

Original signed by **Robyn Pearson** on **16/11/2021**

Robert Harper and Debbie Dickson  
C/- Kreis Grennan Architecture  
94 Illawarra Road  
MARRICKVILLE NSW 2204

D83/21  
AB7 (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 MODIFICATION 83/21/2 - APPROVAL**

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**Development Consent Number:** **83/21**

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**Land to which this applies:** 54 Fitzroy Street, Kirribilli  
Lot No.: 2, SP: 62288

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**Applicant:** Robert Harper and Debbie Dickson  
C/- Kreis Grennan Architecture

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**Proposal:** Section 4.55(1A) application to modify DA 83/21 with  
regards to Condition C9 and G6 alongside minor changes to  
the rear garden

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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. **83/21** and registered in Council's records as Application No. **83/21/2** relating to the land described as **54 Fitzroy Street, Kirribilli**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **19 May 2021**, has been determined in the following manner:

**1. Condition A1 is amended as follows:**

**Development in Accordance with Plans (S4.55 Amendments)**

- A1. The development must be carried out in accordance with the following drawings and documents endorsed with Council's approval stamp:

| No. | Title                      | Drawn by                   | Date       | Received   |
|-----|----------------------------|----------------------------|------------|------------|
| 011 | Existing Ground + L1 Plans | Kreis Grennan Architecture | 09/03/2021 | 07/04/2021 |
| 012 | Existing L2 + Roof Plan    | Kreis Grennan Architecture | 09/03/2021 | 07/04/2021 |
| 013 | Existing Elevations        | Kreis Grennan Architecture | 09/03/2021 | 07/04/2021 |
| 014 | Existing Elevations        | Kreis Grennan Architecture | 09/03/2021 | 07/04/2021 |

|     |                                   |                            |            |            |
|-----|-----------------------------------|----------------------------|------------|------------|
| 015 | Existing Section A                | Kreis Grennan Architecture | 09/03/2021 | 07/04/2021 |
| 016 | Existing Section B                | Kreis Grennan Architecture | 09/03/2021 | 07/04/2021 |
| 020 | Site Plan                         | Kreis Grennan Architecture | 09/03/2021 | 07/04/2021 |
| 024 | Recycling + Waste Management Plan | Kreis Grennan Architecture | 09/03/2021 | 07/04/2021 |
| 100 | Ground Plan + L1 Plan             | Kreis Grennan Architecture | 09/03/2021 | 07/04/2021 |
| 101 | L2 Plan + Roof Plan               | Kreis Grennan Architecture | 09/03/2021 | 07/04/2021 |
| 200 | Elevation A                       | Kreis Grennan Architecture | 09/03/2021 | 07/04/2021 |
| 201 | Elevation B                       | Kreis Grennan Architecture | 15/03/2021 | 07/04/2021 |
| 300 | Section A                         | Kreis Grennan Architecture | 15/03/2021 | 07/04/2021 |
| 301 | Section B                         | Kreis Grennan Architecture | 09/03/2021 | 07/04/2021 |
| 302 | Section C                         | Kreis Grennan Architecture | 15/03/2021 | 07/04/2021 |
| 350 | Schedule of Colour and Finishes   | Kreis Grennan Architecture | 15/03/2021 | 07/04/2021 |

Except as modified as such on the following drawings for DA 83/21/2:

| No. | Title             | Drawn by                   | Date       | Received   |
|-----|-------------------|----------------------------|------------|------------|
| 005 | Notification Plan | Kreis Grennan Architecture | 30/09/2021 | 08/10/2021 |

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

**2. Condition C9 is modified as follows:**

**Protection of Trees**

- C9. The following tree(s) are required to be protected and retained as part of the development consent in accordance with AS 4970-2009 - Protection of trees on development sites:

| Tree                             | Location  | Height     |
|----------------------------------|---|------------|
| 1 x <i>Lophostemon confertus</i> | Council verge in front of 54 Fitzroy Street (Carabella Street frontage) | 10 m x 9 m |
| 1 x <i>Triadica sebiferum</i>    | Council verge in front of 54 Fitzroy Street                             | 7 m x 5 m  |
| 1 x <i>Triadica sebiferum</i>    | Council verge in front of 54 Fitzroy Street                             | 9 m x 7 m  |
| 1 x <i>Jacaranda mimosifolia</i> | The rear setback of 62 Carabella Street                                 | 11 m x 8 m |

No pruning shall be permitted to the *Jacaranda mimosifolia* (11 m x 8 m) tree within the rear setback of 62 Carabella Street shall be protected in accordance with AS4970. to this tree.

