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D412/18
MS3 (CIS)

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 418/18/4 - APPROVAL

Development Consent Number:	412/18
Land to which this applies:	23 Park Avenue, Neutral Bay Lot No.: 4A, DP: 446324
Applicant:	Adriano Pupilli Architects
Date of Determination:	5 May 2022
Proposal:	Section 4.55(2) modification relating to alterations and additions to an existing dwelling house, construction of an outbuilding and reconstruction of a parking space within the front setback area

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. **418/18** and registered in Council's records as Application No. **418/18/4** relating to the land described as **23 Park Avenue, Neutral Bay**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **3 June 2019** has been determined in the following manner:

A. To impose condition A4 Development in Accordance with Plans (S4.55 Amendments)

Development in Accordance with Plans (S4.55 Amendments)

- A1. 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.	Issue	Title	Dated	Drawn by	Received
008	C	Site and Ground Floor Plan	27 April 2022	Adriano Pupilli Architects	5 May 2022
009	C	Lower Ground Floor Plan	27 April 2022		5 May 2022
010	C	Roof Plan	27 April 2022		5 May 2022
011	C	Section	27 April 2022		5 May 2022
012	C	Elevations North and South	27 April 2022		5 May 2022
013	C	Elevations East and West	27 April 2022		5 May 2022

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)

C. To impose Conditions C18, C19, C20, C21, E21 and G6

Geotechnical Report

C18. Prior to issue of any Construction Certificate a Geotechnical/Civil Engineering report must be prepared which addresses at a minimum (but is not limited to) the following:

- a) the type and extent of substrata formations by the provision of a minimum of four (4) representative bore hole logs which are to provide a full description of all material from ground surface to 1.0 m below the finished basement floor level and include the location and description of any anomalies encountered in the profile. The surface and depth of the bore hole logs must be related to Australian Height Datum;
- b) the appropriate means of excavation/shoring in light of point (a) above and proximity to adjacent property and structures. Potential vibration caused by method of excavation and potential settlements affecting nearby footings/foundations must be discussed and mechanisms to ameliorate any such impacts recommended;
- c) the proposed method to temporarily and permanently support the excavation for the basement adjacent to adjoining property, structures and road reserve if nearby (full support must be provided within the subject site);
- d) the existing groundwater levels in relation to the basement structure, where influenced;
- e) the drawdown effects on adjacent properties (including road reserve), if any, the basement excavation will have on groundwater together with the appropriate construction methods to be utilised in controlling groundwater. Where it is considered there is the potential for the development to create a “dam” for natural groundwater flows, a groundwater drainage system must be designed to transfer groundwater through or under the proposed development without a change in the range of the natural groundwater level fluctuations. Where an impediment to the natural flow path is constructed, artificial drains such as perimeter drains and through drainage may be utilised; and
- f) recommendations to allow the satisfactory implementation of the works. An implementation program is to be prepared along with a suitable monitoring program including control levels for vibration, shoring support, ground level and groundwater level movements during construction. The implementation program is to nominate suitable hold points at the various stages of the works for verification of the design intent before sign-off and before proceeding with subsequent stages.

The geotechnical report must be prepared by an appropriately qualified consulting geotechnical/hydrogeological engineer with previous experience in such investigations and reporting.

It is the responsibility of the consulting geotechnical/hydrological specialist to undertake the appropriate investigations, reporting and specialist recommendations to ensure a reasonable level of protection to adjacent property and structures both during and after construction. The report must contain site-specific geotechnical recommendations and shall specify the necessary hold/inspection points by relevant professionals as appropriate.

The design principles for the geotechnical report are as follows:

- a) no ground settlement or movement is to be induced which is sufficient enough to cause an adverse impact to adjoining property and/or infrastructure;
- b) no changes to the ground water level are to occur as a result of the development that are sufficient enough to cause an adverse impact to the surrounding property and infrastructure;
- c) no changes to the ground water level are to occur during the construction of the development that are sufficient enough to cause an adverse impact to the surrounding property and infrastructure;
- d) vibration is to be minimised or eliminated to ensure no adverse impact on the surrounding property and infrastructure occurs, as a result of the construction of the development;
- e) appropriate support and retention systems are to be recommended and suitable designs prepared to allow the proposed development to comply with these Design Principles; and
- f) an adverse impact can be assumed to be crack damage as identified within the relevant Australian Standard for determining such damage.

The report, satisfying the requirements of this condition, must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

The professional recommendations, implementation program, monitoring program, mitigation measures and the like contained in the report must be implemented in full during the relevant stages of excavation and construction.

(Reason: To ensure the structural integrity of the subject site and adjoining sites during the excavation process)

Removal of Redundant Vehicle Crossing

- C19 The redundant layback crossing on Part Avenue must be reinstated as kerb gutter and footpath. The gutter levels and boundary footpath levels must match the existing levels and shall not be altered. The new footpath, kerb gutter and road shoulder 0.6m wide strip adjacent to all new gutter works are required for the full property frontage.

