



Mr Ed Horton
Stable Properties Pty Ltd
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BROOKVALE NSW 2100

D358/22
JD6 (PE)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 358/22/4 - APPROVAL**

Development Consent Number: 358/22

Land to which this applies: 20-22 Waruda Street, Kirribilli
SP 58872

Applicant: Stable Properties Pty Ltd

Proposal: Modify the consent for alterations and additions to a residential flat building, landscaping and associated works

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. **358/22** and registered in Council's records as Application No. **358/22/4** relating to the land described as **20-22 Waruda Street, Kirribilli**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **12 October 2023**, has been determined in the following manner:

Modification of conditions as detailed below, as shown in bold text:

1. Modification of condition A1:

Development in Accordance with Plans/Documentation

A1. The development must be carried out in accordance with the following drawings endorsed with Council's approval stamp and other documentation listed in the table to this clause, or cited by other conditions, and as amended by other conditions of this consent.

Plan No.	Rev No.	Description	Prepared by	Dated
DA000	P	Cover	Nettleton Tribe Architects	01/03/2024
DA001	K	Site Analysis		04/10/2023
DA002	P	Site Plan		01/03/2024
DA004	K	Site Survey		04/10/2023
DA005	P	Demolition – Ground, Level 1 & 2 Floors		01/03/2024

DA006	P	Demolition - Plans		01/03/2024
DA008	K	Demolition Elevations North and South		04/10/2023
DA009	K	Demolition Elevations East and West		04/10/2023
DA010	P	Demolition - Section		01/03/2024
DA100	P	Plan Ground Floor		01/03/2024
DA101	P	Plan Upper Ground Floor		01/03/2024
DA102	P	Plan Level 1		01/03/2024
DA103	P	Plan Level 2		01/03/2024
DA104	P	Plan Level 3 (Typical for Levels 3 to 6)		01/03/2024
DA108	P	Plan Level 7		01/03/2024
DA109	P	Plan Roof Level		01/03/2024
DA110	P	Plan Plant Level		01/03/2024
DA203	P	Elevation North		01/03/2024
DA204	P	Elevation South		01/03/2024
DA205	P	Elevation East		01/03/2024
DA206	P	Elevation West		01/03/2024
DA301	P	Section AA		01/03/2024
DA302	P	Section BB		01/03/2024
DA304	P	Adaptable Unit Plans Level 1		01/03/2024
DA305	P	Adaptable Unit Plans Level 2		01/03/2024
DA421	K	Section Threshold Detail		04/10/2023
DA500	C	Materials Board – Exterior Finishes		04/10/2023
LP01-D4422	L	DA Cover Page	Dangar Barin Smith	29 08 2023
LP02-D4422	L	Ground Landscape Plan	Dangar Barin Smith	29 08 2023
LP03-4422	L	Upper Ground Landscape Plan	Dangar Barin Smith	29 08 2023
LP04-4422	L	Level 1 Landscape Plan	Dangar Barin Smith	29 08 2023
LP05-4422	L	Level 2 Landscape Plan	Dangar Barin Smith	29 08 2023
LP06-4422	L	Roof Landscape Plan	Dangar Barin Smith	29 08 2023
-	3	Disability Access Report	Inclusive Places	14 11 2022
-	-	Acoustic DA Assessment	Acouras Consultancy	09 11 2022
-	-	BCA Assessment Report	BCA Logic	09 11 2022
-	C	Fire Engineering Services Letter	Holmes Australia LP	07 11 2022
-	0	Desktop Geotechnical Study Report	Douglas Partners	15 03 2022
-	-	Structural Design Report	MPN Structural Design and Engineering	November 2022
-	C	Waste Management Plan	Elephants Foot	10 11 2022

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

2. Modification of condition C7:

Geotechnical Report ~~(CC1)~~ (CC2)

C7. Prior to issue of the relevant Construction Certificate ~~including but not limited to CC1~~ 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. 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 Principal Certifier for approval prior to the issue of Construction Certificate ~~(CC1)~~ (CC2) and any other relevant Construction Certificate, as determined by the Principal Certifier.

