

Peter Ping Xie & 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 329/17/4 – APPROVAL**

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**Development Consent Number:** 329/17/4

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

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**Applicant:** Peter Ping Xie & Xiao Ling Shen

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**Proposal:** To modify a consent D329/17 for alterations and additions to an approved detached dwelling including the construction of a new spa pool within the basement.

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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. **329/17** and registered in Council's records as Application No. **329/17/4** relating to the land described as **17 Milson Road, Cremorne Point**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 6 June 2018, has been determined in the following manner: -

- 1. To modify the development consent (D329/17) and modify conditions A1, C7, C9, F4 and G9 to read as follows:*

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

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

Drawing No.	Date	Drawn by	Received
A-01 Issue 3	06.07.18	Paul Bekemeier Architect Pty Ltd	6 July 2018
A-02 Issue 2	18.04.18	Paul Bekemeier Architect Pty Ltd	24 April 2018
A-03 Issue 2	18.04.18	Paul Bekemeier Architect Pty Ltd	24 April 2018
A-04 Issue 3	06.07.18	Paul Bekemeier Architect Pty Ltd	6 July 2018
A-05 Issue 4	03.08.18	Paul Bekemeier Architect Pty Ltd	3 August 2018
A-06 Issue 3	06.07.18	Paul Bekemeier Architect Pty Ltd	6 July 2018

A-07 Issue 4	03.08.18	Paul Bekemeier Architect Pty Ltd	3 August 2018
A-08 Issue 2	18.04.18	Paul Bekemeier Architect Pty Ltd	24 April 2018
A-09 Issue 3	06.07.18	Paul Bekemeier Architect Pty Ltd	6 July 2018
A-10 Issue 3	06.07.18	Paul Bekemeier Architect Pty Ltd	6 July 2018
A-11 Issue 2	18.04.18	Paul Bekemeier Architect Pty Ltd	24 April 2018
A-12 Issue 2	18.04.18	Paul Bekemeier Architect Pty Ltd	24 April 2018
A-14 Issue 4	03.08.18	Paul Bekemeier Architect Pty Ltd	3 August 2018
DAL01C	20/06/18	Jane Britt Design	6 July 2018
DAL02C	20/06/18	Jane Britt Design	6 July 2018
DAL03A	16/04/18	Jane Britt Design	24 April 2018

and endorsed with Council's approval stamp, except where amended by the following drawings and conditions of this consent (**D329/17/2**); and

Drawing No./ Issue	Date	Drawn by	Description
4.55-05 B	15/04/2020	Fortey+Grant Architecture	Loft Plan
4.55-06 B	15/04/2020	Fortey+Grant Architecture	Roof Plan
4.55-08 B	15/04/2020	Fortey+Grant Architecture	South Elevation
4.55-09 B	15/04/2020	Fortey+Grant Architecture	East Elevation
4.55-10 B	15/04/2020	Fortey+Grant Architecture	West Elevation
4.55-12 B	15/04/2020	Fortey+Grant Architecture	Cross Section
4.55-13 B	15/04/2020	Fortey+Grant Architecture	Materials and Finishes

and endorsed with Council's approval stamp, except as modified by highlighting on the following drawings for **D329/17/3**:

Drawing No./ Issue	Date	Drawn by	Description
4.55-02 B	16/07/2020	Fortey+Grant Architecture	Basement Floor Plan
4.55-11 C	31/07/2020	Fortey+Grant Architecture	Section
4.55-12 C	31/07/2020	Fortey+Grant Architecture	Section
4.55-13 C	31/07/2020	Fortey+Grant Architecture	Section

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

### **Structural Adequacy of Adjoining Properties – Excavation Works**

C7. A report prepared by an appropriately qualified and practising structural engineer detailing the structural adequacy of adjoining properties Nos. 15 and No.19 Milson Road, which certifies their ability to withstand the proposed excavation, including additional excavation works in D329/17/4, and outlines any measures required to be implemented to ensure that no damage will occur to adjoining properties during the course of the works, must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The measures outlined in the certified report must be complied with at all times.

