

Original signed by **Robyn Pearson** on **12/6/2020**

Dwell Designs Australia  
PO Box 2294  
NORTH PARRAMATTA NSW 1750

D259/14  
MS3 (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 MODIFICATION 259/14/5 – APPROVAL**

**Development Consent Number:** 259/14/5

**Land to which this applies:** 15 Stratford Street, Cammeray  
Lot No.: 15, DP: 8680

**Applicant:** Dwell Designs Australia

**Proposal:** Section 4.55(1A) – Modification application to modify DA259/2014 with regard to minor changes to the approved dwelling's setbacks, internal layout, and privacy measures and construction of the retaining wall adjacent to the southern boundary.

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. **259/14** and registered in Council's records as Application No. **259/14/5** relating to the land described as **15 Stratford Street, Cammeray**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 4 February 2015, has been determined in the following manner: -

**1. Condition A4 is amended as follows:**

**Development in Accordance with Plans (S96 Amendments)**

A1. The development being carried out in accordance with plans identified in Condition A1 of the consent and endorsed with Council's approval stamp, except as modified by the modifications shown in colour on:

Plan No	Title	Dated	Prepared	Received
1/8 A	Floor Plan Level 1	02/12/2019	Dwell Designs Australia	18/12/2019
2/8 A	Floor Plan Level 2	02/12/2019		18/12/2019
3/8 A	Floor Plan Level 3	13/02/2020		14/02/2020

3/8 A	Floor Plan Level 3	13/02/2020	Dwell Designs Australia	14/02/2020
4/8 A	Floor Plan Level 4	02/12/2019		18/12/2019
5/8 A	Roof Plan	02/12/2019		18/12/2019
6/8 A	East and West Elevations	02/12/2019		18/12/2019
7/8 A	North Elevation	02/12/2019		18/12/2019
8/8 A	South Elevation	02/12/2019		18/12/2019

except as amended by the following conditions and this consent.

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

2. ***Condition A5 Terms of consent is to be deleted.***
3. ***Conditions C28, C29 and C30 are to be imposed.***

### **Level 3 Southern Privacy Screen**

C28. The privacy screen along the southern side of the Level 3 terrace area is to be constructed in accordance with Floor Plan Level 3, prepared by *Smith and Tzannes*, dated 2 February 2017 and approved by Council 17 February 2017.

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 that reasonable levels of privacy are maintained to 13 Stratford Avenue without unreasonably increasing the visual impact of the development.

### **Deletion of Level 4 Landscape Privacy Screen**

C29. The landscaped privacy screen shown on *Floor Plan Level 4*, prepared by *Dwell Designs Australia*, dated 02 December 2019, and received by Council *18 December 2019*, located along the southern side of the roof above level 3 is to be deleted.

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 prevent additional visual impact, impact to views and overshadowing to 13 Stratford Avenue)

### **Northern windows of Bedroom 4 (Level 2)**

C30. The error regarding the location of the Bedroom 4 windows along the northern elevation – *Plan no. 7/8 A*, drawn by *Dwell Designs Australia* and dated *2 December 2019* is to be corrected in favour of the location shown on the level 2 floor plan – *Plan no. 2/8 A*, drawn by *Dwell Designs Australia* and dated *2 December 2019*. The same dimensions of the are to be maintained, including the sill height of 1970mm above the finished floor level.

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 that the plans reference in the determination accurately reflect the determination)

**4. Conditions C2, C22, C25 and I1 are to be amended as follows:**

**Level 3 Roof**

C2. With the exception of the balcony off the **eastern** side of bedroom 1 on Level 4, the remainder of the level 3 roof of the development must remain as a non trafficable area. Access onto this roof is only permitted for maintenance purposes.

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 residential amenity is maintained with surrounding properties)

**Privacy**

C22. The following privacy measures are to be installed:

- a) The northern ensuite windows to level 4 must be fitted with obscure glazing;
- b) The horizontal louvered kitchen window on the northern elevation of Level 3 is to be obscured glazed and restricted from opening more than 45 degrees to a minimum height of 1.5m above the finished floor level of the kitchen.**
- c) A privacy screen is to be installed in line with the northern wall of Level 4 and is to have a length of 1.5m measured perpendicular from the eastern elevation of the ensuite. The privacy screen is to have a minimum height of 1.6m measured from the finished floor level of the master bedroom.**
- d) A privacy screen is to be installed along the southern edge of the balcony on Level 4 and is to have a minimum height of 1.6m measured from the finished floor level.**

(Reason: 'a)', 'c)' and 'd)' ensure that reasonable privacy is maintained to the private open space of 17 Stratford Avenue, Cammeray, 'e)' ensures that reasonable privacy is maintained to 13 Stratford Avenue, Cammeray)

**BASIX Certificate**

C25. 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. (A55598IS-09 dated 6 December 2019) 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)

**Level 3 Roof**

11. With the exception of the balcony off the ~~northern~~ **eastern** side of bedroom 1 on Level 4, the remainder of the level 3 roof of the development must remain as a non trafficable area in perpetuity. Access onto this roof is only permitted for maintenance purposes.

(Reason: To ensure residential amenity is maintained with surrounding properties)

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**Reason for approval:**

The development, as proposed to be modified is considered to be substantially the same development as the development originally approved. A significant portion of the modifications have already been carried out although may be considered with regard to the judgement for *Windy Dropdown Pty Ltd v Warringah Council [2000] NSWLEC 240* as the requirements of section 4.55(2) have been satisfied and an active consent was in place when the works were undertaken.

The proposed modifications generally maintain the approved built form and do not introduce any new non-compliances with Council's Development Control Plan. The internal amenity of the subject dwelling would be improved over previous versions of the plans however the amenity of the surrounding dwellings has also been maintained with regards to the visual impact of the bulk and scale, availability of views, solar access and privacy.

The retaining wall constructed alongside the southern boundary is considered for approval given that it has been demonstrated that it is constructed wholly within the subject site, structurally sound and does not result in any amenity impacts to the adjoining property.

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

The development application to modify DA259/2014 was notified in accordance with Council's Community Engagement Protocol from 17 January 2020 until 31 January 2020 and one submission was received. A site inspection was undertaken of the submitter's property. Conditions have been recommended to resolve the unreasonable amenity impacts that were identified.

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The conditions attached to the original consent for Development Application No. 259/14 by endorsed date of 4 February 2015 still apply.

**ADVISINGS**

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