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)

3. Modification of condition C13:

Work Zone ~~(CC1)~~ (CC2)

C13. If a Work Zone is required a Work Zone permit is to be obtained from Council prior to the issue of the relevant Construction Certificate ~~including but not limited to CC1.~~

Note: For major development an application for work zone permit must be considered by the North Sydney Local Traffic Committee.

Work Zones are provided specifically for the set down and pick up of materials and not for the parking of private vehicles associated with the site. Works Zones will generally not be approved where there is sufficient space on-site for the setting down and picking up of goods being taken to or from a construction site. If the Works Zone is approved by the Committee, the Applicant must obtain a written copy of the related resolution from the North Sydney Local Traffic Committee and submit a copy of this to the Principal Certifier to enable issue of the relevant Construction Certificate ~~including but not limited to CC1.~~

Where approval of the 'Work Zone' is given by the Committee, the requirements of the Committee, including installation of the necessary 'Work Zone' signage and payment of any fees, must occur prior issue of the relevant Construction Certificate and commencement of authorised works on the site ~~and relevant to the issued Construction Certificate.~~ Further, at the expiration of the Work Zone approval, the developer is required to remove the Work Zone signs and reinstate any previous signs, all at the developer's cost. The requirements imposed by the Committee on the Work Zone permit (or permits) must be complied with at all times.

(Reason: Amenity and convenience during construction)

4. Modification of condition C16:

Accessible Parking Spaces to be Provided (CC3)

C16. At least ~~2~~ 1 accessible parking spaces shall be provided as part of the total car-parking requirements. ~~All~~ The accessible parking spaces must be provided in the ground or upper ground level parking areas. Consideration must be given to the means of access from the car-parking spaces to adjacent buildings, to other areas within the building and to footpaths and roads. All details shall be prepared in consideration of, and construction completed in accordance with applicable Australian Standards to achieve compliance with the Disability Discrimination Act. Plans and specifications which comply with this condition must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate including but not limited to CC3.

(Reason: To ensure equity of access and appropriate facilities are available for people with disabilities in accordance with Federal legislation)

5. **Modification of condition C18:**

Obtain Driveway Crossing Permit under S.138 Roads Act 1993

C18. A driveway crossing and roads infrastructure works permit to suit the approved off-street parking facilities must be granted by the Council prior to the issue of any Construction Certificate. In order to obtain a permit under S.138 of the Roads Act 1993, an application must be made to Council on the '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 issue of the permit. The requirements of the permit must be complied with at all times.

The civil design drawings must include the following at a minimum:

- a) the vehicular accessways 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 redundant layback crossings fronting the site in Waruda Street and adjacent to the north/west corner of the site on Beulah Street, must be reinstated as kerb gutter and the footpath reconstructed to match the new levels,
- c) the width of the vehicular layback must be (3.6) m for 1-way or (5.2) m for 2-way (including the wings),
- d) the vehicular crossover must be set square to the kerb,
- e) the crossing (between the layback and the property boundary) must be placed on a single straight grade, falling to the back of the layback,
- f) the gutter levels and boundary footpath levels must match the existing levels and shall not be altered,
- ~~g) the works will require reconstruction of the carriageway shoulder extending out 600mm from the gutter lip in AC10 50mm thick, adjacent to all new gutter works, layback, kerb/gutter,~~
- h) any twisting of driveway access must occur entirely within the subject property,
- i) all inspection openings, utility services must be adjusted to match the proposed driveway levels,
- j) sections along centreline and extremities are required at a scale of 1:50 to be taken from the centreline of the roadway through to the parking area itself and must include all changes of grade and levels both existing and proposed,
- k) the sections must show the calculated clearance to the underside of any overhead structure,
- l) all details of internal ramps between parking levels, and
- m) 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".

The permit must be granted by Council prior to the issue of any Construction Certificate.

All driveway and infrastructure works on the road reserve must be undertaken in accordance with the terms of the permit issued by Council. Inspections by Council will be required as specified. The Principal Certifier issuing the Construction Certificate must ensure that the permit issued by Council is obtained and referenced on and accompanies the Construction Certificate issued.

