



Richard Ferguson
Romeocad Design
19/174 Willoughby Road
CROWS NEST NSW 2065

D270/21
AB7 (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 270/21/2 - APPROVAL**

Development Consent Number:	270/21
Land to which this applies:	64 Cairo Street, Cammeray Lot No.: 33, Sec: 4, DP: 2407
Applicant:	Richard Ferguson, Romeocad Design
Proposal:	Modifications to DA 270/21, including windows, skylights, and roof pitch

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. **270/21** and registered in Council's records as Application No. **270/21/2** relating to the land described as **64 Cairo Street, Cammeray**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **22 November 2021**, has been determined in the following manner:

1. Condition A1 is amended as follows:

Development in Accordance with Plans (S4.55 Amendments)

A1. The development must be carried out in accordance with the following drawings and documents endorsed with Council's approval stamp: -

No.	Title	Drawn by	Date	Received
DA02	Site Management and Roof Plan	Bijl Architecture	30/08/2021	06/09/2021
DA03	Proposed Ground Floor Plan	Bijl Architecture	30/08/2021	06/09/2021
DA04	Proposed First Floor	Bijl Architecture	30/08/2021	06/09/2021
DA05	Elevations	Bijl Architecture	30/08/2021	06/09/2021
DA06	Elevations	Bijl Architecture	30/08/2021	06/09/2021
DA07	Sections	Bijl Architecture	30/08/2021	06/09/2021
EX01	Existing and Demolition Floor Plan	Bijl Architecture	30/08/2021	06/09/2021
1	External Materials and Colours	Bijl Architecture	August 2021	06/09/2021
2	External Materials and Colours	Bijl Architecture	August 2021	06/09/2021
L102	Landscape Plan Side Passage Gardens	Outdoor Establishments	31/08/2021	06/09/2021
L103	Landscape Plan Back Garden	Outdoor Establishments	31/08/2021	06/09/2021
L105	Planting Schedule + Plant Imagery	Outdoor Establishments	31/08/2021	06/09/2021
L201	Swimming Pool Section 01	Outdoor Establishments	31/08/2021	06/09/2021
L202	Swimming Pool Section 02	Outdoor Establishments	31/08/2021	06/09/2021

Except as modified as such on the following drawings for DA 270/21/2:

Plan No.	Rev.	Title	Drawn by	Dated	Received
A-01	A	Ground Floor Plan (External Works)	Romeocad Design	19/09/2022	10/10/2022
A-02	A	First Floor Plan (External Works)	Romeocad Design	19/09/2022	10/10/2022
A-03	A	Roof Plan	Romeocad Design	19/09/2022	10/10/2022
A-04	A	North Elevation	Romeocad Design	19/09/2022	10/10/2022
A-05	A	South Elevation	Romeocad Design	19/09/2022	10/10/2022
A-06	A	East Elevation	Romeocad Design	19/09/2022	10/10/2022
A-07	A	West Elevation	Romeocad Design	19/09/2022	10/10/2022
A-08	A	Short Section	Romeocad Design	19/09/2022	10/10/2022
A-12	A	Ground Floor Plan (Internal Works)	Romeocad Design	19/09/2022	10/10/2022
A-13	A	First Floor Plan (Internal Works)	Romeocad Design	19/09/2022	10/10/2022
LP-01	C	Landscape Plan - Side Passage Garden	Think Outside Gardens	23/08/2022	10/10/2022
LP-02	C	Landscape Plan - Back Garden	Think Outside Gardens	05/09/2022	10/10/2022
LP-03	C	Landscape Section A-A	Think Outside Gardens	05/09/2022	10/10/2022
LP-04	C	Landscape Section B-B	Think Outside Gardens	05/09/2022	10/10/2022

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

2. Conditions C3 and C4 are amended as follows to correct property references:

Dilapidation Survey Private Property (Neighbouring Buildings)

C3. A photographic survey and dilapidation report of adjoining properties Nos. 60 and 66 Cairo Street detailing the physical condition of those properties, both internally and externally, including, but not limited to, such items as walls, ceilings, roof, structural members 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

