

James Michael Elliot  
7/9 Myrtle Street  
NORTH SYDNEY NSW 2060

KRR (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 MODIFICATION 291/19/2 – APPROVAL**

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**Development Consent Number:** 291/19/2

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**Land to which this applies:** 15 Montpelier Street, Neutral Bay  
SP: 16298

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**Applicant:** James Michael Elliot

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**Proposal:** Section 4.55(2) for various modifications to the approved residential flat building

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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. **291/19** and registered in Council's records as Application No. **291/19/2** relating to the land described as **15 Montpelier Street, Neutral Bay**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 20 April 2020, has been determined in the following manner: -

*1. To amend Conditions A1, A4, C10 and C19 as follows: -*

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

A1. The development must be carried out in accordance with the following drawings and documentation and endorsed with Council's approval stamp, except where amended by the following conditions of this consent

**DA291/19 Approved Plan List**

Plan No.	Issue	Dated	Title	Drawn by	Received
D 01	-	11.06.2019	Demolition site plan	Coso Architecture	28 Oct 2019
D 02	-	11.06.2019	Ground floor demolition plan	Coso Architecture	28 Oct 2019
D 03	-	11.06.2019	First floor demolition plan	Coso Architecture	28 Oct 2019
DA 01	A	11.06.2019	Site plan	Coso Architecture	19 Mar 2020

Plan No.	Issue	Dated	Title	Drawn by	Received
DA 02	A	11.06.2019	Basement plan	Coso Architecture	19 Mar 2020
DA 03	A	11.06.2019	Ground floor plan	Coso Architecture	19 Mar 2020
DA 04	A	11.06.2019	First floor plan	Coso Architecture	19 Mar 2020
DA 05	A	11.06.2019	Second floor plan	Coso Architecture	19 Mar 2020
DA 06	A	11.06.2019	Roof plan	Coso Architecture	19 Mar 2020
DA 07	A	11.06.2019	Section AA	Coso Architecture	19 Mar 2020
DA 08	A	11.06.2019	Section BB	Coso Architecture	19 Mar 2020
DA 09	A	11.06.2019	Section CC	Coso Architecture	19 Mar 2020
DA 10	A	11.06.2019	North elevation (side)	Coso Architecture	19 Mar 2020
DA 11	A	11.06.2019	West elevation (front)	Coso Architecture	19 Mar 2020
DA 11 A	A	11.06.2019	West elevation (at building line)		19 Mar 2020
DA 12	A	22.01.2020	South elevation (side)	Coso Architecture	19 Mar 2020
DA 13	A	22.01.2020	East elevation (rear)	Coso Architecture	19 Mar 2020
DA 14	A	22.01.2020	Montpelier St elevation (true elevation)	Coso Architecture	3 Feb 2020
DA 32	A	22.01.2020	Erosion and sediment control plan	Coso Architecture	3 Feb 2020
DA 33	A	22.01.2020	Waste management plan	Coso Architecture	3 Feb 2020
DA 34	A	22.01.2020	Materials schedule	Coso Architecture	3 Feb 2020
DA 35	A	22.01.2020	Bulk excavation	Coso Architecture	3 Feb 2020
L/01	G	23.01.2020	Proposed landscape plan	A Total Concept	3 Feb 2020
2018/205-D1	B	20.08.19	Driveway crossover plan	Law & Dawson Pty Ltd	27 Sep 2019
2018/205-D2	B	20.08.19	Driveway crossover sections	Law & Dawson Pty Ltd	27 Sep 2019
2018/205-D3	B	20.08.19	Council details	Law & Dawson Pty Ltd	27 Sep 2019
C1.0	B	23.08.19	Cover sheet	Triaxial Consulting	27 Sep 2019
C1.1	A	31.02.19	General notes	Triaxial Consulting	27 Sep 2019
C2.0	A	31.02.19	Existing site plan	Triaxial Consulting	27 Sep 2019
C3.0	A	31.02.19	Concept stormwater plan – basement	Triaxial Consulting	27 Sep 2019
C3.1	A	31.02.19	Concept stormwater plan – ground floor	Triaxial Consulting	27 Sep 2019
C3.2	B	23.08.19	Concept stormwater plan – first floor	Triaxial Consulting	27 Sep 2019
C3.3	B	23.08.19	Concept stormwater plan – second floor	Triaxial Consulting	27 Sep 2019
C3.4	B	23.08.19	Concept stormwater plan – roof	Triaxial Consulting	27 Sep 2019
C4.0	B	23.08.19	Civil details - Sheet 1	Triaxial Consulting	27 Sep 2019