All driveway and infrastructure works on the road reserve must be undertaken in accordance with the terms of a Permit issued by Council. Inspections by Council will be required as specified. The Certifying Authority issuing the Construction Certificate must ensure that the permit issued by Council is obtained and referenced on and accompanies the Construction Certificate issued.

(Reason: to maintain Council infrastructure)

Windows and Doors to be Timber Framed

- C20 All new doors and windows within the front elevation of the dwelling are to be timber framed and painted (rather than stained) complementary to the finishes of the dwelling.

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 maintain the built form character of the existing building)

Additional Canopy Tree

- C21 An appropriate replacement tree is to be planted within the front setback area that is capable of reaching a mature height of 6m. The tree is to be of a minimum 45 L pot size.

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 maintain the urban canopy and the landscaped setting of the dwelling)

Geotechnical Stability during Works

- E21. A contractor with specialist excavation experience must undertake the excavations for the development and a suitably qualified and consulting geotechnical engineer must oversee the excavation procedure.

Geotechnical aspects of the development work, namely appropriate excavation method and vibration control, support and retention of excavated faces, and hydrogeological considerations must be undertaken in accordance with the recommendations of the geotechnical report and all subsequent geotechnical inspections carried out during the excavation and construction phase.

Approval must be obtained from all affected property owners, including North Sydney Council where rock anchors (both temporary and permanent) are proposed below adjacent private or public property.

(Reason: Ensure appropriate professional are engaged at appropriate stages during construction)

Landscaping

- G6. The landscaping shown in the approved landscape plan numbered 008 prepared by Adriano Pupilli Architects, dated 27 April 2022, and received by Council on 5 May 2022, must be completed prior to the issue of any Occupation Certificate.

(Reason: To ensure compliance)

D. To amend Conditions C14, C15 and G5

Security Deposit/Guarantee Schedule

- C14. All fees and security deposits/ guarantees in accordance with the schedule below must be provided to Council prior to the issue of any Construction Certificate:

Security Deposit/Guarantee	Amount (\$)
Footpath Damage Bond	\$3,500.00
TOTAL BONDS	\$3,500.00

The security required by the above schedule must be provided by way of a deposit with the Council; or other such guarantee that is satisfactory to Council (such as a bank guarantee). Any guarantee provided as security must name North Sydney Council as the nominated beneficiary and must not be subject to an expiry date.

(Reason: Compliance with the development consent)

BASIX Certificate

- C15. Under clause 97A(3) of the *Environmental Planning and Assessment Regulation 2000*, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. **A332955_05**, dated **19 December 2021** 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)

Compliance with Certain Conditions

- G5. Prior to the issue of any Occupation Certificate, **Conditions C16, C18, C20 and C21** 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. To delete condition C15 and C16

~~Side Setback Outbuilding No Change to Levels~~

- ~~C15 There is to be no change to the levels northern side setback area between the site's boundary and the rear outbuilding~~

~~(Reason: To maintain the existing ground levels on site as far as practical.)~~

~~Wheel Strips for Parking Space and Additional Landscaping~~

~~C16. The front parking area is to be constructed as two wheel strips only, with landscaped areas between the wheel strips and either side of the parking area. The landscaping to the north and south of the wheel strips must include shrubs, ground cover and / or small feature trees.~~

~~The Certifying Authority issuing the Construction Certificate must ensure that the approved plans and specifications, satisfying the requirements of this condition, is referenced on and accompanies the Construction Certificate.~~

~~(Reason: To reduce the visual impact of parking facilities within the front setback area on the streetscape of Park Avenue)~~

The modification application meets the requirements of section 4.55(2) and has been assessed with regard to the original reasons for approval and the matters for consideration as outlined in section 4.15(1) of the Act, which 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 considered substantially the same development and are consistent with the reasons for approval for the original consent. The proposed modifications would delete the mezzanine level third bedroom and alter the roof form over the approved alterations and additions to the rear of the dwelling. The proposed modified roof form is set back to the rear of the dwelling and would not be overly visible from the street.

Reasons for Approval:

The proposed reinstatement works to the front elevation of the dwelling and the proposed relocation of the existing parking space within the front setback area to the rear of the property below the approved outbuilding, now that the appropriate owner's consent has been obtained, would improve the character of the street and the dwelling by re-establishing a landscaped front garden and original built form detailing.

The proposed development, as modified, would remain compliant with the site coverage, unbuilt upon area and landscaped area provisions.

The proposed modification is therefore considered reasonable and is recommended for approval.

How community views were taken into account:

The application was notified in accordance with Council's Community Engagement Protocol from 21 January 2022 until 4 February 2022. No submissions were received. Nevertheless, the potential impacts of the proposed modifications were considered, and existing conditions of consent seek to minimise potential constructions impacts.

The conditions attached to the original consent for Development Application No. **412/18** by endorsed date of **3 June 2019** 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

11 May 2022

DATE

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