

Thomas Kent  
32 Wyndora Avenue  
FRESHWATER NSW 2096

D194/18  
LK (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 MODIFICATION 194/18/3 – APPROVAL**

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**Development Consent Number:** 194/18/3

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**Land to which this applies:** 341 Ernest Street, Neutral Bay  
Lot No.: A, DP: 157283

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**Applicant:** Thomas Kent

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**Proposal:** Section 4.55(2) modifications to DA194/18, which approved a multi-unit development comprising three townhouses.

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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. **194/18** and registered in Council's records as Application No. **194/18/3** relating to the land described as **341 Ernest Street, Neutral Bay**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 23 November 2018, has been determined in the following manner: -

- 1. To modify the development consent (DA194/18) and modify condition A1 to list the revised plans:***

**Development in Accordance with Plans (S 4.55 Amendments)**

- A1. The development must be carried out in accordance with the following drawings and documents endorsed with Council's approval stamp:-

Drawing Number	Issue	Title	Drawn by	Dated
DA000	B	Cover Page	Paton Miranda Architect	23/08/2018
DA101	B	Site Plan	Paton Miranda Architect	23/08/2018
DA110	B	Basement Plan	Paton Miranda Architect	23/08/2018
DA120	B	Ground Floor	Paton Miranda Architect	23/08/2018
DA130	B	First Floor	Paton Miranda Architect	23/08/2018
DA150	B	Second Floor Plan	Paton Miranda Architect	23/08/2018

DA200	B	North Elevation	Paton Miranda Architect	23/08/2018
DA210	B	West Elevation	Paton Miranda Architect	23/08/2018
DA220	B	East Elevation	Paton Miranda Architect	23/08/2018
DA230	B	South Elevation + Section A	Paton Miranda Architect	23/08/2018
DA300	B	Section B	Paton Miranda Architect	23/08/2018
DA301	B	Section C	Paton Miranda Architect	23/08/2018
DA500	B	Materials Analysis	Paton Miranda Architect	23/08/2018
DA501	B	Materials Analysis	Paton Miranda Architect	23/08/2018
DA502	B	Materials Analysis	Paton Miranda Architect	23/08/2018
DA110	B	Driveway Section	Paton Miranda Architect	23/08/2018
L100	D	Landscape Concept Plan	Spirit Level Designs	21/08/2018

except as modified and clouded as such on the following drawings for DA194/18/3:

Drawing Number	Revision	Title	Drawn by	Dated
DA003	7	Site Plan	yg+partners	29/04/2020
DA004	7	Window Schedule	yg+partners	29/04/2020
DA101	7	Basement Plan	yg+partners	29/04/2020
DA102	7	Ground Floor Plan	yg+partners	29/04/2020
DA103	7	First Floor Plan	yg+partners	29/04/2020
DA104	7	Roof Plan	yg+partners	29/04/2020
DA200	7	North Elevation	yg+partners	29/04/2020
DA201	7	West Elevation	yg+partners	29/04/2020
DA202	7	East Elevation	yg+partners	29/04/2020
DA203	7	South Elevation + Section A	yg+partners	29/04/2020
DA300	7	Section B	yg+partners	29/04/2020
DA301	7	Section C	yg+partners	29/04/2020
L01	C	Landscape Plan	B+E Landscape Architects	19/05/2020

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

2. *To modify Conditions A3 (External Finishes and Materials), C22 (BASIX Certificate), G7 (Landscaping), G12 (Compliance with Certain Conditions), and I1 (Maintenance of Approved Landscaping) as follows to reflect the amended application*

#### **External Finishes and Materials**

- A3. External finishes and materials must be in accordance with those specified within the approved drawings listed within Condition A1 of the original consent (Ref. DA194/18), as modified by application Ref. DA194/18/3, unless as otherwise modified by Council in writing.

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

#### **BASIX Certificate**

- C22. 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. 1057102M\_02 dated 14 February 2020 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)

### **Landscaping**

G7. The landscaping shown in the approved landscaping plan numbered L01 prepared by B+E Landscape Architects dated 19/05/20 must be completed prior to the issue of any Occupation Certificate.

(Reason: To ensure compliance and in the interests of the visual amenity of the site)

### **Compliance with Certain Conditions**

G12. Prior to the issue of any Occupation Certificate, new Condition C14 listed below 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)

### **Maintenance of Approved Landscaping**

I1. The owners/management company (whichever applies) are to maintain the landscaping approved by this consent generally in accordance with the approved landscaping plan numbered L01 prepared by B+E Landscape Architects dated 19/05/20, and in strict accordance with Condition I3. Any replacement plants required shall be advanced in growth and be selected to maintain the anticipated mature height, canopy density and nature of those plant species as originally approved.

(Reason: To ensure maintenance of the landscape amenity, solar access and views of adjoining properties and future occupants)

2. *To delete Condition C25 (Privacy Devices), and replace it with a new Condition G14 (Privacy Devices), as follows to reflect the amended application*

### **Privacy Devices**

G14. Prior to the first occupation of the development, all privacy measures to windows, namely the externally mounted aluminium slatted screens shown on the modified approved plans and window schedule listed in Condition A1 of this consent shall be provided.

The windows are to be fully operable without altering these screens, and the privacy slats shall be angled and permanently fixed to prevent direct views to neighbours.

(Reason: To ensure adequate privacy for neighbours and future occupants)

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**Reason for approval:**

The proposed modifications including increased building height, reduced rear setback, reduced basement, window additions and alterations, internal amendments and altered external materials satisfy the provisions of Section 4.55 (2) in that the proposed development is substantially the same as what was approved by DA 194/18 and the proposed modifications will not materially alter the use or the form of the development as originally approved.

The proposed modifications would not significantly change the level of compliance with the relevant development standards and controls as contained in North Sydney LEP 2013 and North Sydney DCP 2013. There would be no undue impacts on the residential amenity of any adjoining properties, or on the character of the locality, and the proposal remains consistent with the objectives of the R3 (Medium Density Residential) Zone, and the reasons for granting consent originally.

The proposal was found to be acceptable in the site circumstances and is recommended that the subject Section 4.55(2) application be approved.

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

The proposal was notified and advertised in accordance with Council's Community Engagement Protocol. Three (3) submissions against the modified application were received with the key planning issues including loss of solar access, loss of privacy, and concern regarding increased building height. The issues raised in the submissions have been considered in the assessment of this application where it is considered that amenity impacts will remain acceptable subject to the recommended conditions of consent.

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The conditions attached to the original consent for Development Application No. 194/18 by endorsed date of 23 November 2018 still apply.

**ADVISINGS**

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

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Signature on behalf of consent authority  
ROBYN PEARSON  
**TEAM LEADER ASSESSMENTS**