(Reason: To ensure the protection and structural integrity of adjoining properties in close proximity during excavation works)

### **Geotechnical Report**

- C9. A report prepared by an appropriately qualified Geotechnical Engineer certifying that the existing rock formations and substrate on the site is capable of:
- a) withstanding the proposed loads to be imposed including works approved in D329/17/4;
  - b) withstanding the extent of the proposed excavation including additional excavation works in D329/17/4, including any recommendations for shoring works that may be required to ensure the stability of the excavation;
  - c) providing protection and support of adjoining properties; and
  - d) the provision of appropriate subsoil drainage during and upon completion of all construction works, including works approved in D329/17/4;

must be submitted for approval by the Certifying Authority prior to the issue of any Construction Certificate.

Recommendations made in the certified report must be complied with at all times.

Building plans and specifications submitted for approval with any construction certificate application must comply with (a), (b), (c) and (d) above and the certified report, including any recommendations made in the said certified report.

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 structural integrity of the subject site and adjoining sites during the excavation process)

### **Construction Certificate**

- F4. Building work, demolition or excavation, including the works approved in D329/17/4, in accordance with the development consent must not be commenced until a Construction Certificate for the relevant part of the building work has been issued in accordance with the provisions of the EP&A Act and its Regulations.

(Reason: Statutory; To ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation)

### **Compliance with Certain Conditions**

- G9. Prior to the issue of any Occupation Certificate Conditions C1, C2, C3, C7, C9, C26, F4 must be certified as having been implemented on site or complied with.

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

**2. To insert a new condition A6, C23, C24, C25, C26, C27, G12, G13 and I1 to read as follows:**

**Terms of Consent (D329/17/4)**

A6. Approval is granted for the following modifications only:

- a) Additional excavation works carried out under the main dwelling between the basement floor level (RL21.29) and the ground floor slab (RL26.84) and as shown on the approved plans;
- b) New excavation works for the proposed spa pool measuring 3.55m(W0 x 5.7m(L) x 1.65m(D) and as shown on the approved plans;
- c) A new cupboard room immediately to the west of the lift shaft on RL24.065; and
- d) The use of the subfloor area for the spa pump, pool filter and a 3,000 litre water tank.

No approval is given or implied in this consent for any other works, both internal and external, within the subject property.

No approval is granted for the use of the subfloor area to the west of the main staircase for any habitable or non-habitable uses other than those specified in item (d) of this condition.

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

**Spa Pool Pumps on Residential Premises**

C23. The Certifying Authority must be satisfied that the spa pool pump to be installed on the premises must not:

- a) emit a noise that is audible within a habitable room in any affected residence (regardless of whether any door or window to that room is open);
  - i) before 8.00am and after 8.00pm on any Sunday or Public Holiday; or
  - ii) before 7.00am or after 8.00pm on any other day
- b) cause an LAeq(15min) which exceeds the RBL background noise level by more than 5dB when measured at the boundary of any affected residence. The modifying factor adjustments in Section 4 of the EPA Industrial Noise Policy shall be applied.

“affected residence” includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation and hospitals.

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

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.

Details demonstrating compliance with the requirements of this condition must be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

(Reason: To maintain residential amenity)

### **Pool Access**

C24. Access to the pool must be restricted by a child resistant barrier in accordance with the regulations prescribed in the Swimming Pools Act 1992, and the barrier is to conform to the requirements of the applicable Australian Standard. 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 safety of children and make applicant aware of the need to comply with applicable pool fencing legislation)

### **Spa Pool Water to Sewer**

C25. The spa pool, including overflow water, must be drained to the sewer. The consent of Sydney Water to dispose of wastewater must be obtained prior to the issue of any Construction Certificate. Plans and specifications complying with this condition and any conditions/ requirements of Sydney Water 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 comply with this condition and any conditions/ requirements imposed by Sydney Water.

