

## DA REPORT – Section 4.55 Modification



<b>Folder /DA No:</b>	DA/305/2018/A
<b>PROPERTY:</b>	89 Mons Avenue, MAROUBRA NSW 2035
<b>Proposal:</b>	Modification of the approved development by deletion of condition (2) and alteration to front roof from. Original consent: Demolition of existing dwelling and construction of a new attached dual occupancy.
<b>Ward:</b>	Central
<b>Applicant:</b>	Arkhaus
<b>Owner:</b>	Mr R J Buchanan and Mr D C Coombes
<b>Author:</b>	Veronique Hoffman
<b>Recommendation:</b>	Approval

### Details of Current Approval

#### DA/305/2018

The original application was granted approval on 26 September 2018. The application consisted of the demolition of an existing dwelling and construction of a new attached dual occupancy (variation to floor space ratio).

### Proposal

This application to modify development consent seeks to remove Condition 2.

### Section 4.55 Assessment

Under the provisions of Section 4.55 of the Environmental Planning and Assessment Act, 1979 (the Act), as amended, Council may only agree to a modification of an existing Development Consent if the following criteria have been complied with:-

- a) it is satisfied that the development to which the consent as modified relates is *substantially the same development* as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and
- b) it has consulted with any relevant public authorities or approval bodies, and
- c) it has notified the application & considered any submissions made concerning the proposed modification

#### **1. Substantially the Same Development**

The proposed modifications are not considered to result in a development that will fundamentally alter the originally approved development.

#### **2. Consultation with Other Approval Bodies or Public Authorities:**

The development is not integrated development or development where the concurrence of another public authority is required.

### **3. Notification and Consideration of Submissions:**

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development in accordance with the Randwick Comprehensive DCP 2013. No submissions were received as a result of the notification process.

### **Key Issues**

#### Building Design

The current application seeks to remove Condition 2 of DA/305/2018. Condition 2 reads:

*The building height is to be lowered to a roof parapet level of RL 32.15. This shall be achieved by reducing ceiling heights within the garage and ground floor levels, and/or by reducing the first floor and roof slab thickness.*

The applicant has provided the following justification:

The proposed Section 4.55(2) application seeks to render this condition void by implementing the following changes:

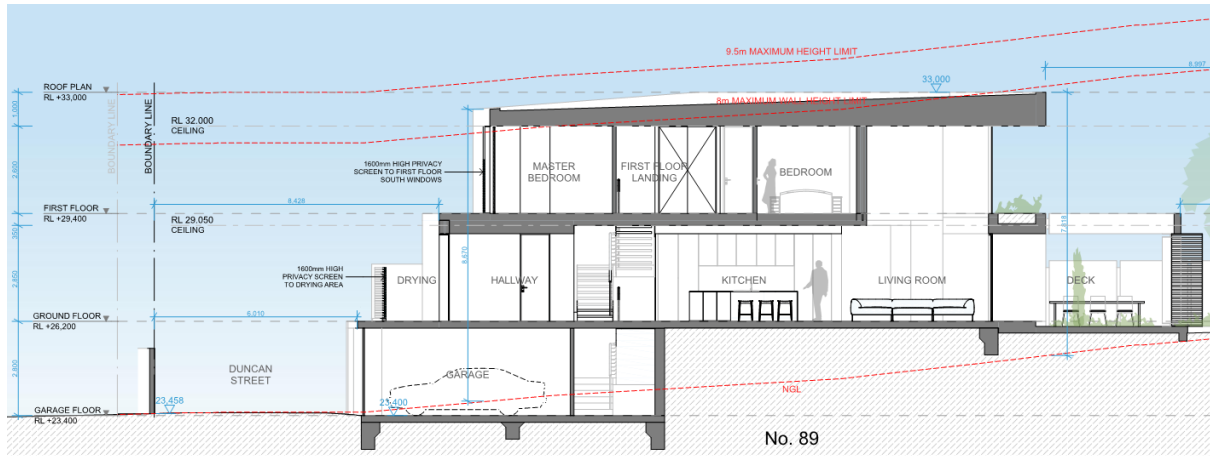
- Structural roof elements added to the front portion of the roof over the living room void, rendering it incapable of being in-filled as usable floor space on the first floor
- Raked ceiling element added over the void with a low point at the junction between the bedroom beyond and the void area. Internal windows between bedroom and void removed.

