

Fistum Gebera  
10/11-17 Watson Street  
NEUTRAL BAY NSW 2089

D173/15  
RT (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 MODIFICATION 173/15/7 - APPROVAL**

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**Development Consent Number:** 173/15/7

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**Land to which this applies:** 19-21 Kareela Road, Cremorne Point  
Lot No.: 19, SEC: D, DP: 3900

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**Applicant:** Fistum Gebera

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**Proposal:** Section 4.55 (2) application to modify development consent D173/15 seeking approval for modifications to approved works and retrospective consent for certain as built building elements.

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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. **173/15** and registered in Council's records as Application No. **173/15/7** relating to the land described as **19-21 Kareela Road, Cremorne Point**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 4 November 2015, has been determined in the following manner:

**1. To modify the development consent (D173/15) and modify condition A1 to read as follows:**

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

A1. The development being carried out in accordance with the following drawings numbered DA01H, DA02H, DA04H, DA05F, DA06F, DA07F, DA08F, dated 22/4/15, DA29B, dated 11/6/15, DA03H, dated 5/8/15, all drawn by Peter Tout Architect received by Council on 15 August 2015 and draft Strata Plan Sheet 1 of 2 and sheet 2 of 2, dated 17/03/2015, drawn by Warren L. Bee and received by Council on 27 May 2015, and endorsed with Council's approval stamp, except as modified by highlighting on:

- a) The drawing numbered for D173/15/4:

Drawings numbered DA01 Issue L, DA02 Issue L, DA03 Issue L, DA04 Issue L, DA07 Issue L, DA08 Issue L, dated 13.03.2017, drawn by Haviland Architects, and received by Council on 14 March 2017.

- b) The drawings for D173/15/7

<b>Plan No./Issue</b>	<b>Date</b>	<b>Title</b>	<b>Prepared by</b>
A01 G	Mar.21	Site and Roof Plan	Fitz's Design
A02 G	Mar.21	Lower Apartment Plan	Fitz's Design
A03 G	Mar.21	Upper Apartment	Fitz's Design
A04 G	Mar.21	First Floor - Upper Apartment	Fitz's Design
A05 G	Mar.21	West Elevation	Fitz's Design
A06 G	Mar.21	East Elevation	Fitz's Design
A07 G	Mar.21	North Elevation	Fitz's Design
A08 G	Mar.21	South Elevation	Fitz's Design
A09 G	Mar.21	Section A - A	Fitz's Design
A10 G	Mar.21	Section B - B	Fitz's Design

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

### **BASIX Commitments**

- C18. 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 Certificates No. A362573 & A362576 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)

### **Compliance with Certain Conditions**

- G11. Prior to the issue of any Occupation Certificate, Conditions C19, C20, C21, C22, C23, A5, A6, G12, G13, G14 must be certified as having been implemented on site and complied with.

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

2. To insert a new conditions A5 (Terms of consent), A6, G12, G13 and G14 and read as follows:

**Terms of Consent (D173/15/7)**

A5. Approval is granted for the following modifications only as shown on the approved architectural plans:

**Retrospective Consent:**

**(Building elements shown in red on the submitted drawings)**

Lower Apartment Level (Lower Ground Floor)

- a) Removal of approved window louvres from the dining room bay windows on the eastern and northern elevations;
- b) Construction of a wall on the south-western edge of the existing living room balcony with a new window fitted with obscure glazing;
- c) Installation of a privacy screen to an existing living room window on the southern elevation and as amended by Condition G13 in this consent;
- d) Deletion of an external staircase on the southern elevation connecting the existing balcony and the southern building setback area;
- e) Repositioning of the store room doorway on the northern elevation;
- f) Construction of a new internal doorway to provide access between the store room and the entry;
- g) Deletion of an internal doorway between the store room and the laundry ;
- h) Reconfiguration of the gymnasium to the west of the lower apartment including relocation of the entry door; a new storage area at the western end of the room; repositioning of the door to the storage room; removal of an external staircase connecting the original gymnasium entry door and the northern side building setback; and
- i) Construction of a timber deck at the western side of the courtyard.

