing	18/02/2021	COSO Architecture	6/05/2021
S4.55 10	B	Western Elevation	03/05/2021		6/05/2021
S4.55 11	A	Eastern Elevation	18/02/2021		6/05/2021
S4.55 12	A	Rear Elevation	18/02/2021		6/05/2021
S4.55 13	A	Courtyard Section AA (South Facing)	18/02/2021		6/05/2021
S4.55 14	A	Section BB (East Facing)	18/02/2021		6/05/2021
S4.55 15	A	Lift Privacy Diagram (East)	18/02/2021		6/05/2021
S4.55 15	C	Lift Privacy Diagram (West)	03/05/2021		6/05/2021

**B. *Modify conditions C17 and G7, as follows:***

The reference to “on-site detention (OSD)” may be deleted from these conditions.

**Covenant and Restriction (Stormwater Control Systems)**

G7. An Instrument pursuant to Sections 88B ~~and 88E~~ of the *Conveyancing Act* 1919 and one copy must be submitted to Council in registrable form, providing for:

- a. ~~a restriction as to user and~~ positive covenant as to user as appropriate in favour of North Sydney Council burdening No. 211 Military Road requiring the ongoing retention, maintenance and operation of the stormwater facility (on-site detention, pump-out, charged lines **where applicable**);
- b. North Sydney Council being nominated in the Instrument as the only party authorised to release, vary or modify the Instrument;
- c. the wording on the Instrument making reference to the Council file/s which hold:
  - (a) the Construction plans; and
  - (b) the “Work-as-Executed” (as built) plans;

Upon Council being satisfied as to the terms of the Instrument, North Sydney Council’s official seal will be affixed to these documents, prior to submission to the Land and Property Information Office for registration

The Instrument creating the restriction and/or covenant under ss 88B and 88E required by this condition of consent must be registered on the Title of the development site prior to the issue of an Occupation Certificate or commencement of use of the site, whichever is the earlier.

Evidence of the registration of the instrument referred to in this condition is to be provided to Council prior to the issue of an Occupation Certificate.

All costs associated with the preparation, approval and registration of the Instrument required by this condition of consent must be borne by the person acting on this consent including the reasonable costs of Council in obtaining advice, negotiating the terms or otherwise facilitating the execution and registration of the required Instrument.

(Reason: Compliance and adequate maintenance of drainage system)

**C. Delete condition C18**

**~~C18—Onsite Stormwater Detention~~**

**D. Impose conditions G21 and G22, as follows:**

**Installation of Privacy Film to Lift Shaft Structure**

G21. 3M Scotchcal Graphic Film 7725 (Nimbus Grey or Medium Grey Colour) is to be installed to the internal face of the western elevation of the glazed lift/mechanical service riser shaft prior to the issue of the Occupation Certificate.

(Reason: To minimise overlooking into the adjoining property (No. 209 Military Road) and to screen the internal workings of the lift shaft)

**Outdoor Lighting**

G22. All outdoor lighting, including relating to the glass lift shaft, must comply with, where relevant AS/NZ1158.3: 1999 Pedestrian Area (Category P) Lighting and AS4282:1997 Control of the Obtrusive Effects of Outdoor lighting. Details demonstrating compliance with these requirements must be submitted to the Certifying Authority for approval prior to the issue of any Occupation Certificate.

(Reason: To maintain the amenity of adjoining land uses)

---

The matters for consideration as outlined in section 4.15(1) of the Act have been satisfied. The proposed modifications seek consent for significant design changes that have been undertaken during construction. The modifications undertaken during construction to resolve NCC and fire safety issues has potentially resulted in a different development outcome. However, the resulting building form has been assessed on its merits and is considered acceptable.

**Reason for Approval:**

On balance, the potential impact of the proposed modifications, as built, are acknowledged in this report, however in the circumstances, do not warrant the refusal of the modification application which would require an order for demolition. The additional obscured glazing film and additional landscaping would remove some existing opportunities for overlooking and provide some visual screening to the currently transparent glazed structure to soften the visual impact when viewed from the adjoining property.

---

---

Other matters such as the non-compliance with site coverage, building height and landscaped area are somewhat minor numerical matters and in the circumstances do not give rise to specific amenity impacts that warrant the refusal of the application.

The application is considered acceptable, in the circumstances, and is therefore recommended for approval.

---

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

The development application was notified in accordance with Council's Community Engagement Protocol from 19 March 2021 until 6 April 2021. A site inspection was undertaken of the objector's property to ensure a full understanding was gained of the site circumstances and potential impacts of the proposal. Additional screening has been required to satisfy part of the concern raised by the submitter.

---

The conditions attached to the original consent for Development Application No. 163/17 by endorsed date of 6 December 2017 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 and 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 and Assessment Act.

**Endorsed for and on behalf of North Sydney Council**

\_\_\_\_\_  
DATE

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