- C4. A report prepared by an appropriately qualified and practising structural engineer detailing the structural adequacy of adjoining property Nos. 60 and 66 Cairo Street 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)

3. Condition C13 is amended as follows:

Tree Protection Measures to be shown on Construction Drawings

- C13. The tree protection measures contained in the arborist report prepared by Sue Wylie, (TreeTalk Arboricultural Consulting) dated August 2021, and received by Council on 6 September 2021, shall be shown clearly on the Construction Certificate drawings. Plans and specifications showing the said tree protection measures must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

To ensure the protection of all trees to be retained, the following measures are also to be undertaken:

- a) All documentation for the Construction Certificate application must show the site trees to be retained, and retention of the adjoining trees, with their positions and diameters of trunks and crowns (canopies) to be clearly and accurately shown in relation to all levels of the proposed development.
- b) All plans and correspondences must refer to the required compliance with the approved Tree Protection and Management Plan, and clearly show the assigned number of each tree on site, adjoining and on Council land.
- c) A Consulting Arboriculturist (“the project arboriculturist”), who holds a minimum Australian Qualification Framework Level 5 in Arboriculture, is a registered consulting member of a nationally recognised arboricultural organisation or association, shall be engaged before work commences for the duration of site preparation, demolition, construction, and landscaping.
- d) The project arboriculturist shall inspect, monitor, supervise, provide recommendations and written reports and certification relating to protection of the trees and compliance with the conditions of consent.
- e) The contact details of the project arboriculturist shall be advised to council before work commences and maintained up to date for the duration of works. If a new project arborist is appointed details of the new project arborist shall be notified to council within 7 days.
- f) Strict adherence to the tree protection and management requirements detailed in the arborist report prepared by Sue Wylie, (TreeTalk Arboricultural Consulting) dated August 2021, and as amended by the report prepared by Sue Wylie, (TreeTalk Arboricultural Consulting) dated June 2022 (received by Council on 10 October 2022), shall be observed at all times.

- g) Sensitive construction techniques including hand excavation, pier and beam construction, and flexible location of piers shall be carried out within the TPZ of any protected tree.

The Certifying Authority must ensure the construction plans and specifications submitted, referenced on, and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure the protection of significant trees, and that appropriate tree protection measures are shown on construction drawings)

4. **Condition C18 is amended as follows:**

Pool Filter

- C18. The pool filtering equipment must be encased by a soundproof cover and must be located six (6) metres from any habitable room in a dwelling on a neighbouring property. 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 noise generated by equipment does not result in offensive noise)

5. **Condition C22 is amended as follows:**

Heritage Requirements

- C22. Details demonstrating compliance with the following are to be submitted with the Construction Certificate:

- a) **Weatherboards**
The new weatherboard cladding is to closely match the profile of the existing weatherboards on the front of the dwelling.
- b) **New Windows and Doors**
New window W02 located on the original Federation dwelling is to be timber framed. All other new windows and doors are to have aluminium or steel framing sections of a width 45 mm or wider or are to be timber framed.
- c) **Solar Panels**
New solar panels are to be laid parallel to the roof plane.
- d) **Awning Shingles**
The shingles to the new front awning are to be painted timber.

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 use of materials is consistent and sympathetic to the character of the conservation area and the original dwelling)

6. New Condition C23 is added as follows:

BASIX Certificate

C23. Under clause 75 of the Environmental Planning and Assessment Regulation 2021, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. **A472434** (dated 1 September 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)

7. Condition D2 is amended as follows:

Temporary Fences and Tree Protection

D2. All protected trees on-site that are specifically nominated to be retained by notation on plans or by condition as a requirement of this consent must be tagged with luminous tape or the like for purposes of identification prior to demolition, excavation or construction works and must remain so for the duration of works on the site.

Appropriate fencing or barricades in accordance with AS4970-2009 (Protection of trees on development sites), not less than the distance of the perimeter of the garden bed specified in the schedule hereunder, must be installed to the satisfaction of the Certifying Authority prior to demolition or commencement of any works and must be maintained for the duration of the works.

