

David Selden Pty Ltd
Suite 306A, 19A Boundary Street
RUSHCUTTERS BAY NSW 2011

D141/21
TH2 (CIS)

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 APPLICATION 141/21/3 - APPROVAL

Development Consent Number: 141/21/3

Land to which this applies: 34 Phillips Street, Neutral Bay
Lot No.: 1, DP: 708780

Applicant: David Selden Pty Ltd

Proposal: Section 4.55(2) to modify development consent DA 141/21 for the demolition of an existing dwelling house and garage and construction of a two storey dwelling house and associated landscaping.

The 4.55 application was considered by the **North Sydney Local Planning Panel (NSLPP)** on 1 June 2022.

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. **141/21** and registered in Council's records as Application No. **141/21/3** relating to the land described as **34 Phillips Street, Neutral Bay**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 1 September 2021, has been determined in the following manner: -

A. Impose Condition A4 as follows:

Development in accordance with Plans (s4.55 Amendments)

- A4. The development being carried out in accordance with plans identified in Condition A1 of the consent and A4 of the modification to consent endorsed with Council's approval stamp, except as modified by the modifications shown on:

Plan Nos.	Revision No	Description of works	Prepared by	Dated
455.01	B	Site Plan	David Selden Design	10/02/2022
455.02	B	Roof Plan		10/02/2022
455.03	B	First Floor Plan		10/02/2022
455.04	C	Ground Floor Plan		10/05/2022
455.05	C	Basement Plan		10/05/2022
455.06	B	Street/Southern Elevation		10/02/2022
455.07	B	Western Elevation		10/02/2022
455.08	B	Northern Elevation		10/02/2022
455.09	B	Eastern Elevation		10/02/2022
455.10	B	Section AA		10/05/2022
455.11	B	Section BB		10/02/2022
EF.01	A	External Finishes	10/05/2022	
L102	I	Landscape DA Plan	Spirit Level Designs Pty Ltd	10/05/2022

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

B. Impose Condition C30 and C31 as follows:

Soil Depth

C30. The following soil depths are required to be achieved, as stipulated by Spirit Level Designs Pty Ltd in the Landscape Statement dated 04 May 2022 and received by Council on 10 May 2022.

Boundary	Location	Soil Depth (mm)
Western Boundary	Within landscaped western setback of the site.	900mm depth from slab to FGL.
Eastern Boundary	Within lower level of eastern side setback of the site.	400mm depth from slab to FGL.
Eastern Boundary	Within upper level planter of eastern side setback of the site.	600mm depth from slab to FL.

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 that soil depths are retained to achieve long term healthy growth of planting within the side setbacks of the site)

Works to be Completed within the Subject Site

C31. The approved works must be wholly contained within the site of No. 34 Phillips Street, Neutral Bay, and must not result in any encroachment into neighbouring lots or Council's road reserve. Under no circumstances shall the boundary retaining walls extend into adjoining lots without the prior written consent of the adjoining owner(s).

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, in order to fully satisfy the requirements of this condition.

(Reason: To ensure the protection and structural integrity of adjoining properties, and that common law property rights are recognised)

C. Delete Conditions C22 Privacy and C23 First Floor Terrace Design Modification

D. Modify Conditions A3, C26, C28, G10, G11 and I2 as follows:

External Finishes & Materials

A3. External finishes and materials must be in accordance with the submitted schedule dated 26 April 2022, prepared by David Selden Design and received by Council on 10 May 2022. Where there are matters not covered by the finishes schedule other finishes must be in accordance with Council's condition (C7 External Colours and Finishes).

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

BASIX Certificate

C26. Under clause 75 of the Environmental Planning & Assessment Regulation 2021, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. A1198659S_02 dated 25 January 2022 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)

Amendments to the Landscape Plan

C28. The landscape plan (L102 Rev I) must be amended as follows to provide an appropriate landscape setting:

- The front south western garden is to have a maximum RL of 55.40 as stipulated in the Ground Floor Plan (455.04 Rev B). No modification or alteration to existing soil levels within the Tree Protection Zone of the Jacaranda mimosifolia shall occur.

- The existing front boundary stone wall subject to an increase in height shall be extended without excavation and/or earthworks within the TPZ of the Jacaranda mimosifolia. If excavation or earthworks are required within the TPZ of the Jacaranda mimosifolia sensitive construction techniques including hand excavation is required under supervision of a project arborist and no roots greater than 40mm shall be cut.

An amended landscape plan 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 amended landscape plan and other plans and specifications submitted fully satisfy the requirements of this condition.

(Reason: To ensure residential amenity)

Landscaping

- G10. The landscaping shown in the approved landscape plan numbered L102 I (as amended by Condition C28) prepared by Spirit Level dated 06/05/22 and received by Council on 10/05/22 must be completed prior to the issue of any Occupation Certificate.

(Reason: To ensure compliance)

Compliance with Certain conditions

- G11. Prior to the issue of any Occupation Certificate, Conditions C6 and C28 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)

Maintenance of Approved landscaping

- I2. The owner of the premises at 34 Phillips Street, Neutral Bay is to maintain the landscaping approved by this consent and as modified under Condition C28 *Amendments to the Landscape Plan* generally in accordance with drawing number L102 I dated 06/05/2022.

Any replacement plants required shall be advanced in growth and be selected to maintain the anticipated mature height, canopy density and nature of those plant species as originally approved.

Should it be desired to substitute plants which are not of the same mature height, canopy density and nature (particularly flowering for non flowering, native for exotic, deciduous for non deciduous or the reverse of any these) a modification to this consent will be required.

(Reason: To ensure maintenance of the amenity, solar access and views of adjoining properties)

Reason for approval:

The Panel noted the amendments were minor and consistent with the original consent.

How community views were taken into account:

The submissions received by Council were addressed in the NSLPP report (see Council's website: [https://www.northsydney.nsw.gov.au/Council Meetings/Meetings/NSLPP/2022/1 June 2022](https://www.northsydney.nsw.gov.au/Council%20Meetings/Meetings/NSLPP/2022/1%20June%202022))

The conditions attached to the original consent for Development Application No. 141/21 by endorsed date of 1 September 2021 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

DATE

Signature on behalf of consent authority
ROBIN TSE
A/TEAM LEADER (ASSESSMENTS)