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

6. Modification of condition C20:

Bond for Damage and Completion of Infrastructure Works - Stormwater, Kerb and Gutter, Footpaths, Vehicular Crossing and Road Pavement

C20. Prior to the issue of any Construction Certificate, security deposit or bank guarantee must be provided to Council to the sum of **\$50,000.00** to be held by Council for the payment of cost for any/all of the following:

- a) making good any damage caused to any property of the Council as a consequence of the doing of anything to which this consent relates,
- b) completing any public work (such as road work, kerbing and guttering, footway construction, stormwater drainage and environmental controls) required in connection with this consent
- c) remedying any defects in any such public work that arise within 6 months after the work is completed.
- d) Council reserves the right to retain all bonds on infrastructure works relating to the completion of required Infrastructure work for a 12-month defect liability period. Council may elect to provide a lesser period for minor residential work.

The security required by this condition and in the schedule contained later in these conditions must be provided by way of a deposit with the Council; or other such guarantee that is satisfactory to Council (such as a bank guarantee). Any guarantee provided as security must name North Sydney Council as the nominated beneficiary and must not be subject to an expiry date.

The security will be refundable following the expiration of six months from the issue of any final Occupation Certificate or completion of public work required to be completed (whichever is the latest) but only upon inspection and release by Council's Development Engineers or Manager of Development Services.

Council shall have full authority to make use of the bond for such restoration works as deemed necessary by Council in circumstances including the following: -

- where the damage constitutes a hazard in which case Council may make use of the security immediately,
- the applicant has not repaired or commenced repairing damage within 48 hours of the issue by Council in writing of instructions to undertake such repairs or works,
- works in the public road associated with the development are to an unacceptable quality, and
- the Principal Certifier must ensure that security is provided to North Sydney Council prior to issue of any Construction Certificate.

(Reason: To ensure appropriate security for works on public land and an appropriate quality for new public infrastructure)

7. Modification of condition C34:

Security Deposit/Guarantee Schedule

C34. All fees and security deposits/guarantees in accordance with the schedule below must be provided to Council prior to the issue of any Construction Certificate:

Security Deposit/Guarantee	Amount
Infrastructure Damage Bond	\$50,000.00
TOTAL BONDS	\$50,000.00

Note: The following fees are applicable

Fees	
Section 7.12 Contributions	\$129,935.00
TOTAL FEES	\$129,935.00

The security required by the above schedule must be provided by way of a deposit with the Council; or other such guarantee that is satisfactory to Council (such as a bank guarantee). Any guarantee provided as security must name North Sydney Council as the nominated beneficiary and must not be subject to an expiry date.

(Reason: Compliance with the development consent)

2. Addition of conditions as detailed below:

a) Insert after condition A3:

External Finishes and Materials

A4. The drawings titled 'Elevations - North' drawing No 12470_DA203 Issue P, and 'Elevations - East' drawing No 12470_DA205 Issue P, both by Nettleton Tribe, dated 1 March 2023 must be amended so that the amendment numbered No 29 is to alter the façade from face brick to façade tile. The Principal Certifier must ensure that the building plans and specifications submitted, referenced on and accompanying the relevant Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure the use of materials consistent with the character of the conservation area)

b) Insert after condition C18:

Required Infrastructure Works - Roads Act 1993

C18A. Prior to issue of any Construction Certificate engineering design plans and specifications must be prepared by a qualified civil design engineer. The plans and specifications must be to a detail suitable for construction issue purposes and must provide detail and specification for the following infrastructure works to be completed as part of the development. To obtain the permit, an application must be made to Council on a 'Application to satisfy development consent' form with payment of the adopted assessment/inspection fees. 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:

Road Works

- a) Construction of a fully new replacement concrete footpath is required across the entire site frontage on both street frontages. A longitudinal section is required along the footpath property boundary at a scale of 1:50 extending 5m past the property boundary line. The footpath shall be designed (at a single straight grade of 3% falling to top of kerb) so that it is uniform without showing signs of dipping or rising particularly at entrances.
- b) half Road surface Reconstruction on both streets.