(Reason: To protect the trees to be retained on the site during construction works)

8. Condition E9 is amended as follows:

Protection of Trees

E9. All trees required to be retained, as part of this consent must be protected from any damage during construction works in accordance with AS4970-2009. All recommendations contained within the tree report prepared by Sue Wylie, (TreeTalk Arboricultural Consulting) dated August 2021, and as amended by the report prepared by Sue Wylie, (TreeTalk Arboricultural Consulting) dated June 2022 (received by Council on 10 October 2022), must be implemented for the duration of the works.

Sensitive construction techniques including hand excavation, pier and beam construction, and flexible location of piers shall be carried out within the TPZ of any protected tree.

In the event that any tree required to be retained is damaged during works on the site, notice of the damage must be given to Council forthwith.

Notes:

- a. If the nominated tree is damaged to a significant degree or removed from the site without prior written approval being obtained from Council, the issuing of fines or legal proceedings may be commenced for failure to comply with the conditions of this consent.

- b. An application to modify this consent pursuant to Section 4.55 of the Environmental Planning and Assessment Act 1979 will be required to address the non-compliance with any of the conditions of consent relating to the retention of nominated trees, and Council may require tree replenishment.

(Reason: Protection of existing environmental infrastructure and community assets)

9. Condition G7 is amended as follows:

Landscaping

- G7. The landscaping shown in the approved landscape plans numbered L102, L103, L105, L201 and L202, prepared by Outdoor Establishments, dated 31 August 2021; and as modified by the landscape plans numbered LP-01-LP-04, prepared by Think Outside Gardens, and received by Council on 10 October 2022, must be completed prior to the issue of any Occupation Certificate.

(Reason: To ensure compliance)

10. New Condition G11 is added as follows:

BASIX Completion Certificate

- G11. In accordance with Section 45 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021, prior to issuing a final occupation certificate the Principal Certifier must provide a BASIX completion receipt.

(Reason: To ensure compliance with the Regulations)

11. Condition I2 is amended as follows:

Maintenance of Approved Landscaping

- I2. The owner of the premises at 15 Carter Street is to maintain the landscaping approved by this consent generally in accordance with drawings numbered L102, L103, L105, L201 and L202, prepared by Outdoor Establishments, dated 31 August 2021; and as modified by the landscape plans numbered LP-01-LP-04, prepared by Think Outside Gardens, and received by Council on 10 October 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.

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

Reasons for Approval:

The proposed modifications satisfy the provisions of Section 4.55(2) in that the proposed development remains substantially the same as what was approved by DA 270/21. The proposed modifications will not alter the use of the development as originally approved and amenity impacts remain acceptable. The proposed modifications would not significantly change the level of compliance with the relevant development standards and controls as contained in NSLEP 2013 and NSDCP 2013.

While the unbuilt-upon area and site coverage are being increased by the proposed modifications alongside a small loss in landscaped area, these proposed figures remain in compliance with the controls in NSDCP 2013.

Overall, the proposed works will provide improved resident amenity without negatively impacting the neighbourhood character, the amenity of adjoining properties, and the heritage significant of the existing circa 1894-1895 Contributory Item within the Plateau Conservation Area. The proposal also remains consistent with the objectives of the R2 Low Density Residential Zone and the original reasons for granting consent. The proposal was found to be acceptable in the site circumstances and it is recommended that the subject Section 4.55(2) application be **approved**.

How community views were taken into account:

The subject application was notified to adjoining properties and the Bay Precinct Committee seeking comment, and no submissions were received. Nevertheless, it is considered that the proposed modifications would not substantially alter the impacts of what has already been approved under the original consent and would not cause any unreasonable impacts to the streetscape and/or adjoining properties.

The conditions attached to the original consent for Development Application No. **270/21** by endorsed date of **22 November 2021** still apply.

ADVISINGS

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

9 December 2022

DATE



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