



Architecture Urbaneia Pty Ltd
8 Clarke Street
CROWS NEST NSW 2065

D244/16
RT (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 244/16/3 - APPROVAL**

Development Consent Number: 244/16

Land to which this applies: 17 Montpelier Street, Neutral Bay
Lot No.: 2, DP: 11150

Applicant: Architecture Urbaneia Pty Ltd

Proposal: S4.55(2) application to modify an approved attached dual occupancy

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. **244/16** and registered in Council's records as Application No. **244/16/3** relating to the land described as **17 Montpelier Street, Neutral Bay**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **7 December 2016**, has been determined in the following manner:

- To modify the development consent (D244/16) and modify conditions A1, C23 and G10 to read as follows:***

Development in Accordance with Plans (S4.55 Amendments)

A1. The development being carried out in accordance with the following drawings:

Plan No.	Issue	Date	Drawn by	Received
A.101	E	31/10/16	Architecture Urbaneia	1 November 2016
A.102	E	31/10/16	Architecture Urbaneia	1 November 2016
A.103	E	31/10/16	Architecture Urbaneia	1 November 2016
A.104	E	31/10/16	Architecture Urbaneia	1 November 2016
A.111	E	31/10/16	Architecture Urbaneia	1 November 2016
A.112	E	31/10/16	Architecture Urbaneia	1 November 2016
A.121	E	31/10/16	Architecture Urbaneia	1 November 2016

and endorsed with Council's approval stamp, except as modified by highlighting on the following drawings for D244/16/3:

Plan No.	Description	Prepared by	Dated
A.100 Rev D	Lower Ground Floor Plan	Architecture Urbaneia	05/05/23
A.101 Rev D	Ground Floor Plan	Architecture Urbaneia	05/05/23
A.102 Rev G	First Floor Plan	Architecture Urbaneia	06/02/23
A.103 Rev G	Second Floor	Architecture Urbaneia	06/02/23
A.104 Rev H	Roof Plan	Architecture Urbaneia	14/04/23
A.111 Rev I	West Elevation - Material	Architecture Urbaneia	05/05/23
A.111A Rev D	West Elevation	Architecture Urbaneia	05/05/23
A.111B Rev I	West Elevation	Architecture Urbaneia	05/05/23
A.111C Rev H	East Elevation - Material	Architecture Urbaneia	14/04/23
A.111D Rev H	East Elevation	Architecture Urbaneia	14/04/23
A.112 Rev H	North Elevation - Material	Architecture Urbaneia	14/04/23
A.112A Rev H	North Elevation	Architecture Urbaneia	14/04/23
A.112B Rev H	South Elevation - Material	Architecture Urbaneia	14/04/23
A.112C Rev H	South Elevation	Architecture Urbaneia	14/04/23
A.121A Rev G	Section 1	Architecture Urbaneia	06/02/23
A.121B Rev G	Section 2	Architecture Urbaneia	06/02/23

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

BASIX Commitments

C23. 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. **742366M_05** 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

G10. Prior to the issue of any Occupation Certificate A5, C1, C2, C3, C4, C5, C24 and C25 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 A5, C24 and C25 to read as follows:

Terms of Consent (D244/16/3)

A5. Approval is granted for the following modifications only:

Ground Floor (RL46.82):

- (a) Lowering of the floor level by 410mm from RL47.23 to RL46.82;
- (b) Revised internal layout to provide a stair access and a lift to the basement garage approved under DA342/19 and reconfiguration of the open plan living/dining/kitchen areas and bedrooms 1, 2 and 3;
- (c) Partial infilling of a courtyard between bedroom 1 and bedroom 3 to provide an additional bedroom with sliding doors;
- (d) External design changes including new windows to the basement staircase on the northern elevation, a new bedroom 2 window on the southern elevation and an additional living room window on the western elevation and external material changes;
- (e) Deletion of an approved external staircase from the western garden to Montpelier Street (west); and
- (f) Associated landscaping works.

First Floor (RL49.85):

- (a) Lowering of the floor level by 430mm from RL50.28 to RL49.85;
- (b) Revised internal layout to provide a rumpus room; four (4) bedrooms; three (3) ensuite bathrooms, a laundry and a balcony on the western elevation;
- (c) External design changes including relocation of windows and new windows associated to the new bedrooms/ensuite bathrooms and external material changes;
- (d) Provision of a passenger lift and reconfiguration of stair access up to second level entry; and
- (e) Provision of an external circular stair access to the upper entry/Montpelier Street from rumpus/home office.

Second Floor (RL53.00):

- (a) Lowering of the floor level by 180mm from RL53.18 to RL53.00;
- (b) Revised internal layout to provide an open plan living/dining/kitchen area, a balcony off the living area on the western elevation;
- (c) Redesign the link structure connecting the main dwelling and the garage incorporating a revised staircase access down from living area to the entry Level and garage;
- (d) Revised the dwelling entrance design from Montpelier Street (east) with a raised floor level from RL52.02 to RL52.46;
- (e) Reposition stair access down from Entry landing down to the level 1 bedroom level below ;
- (f) External design changes including revised fenestration and external material changes; and
- (g) Provision of external circular stair access From Montpelier Street from the rumpus room/home office below on the first floor.

Roof Level (RL56.13):

- (a) Installation of a new skylight over the internal lift foyer on the second floor;
- (b) Installation of solar panels on roofs of the main dwelling and the garage building; and
- (c) Extension of roof overhang towards west for sun and weather protection to the living area on the western side of the building.

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)

Solar Panels

C24. The solar panels on the roof shall be installed with a maximum angle/tilt of 5 degrees from the roof plane in order to minimise visual impacts for the neighbouring properties.

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 minimise visual impacts for the neighbouring properties)

Privacy Protection

C25. Frosted/opaque glazing must be applied to the following first floor window/opening to protect visual privacy for the adjoining property to the north:

- (a) A window located on the northern edge of the first-floor balcony off bedroom 2; and
- (b) The first-floor bedroom 2 window on the northern elevation of the proposed attached dual occupancy;

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 protect visual privacy for the neighbouring properties)

The proposed modifications satisfy the provisions of Section 4.55 (2) in that the proposed development is substantially the same as the development approved under **DA244/16** as the proposed modifications will not change the development type and the overall built form of the development as originally approved.

Reasons for Approval:

The proposed modifications have been assessed against the relevant SEPP's, the North Sydney LEP 2013 and North Sydney DCP 2013 and were found to be generally satisfactory.

The variations to the LEP maximum building height limit of 8.5m for some solar panels are considered to be acceptable because there would be no material impacts arising from the non-compliance with the height limit in terms of the loss of views, solar access and privacy.

The variations to site coverage and landscaped area do not result in an overdevelopment of the subject site because of the proposed modifications would not change the overall built form, bulk and scale and the landscape quality of the approved development. The modified proposal will result in a built form that reads as a single dwelling.

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

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 with the imposition of new and modified conditions.

How community views were taken into account:

The adjoining property owners and the Neutral Precinct Committee were notified about the proposed development between 24 February and 10 March 2023. Council received two (2) submissions and the matters raised have been addressed in the assessment report.

The conditions attached to the original consent for Development Application No. **244/16** by endorsed date of **7 December 2016** 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



21 August 2023

DATE

Signature on behalf of consent authority
MIGUEL RIVERA
A/TEAM LEADER (ASSESSMENTS)