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.

Any tree(s) shown as being retained on the approved plans (regardless of whether they are listed in the above schedule or not) must be protected and retained in accordance with this condition.

(Reason: Protection of existing environmental and community assets)

3. Condition C14 is modified as follows:

**BASIX Certificate**

C14. Under clause 97A (3) of the Environmental Planning and Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. **A407838\_02**, dated 13 September 2021, 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)

4. Condition C15 is added as follows:

**Replacement Trees**

C15. Should any of the following trees within the rear setback listed in the schedule below require removal as part of the approved consent, an appropriate replacement tree(s) able to attain a similar or greater height and canopy spread, of a minimum 45-litre pot size, must be planted within the rear setback to ensure an appropriate landscaped context for the site. Examples of appropriate species may include but are not limited to: *Pyrus calleryana* (Callery pear), *Lagerstroemia indica* (Crepe myrtle), *Rhaphis excelsa* (Raphis palm).

| Tree                          | Location   | Height      |
|-------------------------------|--|-------------|
| 3 x <i>Acer palmatum</i>      | The rear setback of 54 Fitzroy Street (side boundary with 52 Fitzroy Street) | 3 m x 2 m   |
| 1 x <i>Murraya paniculata</i> | The rear setback of 54 Fitzroy Street (side boundary with 52 Fitzroy Street) | 4-5 m x 3 m |

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 provide an appropriate landscaped context for the site)

5. Condition G6 is modified as follows:

**Certification of Tree Condition**

G6. Prior to the issue of an Occupation Certificate, a report prepared by an appropriately qualified person (being an arborist or the like) must be submitted to the Certifying Authority, describing the health of the tree(s) specifically nominated below:

| Tree                             | Location   | Height     |
|----------------------------------|--|------------|
| 1 x <i>Lophostemon confertus</i> | Council verge in front of 54 Fitzroy Street (Carabella Street frontage). | 10 m x 9 m |
| 1 x <i>Triadica sebiferum</i>    | Council verge in front of 54 Fitzroy Street                              | 7 m x 5 m  |
| 1 x <i>Triadica sebiferum</i>    | Council verge in front of 54 Fitzroy Street                              | 9 m x 7 m  |
| 1 x <i>Jacaranda mimosifolia</i> | The rear setback of 62 Carabella Street                                  | 11 m x 8 m |

The report must detail the condition and health of the nominated tree(s) upon completion of the works and shall certify that the tree(s) has/have not been significantly damaged during the works on the site and has/have reasonable prospects for survival.

(Reason: To ensure compliance with the terms of this consent)

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**Reasons for Approval:**

The proposed modifications satisfy the provisions of Section 4.55 (1A) in that the proposed development remains consistent with what was approved by DA 83/21. The proposed modifications will not alter the use, or the built form, of the development as originally approved.

The proposed modifications would not significantly change the level of compliance with the relevant development standards and controls as contained in North Sydney LEP 2013 and North Sydney DCP 2013. There would be no undue impacts on the residential amenity of any adjoining properties, or on the character of the locality, and the proposal remains consistent with the objectives of the R3 (Medium Density Residential) Zone, and the original reasons for granting consent.

The proposal was found to be acceptable in the site circumstances and is recommended that the subject Section 4.55(1A) application be approved.

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

There is no requirement to advertise a Section 4.55(1A) application, and no neighbour would be impacted by the minor amendment of Conditions C9 and G6 or the alterations to the rear courtyard.

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The conditions attached to the original consent for Development Application No. **83/21** by endorsed date of **19 May 2021** still apply.

**ADVISINGS**

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

16 November 2021

\_\_\_\_\_  
DATE

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