

Original signed by Michael Stephens (A/TL) on 16/12/2021

Damian Thomas Reichel
13 Lower Wycombe Road
NEUTRAL BAY NSW 2089

D97/16
TH2 (CIS)

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 97/16/5 - APPROVAL

| | |
|------------------------------------|---|
| Development Consent Number: | 97/16 |
| Land to which this applies: | 13 Lower Wycombe Road, Neutral Bay Lot No.: 0, SP: 81993 |
| Applicant: | Damian Reichel |
| Proposal: | To modify a consent DA97/16 with regards to deletion of approved carport and retention of existing north western garage |

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. **97/16** and registered in Council's records as Application No. **97/16/5** relating to the land described as **13 Lower Wycombe Road, Neutral Bay**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 13 Jul 2016, has been determined in the following manner:

A. Add Condition A5 as follows:

Development in Accordance with Plans (s4.55 Amendments)

- A5 The development being carried out in accordance with plans identified in Condition A1 of the consent and A4 of the modification to consent endorsed with Council's approval stamp, except as modified by the modifications shown on:

| Plan No. | Issue | Date | Drawn by | Received |
|------------------------------------|-------|------------|---|------------|
| Proposed Ground Floor Plan DA03 | A | 02/12/2016 | Castlepeake Consulting Pty Ltd (annotated by applicant for retention of garage only) | 03/09/2021 |

| Plan No. | Issue | Date | Drawn by | Received |
|---|-------|------------|---|------------|
| Proposed North and South Elevations DA07 | S961 | 25/10/2016 | Castlepeake Consulting Pty Ltd (annotated by applicant for retention of garage only) | 03/09/2021 |
| Proposed West Elevation DA08 | S961 | 25/10/2016 | Castlepeake Consulting Pty Ltd (annotated by applicant for retention of garage only) | 03/09/2021 |
| Western Boundary Elevation | A | 02/12/2016 | Castlepeake Consulting Pty Ltd (annotated by applicant for retention of garage only) | 03/09/2021 |
| Proposed Section E DA13 | A | 02/12/2016 | Castlepeake Consulting Pty Ltd (annotated by applicant for retention of garage only) | 03/09/2021 |

A. Delete C2 Front Vehicular and Pedestrian Sliding Gate

~~Front Vehicular and Pedestrian Sliding Gate~~

~~C2 The new vehicular and pedestrian access gates are to be timber picket or steel palisade with traditional detail and design, to reflect the character and significance of the Conservation Area. The gates are to have a maximum height of 1750 mm above finished ground level. Some solid elements may be incorporated in the lower section of the gates, up to a maximum height of 1000 mm, if the detail is consistent with the character of the area. This detail is to be submitted to the PCA prior to the release of the Construction Certificate.~~

~~(Reason: To ensure the design and material of the gate reflects the character and significance of the conservation area)~~

B. Modify Conditions C4 and G7 as follows:

Amendment to Strata Plan

C4. Prior to the issue of the construction certificate, the proposed strata plans (Drawing No. SP02 Revision DA drawn by Castlepeake Pty Ltd dated 31 March 2016) must be amended and submitted to the Certifying Authority.

The proposed strata plans must also include the entitlements for each lot.

Lot 1 (Apartment 1)

1. The existing garage on the eastern side of the street frontage, which accommodates two vehicles must be allocated to Lot 1. The courtyard on the northern side of Apartment 1 must be allocated as private open space to Lot 1.

Lot 2 (Apartment 2)

2. The ~~proposed tandem carport~~ **existing garage** on the western side of the street frontage, which accommodates two vehicles must be allocated to Lot 2. The western terrace and eastern courtyard and swimming pool must be allocated as private open space to Lot 2.

The proposed strata plan must also include common areas.

(Reason: To ensure the entitlement for each of the lots are clear)

Compliance with Certain Conditions

- G7. Prior to the issue of any Occupation Certificate, Conditions ~~C2~~ and C3 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)

C. A new condition is imposed as follows:

Terms of Consent (D97/16/5)

- A6. Approval is granted for the following modifications only:

- (a) Retention of the existing garage adjoining the north western boundary of the site and deletion of previously approved carport.

No approval is given or implied in this consent for any other works, both internal and external, within the subject property.

(Reason: To ensure the terms of the consent are clear)

Reasons for Approval:

The proposed modifications are considered to be generally consistent with the originally approved development application and s4.55 of the EP&A Act 1979. Furthermore, the modifications do not result in any material amenity impact to adjoining properties or the surrounding area. The proposed modifications are consistent with the reasons for the granting of development consent to the originally approved development and are considered to be acceptable.

The proposal to retain the existing garage would have a neutral impact on the streetscape, not altering the existing site appearance to the street and by retaining the existing garage, greater sense of symmetry is provided noting the existing matching garages within the front setback of the site.

The retention of the existing garage maintains a compliant

site coverage whereas construction of the tandem covered carport increases the site coverage exceeding the maximum 45% permitted for dual occupancies. The retention of the garage ensures the development complies with a key development control of the NSDCP 2013.

Having regard to the provisions of section 4.55 & 4.15(1) of the Environmental Planning and Assessment Act 1979, the proposed development as modified is substantially the same development as originally consented to. The application is therefore recommended for **approval**.

How community views were taken into account:

The proposal is considered to be in the public interest for the reasons stated throughout this report.

The conditions attached to the original consent for Development Application No. 97/16 by endorsed date of 13 July 2016 still apply.

ADVISINGS

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

Endorsed for and on behalf of North Sydney Council

16 December 2021

DATE

Signature on behalf of consent authority

MICHAEL STEPHENS

A/TEAM LEADER (ASSESSMENTS)