

**Original signed by: Robyn Pearson Dated: 28/2/2019.**

## **Development Consent No. 12/04**

### **Section 4.55 Application**

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#### **Applicant's Name**

Sanjay Jithoo

#### **Land to which this applies**

59 Earle Street, Cremorne Point  
Lot No. B, DP 442822

#### **Proposal**

Section 4.55(1A) modifications to D12/04 for various modifications to the fencing and timber cladding within the front building setback.

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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. **12/04** and registered in Council's records as Application No. **12/04/6** relating to the land described as **59 Earle Street, Cremorne Point**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 11 May 2004, has been determined in the following manner:

**1. To modify Condition A1:**

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

A1. The development being carried out in accordance with the following drawings numbered DA01, 02, 03/A, 04/A, 05, 06/A, 07, 08, dated December 2003, drawn by Steven Kotoric and received by Council on 12 January 2004, and endorsed with Council's approval stamp, except as modified by highlighting on the following drawings for D12/04/3:

- (a) Drawings numbered DA01 (as numbered by Council staff), dated 8 November 2007, drawn by Leo Laoutaris and received by Council on 22 November 2007; and
- (b) Drawings numbered Sheet 1 of 2 and Sheet 2 of 2, dated 24 February 2008, drawn by Leo Laoutaris, and received by Council on 6 June 2008.

except where amended by the following conditions of this consent (**D12/04/6**):

Drawings numbered Sheet 1 – 2 Rev A, and Sheet 2 – 2 Rev A, dated 18/11/18, and received by Council on 30 November 2018.

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

**2. To insert new conditions nos. A5, C22 and G7 as follows:**

**Terms of Consent (D12/04/6)**

A5. Approval is granted for the following works as shown on drawings numbered Drawings numbered Sheet 1 – 2 Rev A, and Sheet 2 – 2 Rev A, dated 18/11/18, and received by Council on 30 November 2018 and as modified by Conditions:

- (a) Installation of 1m high timber fence on top of the existing masonry wall to the east of the existing garage along the Earle Street boundary;
- (b) Installation of 1m high timber fence on top of the existing masonry walls on the eastern and western edges of the front entry staircase;
- (c) Installation of 1m high timber fence on top of the existing masonry wall between the eastern edge of the entry staircase and the eastern property boundary along the Earle Street boundary; and
- (d) Installation of 1m high timber fence along the existing eastern wall of the garage facing the existing entrance passageway between the northern building line of the main dwelling and the Earle Street boundary.

The design of the timber fencing as approved in Items (a) to (d) must not exceed 2.25m in height as measured from the footpath level of Earle Street and must provide 50% transparency.

No approval is given or implied in this consent for the proposed timber cladding on the roof of the garage and any other works, both internal and external, within the subject property.

The garage roof must not be used for trafficable purposes at any time.

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

**Design Modifications (D12/04/6)**

C22. The proposed works, as shown on drawings numbered Sheet 1 – 2 Rev A, and Sheet 2 – 2 Rev A, dated 18/11/18, and received by Council on 30 November 2018 must be modified as follows:

- (a) Deletion of the proposed timber cladding on the roof of the existing garage;
- (b) Deletion of the proposed timber fence on top of the existing garage along the Earle Street elevation;
- (c) Deletion of the proposed timber fence on top of the existing masonry wall to the west of the garage along Earle Street elevation;

- (d) Installation of 1m high timber fence on top of the existing masonry wall to the east of the existing garage along the Earle Street boundary;
- (e) Installation of 1m high timber fence on top of the existing masonry walls on the eastern and western edges of the entry staircase;
- (f) Installation of 1m high timber fence on top of the existing masonry wall to the east of the entry staircase along the Earle Street boundary;
- (g) Installation of a timber fence along the existing eastern wall of the garage facing the existing entrance passageway between the northern building line of the main dwelling and the Earle Street boundary; and
- (h) The height of all timber fencing as approved in Items (d) to (g) must not exceed 2.25m as measured from the footpath level of Earle Street.
- (i) The timber fencing as approved in this application must provide 50% transparency.

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 maintain the amenity of the adjoining residents and protection of streetscape.)

### **Compliance with Certain Conditions**

G9. Prior to the issue of any Occupation Certificate, Conditions A5, C21, C22 must be certified by the Principle Certifying Authority as having been implemented on site and complied with.

(Reason: To ensure the development is completed in accordance with the requirements of this consent.)

### **Reason for approval**

The proposed modifications satisfy the provisions of Section 4.55(1A) in that the proposal is considered to be substantially the same development as that which was originally approved by Council. However, the modification in its submitted form is not capable of support.

Nevertheless, the proposal modifications, as amended by conditions of consent, would minimise the likely adverse impacts of the proposed development on the locality in terms of bulk, scale and streetscape.

The proposed modifications, as amended by conditions of consent, would not cause material impacts on the amenity of the adjoining properties in terms of the loss of significant views, solar access and privacy.

The issues raised in the submissions have been addressed including the imposition of appropriate conditions to maintain residential amenity.

In summary, the proposal was found to be generally acceptable subject to design modifications as detailed throughout the planning report. Consequently, it is recommended that the subject Section 4.55(1A) application be approved with modifications to the relevant conditions.

### **How were community views taken into account in making the decision**

The adjoining properties and the Precinct were notified about the proposed development for the period between 14 December 2018 and 18 January 2019. The notification resulted in one (1) submission. The issues raised in the submission have been addressed as part of the assessment of the application. Furthermore, appropriate conditions of consent have been recommended requiring design modifications to ensure the amenity of the nearby properties and to maintain streetscape character along Earle Street.

The conditions attached to the original consent for Development Application No. 12/04 by endorsed date of 11 May 2004 and subsequent modifications approved on 19 December 2007 and 19 June 2008 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)