Upper Apartment Level (Ground Floor)

- a) Removal of approved window louvres from the dining room bay windows on the eastern and northern elevations;
- b) Construction of BC compliant spandrels along the bay window alignment on the northern and eastern elevations;
- c) Construction of a wall on the south-western edge of the lounge room winter garden with a new window fitted with a privacy screen as modified by Condition G14;
- d) Removal of a fireplace on the northern kitchen wall;

- e) Removal of a fireplace on the southern lounge room wall;
- f) Replacement of an approved laundry doorway on the northern elevation with a window;
- g) Provision of a new window to ensuite bathroom for bedroom 2;
- h) Extension of the approved verandah on the western elevation;
- i) Removal of external double staircases on the northern elevation connecting the upper apartment level and the northern side setback area on the lower apartment level; and
- j) Construction of a single external staircase on the northern elevation connecting the upper apartment level and the northern side setback area on the lower apartment level

First Floor

- a) Deletion of the study and an associated window on the western side of the First Floor.

Roof

- a) Deletion of an approved gable on the western elevation on the roof; and
- b) Deletion of an approved skylight on the northern elevation of the roof.

**Modified New Works:  
(Building elements shown in blue on the submitted drawings)**

Lower Apartment Level (Lower Ground Floor)

- a) Provision of additional planting within the lower apartment courtyard as required by approved landscape plan.
- b) Installation of privacy screens on the south elevation of the main building as required by Condition G14.

Upper Apartment Level (Ground Floor)

- a) Installation of replacement windows to the dining room bay window on the northern, eastern and southern elevations to match existing windows at the same locations on the Lower Apartment Level;
- b) Installation of privacy screens on the south elevation of the main building as required by Condition G14; and
- c) Repositioning of security gates and associated internal fencing to the east of the garages.

First Floor

- a) Modifications to the side walls of the eastern dormer to provide 450mm setback from the eastern eave line;

- b) Modifications to the design of the eastern balcony balustrade to provide angled corners;
- c) Removal of as built/unauthorised dormers on the northern and southern elevations and construction of new gables on the northern and southern elevation with the ridge height of the new gables being 400mm below the main roof ridge at RL 41.11

Other External Works:

- a) Removal of the glass awning to the lift entry and the construction of a replacement timber pergola;
- b) Replacement of the main entrance gate to Kareela Road (Drawings No. A01 G, A04 G, A07 G, A08 G & A09 G, all dated Mar 21);
- c) Removal of the glass balustrade installed along the pathway/ramp connecting the garage and the main building and installation of timber balustrades (Drawings No. A01 G, A04 G, A07 G, A08 G & A09 G, all dated Mar 21);
- d) Planting of a street tree (75L Bottlebrush) on Council's Kareela Road nature strip in front of the entrance gate (Drawing No. A01 G, dated Mar 21) as required by condition C12 in this consent; and
- e) Replacement of the as-built entry gate with a timber picket front gate at 1.2m high.

All building elements must be located wholly within the subject site with no encroachment onto the adjoining land.

No approval is given or implied in this consent for any other works, both internal and external, within the subject property.

(Reason: To ensure the terms of the consent are clear)

**No Approval for Garages and Associated Structures/Works**

A6. No approval is granted or implied for the following as built structures because of the unsympathetic design of the structures within the Conservation Area:

- a) 2 x brick garages in lieu of the approved timber framed structures;
- b) Garage doors to Kareela Road; and
- c) Extension of the garage eave line over the barrage storage area.

These structures/works are to be demolished and reverted to those works approved by DA173/15 including the floor level for the southern garage as amended by D173/15/4.