**DA291/19/2 Approved Plan List**

Plan Title	Issue	Date	Drawn by	Received
S4.55 01 Site Plan	A	11 May 2020	COSO Architecture	20 August 2020
S4.55 02 Basement Floor Plan	A	11 May 2020	COSO Architecture	20 August 2020
S4.55 03 Ground Floor Plan	A	11 May 2020	COSO Architecture	20 August 2020
S4.55 04 First Floor Plan	A	11 May 2020	COSO Architecture	20 August 2020
S4.55 05 Second Floor Plan	A	11 May 2020	COSO Architecture	20 August 2020
S4.55 06 Roof Plan	A	11 May 2020	COSO Architecture	20 August 2020
S4.55 07 Section AA	A	11 May 2020	COSO Architecture	20 August 2020
S4.55 08 Section BB	A	11 May 2020	COSO Architecture	20 August 2020
S4.55 09 Section CC	A	11 May 2020	COSO Architecture	20 August 2020
S4.55 10 North Elevation (Side)	A	11 May 2020	COSO Architecture	20 August 2020
S4.55 11 West Elevation (Front)	A	11 May 2020	COSO Architecture	20 August 2020
S4.55 12 West Elevation (At Building Line)	A	11 May 2020	COSO Architecture	20 August 2020

Plan Title	Issue	Date	Drawn by	Received
S4.55 13 South Elevation (Side)	A	11 May 2020	COSO Architecture	20 August 2020
S4.55 14 East Elevation (Rear)	A	11 May 2020	COSO Architecture	20 August 2020

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

### External Finishes & Materials

A4. External finishes and materials must be in accordance with the submitted schedule dated 11.05.2020, prepared by COSO Architecture and received by Council on 6 July 2020 unless 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)

### No External Service Ducts

C10. Service ducts must be provided within the building *with the exception of stormwater downpipes* to keep external walls free of other utility installations. 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)

### Protection of Trees

C19. The following tree(s) are required to be protected and retained as part of the development consent in accordance with AS 4970-2009 – Protection of trees on development sites:

Tree	Location	Height
Tree 1 <i>Pittosporum undulatum</i>	NW boundary of 13 Montpelier Street	6m
Tree 2 <i>Olea europaea</i> subsp. <i>cuspidata</i>	NW boundary of 13 Montpelier Street	5m
Tree 11 <i>Ficus rubiginosa</i>	Council verge/rockface	3m
Tree 12 <i>Ficus rubiginosa</i>	Council verge/rockface	6m

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.

Any tree(s) shown as being retained on the approved plans (regardless of whether they are listed in the above schedule or not) must be protected and retained in accordance with this condition.

(Reason: Protection of existing environmental and community assets)

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2. *To delete condition G17*
  3. *The proposed changes to the following conditions are not accepted: C14, C29 and I4 and will remain in force unaltered upon the consent notice*
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**Reason for approval:**

The proposed modifications are considered to be of no unacceptable impact and are consistent with the originally approved development application and s.4.55 of the EP & A Act 1979. Furthermore, the modifications do not result in any new 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 & 4.15 of the Environmental Planning and Assessment Act 1979, the proposed development as modified is substantially the same development as originally consented to. The application can therefore be approved.

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

The owners of adjoining properties and the local community precinct committee were notified of the amended development for a 14-day period in accordance with Council's Community Engagement Protocol. The notification resulted in two submissions. The submission raised solar access privacy, view, separation, and landscaping concerns.

The proposal has been amended to return the as approved footprint of the building to its as approved position. The remaining modification are not considered to result in an new material impact to adjoining properties. Accordingly the modifications can be supported.

The modifications are consistent with the reasons for granting development consent to the originally approved development. The application is recommended for approval subject to amendment to the as approved conditions.

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The conditions attached to the original consent for Development Application No. 291/19 by endorsed date of 20 April 2020 still apply.

**ADVISINGS**

- (a) Council is always prepared to discuss its decisions and in this regard, please do not hesitate to contact **Kim Rothe**. 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  
**LUKE DONOVAN**  
**ACTING TEAM LEADER ASSESSMENTS**