



Ke Lu
11/82 Pacific Highway
St Leonards NSW 2065

D263/20
RT (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 263/20/2 - APPROVAL**

Development Consent Number: 263/20

Land to which this applies: 69A Carter Street, Cammeray
Lot No.: 6 DP: 18140

Applicant: Ke Lu

Proposal: Section 4.55(2) modifications to D263/20 for various modifications to the approved multi-dwelling housing including a modified basement, internal layout changes, changes to building services and additional earthworks

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. **263/20** and registered in Council's records as Application No. **263/20/2** relating to the land described as **69A Carter Street, Cammeray**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **7 April 2021**, has been determined in the following manner:

- To modify the heading and the relevant wording of the following conditions (A1, A3, C1, C7, C8, C9, C27, C36, G13 and G15) to read as follows:***

Development in Accordance with Plans/Documentation (S4.55 Amendments)

A1. The development must be carried out in accordance with the following drawings and documentation:

Plan No.	Description	Prepared by	Dated
DA001E	Demolition Plan	PBD Architects	31.8.2020
DA003E	Site Plan	PBD Architects	31.8.2020
DA101G	Basement Plan	PBD Architects	22.2.2021
DA102G	Lower Ground Floor Plan	PBD Architects	22.2.2021
DA103G	Ground Floor Plan	PBD Architects	22.2.2021
DA104E	Level 1 Plan	PBD Architects	31.8.2020
DA105E	Level 2 Plan	PBD Architects	31.8.2020
DA106E	Roof Plan	PBD Architects	31.8.2020
DA200E	North and West Elevations	PBD Architects	31.8.2020

DA201E	South and East Elevations	PBD Architects	31.8.2020
DA300G	Section A and B	PBD Architects	22.2.2021
DA301G	Section C	PBD Architects	22.2.2021
DA302G	Section D	PBD Architects	22.2.2021
DA550G	Excavation Plan	PBD Architects	22.2.2021

and endorsed with Council's approval stamp, except as modified by highlighting on the following drawings for D263/20/2:

Plan No. Issue	Description	Prepared by	Dated
DA101K	Basement Plan	PBD Architects	10.12.2021
DA102K	Lower Ground Floor Plan	PBD Architects	10.12.2021
DA103K	Ground Floor Plan	PBD Architects	10.12.2021
DA104K	Level 1 Plan	PBD Architects	10.12.2021
DA105K	Level 2 Plan	PBD Architects	10.12.2021
DA106K	Roof Plan	PBD Architects	10.12.2021
DA200K	North & West Elevations	PBD Architects	10.12.2021
DA201K	South & East Elevations	PBD Architects	10.12.2021
DA202K	North & South Int. Elevations	PBD Architects	10.12.2021
DA300K	Section A & B	PBD Architects	10.12.2021
DA301K	Section C	PBD Architects	10.12.2021
DA302K	Section D	PBD Architects	10.12.2021
DA303K	Section E and F	PBD Architects	10.12.2021
DA400K	Material Schedule	PBD Architects	10.12.2021
L-01 A	Lower Ground Floor Landscape Plan	Site Design + Studios	23/11/21
L-02 A	Ground Floor Landscape Plan	Site Design + Studios	23/11/21
L-03 A	Level 1 Landscape Plan	Site Design + Studios	23/11/21
L-04 A	Level 2 Landscape Plan	Site Design + Studios	23/11/21
L-05 A	Planting Schedule & Details	Site Design + Studios	23/11/21

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

External Finishes and Materials

A3. External finishes and materials must be in accordance with the submitted schedule drawing numbered DA 400, Rev K, dated 10 December 2021, prepared by PBD Architects, and received by Council unless otherwise modified by Council in writing.

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

Modifications to the Landscape Plan

C1. The applicant shall amend the scheduled size for the following as denoted in planting List on Drawing Numbered L-05 issue A, dated 23/11/21, prepared by Site Design + Studios:

- (a) Tree - Schedule size: 75 litre; and
- (b) All Shrubs - Schedule size: 300 mm

The Certifying Authority must also 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 landscaping quality for the subject site and the locality.)

