



David Selden Pty Ltd
Suite 306A, 19A Boundary Street
DARLINGHURST NSW 2010

D141/21
TH3 (CPE)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 141/21/5 - APPROVAL**

Development Consent Number:	141/21/5
Land to which this applies:	34 Phillips Street, Neutral Bay Lot No.: 1, DP: 708780
Applicant:	David Selden Pty Ltd
Proposal:	Section 4.55(2) to modify development consent DA 141/21 for the demolition of an existing dwelling house and garage and construction of a two-storey dwelling house and associated landscaping

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. **141/21** and registered in Council's records as Application No. **141/21/5** relating to the land described as **34 Phillips Street, Neutral Bay**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **1 September 2021**, has been determined in the following manner:

A. Add Condition A6 and A7 as follows:

Development in Accordance with Plans (s4.55 Amendments)

- A6. The development being carried out in accordance with plans identified in Condition A1 of the consent and A4 and A5 of the modification to consent endorsed with Council's approval stamp, except as modified by the modifications shown on:

Plan No.	Rev	Title	Drawn by	Received
455.04	B	Ground Floor Plan	David Selden Design	17/08/23
455.06	B	Street/ Southern Elevation	David Selden Design	17/08/23
455.07	B	Western Elevation	David Selden Design	17/08/23
455.09	B	Eastern Elevation	David Selden Design	17/08/23

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

Terms of Consent

A7. Approval is granted under Modification Application No. DA 141/21/5 for the following works only:

1. Construction of front fence and gate.
2. Louvres to first floor western elevation window (FW07).

No approval is granted under Modification Application No. DA 141/21/5 for the following works:

1. No approval is given or implied under this modification application for alterations to the roof including reduction in roof planting and roof hatch addition.
2. No approval is given or implied under this modification application for alterations to the driveway/hardstand and the landscaping in the south eastern corner of the site is to remain.
3. No approval is given or implied under this modification application for deletion of the ladder on the eastern elevation providing access to the roof.

Plans submitted and as stipulated in Condition A6 are annotated and clouded in red confirming the terms of consent for Modification Application No. DA 141/21/5.

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

Reasons for Approval:

The proposed modification which in part proposes a reduction loss in landscaping to the roof and front setback is not supported. The modification application seeks to reduce the front roof garden by approximately 35m² limiting landscaping to a small linear portion of the roof. The proposed roof garden provides insufficient planting not adding to the landscaped setting of the dwelling, fails to soften the built form of the dwelling when viewed from the public domain and does not improve the aesthetics of the roof when viewed from surrounding buildings not meeting or satisfying Objective O2, s1.6.10 of NSDCP 2013. The modified development no longer achieves at least three objectives in s1.6.10 of NSDCP 2013 and the proposed amendments to the flat roof reducing the scale of roof garden are a negative outcome and weakens a significant reason for supporting the flat roof.

The additional paving is contrary to Provision P2 in s1.5.8 of NSDCP 2013 whereby the emphasis is on utilizing the minimum amount of paving as practicable and the removal of landscaping to the front southeastern corner of the site removes landscaping in a prominent corner visible from Phillips Street/Harriette Street. The modification application seeks to increase the size and width of the concrete driveway reducing the provision of landscaping and reducing the contribution of landscaping to the street contrary to Provisions P3 and P5 of s1.5.8 in NSDCP 2013. Furthermore, a reduction in landscaping to the front southeastern corner of the site undermines the potential to soften the built form of the dwelling as viewed from Phillips Street/Harriette Street not complying with Provision P6 or Objective O2 of s1.5.8 in NSDCP 2013.

The roof subject to the installation of a roof hatch provides ease of access from within the dwelling undermining operational condition I3 Roof top area must be non-trafficable and any potential use of the roof other than for maintenance is not supported noting the use of the roof would have an adverse impact on the visual and acoustic amenity of neighbouring properties. The originally approved method and access to the roof satisfied under Condition C29 'Roof top garden maintenance plan' and the access via a ladder on the eastern elevation will remain.

The front fence is however supported on merit appropriately setback, articulated and designed with sufficient transparency to not dominate the street or detract from landscaping within the front garden generally satisfying the objectives of s1.4.14 of NSDCP 2013.

Considering the scale of works which are not supported a condition of consent will ensure the terms of consent are clear not approving any loss of landscaping approved under previous consents.

Having regard to the provisions of section 4.55 and 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 was notified for 14 days to adjoining properties and Neutral/Hayes Precinct. There were two (2) submissions and the matters have been considered in the assessment report and subject conditions of consent the development is considered to be in the public interest.

The conditions attached to the original consent for Development Application No. **141/21** by endorsed date of **1 September 2021** 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.

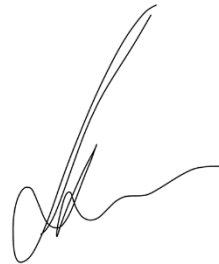
- (b) Pursuant to Section 8.2, an applicant is able to request Council to review its determination. An application for a review under Section 8.2 of the Act must be made no later than 28 days after the date on which the application for the modification of the development consent was determined.
- (c) 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

11 October 2023

DATE



Signature on behalf of consent authority
ISOBELLA LUCIC
TEAM LEADER (ASSESSMENTS)