It is understood from the 28 November meeting that Condition of Consent 2 was implemented in order to prevent the void space over the living rooms being filled-in and utilised as habitable floor space. It is clear that reducing the height of the building by 850mm would significantly impact the amenity to the dwellings' occupants. It would introduce serious constraints on the functionality of the building and its structure; hence an alternative course of action was agreed upon.

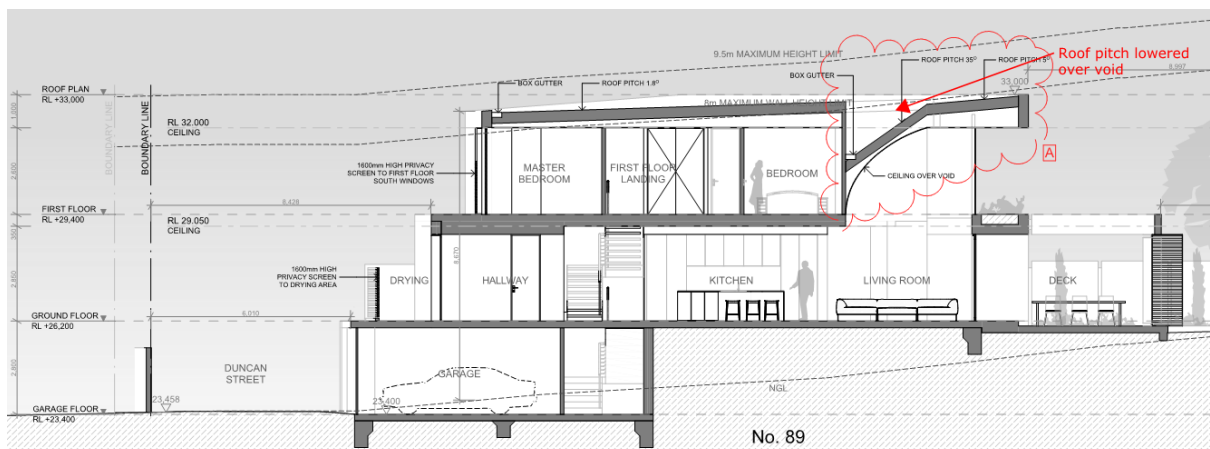
The proposed roof form is considered by Council to satisfy Part C1, Section 4 *Building Design* of the RDCP 2013 for following reasons:

- The proposed roof form is considered by Council to be a more skillful design and reduces the vertical massing and visual bulk of the original proposal.
- The proposed roof form demonstrates a contemporary design and is more in-keeping with the desired future character of the area.

As such, the proposed roof form is not expected to result in any unreasonable, adverse impacts to the building design and surrounding streetscape character. Further, Council is no longer concerned the void may be used for habitable purposes as the roof pitch has been lowered over the existing void (see **Figure 1** and **Figure 2** below).



**Figure 1 | Proposed roof form as per DA/305/2018 (Source: Arkhaus, 2018)**



**Figure 2 | Proposed changes to roof form as per DA/305/2018 (Source: Arkhaus, 2018 / Marked: V Hoffman, 2019)**

## Referrals

No referrals were required for this application.

## Section 4.15 Assessment

The site has been inspected and the application has been assessed having regard to Section 4.15 of the Environmental Planning and Assessment Act, 1979, as amended.