Dilapidation Survey Private Property (Neighbouring Buildings)

- C7. A photographic survey and dilapidation report of adjoining properties Nos. 71A Carter Street and 24 Cammeray Road detailing the physical condition of those properties, both internally and externally, including, but not limited to, such items as walls, ceilings, roof, structural members, the existing sandstone walls and other similar items, SHALL BE submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The survey and report are to be prepared by an appropriately qualified person agreed to by both the applicant and the owner of the adjoining property. A copy of the report is to be provided to Council, if Council is not the Certifying Authority, prior to the issue of any Construction Certificate.

All costs incurred in achieving compliance with this condition shall be borne by the person entitled to act on this Consent.

In the event that access for undertaking the photographic survey and dilapidation report is denied by an adjoining owner, the applicant MUST DEMONSTRATE, in writing, to the satisfaction of Council that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed. Written concurrence must be obtained from Council in such circumstances.

Note: This documentation is for record keeping purposes only and may be used by an applicant or affected property owner to assist in any action required to resolve any dispute over damage to adjoining properties arising from the works. It is in the applicant's and adjoining owner's interest for it to be as full and detailed as possible.

(Reason: Proper management of records)

Structural Adequacy of Adjoining Properties - Excavation Works

- C8. A report prepared by an appropriately qualified and practising structural engineer detailing the structural adequacy of adjoining properties Nos. 71A Carter Street and 24 Cammeray Road, including sandstone walls along property boundaries, which certifies their ability to withstand the proposed excavation and outlines any measures required to be implemented to ensure that no damage will occur to adjoining properties during the course of the works, must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The measures outlined in the certified report must be complied with at all times.

(Reason: To ensure the protection and structural integrity of adjoining properties in close proximity during excavation works)

Geotechnical Report

- C9. Prior to issue of any Construction Certificate a Geotechnical/Civil Engineering report must be prepared which addresses at a minimum (but is not limited to) the following:

- a) the type and extent of substrata formations by the provision of a minimum of four (4) representative bore hole logs which are to provide a full description of all material from ground surface to 1.0 m below the finished basement floor level and include the location and description of any anomalies encountered in the profile. The surface and depth of the bore hole logs must be related to Australian Height Datum;
- b) the appropriate means of excavation/shoring in light of point (a) above and proximity to adjacent property and structures, including any sandstone walls along the property boundaries. Potential vibration caused by method of excavation and potential settlements affecting nearby footings/foundations must be discussed and mechanisms to ameliorate any such impacts recommended;
- c) the proposed method to temporarily and permanently support the excavation for the basement adjacent to adjoining property, structures and road reserve if nearby (full support must be provided within the subject site);
- d) the existing groundwater levels in relation to the basement structure, where influenced;
- e) the drawdown effects on adjacent properties (including road reserve), if any, the basement excavation will have on groundwater together with the appropriate construction methods to be utilised in controlling groundwater. Where it is considered there is the potential for the development to create a “dam” for natural groundwater flows, a groundwater drainage system must be designed to transfer groundwater through or under the proposed development without a change in the range of the natural groundwater level fluctuations. Where an impediment to the natural flow path is constructed, artificial drains such as perimeter drains and through drainage may be utilised; and
- f) recommendations to allow the satisfactory implementation of the works. An implementation program is to be prepared along with a suitable monitoring program including control levels for vibration, shoring support, ground level and groundwater level movements during construction. The implementation program is to nominate suitable hold points at the various stages of the works for verification of the design intent before sign-off and before proceeding with subsequent stages.

The geotechnical report must be prepared by an appropriately qualified consulting geotechnical/hydrogeological engineer with previous experience in such investigations and reporting.

It is the responsibility of the consulting geotechnical/hydrological specialist to undertake the appropriate investigations, reporting and specialist recommendations to ensure a reasonable level of protection to adjacent property and structures both during and after construction. The report must contain site-specific geotechnical recommendations and shall specify the necessary hold/inspection points by relevant professionals as appropriate.