- c) Construction of a fully new kerb and gutter is required across the entire site frontage (on both street frontages). A longitudinal section is required along the gutter line (existing and proposed levels), at a scale of 1:50 extending 5m past the property boundary line.
- d) Cross sections at a scale of 1:50 along the centre-line of each access point from the footpath to the property boundary/building must be provided and are to show the calculated clearance to the underside of any overhead structure. All the entry points are to comply with the Building Code of Australia (BCA), including disability requirements. The Council approved footpath levels must be accommodated at the building entry points.

Plans and specifications which comply with this condition must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate.

Certifying Authorities must not issue a Construction Certificate without the formal written approval of Council (as Roads Authority) under the Roads Act 1993.

The required plans and specifications are to be designed in accordance with North Sydney Council's current documents Infrastructure Specification for Road Works, Drainage and Miscellaneous Works and Performance Guide for Engineering Design and Construction. The drawings must detail existing utility services and trees affected by the works, erosion control requirements and traffic management requirements during the course of works. A detailed survey must be undertaken as required. Traffic management is to be certified on the drawings as being in accordance with the documents SAA HB81.1 - 1996 - Field Guide for Traffic Control at Works on Roads – Part 1 and RMS Traffic Control at Work Sites (1998). **Construction of the works must proceed only in accordance with any conditions attached to the Council Roads Act 1993 approval.**

Note: A minimum of 21 days will be required for Council to assess Roads Act submissions. Early submission is recommended to avoid any delays in obtaining a Construction Certificate. A fee to cover cost of assessment (set out in Council's adopted fees and charges) is payable and Council will withhold any consent and approved plans until full payment of the correct fees. Plans and specifications must be marked to the attention of Council's Development Engineers. In addition, a copy of this condition must be provided, together with a covering letter stating the full address of the property and the accompanying DA number.

(Reason: To ensure infrastructure works are designed and constructed to appropriate standards and requirements of the Roads Act 1993)

c) ***Insert after condition C36:***

Landscape Plan Amendments

C37 The garden planter in the south west corner of the site shall be planted with low-mid storey shrubs such as *Pennisetum*, *Lomandra*, *Macrozamia*, *Doryanthes* and the like. Approved landscaping plans shall be amended accordingly and details submitted with the relevant Construction Certificate.

(Reason: Landscaping makes a positive contribution to the streetscape.)

d) Insert after condition G3:

Noise Certification G4

G15. Prior to issue of the final Occupation Certificate a certificate from an appropriately qualified acoustical consultant eligible for membership of the Association of Australasian Acoustical Consultants is to be submitted to, and approved by, the Principal Certifier certifying that the noise and vibration from use of the development complies with the conditions of consent herein.

(Reason: To ensure acoustic amenity)

e) Insert after condition I7:

Noise and Vibration Impact I8

I5. The on-going use of the premises approved under this consent must comply with all conditions pertaining to noise and vibration specified in this consent.

(Reason: To ensure compliance with the specified levels of noise and vibration and to maintain the amenity of surrounding land uses)

Reasons for Approval:

Assessment of the proposed modifications to conditions of consent and amendments of the approved development's design concludes the modifications are satisfactory. Insignificant environmental impacts will result from these amendments, subject to implementation of additional conditions and modification of other conditions. Proposed changes will not materially affect neighbourhood amenity and that of the development site's neighbours. The development, as modified is substantially the same as that conditionally approved by the North Sydney Local Planning Panel at its meeting held 6 September 2023.

Accordingly, the proposal is satisfactory and approval of the requested modifications to the consent was recommended as set out below.

How community views were taken into account:

The application was notified in accordance with Council's Community Engagement Protocol and no submissions were received.

The conditions attached to the original consent for Development Application No. **358/22** by endorsed date of **12 October 2023** still apply.

ADVISINGS

(a) Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact **Jim Davies**. 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

11 June 2024

DATE



Signature on behalf of consent authority
JIM DAVIES
EXECUTIVE PLANNER (ASSESSMENTS)