

Babby Babikian
BJB Architects
3.09/77 Dunning Avenue
ROSEBERY NSW 2018

D336/16
LD (CIS)

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 APPLICATION 336/16/4 - APPROVAL

Development Consent Number: 336/16/4

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

Applicant: Babby Babikian, BJB Architects

Proposal: Section 4.55 (2) Application to modify DA 336/16 with regards to the addition of privacy screens to terraces, conversion of the approved non-trafficable section of roof to a southern level 2 terrace, an extension to the approved northern level 2 terrace over the approved non trafficable section of roof, changes to internal stairs and western window and addition of nib walls

The 4.55 application was considered by the **North Sydney Local Planning Panel (NSLPP)** on 1 September 2021.

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. **336/16/4** 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 Condition A4 'Development in Accordance with Plans (Modification applications)', Condition C30 'Privacy' and Condition I2 'Non Trafficable Roof' 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	D	Site plan	BJB Architects	27/07/2021
A01	C	Basement floor plan	BJB Architects	21/05/2021
A02	C	Ground floor plan	BJB Architects	21/05/2021
A03	C	First floor plan	BJB Architects	21/05/2021
A04	D	Second floor plan	BJB Architects	27/07/2021
A05	C	Roof plan	BJB Architects	21/05/2021
A06	C	Section	BJB Architects	21/05/2021
A07	C	Section	BJB Architects	21/05/2021
A08	C	Section	BJB Architects	21/05/2021
A09	C	Section	BJB Architects	21/05/2021
A10	C	North (Ernest Street) Elevation	BJB Architects	21/05/2021
A11	C	East elevation	BJB Architects	21/05/2021
A12	C	South elevation	BJB Architects	21/05/2021
A13	C	West elevation	BJB Architects	21/05/2021
A20	D	View Privacy Analysis – South Terrace	BJB Architects	27/07/2021
A21	D	View Privacy Analysis – North Terrace	BJB Architects	27/07/2021

And except as modified by other conditions of this consent.

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

Privacy

- C30. The following privacy devices are to be provided:

- The western study room window (Level 1) must be fitted with obscure glass.
- 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).
- 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.
- 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.

- e) The louvred privacy screens along the eastern side of the northern terraces at ground, level 1 and level 2 must be fixed. The privacy screens must be a minimum of 1.6m above the respective floor levels of the terraces. The fixed louvres must be angled in a manner that would not permit views onto the ground or first floor balconies of 317 Ernest Street.

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 properties located at No's 313 and 317 Ernest Street and 37 Merlin Street. Further, to ensure that the nominated sashless windows restrict access to the non-trafficable parts of the roof.)

Non-Trafficable Roof

12. The roof over the first floor of the building must be non-trafficable with the exception of the area nominated as "Terrace" on the northern side of Unit 05 (Level 2).

(Reason: To minimise privacy impacts for the adjoining properties)

2. To add Condition A5 'Level 2 southern terrace to read as follows:

Level 2 Southern Terrace

- A5. No approval is granted or implied for the level 2 southern terrace (15sqm).
No approval is granted or implied for any changes to the level 1 roof form, including parapets/upturns on the southern side of the building.

The roof over level 1 on the southern side of the building must remain non trafficable.

The southern sliding doors to level 2 must be replaced with the sashless windows as required by Condition C30(d) of this consent.

(Reason: To clarify terms of this consent and ensure a reasonable level of visual privacy is maintained with the adjoining properties at 37 Merlin Street and 317 Ernest Street).

Reason for approval:

The Panel is satisfied the application is substantially the same development as approved, and the application has been notified and submissions have been considered. Furthermore, the Panel has had regard to the reasons in the consent as originally issued.

The Panel does not consider the proposed southern terrace (unit 5) is acceptable given impacts to adjoining properties, and notes that the principal private open space to the apartment is to the north.

How community views were taken into account:

The submissions received by Council were addressed in the NSLPP report (see Council's website: [North Sydney Council - 1 September 2021 \(nsw.gov.au\)](https://www.northsydney.nsw.gov.au/news-and-events/2021/09/01/nslpp-report))

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 **Luke Donovan**. 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
DAVID HOY
TEAM LEADER (ASSESSMENTS)