

Development Consent No. 316/15

Section 4.55 Application

Applicant's Name

Smith & Tzannes Architects

Land to which this applies

12A Milson Road, Cremorne Point

Proposal

Section 4.55(2) modifications to DA316/15 for a new detached dwelling including changes the Level 1 courtyard adjacent to the north-western property boundary and alterations to the design of fencing along the south-western boundary to the Cremorne Reserve.

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. **316/15** and registered in Council's records as Application No. **316/15/4** relating to the land described as **12A Milson Road, Cremorne Point**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 6 April 2016, has been determined in the following manner: -

1. To modify Conditions A1 and G11 as follows:

Development in Accordance with Plans (S96 Amendments)

- A1. The development being carried out in accordance with the following drawings numbered DA-A-100 Rev B, DA-A-101 Rev C, DA-A-103 Rev C, DA-A-200 Rev C, DA-A-201 Rev C, DA-A-202 Rev C, DA-A-203 Rev C, DA-A-204 Rev C, all dated 17-11-15 and DA-A-205 Rev A dated 04-12-15, DA29B, all drawn by Smith & Tzannes Architecture Urban Planning, and received by Council on 17 December 2015 and Drawings numbered DA-A-102 Rev D, dated 18.02.16, drawn by Smith & Tzannes Architecture Urban Planning, and received by Council on 18 February 2016, and endorsed with Council's approval stamp, except as modified by highlighting on the following drawings for D316/15/2:

Plan No.	Rev.	Date	Drawn by	Received Date
DA-A-100	C	03-08-16	Smith & Tzannes Architecture Urban Planning	5 August 2016
DA-A-101	E	03-08-16	Smith & Tzannes Architecture Urban Planning	5 August 2016
DA-A-102	D	03-08-16	Smith & Tzannes Architecture Urban Planning	5 August 2016
DA-A-103	F	17-10-16	Smith & Tzannes Architecture Urban Planning	17 October 2016
DA-A-200	E	03-08-16	Smith & Tzannes Architecture Urban Planning	5 August 2016
DA-A-201	D	03-08-16	Smith & Tzannes Architecture Urban Planning	5 August 2016
DA-A-202	E	03-08-16	Smith & Tzannes Architecture Urban Planning	5 August 2016
DA-A-203	E	03-08-16	Smith & Tzannes Architecture Urban Planning	5 August 2016
DA-A-204	E	03-08-16	Smith & Tzannes Architecture Urban Planning	5 August 2016
DA-A-205	B	03-08-16	Smith & Tzannes Architecture Urban Planning	5 August 2016

except as modified by highlighting on the following drawings for D316/15/3:

Plan No.	Rev	Date	Drawn by	Received Date
CD-A-101	Q	12-10-17	Smith & Tzannes Architecture Urban Planning	20 October 2017
CD-A-201	G	12-10-17	Smith & Tzannes Architecture Urban Planning	20 October 2017

except as modified by highlighting on the following drawings for D316/15/4:

Plan No.	Rev	Date	Drawn by	Received Date
DA-A-010	F	08-03-2018	Smith & Tzannes Architecture Urban Planning	21 March 2018
DA-A-102	F	08-03-2018	Smith & Tzannes Architecture Urban Planning	21 March 2018
DA-A-205	C	08-03-2018	Smith & Tzannes Architecture Urban Planning	21 March 2018

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

Compliance with Certain Conditions

G11. Prior to the issue of any Occupation Certificate Conditions C1, C2, C3, C4, C5, E10 and G11 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)

2. To insert new conditions nos. A6 and C30 as follows:

Terms of Consent (D316/15/4)

A6. Approval is granted for the following works as shown on drawings numbered DA-A-010 Rev F, DA-A-102 Rev F, DA-A-205 Rev C, all dated 08-03-2018, drawn by Smith & Tzannes Architecture Urban Planning, and received by Council on 21 March 2018:

- (a) Modifications to the design of the south-western (Cremorne Reserve) property boundary fencing.

The proposed modifications involving an extension of the retaining wall along the north-western property boundary, an extension of the Level 1 courtyard and new fencing on the edge of the courtyard are deleted from this consent and form no part of this approval.

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)

Boundary Fencing to Cremorne Reserve

C30. The design of the south-western property boundary to Cremorne Reserve be modified to be sympathetic to the character of the conservation area.

The height of the boundary fence to Cremorne Reserve must not exceed the following:

- (a) 1.2m at the south-eastern end of the fence with No.10 Milson Road; and
- (b) 1.1 m at the north-western end of the fence with No.14 Milson Road.

A minimum of one step in the fence, approximately in the centre of the boundary, is required to accommodate the change in the height of the fence in order to match the height of the boundary fence of the adjoining properties at Nos. 10 and 14 Milson Road.

(Reason: To be sympathetic to the character of the conservation area)

Reason for approval/refusal

The proposed modifications satisfy the provisions of Section 4.55(2) in that the proposal is considered to be substantially the same development as that which was originally approved by Council.

The proposed modifications, as amended by conditions of consent, would not result in changes to the height, form, bulk and scale and the building envelope of the approved development subject to the imposition of a condition requiring the retention of the existing sunken planter along the north-western property boundary with No.14 Milson Road. There would be no change to the approved site coverage, unbuilt upon area and landscaped area within the subject site.

The proposal, as amended by conditions of consent, would not cause material amenity impacts on the adjoining properties in terms of privacy, overshadowing and view loss. The proposal would not adversely affect the significance of the conservation area subject to the imposition of appropriate conditions.

The issues raised in the submissions have been addressed.

In summary, the proposal was found to be acceptable in the site circumstances and is recommended that the subject Section 4.55(2) application be approved with modifications to the relevant conditions.

How were public submissions taken into account

The adjoining properties and the Cremorne Point Precinct were notified about the proposed development for the period between 6 and 20 April 2018. The notification resulted in one (1) submission from an adjoining property comprising three (3) letters. The concerns relating to visual privacy and the height of the fence have been addressed by a condition requiring the deletion of the proposed extension of the level 1 courtyard and fencing along the north-western boundary.

The conditions attached to the original consent for Development Application No. 316/15 by endorsed date of 6 April 2016 still apply.

ADVISINGS

- (a) Council is always prepared to discuss its decisions and in this regard, please do not hesitate to contact **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. The use of the Section 34 Conference approach requires the appellant to agree, in advance and in writing, that the Court appointed assessor will be given the full authority to completely determine the matter at the conference.
- (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 Certifying Authority 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 & 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 & Assessment Act.

DATE

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