



Mr Daniel Kim
Unit 11, 470 Canterbury Road
CAMPSIE NSW 2194

D144/17
RT (P&E)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 144/17/2 - APPROVAL**

Development Consent Number:	144/17
Land to which this applies:	2 Cowdroy Avenue, Cammeray Lot No.: 1, DP: 89833
Applicant:	Daniel Kim
Proposal:	To modify development consent D144/17 for an approved detached single dwelling

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. **144/17** and registered in Council's records as Application No. **144/17/2** relating to the land described as **2 Cowdroy Avenue, Cammeray**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **12 December 2017**, has been determined in the following manner:

1. To modify the development consent (D144/17) and modify condition A1 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.	Rev	Date	Drawn by	Received
A-100-000	D	04/10/17	Fox Johnston	4 October 2017
A-110-001	D	04/10/17	Fox Johnston	4 October 2017
A-110-002	D	04/10/17	Fox Johnston	4 October 2017
A-110-003	D	04/10/17	Fox Johnston	4 October 2017
A-110-004	D	04/10/17	Fox Johnston	4 October 2017
A-110-005	D	04/10/17	Fox Johnston	4 October 2017
A-110-006	D	04/10/17	Fox Johnston	4 October 2017
A-210-001	D	04/10/17	Fox Johnston	4 October 2017
A-210-002	D	04/10/17	Fox Johnston	4 October 2017
A-210-003	D	04/10/17	Fox Johnston	4 October 2017
A-210-004	D	04/10/17	Fox Johnston	4 October 2017
A-210-006	D	04/10/17	Fox Johnston	4 October 2017

and endorsed with Council's approval stamp, except as modified by highlighting on:

- (a) The drawing numbered for **D144/17/2**:

Plan No.	Description	Prepared by	Dated
DA100 Rev S8	Site Plan	LVL D Architecture	13/05/2024
DA200 Rev S8	Roof Plan	LVL D Architecture	13/05/2024
DA201 Rev S8	Upper Bedroom Level Plan	LVL D Architecture	13/05/2024
DA202 Rev S8	Garage Level Plan	LVL D Architecture	13/05/2024
DA203 Rev S8	Bedroom Level Plan	LVL D Architecture	13/05/2024
DA204 Rev S8	Living Level Plan	LVL D Architecture	13/05/2024
DA205 Rev S8	Cabana Level Plan	LVL D Architecture	13/05/2024
DA300 Rev S8	Elevation Northern and Southern	LVL D Architecture	13/05/2024
DA301 Rev S8	Elevation Eastern	LVL D Architecture	13/05/2024
DA302 Rev S8	Elevation Western	LVL D Architecture	13/05/2024
DA303 Rev S8	Short Section	LVL D Architecture	13/05/2024
DA304 Rev S8	Long Section	LVL D Architecture	13/05/2024
DA305 Rev S8	Additional Section	LVL D Architecture	13/05/2024

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

Amendments to Landscape Plan

- C1. The applicant shall submit a revised landscape plan for the subject site generally based on the following drawings numbered LA-01 Issue B, LA-02 Issue B, LA-03 Issue B, LA-04 Issue B, LA-05 Issue B, LA-06 Issue B and LA-07 Issue B, all dated 13/9/17, prepared by Johnston Fox, and drawing numbered 110.18/254 dated July 2018, prepared by iScape Landscape Architecture, and incorporates the following modifications:
- (a) The revised landscape plan shall be consistent with the architectural design of the approved detached dwelling under D144/17/2 and as amended by **Condition C28**;
 - (b) Substitute plant species that are not commercially available with other locally indigenous species that are commercially available or able to be contract grown. The list of species is provided in the North Sydney Natural Area Survey 2010 vegetation community list for Angophora Foreshore Forest and Blackbutt Gully Forest;
 - (c) The number, pot size and mature height of all planting must be specified;
 - (d) Planting zone PT8, as shown on drawing numbered LA-06 Issue B, must be extended along the entire western property boundary to provide planting compatible to the adjoining bushland reserve;
 - (e) Removal of exotic species planted on Council land currently used as part of the rear garden of the subject property to facilitate bushland regeneration of this area; Council's Bushland Management Co-ordinator must be consulted in the preparation of the list of exotic plants to be removed;
 - (f) The height of the side fence along the western property boundary must not exceed 1.1m as measured from the ground level and must be open construction (such as mesh or palisade) in the setback between the northern building line and the harbour; and
 - (g) Excess water from pond must be directed to stormwater management system for the proposed development.

The revised landscape plan and any supporting information must be submitted to Council for written approval by Council's Team Leader Assessments.

