

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 305/11/6 - APPROVAL

Development Consent Number: 305/11/6

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 modifications to the pool terrace, a replacement swimming pool, a replacement staircase along the eastern side property boundary, fenestration changes on the eastern (side) elevation and installation of privacy screens/vertical louvres to certain windows/openings.

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. **305/11/6** relating to the land described as **10 Shellbank Parade, Cremorne**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 22 January 2013, has been determined in the following manner: -

- 1. To modify the development consent (D305/11) and modify conditions A1, A5 and B17 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 and 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

and endorsed with Council's approval stamp, except as modified by highlighting on the following drawings for D305/11/6:

Drawing No	Issue	Date	Prepared by	Received
DA_00	B	March 2021	Hampton Architecture	17 March 2021
DA_01	A	December 2020	Hampton Architecture	8 December 2020
DA_02	A	December 2020	Hampton Architecture	8 December 2020
DA_03	A	December 2020	Hampton Architecture	8 December 2020
DA_04	A	December 2020	Hampton Architecture	8 December 2020
DA_05	A	December 2020	Hampton Architecture	8 December 2020
DA_06	B	March 2020	Hampton Architecture	17 March 2021
DA_07	B	March 2020	Hampton Architecture	17 March 2021
DA_08	B	March 2020	Hampton Architecture	17 March 2021
DA_09	C	May 2020	Hampton Architecture	3 May 2021
DA_10	B	March 2020	Hampton Architecture	17 March 2021
DA_11	A	December 2020	Hampton Architecture	8 December 2020
DA_12	A	December 2020	Hampton Architecture	8 December 2020

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

External Colours, Finishes and Materials

A5. External colours, finishes and materials must be in accordance with the following:

- (a) The submitted schedule drawing numbered DA_36 dated November 2019, prepared by Csqared Architects Pty Ltd and received by Council on 12 November 2019; and
- (b) The submitted materials for privacy screens fitted to windows (W16, W17 & W18) as indicated on Drawings numbered DA-08B and DA-09B, both dated Mar 2021, prepared by Hampton Architecture and received by Council on 17 March 2021 unless otherwise modified by Council in writing.

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

BASIX Certificate

B17. Under clause 97A(3) of the Environmental Planning and Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. A24649_07 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 a new conditions A7, B18, B19, B20, B21 and G3 to read as follows:*

Terms of Consent (D305/11/5)

A7. Approval is granted for the following modifications only:

Pool Level

- (a) Demolition of the existing kidney shape swimming pool and pool terrace;

- (b) Construction of a new rectangular shape swimming pool and a new pool terrace;
- (c) Re-construction of a new staircase along the eastern property boundary to provide an external pedestrian access to the upper levels of the proposed dwelling and Shellbank Parade;
- (d) Relocation of a doorway on the northern elevation to the plant room under the pool terrace;
- (e) Installation of a new bathroom and a new sauna under the new external staircase; and
- (f) New paving to the covered terrace between the pool terrace and the repositioning of the operable ventilation louvres to screen the approved subfloor plant/equipment area.

Level 1

- (a) Reconstruction of northern balcony at RL 6.530 and the addition of a 1m high masonry balustrade with a 500 mm high opaque glass panel on top of the balustrade on the western edge of the balcony adjacent to the common property boundary with No.8 Shellbank Parade; and
- (b) Re-construction of a new staircase along the eastern property boundary to provide an external pedestrian access to the upper levels of the proposed dwelling and Shellbank Parade.

Level 2

- (a) Deletion of a study at the rear;
- (b) Modification to the approved bathroom window (W05) to a vertical window with privacy screen;
- (c) Reconfiguration of the internal layout of bedroom 2 to provide an ensuite bathroom and a walk-in-robe; and
- (d) Re-construction of a new staircase along the eastern property boundary to provide an external pedestrian access to the upper levels of the proposed dwelling and Shellbank Parade.

Level 3

- (a) Infilling of 2 x previously approved kitchen window on the eastern elevation;
- (b) Modifications to the laundry and guest room windows to provide new doorways (W10 and W11) with full height glazed sliding doors on the eastern elevation;
- (c) Addition of a new scullery doorway (W09) with full height glazed sliding doors on the eastern elevation; and
- (d) Re-construction of a new staircase along the eastern property boundary to provide an external pedestrian access to the upper levels of the proposed dwelling and Shellbank Parade.

Level 4

- (a) Modifications to the ensuite bathroom windows to provide two vertical windows (W17 and W18) with privacy screens;
- (b) Infilling of the garage windows on the eastern elevation;
- (c) Revised privacy screen to ensuite bathroom windows on the northern elevation (W16)

- (d) Construction of 1m high masonry walls on the eastern and western edges of the approved main bedroom terrace at RL15.60;
- (e) Addition of two (2) new skylights over the stairwell and the ensuite bathroom for the main bedroom;
- (f) Replacement roof over the garage;
- (g) Installation of a new planter along the western edge of the entry forecourt; and
- (h) Re-construction of a new staircase along the eastern property boundary to provide an external pedestrian access to the upper levels of the proposed dwelling and Shellbank Parade.

Other works

- (a) Modification to the height of the driveway entrance gate to match the height of the approved masonry boundary wall; and
- (b) Installation of a new pedestrian gate to Shellbank Parade for the new external staircase along the eastern property boundary;

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.)

Swimming Pool Pumps on Residential Premises

B18. The Certifying Authority must be satisfied that the swimming 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 8.00 am and after 8.00 pm on any Sunday or Public Holiday; or
 - (ii) before 7.00 am or after 8.00 pm 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)

Swimming Pool Water to Sewer

B19. The swimming 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

B20. 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)

Design Modifications - Level 1 Balustrade

B21. The design of the proposed 1m high masonry balustrade on the western edge of the Level 1 northern balcony shall be modified to provide a 500 mm high opaque glass panel on top of the masonry fence to minimise the visual dominance of the structure and to provide privacy protection for the subject and adjoining property to the west.

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 minimise visual bulk and to protect privacy for the adjoining property)

Pool Filter

G3. The swimming 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 8.00 am and after 8.00 pm on any Sunday or Public Holiday; or
 - (ii) before 7.00 am or after 8.00 pm 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)

Reason for Approval:

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 proposed modifications would not result in significant changes in terms of height, envelope, bulk/scale of the approved development and no material impacts on the amenity of the surrounding properties in terms of the loss of significant views, privacy and solar access.

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

The proposed 0.4% increase in site coverage is considered to be acceptable because there would be no change to the density and the overall landscape quality within the subject site and the locality.

The issues raised in the submission have been addressed.

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 18 December 2020 and 25 January 2021. The notification has attracted one (1) submission. The issues raised in the submission have been addressed in the assessment report.

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 and 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 and Assessment Act.

Endorsed for and on behalf of North Sydney Council

DATE

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