



D416/17  
RT (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 MODIFICATION 416/17/3 - APPROVAL**

<b>Development Consent Number:</b>	<b>416/17/3</b>
<b>Land to which this applies:</b>	1 Tobruk Avenue, Cremorne Lot No.: B, DP: 398221
<b>Applicant:</b>	
<b>Proposal:</b>	To modify Development Consent (D416/17) including changes to the first-floor balcony and the installation of a swimming pool within the front building setback.

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. **416/17** and registered in Council's records as Application No. **416/17/3** relating to the land described as **1 Tobruk Avenue, Cremorne**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **7 May 2018**, has been determined in the following manner:

- To modify the development consent (D416/17) and modify condition A1 to read as follows:**

**Development in Accordance with Plans (S4.55 Amendments)**

- The development being carried out in accordance with the following drawings:

Drawing No.	Date	Drawn by	Received
DA10B	06/05/2018	Into Architecture	07/05/2018
DA12C	06/05/2018	Into Architecture	07/05/2018
DA13C	06/05/2018	Into Architecture	07/05/2018
DA14B	16/03/2018	Into Architecture	04/04/2018
DA20B	29/03/2018	Into Architecture	04/04/2018
DA21B	29/03/2018	Into Architecture	04/04/2018
DA22A	29/03/2018	Into Architecture	04/04/2018
DA23A	29/03/2018	Into Architecture	04/04/2018
DA24A	29/03/2018	Into Architecture	04/04/2018
DA25A	29/03/2018	Into Architecture	04/04/2018

and endorsed with Council's approval stamp, except as modified by highlighting on the following drawings for D416/17/3:

Plan Nos.	Description of Works	Prepared by	Dated
DA11 Rev D	Site Plan - Ground Floor	INTO Architects	03/03/2022
DA12 Rev D	Floor Plan - Ground	INTO Architects	03/03/2022
DA13 Rev D	Floor Plan - Level 1	INTO Architects	03/03/2022
DA14 Rev C	Site Plan - Roof Plan	INTO Architects	03/03/2022
DA20 Rev C	Section A	INTO Architects	03/03/2022
DA22 Rev B	Elevation North	INTO Architects	03/03/2022
DA23 Rev B	Elevation South	INTO Architects	03/03/2022
DA24 Rev B	Elevation East	INTO Architects	03/03/2022
DA25 Rev B	Elevation West	INTO Architects	03/03/2022
DA60 Rev A	Colours and Materials	INTO Architects	03/03/2022
L/01 Rev D	Proposed Landscape Plan	A Total Concept	03/03/2022

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

**2. To insert a new conditions A4, C25, C26, C27, C28, G9, G10 and I2 to read as follows:**

**Terms of Consent (D416/17/3)**

A4. Approval is granted for the following modifications only:

- (a) First floor balcony on the Tobruk Avenue elevation: Installation of a metal floor and sliding aluminium louvres on along northern and western edges of the balcony; and
- (b) Installation of a plunge pool, measuring 6.5m x 1.5m, above the double garage and associated works.

No approval is given or implied in this consent for any other works, both internal and external, within the subject property.

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

**Swimming Pool Pumps on Residential Premises**

C25. The Certifying Authority must be satisfied that the swimming pool pump to be installed on the premises must not:

- (a) emit a noise that is audible within a habitable room in any affected residence (regardless of whether any door or window to that room is open);
  - (i) before 8.00 am and after 8.00 pm on any Sunday or Public Holiday; or
  - (ii) before 7.00 am or after 8.00 pm on any other day
- (b) cause an LAeq(15min) which exceeds the RBL background noise level by more than 5dB when measured at the boundary of any affected residence. The modifying factor adjustments in Section 4 of the EPA Industrial Noise Policy shall be applied.

“affected residence” includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation and hospitals .

“boundary” includes any window or elevated window of an affected residence.

Terms in this condition have the same meaning as in the Noise Guide for Local Government and the Industrial Noise Policy published by the NSW Environment Protection Authority.