<b>Section 4.15 'Matters for Consideration'</b>	<b>Comments</b>
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	<b>Randwick Local Environmental Plan 2012</b>  The proposed modifications are ancillary to the approved development, which will remain substantially the same. The development remains consistent with the general aims and objectives of the RLEP 2012.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The development remains compliant with the objectives and controls of the Randwick Comprehensive DCP 2013.
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	The proposed modifications have responded appropriately to the relevant planning controls and will not result in any significant adverse environmental, social or economic impacts on the locality.
Section 4.15(1)(c) – The suitability of the site for the development	The site has been assessed as being suitable for the development in the original development consent.  The modified development will remain substantially the same as the originally approved development and is considered to meet the relevant objectives and performance requirements in the RDCP 2013 and RLEP 2012. Further, the proposed modifications will not adversely affect the character or amenity of the locality.  Therefore the site remains suitable for the modified development.
Section 4.15(1)(d) – Any submissions made	No submissions were received.

in accordance with the EP&A Act or EP&A Regulation	
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

## Conclusion

The application is recommended for approval for the following reasons:

- a) The proposed modifications are considered to result in a development that is substantially the same as the previously approved development.
- b) The modified development will not result in significant adverse environmental impacts upon the amenity and character of the locality.

## Recommendation

**THAT** Council's Coordinator/Manager Development Assessment under delegated authority from the General Manager, as the consent authority, grant its consent under Section 4.55 of the Environmental Planning and Assessment Act 1979 as amended to modify Development Consent No DA/305/2018/A for permission to *Modification of the approved development by deletion of condition (2) and alteration to front roof from. Original consent: Demolition of existing dwelling and construction of a new attached dual occupancy at 89 Mons Avenue, MAROUBRA NSW 2035* in the following manner:-

- **Amend Condition 1 to read:**

1. The development must be implemented substantially in accordance with the plans and supporting documentation listed below and endorsed with Council's approved stamp:

Plan	Drawn By	Dated
Site Plan DA.02 Issue F03	Arkhaus	15/08/18
Garage Floor DA.03 Issue F03	Arkhaus	15/08/18
Ground Floor DA.04 Issue F03	Arkhaus	15/08/18
First Floor DA.05 Issue F03	Arkhaus	15/08/18
Roof Plan DA.06 Issue F03	Arkhaus	15/08/18
Streetscape Elevation DA.07 Issue F03	Arkhaus	15/08/18
Elevations DA.08 Issue F03	Arkhaus	15/08/18
Elevations DA.09 Issue F03	Arkhaus	15/08/18
Sections DA.10 Issue F03	Arkhaus	15/08/18
Sections DA.11 Issue F03	Arkhaus	15/08/18
Colours & Finishes Schedule DA.18 Issue F03	Arkhaus	15/08/18

<b>BASIX Certificate No.</b>	<b>Dated</b>
928900S_02	16/08/18
928765S_02	16/08/18

**EXCEPT where amended by:**

- **Council in red on the approved plans; and/or**
- **Other conditions of this consent; and/or**
- **the following Section 4.55 plans and supporting documents only in so far as they relate to the modifications highlighted on the Section 4.55 plans and detailed in the Section 4.55 application:**

<b><i>Plan</i></b>	<b><i>Drawn by</i></b>	<b><i>Dated</i></b>
00318s455 s455.01	Arkhaus	4 December 2018
00318s455 s455.02	Arkhaus	4 December 2018
00318s455 s455.03	Arkhaus	4 December 2018
00318s455 s455.04	Arkhaus	4 December 2018
00318s455 s455.05	Arkhaus	4 December 2018
00318s455 s455.06	Arkhaus	4 December 2018
00318s455 s455.07	Arkhaus	4 December 2018

- **Delete Condition 2.**

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Veronique Hoffman  
Assessment Officer

DATE: 15 May 2019

Having considered the report of the Assessment Officer and after having taken into account Council's Local Environmental Policies and Codes I determine that the application subject of this assessment report should be determined in accordance with the recommendation.

I have exercised my delegation of authority, in accordance with the instrument of delegation, to determine this application.

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Roger Quinton  
Coordinator

DATE: 15 May 2019