



Mr Toby Breakspear
Breakspear Architects
2/4 Belgrave Street
MANLY NSW 2095

D330/20
AB7 (CPE)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 330/20/2 - APPROVAL**

Development Consent Number: 330/20

Land to which this applies: 38 Cremorne Road, Cremorne Point
Lot No.: 51, SEC: F, DP: 4150

Applicant: Toby Breakspear, Breakspear Architects

Proposal: Modification to include new window.

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. **330/20** and registered in Council's records as Application No. **330/20/2** relating to the land described as **38 Cremorne Road, Cremorne Point**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **24 September 2021**, has been determined in the following manner:

1. Condition A1 is amended as follows:

Development in Accordance with Plans (S4.55 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: -

Plan No.	Rev.	Title	Drawn By	Dated	Received
DA101	C	Plan ground demolition	Breakspear Architects	2/11/2021	18/08/2021
DA200	L	Plan - Ground	Breakspear Architects	18/08/2021	18/08/2021
DA201	K	Plan - Level 1	Breakspear Architects	18/08/2021	18/08/2021
DA202	K	Plan - Roof	Breakspear Architects	18/08/2021	18/08/2021
DA300	G	Elevation East	Breakspear Architects	18/08/2021	18/08/2021
DA301	F	Elevation West	Breakspear Architects	18/08/2021	18/08/2021
DA302	K	Elevation North	Breakspear Architects	18/08/2021	18/08/2021

DA303	G	Elevation South	Breakspear Architects	18/08/2021	18/08/2021
DA304	D	Elevation West (rear façade)	Breakspear Architects	18/08/2021	18/08/2021
DA305	D	Elevation East (rear garden)	Breakspear Architects	18/08/2021	18/08/2021
DA400	H	Long section	Breakspear Architects	18/08/2021	18/08/2021
DA401	F	Cross Section	Breakspear Architects	18/08/2021	18/08/2021
DA500	G	Material Palette	Breakspear Architects	18/08/2021	18/08/2021

Except as modified as such on the following drawings for DA 330/20/2:

Drwg No.	Rev.	Title	Drawn By	Date	Received
201	K	Plan - Level 1	Breakspear Architects	05/09/2023	15/09/2023
302	L	Elevation North	Breakspear Architects	05/09/2023	15/09/2023

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

2. Condition C11 is amended as follows:

BASIX Certificate

C11. Under clause 75 of the *Environmental Planning and Assessment Regulation 2021*, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. **A397305_03** (dated 30 August 2023) for the development are fulfilled. Plans and specifications complying with this condition must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate. The Principal Certifier 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)

3. Condition G5 is amended as follows:

BASIX Completion Receipt

G5. In accordance with Section 45 of the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*, prior to issuing a final occupation certificate the Principal Certifier must provide a BASIX completion receipt.

(Reason: To ensure compliance with the Regulations)

Reasons for Approval:

The proposed modification satisfies the provisions of Section 4.55(1A) in that the proposed development remains substantially the same as what was approved by DA 330/20. The proposed modification will add a new window to the northern side elevation of the approved rear addition and will not involve any further demolition/removal of original fabric.

The proposal will not alter the use of the development and will have minimal environmental impacts given that the works will be within the existing footprint of the building and not be highly visible from the public domain. The high sill height and location of the window within a bedroom space mean that it is unlikely to create any significant privacy impacts for neighbouring properties.

The proposed modification would not significantly change the level of compliance with the relevant development standards and controls as contained in North Sydney LEP 2013 and North Sydney DCP 2013. Notably, the proposal is wholly contained within the footprint of the development and will not alter the building height, bulk and massing, setbacks, site coverage, landscaped area, and unbuilt-upon area, of the approved scheme.

The minor change to the approved development will result in some improvements to the existing residence in terms of amenity and functionality whilst not resulting in adverse environmental impacts and not compromising the amenity of adjoining properties. Accordingly, the proposal remains consistent with the original reasons for granting consent.

The proposal was found to be acceptable in the site circumstances and is recommended that the subject Section 4.55(1A) application be **approved**.

How community views were taken into account:

Council has the discretion to not advertise a Section 4.55(1A) application pursuant to Section 3.4.2 of Council's Community Engagement Protocol. The proposed modification application was not notified because the proposed modifications were not considered to have the potential to adversely impact the amenity of surrounding properties. However, one submission was received raising privacy concerns. Nevertheless, it is considered that the proposal will not have a significant impact upon the general amenity of adjoining properties or the neighbourhood and will be sympathetic to the existing heritage item and the surrounding area.

The conditions attached to the original consent for Development Application No. **330/20** by endorsed date of **24 September 2021** still apply.

ADVISINGS

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

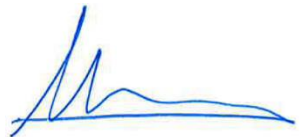
- (b) Pursuant to Section 8.2, an applicant is able to request Council to review its determination. An application for a review under Section 8.2 of the Act must be made no later than 28 days after the date on which the application for the modification of the development consent was determined.
- (c)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

14 November 2023

DATE



Signature on behalf of consent authority
ANDREW BEVERIDGE
SENIOR ASSESSMENT OFFICER