Details demonstrating compliance with the requirements of this condition must be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

(Reason: To maintain residential amenity)

#### **Pool Access**

C26. Access to the pool must be restricted by a child resistant barrier in accordance with the regulations prescribed in the Swimming Pools Act 1992, and the barrier is to conform to the requirements of the applicable Australian Standard. 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 safety of children and make applicant aware of the need to comply with applicable pool fencing legislation)

#### **Swimming Pool Water to Sewer**

C27. The swimming pool, including overflow water, must be drained to the sewer. The consent of Sydney Water to dispose of wastewater must be obtained prior to the issue of any Construction Certificate. Plans and specifications complying with this condition and any conditions/requirements of Sydney Water 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 comply with this condition and any conditions/ requirements imposed by Sydney Water.

(Reason: Water from a swimming pool is classified as wastewater and cannot be legally disposed of into the stormwater system)

#### **Pool Filter**

C28. The pool filtering equipment must be encased by a soundproof cover and must be located six (6) metres from any habitable room in a dwelling on a neighbouring property. 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 noise generated by equipment does not result in offensive noise)

#### **Pool Access**

G9. Access to the pool must be restricted by a child resistant barrier in accordance with the regulations prescribed in the Swimming Pools Act 1992, and the requirements of the applicable Australian Standard. The pool must not be filled with water or be allowed to collect stormwater until the installation of the child resistant barrier is completed. Certification from an appropriately qualified person confirming compliance with these requirements must be provided prior to the issuing of any Occupation Certificate.

(Reason: To ensure that any person acting upon this consent is aware of their obligations under the provisions of the Swimming Pools Act)

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**Pool Safety Requirements**

- G10. A notice must be displayed in a prominent position in the immediate vicinity of the pool at all times showing:
- a) Appropriate instructions of artificial resuscitation methods.
  - b) A warning stating:
    - (i) "YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS SWIMMING POOL", and
    - (ii) "POOL GATES MUST BE KEPT CLOSED AT ALL TIMES", and
    - (iii) "KEEP ARTICLES, OBJECTS AND STRUCTURES AT LEAST 900 MILLIMETRES CLEAR OF THE POOL FENCE AT ALL TIMES",

Details demonstrating compliance are to be provided with any Occupation Certificate issued for the pool.

This notice must be kept in a legible condition and at the poolside.

(Reason: To ensure an adequate level of safety for young pool users)

**Pool Filter**

- I2. The swimming pool pump installed at the premises must not operate so as to:
- (a) emit a noise that is audible within a habitable room in any affected residence (regardless of whether any door or window to that room is open);
    - (i) before 8.00 am and after 8.00 pm on any Sunday or Public Holiday; or
    - (ii) before 7.00 am or after 8.00 pm on any other day
  - (b) cause an LAeq(15min) which exceeds the RBL background noise level by more than 5dB when measured at the boundary of any affected residence. The modifying factor adjustments in Section 4 of the EPA Industrial Noise Policy shall be applied.

"affected residence" includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation and hospitals.

"boundary" includes any window or elevated window of an affected residence.

Terms in this condition have the same meaning as in the Noise Guide for Local Government and the Industrial Noise Policy published by the NSW Environment Protection Authority.

(Reason: To ensure noise generated by equipment does not result in offensive noise)

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The proposed development as modified is substantially the same development as originally approved development application and s.4.55 of the EP & A Act 1979.

**Reasons for Approval:**

The proposal does not change the maximum building height as approved in the original DA and remains compliant with the DCP site coverage provision. The proposal does not significantly change the overall design of the subject dwelling in terms of appearance, bulk and scale.

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The proposed modifications would have no material impacts on the adjoining properties. Furthermore, the proposed modifications would not result in further changes to the landscaping treatments along the southern (side) boundary.

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

The subject application was notified to adjoining properties and the Willoughby Bay Precinct between 20 May and 3 June 2022. Council received no submissions.

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The conditions attached to the original consent for Development Application No. **416/17** by endorsed date of **7 May 2018** still apply.

**ADVISINGS**

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

20 December 2022

DATE



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Signature on behalf of consent authority  
MICHAEL STEPHENS  
**A/TEAM LEADER ASSESSMENTS**