The design principles for the geotechnical report are as follows:

- a) no ground settlement or movement is to be induced which is sufficient enough to cause an adverse impact to adjoining property and/or infrastructure;
- b) no changes to the ground water level are to occur as a result of the development that are sufficient enough to cause an adverse impact to the surrounding property and infrastructure;

- c) no changes to the ground water level are to occur during the construction of the development that are sufficient enough to cause an adverse impact to the surrounding property and infrastructure;
- d) vibration is to be minimised or eliminated to ensure no adverse impact on the surrounding property and infrastructure occurs, as a result of the construction of the development;
- e) appropriate support and retention systems are to be recommended and suitable designs prepared to allow the proposed development to comply with these Design Principles; and
- f) an adverse impact can be assumed to be crack damage as identified within the relevant Australian Standard for determining such damage.

The report, satisfying the requirements of this condition, must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

The professional recommendations, implementation program, monitoring program, mitigation measures and the like contained in the report must be implemented in full during the relevant stages of excavation and construction.

(Reason: To ensure the structural integrity of the subject site and adjoining sites during the excavation process)

Location of Plant

- C27. All plant and equipment (including but not limited to air conditioning equipment) is to be located within the basement of the building or a new plant room for air conditioning plant/equipment on the lower ground floor level to the east of the service plant area and is not to be located on balconies or the roof.

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: Minimise impact on surrounding properties, improved visual appearance and amenity for locality)

BASIX Certificate

- C36. 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. 1120948M_07 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)

Landscaping

G13. The landscaping shown in the revised landscape plans as required by Condition C1 of this consent must be completed prior to the issue of any Occupation Certificate.

(Reason: To ensure compliance)

Compliance with Certain Conditions

G15. Prior to the issue of any Occupation Certificate, **Conditions C1, C2, C3, C4, C27 and C38** 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 new conditions A4, G16, G17 and I7 as follows:

Terms of Consent (D263/20/2)

A6. Approval is granted for the following works under D263/20/2 as shown on the approved drawings as listed in Condition A1:

Basement (RL58.00):

- Additional excavation works and modifications to the internal layout to provide the approved seven (7) parking spaces, new storage areas, bin storage and plant rooms.

Lower Ground Floor (RL61.00):

- Reconfiguration of the outdoor open space to the north of Townhouse 1 (lower level) balcony to provide level access from the balcony to a raised terrace for a new private open space with landscaped screening along its north and east perimeter;
- An additional storage room at the southern end of Townhouse 1 (lower level);
- Reconfiguration of the terrace covered area to the south of Townhouse 2 (lower level) including the installation of security gate and lift access;
- A new service plant room to the south of the lift shaft;
- A new plant room for air-conditioning units to the east of the new service plant room.

Ground Level (RL64.10):

- Reconfiguration of the internal layout of Townhouse 1 (upper level) including the relocation of the powder room and the entrance from the southern terrace;
- Reconfiguration of the internal layout of Townhouse 2 (upper level) including the deletion of an internal void, an increase in the floor area of the unit by 10sqm and the relocation of the powder room;
- Lowering the level of the rear courtyard to the south of Townhouse 3 (lower level) to provide level access and associated landscaping works;
- Reconfiguration of the internal layout of Townhouse 4 (lower level) and additional earthworks for relocation of the internal lift/staircase arrangements and to provide additional internal room for storage/cellar.

Level 1 (RL67.20):

- Reconfiguration of the internal layout for Townhouse 3 (upper level) including the relocation of the powder room and an additional toilet;
- Reconfiguration of the internal layout for Townhouse 4 (middle level) including relocation of an internal lift/staircase arrangements;
- Raising the level of the rear courtyard to Townhouse 4 (middle level) to provide level access from the dining/kitchen area.

Level 2 (RL70.30):

- Reconfiguration of the internal layout for Townhouse 4 (upper level) including relocation of an internal lift/staircase arrangements;
- Addition of privacy screens on the eastern and western edges of the balcony to the north of Bedroom 1 and its ensuite bathroom.

No approval is given or implied in this consent for any other works, both internal and external, including the placement of air conditioning units on balconies, within the subject property.

