



Architecture Urbaneia Pty Ltd  
8 Clarke Street  
CROWS NEST NSW 2065

D342/19  
RT (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 MODIFICATION 342/19/2 - APPROVAL**

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**Development Consent Number:** 342/19

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

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**Applicant:** Architecture Urbaneia Pty Ltd

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**Proposal:** S4.55(2) application to modify the basement garage and associated engineering and landscaping works

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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. **342/19** and registered in Council's records as Application No. **342/19/2** 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 **27 February 2020**, has been determined in the following manner:

- To modify the development consent (D342/19) and modify conditions A1, A5, C10, C17 and G11 to read as follows:***

**Development in Accordance with Plans (S4.55 Amendments)**

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

Drawing no.	Description	Prepared by	Date
A.100 Rev B	Basement	Architecture Urbaneia	18/06/2020
A.101 Rev B	Ground Floor Plan	Architecture Urbaneia	18/06/2020
A.111A Rev A	West Elevation	Architecture Urbaneia	18/06/2020
A.121 Issues F	Sections	Architecture Urbaneia	24/10/2019
LP-01 Rev E	Landscape Plan - Ground Level	John Lock & Associates	24/07/2020
LP-01.1 Rev E	Landscape Plan - Basement Level	John Lock & Associates	24/07/2020

and endorsed with Council's approval stamp, except as modified by highlighting on the following drawings for D342/19/2:

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)

**Terms of Consent (D329/19/2)**

A5. Approval is granted for the following modifications only:

- (a) Re-configuration of the basement to provide two (2) car parking spaces, a hydrant booster pump room and a water storage tank;
- (b) Revised design for the pedestrian entrance for the ground floor unit off Montpelier Street (west);
- (c) Revised design for the vehicular entrance including a driveway 3.3m wide;
- (d) Removal of an existing external staircase on the western elevation; and
- (e) Associated landscaping works.

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.)

**Obtain Driveway Crossing and associated works permit**

C10 Prior to the issue of the Construction Certificate, North Sydney Council must issue the applicant with a driveway crossing and road infrastructure works permit to suit the approved off-street parking facilities. To obtain the permit, an application must be made to Council on a 'Vehicular Access Application' form with payment of the adopted assessment/inspection fees. Council will require civil design construction drawings and certification from the applicant's Civil Engineer to verify design details and enable permit issue. The responsibility for accuracy of the design fully rests with the designing engineer. All responsibility on implementation and supervision of works specified on design plans fully rests on designing engineer or whoever is chosen to be applicant's engineering representative. The civil design drawings shall detail the following infrastructure construction requirements of Council in relation to the consent:

- (a) The proposed vehicular access ways must comply with AS 2890.1 and Council's current Vehicular Access Application Guidelines and Specification (gutter bridges not permitted) to ensure that a B85 vehicle will not scrape/strike the surface of the carriageway, layback, vehicular crossing or parking floor.
- (b) The width of the lower-level vehicular layback must be 4.6m (including the wings).
- (c) The vehicular laybacks must be set square to the kerb.
- (d) The crossing (between the layback and the property boundary) must be perpendicular on a single straight grade of approximately 4.0%, falling to the back of the layback.
- (e) The footpath and grass verge on lower-level of Montpelier Street must be reconstructed and are to be transitioned from new driveway crossing, at least 1.5m on the left-hand side and 2.1m on the right-hand side or for additional pavement panel, whichever is greater, to ensure uniformity on the footpath.
- (f) The gutter levels and road shoulder levels on the lower level of Montpelier Street will require some adjustment (lifting) to prevent scraping of vehicles and to ensure smooth transitions. As a result, the kerb gutter is to be transitioned as necessary on both sides of the proposed layback crossing to ensure that a minimum longitudinal fall of 1% is achieved to maintain gutter flows.
- (g) Upstream of the proposed layback, the kerb/gutter shall be reconstructed for a length of 1000mm or to a point where a longitudinal gutter grade of 1.0% can be achieved or to an existing joint, whichever is the greatest. Downstream of the existing layback, the kerb/gutter shall be reconstructed for a length of 1000mm or to an existing joint, whichever is the greatest.
- (h) The kerb, and 1200 mm road shoulder wide- strip, adjacent to all new layback and gutter works, on lower-level of Montpelier Street must be reconstructed, to ensure uniformity in the road reserve.
- (i) The width of the upper-level vehicular layback must be 7.0m (including the wings)
- (j) The crossing section over the footpath (between the property boundary and grass verge) must be perpendicular on a single straight grade of approximately 4.5, falling to the grass verge. The driveway crossing section over the grass verge (between the lip of the layback and footpath) must be perpendicular on grade which, if necessary, may be greater than 4.5 %, (apart from the footpath section), but taking into account that the change in cross fall grade in between the road shoulder and driveway crossing is no more than 15%.
- (k) Any twisting of driveway access to ensure vehicles do not scrape must occur wholly within the subject property.
- (l) The gutter levels and road shoulder levels on upper-level of Montpelier St. will require some adjustment (lifting) and then, longitudinal transitions on both sides from the vehicular crossing, to prevent scraping of vehicles and to ensure smooth transitions.
- (m) Footpath on upper-level of Montpelier street will require longitudinal transition downhill until the maximum longitudinal change in grade is no more than 7%. Downhill -approximately – for 8 m and uphill for one pavement panel.
- (n) The kerb, and 1650 mm road shoulder wide- strip, adjacent to all new layback and gutter works, on upper level of Montpelier Street must be reconstructed, to ensure uniformity in the road reserve.
- (o) The footpath and grass verge on upper-level of Montpelier Street must be reconstructed and is to be transitioned at approximately for 1m on left hand side and 8.0m on the right-hand side of the crossing (facing the property) to ensure uniformity on the footpath.
- (p) All inspection openings and utility services must be adjusted to match the proposed driveway levels and location.

