

Wesley Shaw  
PO Box 311  
CAMMERAY NSW 2062

D180/15  
AB7 (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 MODIFICATION 180/15/2 – APPROVAL**

---

**Development Consent Number:** 180/15/2

---

**Land to which this applies:** 35 Merlin Street, Neutral Bay  
Lot No.: A, DP: 398964

---

**Applicant:** Wesley Shaw

---

**Proposal:** To modify Consent No 180/15 for various modifications to an approved semi-detached dwelling, including reducing the scope of works to remove approved pergola, deck, and northern boundary fence, retain existing screen, new timber steps, retain existing landscaping and relocate rainwater tank.

---

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. **180/15** and registered in Council's records as Application No. **180/15/2** relating to the land described as **35 Merlin Street, Neutral Bay**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 11 September 2015, has been determined in the following manner: -

**1. Condition A1 is amended as follows:**

**Development in Accordance with Plans (S4.55 Amendments)**

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

Plan No.	Title	Drawn by	Received
DA04	Proposed Site/Roof Plan	Lime Architects	28 May 2015
DA06	Proposed Ground Plan	Lime Architects	28 May 2015
DA07	Proposed Elevations/Sections	Lime Architects	28 May 2015
DA08	Proposed Section	Lime Architects	28 May 2015

Except as modified as such on the following drawings for DA180/15/2:

Plan No.	Revision	Title	Drawn by	Dated	Received
DA04	Rev.1	Amended Site/Ground Plan	Wes Shaw	20/07/2021	29/07/2021
DA06	Rev.1	Amended Ground Plan	Wes Shaw	20/07/2021	29/07/2021
DA07	Rev.1	Amended Elevations/Sections	Wes Shaw	20/07/2021	29/07/2021
DA08	Rev.1	Amended Section	Wes Shaw	20/07/2021	29/07/2021

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

**Reason for approval:**

The proposed modifications satisfy the provisions of Section 4.55(2) in that the proposed development remains substantially the same as what was approved by DA180/15. The proposed modifications will not alter the use of the development as originally approved and amenity impacts remain acceptable. The proposed modifications would not significantly change the level of compliance with the relevant development standards and controls as contained in NSLEP 2013 and NSDCP 2013.

While the proposal will result in the deletion of the originally approved additional landscaping in the rear garden, this is considered to be acceptable on the basis that it broadly maintains the status quo with no further loss of landscaping and the deletion of the approved raised deck and pergola will remove additional bulk and scale within the rear garden. The proposed works will provide resident amenity without negatively impacting the neighbourhood character, and the Waters Neighbourhood. The proposal also remains consistent with the objectives of the R4 High Density Residential Zone and the original reasons for granting consent.

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

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

The subject application was notified to adjoining properties and the Parks Precinct Committee seeking comment, and no submissions were received. Nevertheless, it is considered that the proposed modifications would not substantially alter the impacts of what has already been approved under the original consent, and would not cause any unreasonable impacts to the streetscape and/or adjoining properties.

The conditions attached to the original consent for Development Application No. 180/15 by endorsed date of 11 September 2015 still apply.

## ADVISINGS

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

**6 September 2021**

DATE

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