

Praetorian NSW Pty Ltd
Fiore Mowbray Trust
6 McGowan Street
PUTNEY NSW 2112

D336/16
LD (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 336/16/3 – APPROVAL**

Development Consent Number: 336/16/3

Land to which this applies: 315 Ernest Street, Neutral Bay
Lot No.: B, DP: 369998

Applicant: Praetorian NSW Pty Ltd

Proposal: Section 4.55 Application to modify DA 336/16 with regards to internal layout changes and facade changes

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. **336/16** and registered in Council's records as Application No. **336/16/3** relating to the land described as **315 Ernest Street, Neutral Bay**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 3 May 2017, has been determined in the following manner: -

1. Modify Conditions A4, C11, C30 and C34 to read as follows:

Development in Accordance with Plans (Modification applications)

A4. The development being carried out in accordance with plans identified in **Condition A1** of the consent, except as modified by the modifications shown clouded in red on the following plans:

Drawing No.	Revision	Title	Drawn by	Dated
A00	R	Site plan + BASIX notes	BJB Architects	5/02/2020
A01	R	Basement floor plan	BJB Architects	5/02/2020
A02	R	Ground floor plan	BJB Architects	5/02/2020
A03	R	First floor plan	BJB Architects	5/02/2020
A04	R	Second floor plan	BJB Architects	5/02/2020

A05	R	Roof plan	BJB Architects	5/02/2020
A06	R	Section	BJB Architects	5/02/2020
A07	R	Section	BJB Architects	5/02/2020
A08	R	Section	BJB Architects	5/02/2020
A09	R	North (Ernest Street) elevation	BJB Architects	5/02/2020
A10	R	East elevation	BJB Architects	5/02/2020
A11	R	South elevation	BJB Architects	5/02/2020
A12	R	West elevation	BJB Architects	5/02/2020
A22	R	Sections	BJB Architects	5/02/2020

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

No External Service Ducts

C11. Service ducts must be provided within the building with the exception of the external downpipes nominated on the plans that form part of Conditions A1 and A4 of this consent. Plans and specifications which comply 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 quality built form of the development)

Privacy

C30. The following privacy devices are to be provided:

- a) The western study room window (Level 1) must be fitted with obscure glass.
- b) A fixed privacy screen must be attached on the eastern side of the fire egress stair (adjacent to the eastern boundary of the site) and landing (as indicated on the plans that form part of Condition A1 of this consent). The privacy screen must have a minimum height of 1.6m above the level of the stair landing (RL84.35).
- c) A fixed or sliding privacy screen must be attached to the southern side of the first floor terrace (Unit 3). The privacy screen must have a minimum height of 1.8m above the level of the terrace (RL87.30) and a minimum width of 2m.
- d) The southern windows to the second floor bedrooms (Unit 5) must be two pane sashless windows that have a maximum opening of 100mm. The sections of glass below the sashless windows must be fixed and non operable.

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 an adequate level of privacy is provided to adjoining property located at No's 313 and 317 Ernest Street. Further, to ensure that the nominated sashless windows restrict access to the non-trafficable parts of the roof.)

BASIX Certificate

C34 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. (762404M_04) 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 removal of the second floor terrace from the amended proposal was considered necessary to ensure reasonable privacy was maintained with the rear private open space of No. 317 Ernest Street. The roof over the rear of the first floor level will remain as non-trafficable.

The replacement of the sliding doors with sashless windows will not materially impact privacy noting that the sashless windows replace existing approved windows. Although the proposed sashless windows are larger than the approved windows, the windows service a bedroom and are setback between 4755mm (min) and 8.7m (max) from the common boundary with No. 317 Ernest Street ensuring a reasonable level of privacy, noting that any outlook to this adjoining property would be an an oblique angle and partially screened by approved landscaping along the eastern boundary of the site. Condition C30(d), as modified, specifies the details of the sashless window.

Reason for approval:

Under the amended proposal, the level at the top of the front staircase remains as approved (RL83.95) under the DA ensuring no additional privacy impacts on the adjoining property at No. 317 Ernest Street.

The deletion of a number of the eastern en-suite and bathroom windows along the eastern elevation will further improve privacy with the adjoining property at No. 317 Ernest Street.

The proposed modification seeks to retain the existing external downpipes which is considered reasonable noting that downpipes are discreet elements and given their predominant locations on the sides of the building will not be easily visible from the public domain. Moreover, a majority of the existing low and medium density residential buildings within the visual catchment of the subject site have external downpipes. For these reasons, Condition C11 is to be modified.

How community views were taken into account:

The application was notified to surrounding property owners between 6 December 2019 and 13 January 2020. The notification area was increased to include additional properties along Byrnes Avenue and Ernest Street and as a result the notification period was extended through to 5 February 2020. A total of five (5) submissions were received against the application. The issues raised in the submissions were addressed in the delegated report.

In accordance with Section 3.6 of the Community Participation Plan, the amended plans were not re-notified to adjoining properties as the amendments involving the deletion of the second floor terrace and the non-raising of the walkway level at the top of the front staircase will likely reduce the adverse effect on adjoining properties and more consistent with the reasons given by the Panel for approving the DA.

The conditions attached to the original consent for Development Application No. 336/16 by endorsed date of 3 May 2017 still apply.

ADVISINGS

- (a) Council is always prepared to discuss its decisions and in this regard, please do not hesitate to contact **the undersigned**. 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 & 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 & Assessment Act.

Endorsed for and on behalf of North Sydney Council

DATE

Signature on behalf of consent authority
LUKE DONOVAN
SENIOR ASSESSMENT OFFICER