

Development Consent No. 429/15

Section 4.55 Application

Applicant's Name

Kerrie Allsop

Land to which this applies

107A Young Street, Cremorne
Lot No.: 1, DP: 175818

Proposal

Section 4.55(2) modifications to DA429/15 for alterations and additions to an existing detached dwelling including various design changes at the rear of the dwelling

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. **429/15** and registered in Council's records as Application No. **429/15/3** relating to the land described as **107A Young Street, Cremorne**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 8 September 2016, has been determined in the following manner:

- 1. To modify the development consent (D429/15) and modify conditions A1, A4, C1, C14 and C16 to read as follows:*

Development in Accordance with Plans (S4.55 Amendments)

- A1. The development being carried out in accordance with the following drawings numbered DA01 Rev B, DA02 Rev B, DA03 Rev B, DA04 Rev B, DA05 Rev B, DA06 Rev B, dated June 2016, drawn by Kerrie Allsop, and received by Council on 5 July 2016, and endorsed with Council's approval stamp, except as modified by highlighting on the following drawings for D429/15/2:

Plan No.	Date	Drawn by	Received
S96 01 D	March 2017	Kerrie Allsop	3 April 2017
S96 03 D	March 2017	Kerrie Allsop	3 April 2017
S96 04 D	March 2017	Kerrie Allsop	3 April 2017
S96 05 D	March 2017	Kerrie Allsop	3 April 2017
S96 06 D	March 2017	Kerrie Allsop	3 April 2017
S96 07 D	March 2017	Kerrie Allsop	3 April 2017

and endorsed with Council's approval stamp, except as modified by highlighting on the following drawings for D429/15/3:

Plan No.	Date	Drawn by	Received
MOD 01	December 2018	Kerrie Allsop	20 December 2018
MOD 03	December 2018	Kerrie Allsop	20 December 2018
MOD 04	December 2018	Kerrie Allsop	20 December 2018
MOD 06	December 2018	Kerrie Allsop	20 December 2018
MOD 07	December 2018	Kerrie Allsop	20 December 2018

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

Works within Subject Site

A4 All works shall be carried out wholly within the subject site, except the works on Council property as specified and approved in DA 429/15/2 and D429/15/3.

No approval is granted or implied for any other works outside the subject site.

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

Privacy Protection

C1. The following privacy protection devices must be applied to the proposed development:

- (a) A 1.8m high fixed privacy screens is to be installed on the northern edge of the proposed first floor balcony on the western elevation of the dwelling to ensure visual privacy protection for the adjoining property to the north at No.109 Young Street.
- (b) The length of the planter to the south of the proposed staircase must be extended to 2.5m from the rear (eastern) building line of the dwelling with the provision of screen planting at the maximum height of 5m to ensure visual privacy for the adjoining property to the south at No.107 Young Street.

The Certifying Authority must ensure that the building plans and specifications submitted by the Applicant, referenced and accompanying the issued Construction Certificate, fully satisfy the requirement of this condition.

(Reason: To protect visual privacy for the adjoining properties.)

Noise from Plant and Equipment

C14. The use of all plant and equipment installed on the premises, including but not limited to, the exhaust fan over the first floor BBQ area, must not:

- (a) Contribute an LAeq(15min) which will cause the total LAeq(15min) from all plant and equipment operating contemporaneously on the site or in the strata scheme or in the mixed strata schemes to exceed the RBL by more than 5dB when measured at the boundary of any affected receiver. The modifying factor adjustments in Section 4 of the EPA Industrial Noise Policy shall be applied.
- (b) Cause “offensive noise” as defined in the *Protection of the Environment Operations Act 1997*.

“affected receiver” includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation, schools, hospitals, places of worship, commercial premises and parks and such other affected receiver as may be notified by the Council in writing.

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

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 maintain an appropriate level of amenity for adjoining land uses)

BASIX Certificate

C16. Under clause 97A(3) of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. A235497_02 for the development are fulfilled. 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 proposed development will meet the Government’s requirements for sustainability and statutory requirements)

2. To insert new condition A6 namely:

Terms of Consent (D429/15/3)

A6. Approval is granted for the following works as shown on drawings numbered MOD 01, MOD 03, MOD 04, MOD 05, MOD 06, MOD 07, dated December 2018, drawn by Kerrie Allsop, and received by Council on 20 December 2018:

- (a) Extension of the first floor rear terrace;
- (b) Deletion of the approved spiral stairs at the rear and the construction of a replacement staircase connecting the elevated terrace and the rear yard;
- (c) Inclusion of the BBQ area into the kitchen on the first floor of main dwelling;
- (d) Modifications to the roof form from a skillion roof form to a pitched roof form for the approved extension over the BBQ area on the southern side of the first floor rear terrace with the installation of a new exhaust fan over the BBQ;
- (e) The tiled roof for the existing and new building elements of the main dwelling to be replaced by the Colorbond corrugated metal with two new skylights on the southern elevation; and
- (f) A new window with obscured glazing on the northern elevation to the walk-in-robe for ground floor bedroom 1.

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.)

Reason for approval

The proposed development as modified would be substantially the same development as original approved by Council in accordance with S4.55(2) of the E P & A Act 1979.

The non-compliance with the LEP maximum building height is considered to be acceptable because the 300mm breach in the building height is caused by the replacement of roof materials and there would be no significant change to the height, massing, bulk and scale of the existing roof and no material loss of amenity for the adjoining residential properties.

The proposal modifications would have no adverse impacts in terms of height, bulk and scale of the approved development. The proposal modifications would have no material impacts on the amenity of nearby residential properties.

The proposed modifications would result in a reduction in unbuilt upon area whilst maintaining compliance with DCP's site coverage and landscape area requirements.

Having regard to the assessment carried out above, it is recommended that the subject S4.55(2) application be approved.

How were community views taken into account in making the decision

The owners of adjoining properties and the Brightmore and Parks Precincts were notified of the proposed development between 11 January and 1 February 2019. The notification of the proposal has attracted no submissions.

The conditions attached to the original consent for Development Application No.429/15 by endorsed date of 8 September 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)