

## Development Consent No. 314/16

### Section 4.55 Application

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#### Applicant's Name

Hebden Architects

#### Land to which this applies

19 Samora Avenue, Cremorne  
Lot No.: 9 DP: 18485 and Lot No.: 10 DP:212264

#### Proposal

Section 4.55 (2) modifications to D314/16 relating to fenestration changes, new internal storage areas, installation of solar panels and extension of the south-western planter bed.

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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. **314/16** and registered in Council's records as Application No. **314/16/2** relating to the land described as **19 Samora Avenue, Cremorne**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 1 March 2017, has been determined in the following manner:

- To modify conditions A1, C2 and G13 to read as follows:*

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

- A1. The development being carried out in accordance with the following drawings:

Plan No.	Issue	Date	Drawn by	Received
DA1	B	Dec 16	Hebden Architects	16 December 2016
DA02	B	Dec 16	Hebden Architects	16 December 2016
DA03	B	Dec 16	Hebden Architects	16 December 2016
DA04	B	Dec 16	Hebden Architects	16 December 2016
DA05	B	Dec 16	Hebden Architects	16 December 2016
DA06	B	Dec 16	Hebden Architects	16 December 2016
DA07	B	Dec 16	Hebden Architects	16 December 2016
DA17	A	Dec 16	Hebden Architects	16 December 2016

and endorsed with Council's approval stamp, except as modified by highlighting on the following drawings for D314/16/2:

Plan No.	Issue	Date	Drawn by	Received
DA01	C	Jun 18	Hebden Architects	22 June 2018
DA02	C	Jun 18	Hebden Architects	22 June 2018
DA03	C	Jun 18	Hebden Architects	22 June 2018
DA04	C	Jun 18	Hebden Architects	22 June 2018
DA05	C	Jun 18	Hebden Architects	22 June 2018
DA06	C	Jun 18	Hebden Architects	22 June 2108
DA07	C	Jun 18	Hebden Architects	22 June 2018

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

### **Amendments to Landscape Plan**

C2. The landscape plans, drawings numbered LP01 and LP02, dated 23/08/16 and drawn by EZI Grow, shall be modified as follows:

- The provision of screen planting, with a maximum mature height of 5m must be planted, along the south-western property boundary to ensure the visual privacy of the adjoining property at No.34 Ellalong Road.
- The existing screen planting along the north western boundary shall be retained as shown on the landscape plan LP01 and LP02.
- To incorporate the changes to the configuration of the planter on the south-western side of the subject site in accordance with D314/16/2.

An amended landscape plan 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 amended landscape plans and other plans and specifications submitted fully satisfy the requirements of this condition.

(Reason: To ensure adequate visual privacy protection for the adjoining property)

### **Compliance with Certain Conditions**

G13. Prior to the issue of any Occupation Certificate C1, C2, C3, C4 and C25 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. A5 and C25 as follows:*

**Terms of Consent (D314/16/2)**

A5. Approval is granted for the following works as shown on the following drawings:

Plan No.	Issue	Date	Drawn by	Received
DA01	C	Jun 18	Hebden Architects	22 June 2018
DA02	C	Jun 18	Hebden Architects	22 June 2018
DA03	C	Jun 18	Hebden Architects	22 June 2018
DA04	C	Jun 18	Hebden Architects	22 June 2018
DA05	C	Jun 18	Hebden Architects	22 June 2018
DA06	C	Jun 18	Hebden Architects	22 June 2018
DA07	C	Jun 18	Hebden Architects	22 June 2018

- (a) Modifications to the design of the approved first floor kitchen windows (Unit 1) on the north-western elevation;
- (b) Modifications to the ground floor bathroom windows for Units 1 and 2 on the south-eastern (street) elevation (the windows affected by this part of the application are not visible from the public domain because of the screening provided by an existing retaining wall and the existing fencing along the boundary);
- (c) Conversion of the void spaces over the approved garages for Units 1 and 2 as storage areas;
- (d) Installation of solar panels on the roof; and
- (e) Modifications to the size and configuration of the planter to include an existing tree on the south-western side of the property.

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.)

**Solar Panels**

C25. The solar panels shall be installed parallel to the roof plan and no higher than 300mm from the surface of the roof in order to minimise the visual bulk and scale of the panels.

Plans and specifications which comply 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 minimise the visual bulk and scale of solar panels.)

### **Reason for approval**

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

The proposed modifications involve fenestration changes, new internal storage areas, installation of solar panels and extension of the south-western planter bed. There would be no changes to the height, form, bulk and scale and the building envelope of the approved development. There would be no change to the approved site coverage, unbuilt upon area and landscaped area within the subject site. A condition has been recommended relating to the installation of solar panel to minimise any visual impacts on surrounding properties.

Furthermore, the proposal would not cause material amenity impacts on the adjoining properties in terms of privacy, overshadowing and view loss.

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 community views taken into account in making the decision**

The application was notified to adjoining properties and the Willoughby Bay Precinct Committee seeking comment between 6 and 20 July 2018. The notification attracted two submissions raising various issues which were addressed in the delegated report with appropriate conditions.

The conditions attached to the original consent for Development Application No. 314/16 by endorsed date of 1 March 2017 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.

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DATE

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