(Reason: To ensure the terms of the consent are clear and to maintain the significance of the conservation area)

### Required Street Tree Planting

- G12. On completion of works and prior to the issue of any Occupation Certificate, a tree in accordance with the schedule hereunder must be planted in Council's nature strip/footpath:

Tree Species	Location	Pot Size
1 x <i>Callistemon citrinus</i>	Council Nature strip between the driveway crossings	75 Litre

The installation of such tree, its current health and its prospects for further survival must be certified upon completion by an appropriately qualified horticulturalist.

Upon completion of installation and prior to the issue of any Occupation Certificate, an appropriately qualified horticulturalist must certify that any trees planted in accordance with this condition are healthy and have good prospects of future survival. The certification must be submitted with any application for any Occupation Certificate.

(Reason: To ensure that appropriate planting is provided to enhance community landscaped amenity and cultural assets)

### Modifications to Drawing Numbered A09

- G13. Prior to the issue of any Occupation Certificate, the applicant must amend Drawing A09, Issue G, dated Mar.21 and prepared by Fitz's Design as follows:

The ridge of the garble roof above the first floor ensuite bathroom must be lowered by 400mm from the ridge of the roof of main building to match the design as shown on the northern and southern elevations.

The amended drawing must be submitted to the Certifying authority and the gable roof must be constructed and certified by an appropriately qualified person prior to the issue of any Occupation Certificate, to ensure that the construction of the gable roof has been carried out in accordance with the amended drawing. The certification must be submitted with any application for any Occupation Certificate.

(Reason: To ensure characteristic design within a conservation area.)

### Modifications to Privacy Screens

- G14. Prior to the issue of any Occupation Certificate, the applicant must amend the design of the privacy screens to be installed on the southern elevation of the lower ground floor balcony and the ground floor winter garden.

The existing as built/unauthorised metal privacy screens and opaque glazing installed at the following locations must be removed:

- a) Lower ground floor living room windows and balcony on the southern elevation; and
- b) Ground level lounge windows and winter garden on the southern elevation.

The installation of replacement privacy screens with a design that matches those approved at the same locations in D173/15/4 (Drawing NO. DA07 Issue L, dated 13.03.17, prepared by Haviland Architects). The design and the locations of the privacy screens must be submitted for the written approval of Team Leader Assessment prior to the commencement of construction/installation of the replacement privacy screens.

The completed works must be certified by an appropriately qualified person to ensure that are in accordance with the written approval from Council. The certification must be submitted with any application for any Occupation Certificate.

(Reason: To ensure characteristic design within a conservation area and to enhance privacy protection)

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**Reasons for Approval:**

The application has been assessed against Section 4.55 (2) of the Environmental Planning and Assessment Act 1979 and the relevant planning instrument. The proposed modifications would result in a development which is substantially the same development as originally approved as the proposed works would not materially change the overall building height and the form of the development as approved in the original DA.

The proposed modifications to the building elements above the LEP building height limit are considered to be acceptable given that the design of the modified elements would be consistent with the character within the conservation area and would not cause adverse impacts on the amenity of the adjoining properties in terms of view loss, overshadowing and loss of privacy.

Consideration has also been given to the as-built/unauthorised structures and the building elements proposed to be modified to ascertain their appropriateness within the context and character of the conservation as well as their merits against the relevant planning controls. Whilst the majority of the as built/unauthorised structures and the proposed modified building elements are considered to be generally acceptable subject to the imposition of appropriate conditions, the design and construction of the as-built/unauthorised garages are considered to be unsympathetic with the character of the conservation area and streetscape. Therefore, it is recommended that the unauthorised garages are to be deleted from any approval.

The issues raised in the submissions have been addressed in the report.

The proposal was found to be acceptable in the site circumstances and the subject Section 4.55(2) application can be approved with modifications to existing conditions of consent and addition of new conditions.

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

The subject S4.55 application was notified to the adjoining properties and the Cremorne Point Precinct for a period of 14 days between 9 and 23 July 2021. The application has attracted a total of four (4) submissions and the issues raised in the submissions have been addressed in the report.

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The conditions attached to the original consent for Development Application No. 173/15 by endorsed date of 4 November 2015 still apply.

**ADVISINGS**

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

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DATE

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