

Original signed by: Robyn Pearson Dated: 18/11/2020

James Spenceley
8 Walker Place
CHURCH POINT NSW 2105

D305/11
RT(CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.56 MODIFICATION 305/11/5 – APPROVAL**

Development Consent Number: 305/11/5

Land to which this applies: 10 Shellbank Parade, Cremorne
Lot No.: 136, DP: 10291

Applicant: James Spenceley

Proposal: To modify Development Consent (D305/11) for substantial alterations and additions to a detached dwelling including retrospective approval of excavation works and vegetation removal, the construction of replacement floor slabs, the use of a subfloor area as a plant room and landscaping works.

Pursuant to Section 4.56 of the Act notice is hereby given of the determination by the consent authority of your request for a modification to Development Consent No. **305/11** and registered in Council's records as Application No. **305/11/5** relating to the land described as **10 Shellbank Parade, Cremorne**.

Your request for the modification of the Development Consent as set out in the Order issued by the Land & Environment Court, dated 22 January 2013, has been determined in the following manner: -

1. To modify the development consent (D305/11) and modify condition A1 to read as follows:

Development in Accordance with Plans (S4.56 Amendments)

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

Drawing No. 0634	Issue	Date	Description	Drawn by
DA_00	E	Undated	Drawing schedule and waterfront perspective view	Csquared Architects Pty Ltd
DA_01		30 June 2011	Locality Plan and site photographs	Csquared Architects Pty Ltd

DA_02		30 June 2011	Site Analysis Plan	Csquared Architects Pty Ltd
DA_03	B	24 Dec 2012	Site Plan	Csquared Architects Pty Ltd
DA_04		30 June 2011	Plan – Level 0, existing waterfront and pool level	Csquared Architects Pty Ltd
DA_05	C	20 Dec 2012	Plan – Level 1, existing lower ground family level	Csquared Architects Pty Ltd
DA_06	D	20 Dec 2012	Plan – Level 2, existing bedroom level	Csquared Architects Pty Ltd
DA_07	C	20 Dec 2012	Plan – Level 3, existing ground/entry level	Csquared Architects Pty Ltd
DA_08	D	20 Dec 2012	Plan – Level 4, proposed new entry level	Csquared Architects Pty Ltd
DA_09	D	20 Dec 2012	Plan – Roof Plan	Csquared Architects Pty Ltd
DA_10	D	20 Dec 2012	Waterfront elevation – north west elevation	Csquared Architects Pty Ltd
DA_11	C	20 Dec 2012	South-east elevation and streetscape	Csquared Architects Pty Ltd
DA_12	D	20 Dec 2012	North-east elevation	Csquared Architects Pty Ltd
DA_13	D	20 Dec 2012	South-west elevation	Csquared Architects Pty Ltd
DA_14	D	20 Dec 2012	Section a-a	Csquared Architects Pty Ltd
DA_32	C	24 Dec 2012	Existing and proposed landscape calculation	Csquared Architects Pty Ltd
DA_33	B	20 Dec 2012	Landscape plan	Csquared Architects Pty Ltd
DA_36	B	Jan 2012	External finishes materials	Csquared Architects Pty Ltd
16216			Survey – Detail & Level survey	

and endorsed with Council’s approval stamp, except as modified by highlighting on the following drawings for D305/11/3:

Drawing No. 0634	Issue	Date	Drawn by	Received
DA_03	D	November 2019	Csquared Architects Pty Ltd	12 November 2019
DA_04	D	August 2019	Csquared Architects Pty Ltd	12 November 2019
DA_05	E	November 2019	Csquared Architects Pty Ltd	12 November 2019
DA_06	F	November 2019	Csquared Architects Pty Ltd	12 November 2019
DA_07	E	November 2019	Csquared Architects Pty Ltd	12 November 2019
DA_08	F	November 2019	Csquared Architects Pty Ltd	12 November 2019
DA_09	F	November 2019	Csquared Architects Pty Ltd	12 November 2019
DA_10	F	November 2019	Csquared Architects Pty Ltd	12 November 2019
DA_11	D	August 2019	Csquared Architects Pty Ltd	12 November 2019
DA_12	F	November 2019	Csquared Architects Pty Ltd	12 November 2019
DA_13	E	September 2019	Csquared Architects Pty Ltd	12 November 2019
DA_14	F	November 2019	Csquared Architects Pty Ltd	12 November 2019
DA_36	D	November 2019	Csquared Architects Pty Ltd	12 November 2019

and endorsed with Council’s approval stamp, except as modified by highlighting on the following drawings for D305/11/5:

Drawing No	Issue	Date	Prepared by	Received
DA_04	C	November 2020	Csquared Architects Pty Ltd	9 November 2020
DA_05	F	September 2020	Csquared Architects Pty Ltd	24 September 2020
DA_06	G	September 2020	Csquared Architects Pty Ltd	24 September 2020
DA_07	F	September 2020	Csquared Architects Pty Ltd	24 September 2020
DA_08	G	September 2020	Csquared Architects Pty Ltd	24 September 2020

DA_10	H	November 2020	Csquared Architects Pty Ltd	9 November 2020
DA_14	H	November 2020	Csquared Architects Pty Ltd	9 November 2020
DA_37	A	September 2020	Csquared Architects Pty Ltd	24 September 2020
DA_38	A	September 2020	Csquared Architects Pty Ltd	24 September 2020
DA_39	A	September 2020	Csquared Architects Pty Ltd	24 September 2020
DA_40	A	September 2020	Csquared Architects Pty Ltd	24 September 2020

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

2. To insert a new condition A7 to read as follows:

Terms of Consent (D305/11/5)

A7. Approval is granted for the following modifications only:

1. Retrospective consent is sought on the following works:

Pool Level/Waterfront Courtyard Level

- (a) Excavation/removal of existing fill/rock under the original lower ground floor (Level 4) floor slab.

Lower Ground Level (L4)

- (a) Partial removal of the original floor slabs at RL 6.400 and RL 6.530

Bedroom Level (L3)

- (a) Partial removal of the original floor slab at RL 9.82; and
- (b) Partial demolition of the original walls on the side (south-western) elevation.

Main Living Level (L2)

- (a) Additional excavation and shotcrete reinforcement within the south-western side setback area adjacent to the forecourt and driveway;
- (b) Removal of the original floor slab at RL12.30; and
- (c) Partial demolition of the original external walls on the side (north-eastern and south-western) elevations.

Entry Level (L1)

- (a) Removal of hedges along the Shellbank Parade boundary and the side (south-western) property boundary with No.8 Shellbank Parade.

2. Construction Works:

Pool Level/Waterfront Courtyard Level

- (a) Construction of internal perimeter walls within the new subfloor plant/equipment room;
- (b) Construction of footings for supporting structural columns for the main dwelling;
- (c) Construction of an extended external wall on the foreshore (north-western) elevation; and
- (d) Installation of louvred doors on the foreshore (north-western) elevation to provide access and ventilation for the underfloor plant/equipment room.

Lower Ground Level (L4)

- (a) Construction of concrete floor slabs at RL 6.530 and RL 6.400 to replace removed original floor slabs.

Bedroom Level (L3)

- (a) Construction of concrete floor slab at RL 9.82 to replace removed original floor slab.

Main Living Level (L2)

- (a) Construction of concrete floor slab at RL 12.30 to replace removed floor slab.

New Entry Level (L1)

- (a) Planting of Lilly Pilly (*Acmena smithii* 'Firescreen') to replace the previously removed hedges along the Shellbank Parade boundary and the side (south-western) property boundary with No.8 Shellbank Parade.

No approval is given or implied for the works and use within the subfloor area under the lower ground floor (L4) for any habitable uses other than the use as a plant/equipment room.

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.)

Plant/Equipment Room

- G2. The plant/equipment room within the subfloor area under the lower ground floor (L4) must be used as a non-habitable plant/equipment room only. No approval is granted for the use of this room for any habitable purposes.

(Reason: To ensure no habitable use within the subfloor area under L4.)

The proposed modifications satisfy the provisions of Section 4.56 in that the proposed development is substantially the same as what was approved under DA 305/11 as detailed in the assessment report.

The unauthorised excavation was carried out to remove heavily weathered rock within the subfloor area and such works were monitored by geotechnical engineer as required by the original development consent. No objection is raised for the use of the subfloor excavated area as a plant/equipment room subject to a condition restricting the use of the area as a non-habitable room only (**Conditions A7 and G2**).

Reason for approval:

The proposed modifications would not result in significant changes in terms of height, envelope, bulk/scale of the approved development and the amenity of the surrounding properties in terms of the loss of significant views, privacy and solar access.

The proposal would not material change the level of compliance with the key LEP and DCP planning standards/controls.

The proposal was found to be acceptable in the site circumstances and is recommended that the subject Section 4.56 application be approved with modifications to the relevant conditions

How community views were taken into account:

The adjoining properties and the Willoughby Bay Precinct were notified about the proposed development for the period between 9 and 23 October 2020. The notification has attracted no submissions.

The conditions attached to the original consent for Development Application No. 305/11 by endorsed date of 22 January 2013 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.

- (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

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