

Original signed by Robyn Pearson on 10/11/21

Jeff Karskens Designer  
12 Allen Street  
GLEBE NSW 2037

D405/19  
MS3 (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 MODIFICATION 405/19/2 - APPROVAL**

**Development Consent Number:** 405/19

**Land to which this applies:** 35 Ellalong Road, Cremorne  
Lot No.: A, DP: 411066

**Applicant:** Jeff Karskens Designer

**Proposal:** Section 4.55(2) modification relating to alterations and additions an existing dwelling house and construction of a swimming pool

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. **405/19** and registered in Council's records as Application No. **405/19/2** relating to the land described as **35 Ellalong Road, Cremorne**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 16 April 2020, has been determined in the following manner:

**1. To insert Condition A4 Development in Accordance with Plans (s4.55 Amendments)**

Plan No	Title	Dated	Prepared	Received
A3.05 - C	Basement Floor Plan	17 July 2021	Jeff Karskens Designer	9 August 2021
A3.06 - C	Ground Floor Plan	17 July 2021		27 July 2021
A3.07 - C	First Floor Plan	17 July 2021		27 July 2021
A3.08 - C	Site and Roof Plan	17 July 2021		27 July 2021
A4.01 - C	North and West Elevations	17 July 2021		27 July 2021
A4.02 - C	South and East Elevations	17 July 2021		27 July 2021
A4.03 - C	Sections A and B	17 July 2021		27 July 2021
A4.04 - C	Street Section C	17 July 2021		27 July 2021

**2. Impose Condition A5 Terms of the Consent**

**A5. Terms of the Consent - Garage**

Nothing in this consent confirms or implies the use of the existing garage area within the lower ground floor being for any other purpose other than a garage, as existing. The proposed bi-fold doors within the northern (street) elevation are to be deleted and a garage door reinstated.

(Reason: to ensure that the development is in accordance with the determination.)

**3. Amend Condition C17 BASIX Certificate as follows:**

**C17. BASIX Certificate**

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. A362186\_02, dated 21 July 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. Impose Condition C20 Garage Door**

**C20. Garage Door**

The proposed bi-fold glazed doors in the northern (street) elevation of the lower ground floor level for the existing garage are to be deleted and the existing garage door to be retained or replaced with a similar segment panel lift door with the external finish to be a colour that is compatible with the character of the dwelling.

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 that parking in compliance with Provision 11 of Section 1.5.4 of Part B in NSDCP 2013.)

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**Reasons for Approval:**

The modification application meets the requirements of section 4.55(1A) and has been assessed with regard to the original reasons for approval and 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.

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The proposed modifications are considered substantially the same development and of minimal environmental impact. The proposed modifications are minor in nature and generally relate to the internal reconfigurations of the approved dwelling layout. The proposed modifications to windows would not result in any additional privacy impacts to adjoining properties.

The proposed reconfiguration of the existing garage to accommodate a secondary use as a rumpus room by replacing the existing garage door with bi-fold glazed doors is likely to prevent the practical use of the garage for parking and result in parking being introduced within the front setback area which is contrary to the development controls regarding the location of on-site parking as parking should not be introduced within the front setback area where there is existing parking elsewhere on the site. Conditions A5 and C20 are therefore recommended to retain the existing parking arrangement.

The proposed modification, subject to the requirement to retain the garaging, is therefore considered reasonable and is recommended for approval.

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

The application was notified in accordance with Council's Community Engagement Protocol from 13 August 2021 until 27 August 2021. One submission was received which did not object to the proposal but sought clarification on a number of matters. Nevertheless, the potential impacts to the amenity of the surrounding properties were considered. Conditions of consent have previously been imposed which seek to minimise potential construction impacts.

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The conditions attached to the original consent for Development Application No. 405/19/2 by endorsed date of 16 April 2020 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**

**10 November 2021**

\_\_\_\_\_  
DATE

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