



David Selden Pty Ltd
Suite 306A, 19A Boundary Street
DARLINGHURST NSW 2010

D141/21
TH2 (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 141/21/4 - APPROVAL**

Development Consent Number:	141/21/4
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

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. **141/21/4** 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. Add Condition A5 as follows:

Development in Accordance with Plans/Documentation (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.	Rev	Title	Drawn by	Received
455.04	D	Ground Floor Plan	David Selden Design	11/11/2022
455.07	C	Western Elevation	David Selden Design	11/11/2022
455.09	C	Eastern Elevation	David Selden Design	11/11/2022

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

B. Modify Condition C26 as follows:

BASIX Certificate

C26. 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. 1198659S_03 dated 9 November 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)

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 development consent to the originally approved development and are considered to be acceptable.

Reasons for Approval:

The alterations to the windows on the ground floor eastern elevation and the installation of a recessed louvre on the western elevation will maintain a reasonable level of visual privacy for adjoining properties satisfying the objective and provisions in s1.3.10 'Visual Privacy' of the NSDCP 2013.

Having regard to the provisions of section 4.55 and 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. The application is therefore recommended for **approval**.

How community views were taken into account:

The subject application was notified to adjoining properties and the Neutral/Hayes Precinct inviting comment between 25 November - 09 December 2022. There were no submissions raised following notification of the modification application. Nevertheless, the assessment considered the amenity impact to adjoining properties and the alterations to the eastern and western elevations are considered not to have an adverse impact.

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 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

31 January 2023

DATE



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