Written concurrence from Council confirming compliance with this condition must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The Principal Certifier must ensure that the amended landscape plan and other plans and specifications submitted fully satisfy the requirements of this condition.

(Reason: To ensure desirable landscape outcomes for the subject site and the adjoining bushland)

BASIX Commitments

C27. 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 Certificates No. 1320809S for the development are fulfilled. Plans and specifications complying with this condition must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate.

The Principal Certifier 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, Conditions A4, C1 and C28 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 conditions A4 (Terms of consent) and C28 (Design Modifications) and read as follows:

Terms of Consent (D144/17/2)

A4. Approval is granted for the following modifications only as shown on the approved architectural plans:

Finished Floor Levels Changes:

- Cabana Level (L1) - Increase in height by 50mm from FFL 10.020 to FFL 10.070;
- Living Level (L2) - Reduce in height by 40mm from FFL 13.610 to FFL 13.570;
- Lower Bedrooms Level (L3) - Reduce in height by 40mm from FFL17.110 to FFL 17.070;
- Garage Level (L4) - Reduce in height by 40mm from FFL20.310 to FFL 20.270;
- Upper Bedroom Level (L5) - Reduce in height by 40mm from FFL 24.010 to FFL 23.970; and
- Roof Level - Reduce in height by 200mm from FFL 27.220 to FFL 27.020.

Building Setbacks Changes:

- Southern (Cowdroy Avenue) boundary - Increase in setback by 600mm from 4.043m to 4.643m;
- Northern (Long Bay) boundary - Decrease in setback by 430mm from 27.782m to 27.352m;
- Eastern boundary - Decrease in setback by 108mm from 1.13m to 1.022; and
- Western boundary - Decrease in setback by 55mm from 1m to 945mm

Modifications to Approved Internal Layout:

- Cabana Level (L1) - Deletion of a gymnasium, re-configuration of the internal layout to accommodate an extension of the open plan living area, a wet bar and a bathroom with sauna;
- Living Level (L2) - Modifications to the design of the garden courtyard, deletion of plant and store rooms, relocation of the lift, relocation of kitchen, provision of a fire place, and increase in the size of the living room;
- Lower Bedrooms Level (L3) - Deletion of study area, relocation of lift reconfiguration of ensuite layout, provision of ensuite and walk-in wardrobe for Bedroom 2, addition of service areas;
- Garage Level (L4) - Reconfiguration of the garage with smaller storage/plant areas, relocation of the lift and new subterranean service areas;
- Upper Bedroom Level (L5) - Deletion of a mud room, relocation of the lift, relocation of bathrooms, relocation of wardrobes, provision of laundry and store room; and
- Associated fenestration changes.

Retrospective consent, use only of building elements constructed without consent: (Building elements shown in brown on the submitted drawings)

- (a) Floor slab for the cabana level at FFL 10.070 and external walls; and
- (b) Floor slab for the living level at FFL 13.570 and one external wall on the western elevation.

No approval is granted or implied for other works and use building elements, internal or external, within the subject site.

(Reason: To ensure that the terms of consent is clear)

Design Modifications

- C28. The proposed service areas on the eastern side of the garage shall be deleted and replaced with deep soil planters to provide substantial screen planting and a soft landscaping buffer between the subject site and the adjoining property top the east at No. 2A Cowdroy Avenue.

Details of the landscape treatments shall be provided as part of the revised landscape plan as required under Condition C1 in this consent.

The Principal Certifier 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 a desirable landscape outcome and to protect the amenity of the adjoining properties)

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 modifications to the building elements above the LEP building height limit are considered to be acceptable given that the additional height variation is primarily resulted from additional earthworks and the overall height of the detached dwelling would be lowered by 200mm from FFL 27.220 to FFL 27.020.

The design of the modified dwelling would generally be consistent with the original approved dwelling. The modified proposal would not cause material impacts on the amenity of the adjoining properties in terms of view loss, overshadowing and loss of privacy. Therefore, the proposed modifications would achieve the objectives of the building height controls.

Reasons for Approval:

The changes to site coverage, unbuilt upon/landscaped area are the result of re-classification of different parts of the proposed development due to the additional earthworks. These changes would have no impacts on the overall density and landscape quality within the subject site.

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 granted of development consent to the originally approved development and is considered to be acceptable.

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 Bay Precinct inviting comments between 16 and 31 January 2023. Four (4) submissions were received and the matters raised in the submissions have been considered in the assessment report.

The conditions attached to the original consent for Development Application No. **144/17** by endorsed date of **12 December 2017** still apply.

ADVISINGS

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

28 June 2024

DATE



Signature on behalf of consent authority
ROBIN TSE
SENIOR ASSESSMENT OFFICER