- (q) The design detail has to be provided with vehicular access application and must include sections along centre-line and extremities of the crossing at a scale of 1:25. Sections are to be taken from the centre of the roadway through to the parking area itself and shall include all changes of grade and levels, both existing and proposed.
- (r) A longitudinal section along the gutter line on Montpelier Street at a scale of 1:50 showing how it is intended to transition the layback with the existing gutter levels and shall include all changes of grade and levels, both existing and proposed.
- (s) A longitudinal section along the footpath inner edge (footpath edge close to the property boundary) at a scale of 1:50 is required and shall include all changes of grade and levels, both existing and proposed.
- (t) The sections must show the calculated clearance to the underside of any overhead structure.
- (u) A swept path analysis is required demonstrating that an 85th percentile vehicle can manoeuvre in and out of the garage spaces in accordance with AS 2890.1 2004 "Off Street Parking".
- (v) Pipelines within the footpath area must be hot dipped galvanized rectangular steel hollow section with a minimum wall thickness of 4.0 millimetres and a section height of 100 millimetres.
- (w) Any footpath panel on Montpelier Street that is disturbed for the purpose of stormwater connection must be reconstructed as a whole panel.

All driveway and infrastructure works on the road reserve must proceed in accordance with the terms of the permit issued by Council. Inspections by Council will be required as specified on the permit. The Certifying Authority issuing the Construction Certificate must ensure that the permit issued by Council is obtained prior to its issue, is referenced on and accompanies the relevant Construction Certificate issued.

(Reason: To facilitate appropriate vehicular access to private sites, without disruption to pedestrian and vehicular traffic)

### **BASIX Commitments**

C23. Under clause 97A(3) of the Environmental Planning & 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**

G11. Prior to the issue of any Occupation Certificate A5, A6, C6 and C18 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 a new Condition C18 to read as follows:

**Revised Landscape Plan**

C18. Revised landscape plans, based on the submitted landscape plans (Drawings numbered LP-01 Rev E and LP-01.1 Rev E, prepared by John Lock & Associates, all dated 25 Jan 2023), be revised to include the following:

- (a) The width of the driveway to be reduced to 3300mm to match that on the architectural plans'
- (b) Retention of an existing crepe myrtle tree on the landscape strip to the south of the modified driveway; and
- (c) Additional soft landscaping for the modified landscape strip to the south of the modified driveway.

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 landscape quality for the subject site and the locality)

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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.

The proposed driveway/garage changes are considered to be acceptable given that the proposed modifications would not significantly change the overall form and scale of the approved development with a single driveway on the front (western) elevation of the subject property.

**Reasons for Approval:**

The landscape quality of the subject property would generally be maintained with the requirement for a revised landscape plan. The proposed modifications would not cause material impacts on the amenity of surrounding residential properties.

Having regard to the provisions of section 4.55 & 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**.

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**How community views were taken into account:**

The adjoining property owners and the Neutral Precinct Committee were notified about the proposed development between 3 March and 17 March 2023. Council received two (2) submissions and the matters raised have been addressed in the assessment report.

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The conditions attached to the original consent for Development Application No. **342/19** by endorsed date of **27 February 2020** 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)**