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

Covenant and Restriction (Use of Storage Areas)

G16. An Instrument pursuant to Sections 88B and 88E of the *Conveyancing Act* 1919 and one copy must be submitted to Council in registrable form, providing for:

- 1) a restriction as to user and positive covenant in favour of North Sydney Council burdening Nos. 69A Carter Street, Cammeray restricting the use of the storage areas within the basement, as indicated on the approved DA plans, for residents to be maintained as such and shall only be varied with approval of Council; and
- 2) North Sydney Council being nominated in the Instrument as the only party authorised to release, vary or modify the Instrument.

Upon Council being satisfied as to the terms of the Instrument, North Sydney Council's official seal will be affixed to these documents, prior to submission to the Land & Property Information Office for registration

The Instrument creating the restriction and/or covenant under ss 88B and 88E required by this condition of consent must be registered on the Title of the development site prior to the issue of an Occupation Certificate or commencement of use of the site, whichever is the earlier.

Evidence of the registration of the instrument referred to in this condition is to be provided to Council prior to the issue of an Occupation Certificate.

All costs associated with the preparation, approval and registration of the Instrument required by this condition of consent must be borne by the person acting on this consent including the reasonable costs of Council in obtaining advice, negotiating the terms or otherwise facilitating the execution and registration of the required Instrument.

(Reason: Compliance and to maintain the specified use of the storage areas within the basement.)

Covenant and Restriction (Use of Garbage Storage Areas)

G17. An Instrument pursuant to Sections 88B and 88E of the *Conveyancing Act 1919* and one copy must be submitted to Council in registrable form, providing for:

- 1) a restriction as to user and positive covenant in favour of North Sydney Council burdening Nos. 69A Carter Street, Cammeray restricting the use of the garbage storage areas within the basement, as indicated on the approved DA plans, for residents to be maintained as such and shall only be varied with approval of Council; and
- 2) North Sydney Council being nominated in the Instrument as the only party authorised to release, vary or modify the Instrument.

Upon Council being satisfied as to the terms of the Instrument, North Sydney Council's official seal will be affixed to these documents, prior to submission to the Land & Property Information Office for registration

The Instrument creating the restriction and/or covenant under ss 88B and 88E required by this condition of consent must be registered on the Title of the development site prior to the issue of an Occupation Certificate or commencement of use of the site, whichever is the earlier.

Evidence of the registration of the instrument referred to in this condition is to be provided to Council prior to the issue of an Occupation Certificate.

All costs associated with the preparation, approval and registration of the Instrument required by this condition of consent must be borne by the person acting on this consent including the reasonable costs of Council in obtaining advice, negotiating the terms or otherwise facilitating the execution and registration of the required Instrument.

(Reason: Compliance and to maintain the specified use of the garbage storage areas within the basement.)

Non-habitable Areas

I7. The storage and cellar room at the rear of Townhouse 4 on the ground floor level must only be used as a non-habitable area.

(Reason: To restrict the use of certain areas as non-habitable uses only.)

Reasons for Approval:

The proposal satisfies the provisions of Section 4.55(2) in that the development would be substantially the same as what was approved under DA 263/20 as the modified development would not alter the overall level of compliance with the relevant LEP and DCP provisions and requirements.

The proposed modifications would not change the number and mix of units and the design outcome of the development in terms of height, bulk and scale, envelope and appearance of the approved multi-dwelling housing development.

The proposed additional excavation for an extended basement is considered to be acceptable given that the new earthworks are to be carried out within the approved building footprint and the relevant engineering/geotechnical and construction management conditions would apply to the approved and additional earthworks to minimise the impacts on the surrounding properties.

The proposed modifications would have no material amenity impacts for the adjoining properties subject to the imposition of modified and new conditions of consent including the placement of air conditioning units within a service plant room on the lower ground level.

How community views were taken into account:

The application was notified to adjoining properties and the Bay Precinct under section 3.6 of the North Sydney Community Engagement Protocol inviting comment on the proposal between 21 January and 4 February 2022. Council received two (2) submissions and the issues raised in the submissions have been addressed in the assessment report.

The conditions attached to the original consent for Development Application No. **263/20/2** by endorsed date of **7 April 2021** 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

5 October 2022

DATE



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