

Rachel Sherwood  
Redfern Lynch Architects  
165 Illawarra Road  
MARRICKVILLE NSW 2204

D363/19  
TH2 (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 MODIFICATION 363/19/2 – APPROVAL**

---

**Development Consent Number:** 363/19/2

---

**Land to which this applies:** 28 Fitzroy Street, Kirribilli  
Lot No.: 1, DP: 584966

---

**Applicant:** Redfern Lynch Architects

---

**Proposal:** To modify a consent for additions and alterations to a terrace dwelling including a three level rear extension.

---

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. **363/19** and registered in Council's records as Application No. **363/19/2** relating to the land described as **28 Fitzroy Street, Kirribilli**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 15 April 2020, has been determined in the following manner:

**1. Add Condition A5 as follows:**

**Development in accordance with Plans (s4.55 Amendments)**

A5. The development being carried out in accordance with plans identified in Condition A1 of the consent and A5 of the modification to consent endorsed with Council's approval stamp, except as modified by the modifications shown on:

Plan No.	Issue	Title	Drawn by	Received
DA:05	D	Demolition Site and Floor Plan	Redfern Lynch Architects	8 September 2021
DA:06	E	Demolition Floor Plans	Redfern Lynch Architects	27 January 2022
DA:08	D	Site and Landscape Plan	Redfern Lynch Architects	8 September 2021

DA:09	E	Proposed Floor Plans	Redfern Lynch Architects	27 January 2022
DA:10	D	Proposed Floor Plans	Redfern Lynch Architects	8 September 2021
DA:11	D	Proposed Elevations	Redfern Lynch Architects	8 September 2021
DA:12	D	Proposed West Elevation	Redfern Lynch Architects	8 September 2021
DA:13	D	Proposed East Elevation	Redfern Lynch Architects	8 September 2021
DA:14	D	Section	Redfern Lynch Architects	8 September 2021
DA:20	D	Fitzroy St Colours	Redfern Lynch Architects	8 September 2021

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

**2. Modify Conditions A4, C1, C17 and G1 as follows:**

**External Finishes and Materials**

- A4. ~~All materials and finishes are to be in accordance with the submitted schedule (Drawing DA:19, Revision B, listed in Condition A1 of this consent)~~ **All materials and finishes are to be in accordance with the submitted schedule (Drawing DA:19, Revision B, listed in Condition A1 of development consent no. 363/19) and in accordance with the submitted schedule (Drawing DA:20, Revision D, listed in Condition A5 of this consent), unless otherwise modified by Council in writing.**

Plans and specifications which comply 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 that the form of the development undertaken is in accordance with the determination of Council, Public Information)

**Heritage Requirements**

- C1. The following shall be applied to the development:

- ~~All solar panels shall be installed to lie flat on the roof surface.~~ **The new external blinds on the rear elevation are to be retractable venetian blinds and are to match or be similar to the approved external colour scheme.**
- All new doors and windows on the south elevation (front, Fitzroy Street façade) shall be timber. All other new windows and doors are to have aluminium or steel framing sections of a width 45mm or wider or are to be timber framed.
- All decorative balustrades on the Fitzroy Street façade are to be retained as indicated on Drawing DA11 (Revision **ED**).

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 minimise visual impact of solar panels and be sympathetic to the character of the Heritage Item)

### BASIX Certificate

C17. Under clause 97A(3) of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in BASIX Certificate ~~No. A370026 dated 12 February 2020~~ **No. A430721 dated 07 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)

### New front boundary fence

G1. The new front boundary fence shall be completed in full, and in strict accordance with Drawing DA11 (Revision **ED**) listed in Condition ~~A4~~ **A5** of this consent prior to the issue of any Occupation Certificate. The new front boundary fence along Fitzroy Street shall be completed in full prior to the issue of any Occupation Certificate.

(Reason: To ensure the development is completed in accordance with this consent)

---

### Reason for approval:

The proposed modifications are considered to be generally consistent with the originally approved development application and s.4.55 of the EP&A Act 1979. Furthermore, the modifications do not result in any material amenity impact to adjoining properties or the surrounding area. The proposed modifications are consistent with the reasons for the granting of consent to the originally approved development and is considered to be acceptable.

There is no change to the height exceedance remaining at 9.79m. The non-compliance with the height control is caused by the second floor rear addition that is unlikely to have a material impact on adjoining properties including no additional overshadowing, no privacy loss and no impact on adjoining views. It is concluded that the height exceedance is acceptable in the site circumstances.

The modification application primarily seeks to remove aspects of the previous consent including a lift and reduce the size of the first floor and second floor rear additions. The cantilevered rear addition for the first floor is deleted and the modified first floor addition has a reduced size and scale not projecting beyond the adjoining party wall of 26 Fitzroy Street which is an improved heritage outcome.

Given the reduced scale, and proportions of the rear extensions, it is considered that the modification application has an improved heritage outcome not detracting from the group of heritage items and consequently the proposal generally accords with Clause 5.10 in NSLEP 2013.

---

---

Having regard to the provisions of section 4.55 & 4.15(1) of the *Environmental Planning and Assessment Act 1979*, the proposed development as modified is substantially the same development as originally consented to and the proposed modifications are considered reasonable and therefore the application is recommended for **approval**.

---

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

The application was notified to adjoining properties and the Bradfield Precinct. Council received no submissions, and no matters were raised with regards to the proposed modification of DA 363/19.

---

The conditions attached to the original consent for Development Application No. 363/19 by endorsed date of 15 April 2020 still apply.

**ADVISINGS**

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

03 March 2022

---

DATE

---

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