

Original signed by Robyn Pearson on 7/03/2022

Minto Planning Services  
PO Box 424  
BEROWRA NSW 2081

D366/18  
MS3 (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 MODIFICATION 366/18/2 - APPROVAL**

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**Development Consent Number:** 366/18/2

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**Land to which this applies:** 5 Montpelier Street, Neutral Bay  
Lot No.: 8, DP: 11150

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**Applicant:** Minto Planning Services

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**Proposal:** Modifications to Development Consent DA366/2018 pursuant to section 4.56 relating to demolition of the existing structures and construction of a dual occupancy (attached) and associated garages.

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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. **366/18** and registered in Council's records as Application No. **366/18/2** relating to the land described as **5 Montpelier Street, Neutral Bay**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 15 January 2020, has been determined in the following manner: -

**1. Impose condition A5 s4.56 modification plans**

**Development in Accordance with Plans (s4.56 Amendments)**

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

Plan No	Revision	Title	Prepared	Dated
DA-204	23	Site Plan	ID Studios	14/12/2021
DA-104	23	Planter Cross Section		14/12/2021
DA-200	24	Basement Plan		28/01/2021
DA-201	23	Mezzanine Floor Plan		14/12/2021

DA-202	23	Ground Floor Plan		14/12/2021
DA-203	23	First Floor Plan		14/12/2021
DA-300	23	Section 1		14/12/2021
DA-301	23	Section 2		14/12/2021
DA-400	24	West Elevation		28/01/2021
DA-401	23	East Elevation		14/12/2021
DA-403	23	South Elevation		14/12/2021
DA-405	23	North Elevation		14/12/2021
L5M/01 1 of 2	B	Landscape Plan for Construction	Designer ideas	20/08/2021

except as amended by the following conditions and this consent.

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

**2. Amend Condition C16 Obtain Driveway Crossing and associated works permit**

**C16 Obtain Driveway Crossing and associated works permit**

Prior to the issue of the Construction Certificate, North Sydney Council must issue the applicant with a driveway crossing and road infrastructure works permit to suit the approved off-street parking facilities. To obtain the permit, an application must be made to Council on a 'Vehicular Access Application' form with payment of the adopted assessment/inspection fees. Council will require civil design construction drawings and certification from the applicant's Civil Engineer to verify design details and enable permit issue. The responsibility for accuracy of the design fully rests with the designing engineer. All responsibility on implementation and supervision of works specified on design plans fully rests on designing engineer or whoever is chosen to be applicant's engineering representative. The civil design drawings shall detail the following infrastructure construction requirements of Council in relation to the consent:

- a) The proposed vehicular access way must comply with AS 2890.1 and Council's current Vehicular Access Application Guidelines and Specification (gutter bridges not permitted) to ensure that a B85 vehicle will not scrape/strike the surface of the carriageway, layback, vehicular crossing or parking floor.
- b) The width of the vehicular layback must be ~~6.5m~~ **7.0 m** (including the wings).
- c) The vehicular layback and crossing must be set square to the kerb.
- d) The gutter levels and road shoulder levels on Montpelier Street must stay unchanged.
- e) The footpath levels must match the existing levels and shall not be altered unless agreed to by Council.
- f) Footpath alignment levels at proposed driveway crossing section have an important impact on the proposed property garage slab levels. The works must not start until confirmation of boundary alignment levels from registered surveyor. Council has the authority to remove any unauthorized works at the cost of the property owner.
- g) The Certifying Authority must ensure that the internal property levels at boundary matches council's confirmed boundary levels.

- h) Construction of a fully new concrete footpath, kerb & gutter, 600 mm wide strip – road shoulder and grass verge (to be restored) is required across the entire site frontage in Montpelier Street.
- i) Any twisting of driveway access to ensure vehicles do not scrape must occur wholly within the subject property.
- j) All inspection openings, utility services must be adjusted to match the proposed driveway levels and location.
- k) The design detail has to be provided with vehicular access application and must include sections along centre-line and extremities of the crossing at a scale of 1:25. Sections are to be taken from the centre of the roadway through to the parking area itself and shall include all changes of grade and levels, both existing and proposed.
- l) A longitudinal section along the gutter line of Montpelier Street at a scale of 1:50 showing how it is intended to transition the layback with the existing gutter levels and shall include all changes of grade and levels, both existing and proposed.
- m) A longitudinal section along the footpath at a scale of 1:50 is required and shall include all changes of grade and levels, both existing and proposed.
- n) The sections must show the calculated clearance to the underside of any overhead structure.
- o) Pipelines within the footpath area must be hot dipped galvanized rectangular steel hollow section with a minimum wall thickness of 4.0 millimetres and a section height of 100 millimetres.
- p) Any footpath panel on Montpelier Street that is disturbed for the purpose of storm-water connection must be reconstructed as a whole panel.

All driveway and infrastructure works on the road reserve must proceed in accordance with the terms of the permit issued by Council. Inspections by Council will be required as specified on the permit. The Certifying Authority issuing the Construction Certificate must ensure that the permit issued by Council is obtained prior to its issue, is referenced on and accompanies the relevant Construction Certificate issued.

(Reason: To facilitate appropriate vehicular access to private sites, without disruption to pedestrian and vehicular traffic).

### 3. *Delete Condition C27 Skylights*

#### **Skylights**

~~C27. Skylight flashings and frames are to be coloured to match the roof material.  
Skylight(s) to sit no higher than 100mm above roof plane when in a closed position.~~

~~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 fully satisfy the requirements of this condition.~~

~~(Reason: To minimise the visual impact of the skylights on the roof plane).~~

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**Reason for Approval:**

The proposed modifications have been considered regarding the requirements of section 4.56 of the Act. The proposed modified development is considered to be substantially the same as the development originally approved by the Court and is consistent with the reasons for approval given by the presiding Commissioner.

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Council has undertaken its statutory obligations to notify the proposed modification in accordance with Council's Community Engagement Protocol and to any submitter who objected to the original development application.

The matters for consideration as outlined in section 4.15(1) of the Act have been satisfied. The proposed development is permissible, meets the development standards and relevant provisions of NSLEP 2013 and is generally in accordance with the objectives of the NSDCP 2013.

The proposed modifications are generally consistent with the approved building form. The use of the lower ground level for a mezzanine level would improve the amenity of the dwellings and has been designed to ensure that it does not add to the perceived bulk and massing of the building. The extensive landscaping within the front setback area is to be retained and screens the building form. Other modifications are minor in context and would not have any adverse impact to the amenity of the surrounding dwellings or the character of the building within the streetscape.

On balance, the proposed modifications are considered reasonable and therefore the modification application is recommended for approval.

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

The development application was notified in accordance with Council's Community Engagement Protocol from 22 October 2021 until 5 November 2021. Two submissions were received which are considered to be addressed by existing conditions of consent.

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The conditions attached to the original consent for Development Application No. 366/18 by endorsed date of 15 January 2020 still apply.

**ADVISINGS**

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

\_\_\_\_\_  
DATE

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