

Original signed by: Robin Tse Dated: 13/5/2019

Peter Ping Xie and Xiao Ling Shen
3 High Street
EDGECLIFF NSW 2027

D329/17
RT(CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION - REFUSAL**

Development Number: 329/17

Land to which this applies: 17 Milson Road, Cremorne Point
Lot No. 1, DP 559329

Applicant: Peter Ping Xie and Xiao Ling Shen

Proposal: Section 4.55(2) modifications to D 329/17 for design changes to the front dormer.

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. **329/17** and registered in Council's records as Application No. **329/17/2** relating to the land described as **17 Milson Road, Cremorne**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 13 May 2019, has been refused.

Reason for refusal:

1. Adverse Heritage Impacts

The proposed development will have unacceptable impacts on the Cremorne Point Conservation Area, contrary to the objectives at (a) and (b) of clause 5.10(1) of the LEP and also to the provisions of Section 13 of the DCP.

Particulars:

- (a) The proposal detracts from the significance and character of the Conservation Area through the enlargement of the approved dormer with the introduction of an uncharacteristic balcony to replace the approved dormer.
- (b) The proposed modifications will increase the scale, form, massing of the approved building elements. The design and use of the proposed development as a balcony is uncharacteristic of the conservation area and will have a detrimental impact on the character of Milson Road and the Conservation Area.

- (c) As a result of the matters listed above at subparagraphs (a) to (b), the proposed development does not aim to preserve the environmental heritage of North Sydney (objective (a) of clause 5.10(1) of the LEP).
- (d) The proposed development is contrary to the following provisions for dormers as contained in Part B Section 1.4.11 of the North Sydney DCP 2013:
 - (i) The proposed enlargement of the approved dormer will result in this building element being more visually intrusive from the public domain and is contrary to P2 in Part B Section 1.4.11 of North Sydney DCP 2013 requiring dormers not to be placed on the street elevation of a building;
 - (ii) The further increase in the height of the approved dormer will result in the dormer being more visually apparent from the public domain and is contrary to P7 in Part B Section 1.4.11 of North Sydney DCP 2013 requiring the height of the dormer be limited to 1.5m from its base to the ridge; and
 - (iii) The dormer, in its modified form with a balcony, will result in the introduction of an element that is not sympathetic to the character of the conservation area and is contrary to P11 in Part B Section 1.4.11 of North Sydney DCP 2013 not permitting balconies off dormers on street elevation.
- (e) The proposed development is contrary to the following heritage controls as contained in Part B Section 13.9.2 of the North Sydney DCP 2013.
 - (i) The proposed modifications to the approved dormer do not comply with P1 in Part B Section 13.9.2 of North Sydney DCP 2013 which require compliance with the requirements for dormer in Part B Section 1.4.11 of North Sydney DCP 2013;
 - (ii) The proposed modifications to the approved dormer to provide a balcony do not comply with P6 in Part B Section 13.9.2 of North Sydney DCP 2013 which does not permit balcony dormers in conservation area.

2. The modified development is not substantially the same development as originally approved.

The modified design with a balcony results in adverse heritage impacts and as such, it is not substantially the same development as originally approved.

Particulars:

- (a) The proposal is contrary to Section 4.55 (2)(a) of the *Environmental Planning and Assessment Act, 1979*.

3. Unacceptable variation to the LEP maximum building height development standard

There are insufficient environmental grounds to justify contravening the development standard.

Particulars:

- (a) The variation to the LEP's maximum building height development standard is unacceptable because the proposed balcony to replace the approved dormer fails to promote the character of the Conservation Area. The proposal is contrary to:
 - (i) Clauses 1.2(2)(a), (b)(i) and (f) of NSLEP 2013;

- (ii) Clauses 4.6(1)(b) and (4)(a)(2) of NSLEP 2013;
- (iii) Sections 1.6(a), (b), (e) and (f) Aims in Part A of NSDCP 2013;
- (iv) Sections 1.4.8 Built Form Character O1, P1 in Part B of NSDCP 2013;
- (v) Sections 1.4.11 Dormers O1, P2, P3(d), P4, P7, P11 in Part B of NSDCP 2013; and
- (vi) Section 6.4.7 Uncharacteristic Elements P1 in Part C of North Sydney DCP 2013.

4. Insufficient information

The information submitted with the application is inadequate to make an assessment of the view impacts for the adjoining property to the north-east as the result of the modified proposal.

Particulars:

- (a) The Applicant's submission does not properly assess the view impacts for the adjoining property to the north-east as the result of the modified proposal.
- (b) The absence of further view analysis for the proposed modified dormer balcony.

5. Public Interest

The proposed modifications are not considered to be in public interest due to the adverse impacts on the heritage significance of the conservation area.

How community views were taken into account:

The adjoining properties and the Cremorne Point Precinct were notified about the proposed development for the period between 8 March and 22 March 2019. The notification has attracted no submissions.

Any variation to the Development Consent can only be made with the written approval of the Council. Major variations will require a new or amended Development Consent.

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.

Section 4.55 of the Act confers on an applicant who is dissatisfied with the determination of a consent authority a right of appeal to the Land and Environment Court pursuant to Section 8.7 of the *Environmental Planning and Assessment Act, 1979*.

Endorsed for and on behalf of North Sydney Council

DATE

Signature on behalf of consent authority
ROBIN TSE
ACTING TEAM LEADER (ASSESSMENTS)