(Reason: Water from a swimming pool is classified as wastewater and cannot be legally disposed of into the stormwater system)

### **Pool Filter**

C26. The pool filtering equipment must be encased by a soundproof cover and must be located six (6) metres from any habitable room in a dwelling on a neighbouring property. 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 noise generated by equipment does not result in offensive noise)

### **Water Tank**

C27. A water tank with a capacity of 3,000 litre must be installed to ensure that the approved pool can be topped up without the need to rely on portable water supplies. 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 approved pool can be topped up without the need to rely on portable water supplies)

### **Pool Access**

G12. Access to the pool must be restricted by a child resistant barrier in accordance with the regulations prescribed in the Swimming Pools Act 1992, and the requirements of the applicable Australian Standard. The pool must not be filled with water or be allowed to collect stormwater until the installation of the child resistant barrier is completed. Certification from an appropriately qualified person confirming compliance with these requirements must be provided prior to the issuing of any Occupation Certificate.

(Reason: To ensure that any person acting upon this consent is aware of their obligations under the provisions of the Swimming Pools Act)

### **Pool Safety Requirements**

G13. A notice must be displayed in a prominent position in the immediate vicinity of the pool at all times showing:

- a) Appropriate instructions of artificial resuscitation methods.
- b) A warning stating:
  - i) "YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS SWIMMING POOL", and
  - ii) "POOL GATES MUST BE KEPT CLOSED AT ALL TIMES", and
  - iii) "KEEP ARTICLES, OBJECTS AND STRUCTURES AT LEAST 900 MILLIMETRES CLEAR OF THE POOL FENCE AT ALL TIMES",

Details demonstrating compliance are to be provided with any Occupation Certificate issued for the pool.

This notice must be kept in a legible condition and at the poolside.

(Reason: To ensure an adequate level of safety for young pool users)

### **Pool Filter**

I1. The spa pool pump installed at the premises must not operate so as to:

- a) emit a noise that is audible within a habitable room in any affected residence (regardless of whether any door or window to that room is open);
  - i) before 8.00am and after 8.00pm on any Sunday or Public Holiday; or
  - ii) before 7.00am or after 8.00pm on any other day
- b) cause an LAeq(15min) which exceeds the RBL background noise level by more than 5dB when measured at the boundary of any affected residence. The modifying factor adjustments in Section 4 of the EPA Industrial Noise Policy shall be applied.

“affected residence” includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation and hospitals.

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

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 ensure noise generated by equipment does not result in offensive noise)

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The proposed modifications satisfy the provisions of Section 4.55 (2) in that the proposed development, including the authorised works, is substantially the same as what was approved under D329/17 as the proposed modifications will not alter the use, height, scale and built form of the development as originally approved.

Consideration has been given to the likely impacts of the proposal. Appropriate modified and new conditions have been recommended to minimise impacts on the surrounding properties during the construction phase and after the occupation of the development including modifications to conditions relating to structural integrity and geotechnical aspects of the proposal (**Conditions C7, C9**) and a new condition requiring certification prior to issue of the Occupation Certificate (**Condition G10**).

**Reason for approval:**

In addition, the requirements in the approved Construction Noise Management Plan (**Condition C20**) and the relevant consent conditions relating to geotechnical stability during works, construction hours, air quality, noise/vibration, health and safety and damage to adjoining properties will continue to apply in order to protect the amenity of the adjoining properties (**Conditions E6, E9, E10, E14, E19 & G8**). The subject application does not seek to change the above conditions in the original DA consent.

The issues raised in the submission received have been addressed in the assessment report.

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 and the imposition of new conditions.

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**How community views were taken into account:**

The adjoining properties and the Cremorne Point Precinct were notified about the subject application between 3 and 17 July 2020. The notification attracted two (2) submissions. The further information submitted by the applicant were notified to the adjoining properties between 21 August and 4 September 2020. This notification attracted two (2) submissions. The issues raised in the submissions have been addressed in this report.

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The conditions attached to the original consent for Development Application No. 329/17 by endorsed date of 6 June 2018 still apply.

**ADVISINGS**

- (a) Council is always prepared to discuss its decisions and in this regard, please do not hesitate to contact **the undersigned**. 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.
- (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 Certifier 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.

**Endorsed for and on behalf of North Sydney Council**

\_\_\_\_\_  
DATE

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