

Original signed by Mr Kim Rothe on 8/03/2022

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

D291/19  
KRR (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 MODIFICATION 291/19/4 – APPROVAL**

**Development Consent Number:** 291/19/4

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

**Applicant:** James Elliot

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

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. **291/19/4** 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, C29 and C31 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
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
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

**DA291/19/4 Approved Plan List**

<b>Plan Title</b>	<b>Issue</b>	<b>Date</b>	<b>Drawn by</b>	<b>Received</b>
S4.55 01 Site Plan	A	11 May 2021	COSO Architecture	11 January 2022
S4.55 02 Basement Floor Plan	A	11 May 2021	COSO Architecture	11 January 2022
S4.55 03 Ground Floor Plan	A	11 May 2021	COSO Architecture	11 January 2022
S4.55 04 First Floor Plan	A	11 May 2021	COSO Architecture	11 January 2022
S4.55 05 Second Floor Plan	A	11 May 2021	COSO Architecture	11 January 2022
S4.55 06 Roof Plan	A	11 May 2021	COSO Architecture	11 January 2022
S4.55 07 Section AA	A	11 May 2021	COSO Architecture	11 January 2022
S4.55 08 Section BB	A	11 May 2021	COSO Architecture	11 January 2022
S4.55 09 Section CC	A	11 May 2021	COSO Architecture	11 January 2022
S4.55 10 North Elevation (Side)	A	11 May 2021	COSO Architecture	11 January 2022
S4.55 11 West Elevation (Front)	A	11 May 2021	COSO Architecture	11 January 2022
S4.55 12 West Elevation (At Building Line)	A	11 May 2021	COSO Architecture	11 January 2022
S4.55 13 South Elevation (Side)	A	11 May 2021	COSO Architecture	11 January 2022
S4.55 14 East Elevation (Rear)	A	11 May 2021	COSO Architecture	11 January 2022

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

**External Finishes and 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 as detailed in modification plans referred to in Condition A1.

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

**Privacy**

- C29. Permanent, fixed and durable timber or metal or equivalent louvre/lightweight/lattice privacy screens, with maximum openings of 25%, must be installed across the full height and width of all windows upon the eastern (rear) elevation of the building.

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 each of the subject units and the adjoining property located at 21 Montpelier Street)

**BASIX Certificate**

- C32. 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. 986067 M\_06 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)

---

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.

**Reason for approval:**

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 is therefore can be approved.

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.

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

The modifications are not considered to result in any 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.

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 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**

**8 March 2022**

---

DATE

---

Signature on behalf of consent authority  
DAVID HOY  
**TEAM LEADER ASSESSMENTS**