

Original signed by **Robyn Pearson** on **23/07/2021**

Stephanie Brancatisano Architect Pty Ltd
1 Kareela Road
CREMORNE POINT NSW 2090

D384/18
RT (CIS)

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 348/18/2 - APPROVAL

Development Consent Number: 384/18

Land to which this applies: 1 Kareela Road, Cremorne Point
Lot No.: 25, DP: 660969

Applicant: Stephanie Brancatisano Architect Pty Ltd

Proposal: To modify development consent D384/18 for various internal and external changes

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. **384/18** and registered in Council's records as Application No. **384/18/2** relating to the land described as 1 Kareela Road, Cremorne Point.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 17 June 2019 has been determined in the following manner:

- 1. To modify the development consent (D384/18) and modify conditions A1, C18 and G11 to read as follows:*

Development in Accordance with Plans (S4.55 Amendments)

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

Plan No.	Rev	Date	Drawn by	Received
DA06.7	B	4 April 2019	BMA Architects	4 April 2019
DA06.8	B	4 April 2019	BMA Architects	4 April 2019
DA06.9	B	4 April 2019	BMA Architects	4 April 2019
DA06.10	B	4 April 2019	BMA Architects	4 April 2019
DA06.11	B	4 April 2019	BMA Architects	4 April 2019
DA06.12	B	4 April 2019	BMA Architects	4 April 2019
DA06.13	B	4 April 2019	BMA Architects	4 April 2019
DA06.14	C	4 April 2019	BMA Architects	4 April 2019
DA06.15	B	4 April 2019	BMA Architects	4 April 2019
DA06.16	B	4 April 2019	BMA Architects	4 April 2019
DA06.17	C	4 April 2019	BMA Architects	4 April 2019
DA06.18	C	4 April 2019	BMA Architects	4 April 2019
DA06.19	B	4 April 2019	BMA Architects	4 April 2019
DA06.20	B	4 April 2019	BMA Architects	4 April 2019
DA06.21	B	4 April 2019	BMA Architects	4 April 2019
DA06.28	B	18 March 2019	BMA Architects	4 April 2019

and endorsed with Council's approval stamp, except as modified by highlighting on the following drawings for D384/18/2:

Plan No.	Rev	Date	Prepared by	Received
DA06.3	D	17 June 2021	BMA Architects	17 June 2021
DA06.4	D	17 June 2021	BMA Architects	17 June 2021
DA06.7	D	17 June 2021	BMA Architects	17 June 2021
DA06.8	D	17 June 2021	BMA Architects	17 June 2021
DA06.9	D	17 June 2021	BMA Architects	17 June 2021
DA06.10	D	17 June 2021	BMA Architects	17 June 2021
DA06.11	D	17 June 2021	BMA Architects	17 June 2021
DA06.12	E	17 June 2021	BMA Architects	17 June 2021
DA06.14	F	17 June 2021	BMA Architects	17 June 2021
DA06.15	E	17 June 2021	BMA Architects	17 June 2021
DA06.16	E	17 June 2021	BMA Architects	17 June 2021
DA06.17	F	17 June 2021	BMA Architects	17 June 2021
DA06.18	E	17 June 2021	BMA Architects	17 June 2021
DA06.19	D	17 June 2021	BMA Architects	17 June 2021
DA06.20	F	17 June 2021	BMA Architects	17 June 2021
DA06.21	E	17 June 2021	BMA Architects	17 June 2021

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

BASIX Commitments

C18. 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. A419123 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)

Compliance with Certain Conditions

G15. Prior to the issue of any Occupation Certificate, Conditions C19, C20, C21 and C22 must be certified as having been implemented on site and complied with.

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

2. To insert a new conditions A4, C22 and G12 to read as follows:

Terms of Consent (D384/18/2)

A5. Approval is granted for the following modifications only:

- (a) Replacement of all terracotta tiles on the roof of the main dwelling (Annotation A-01 on the approved drawings);
- (b) Demolition of the existing eastern sunrooms and balconies on the ground and first floors and the roof over the first-floor structure of the main dwelling (Annotation A-02 on the approved drawings);
- (c) Reconstruction of the eastern sunrooms and balconies on the ground and first floor including the roof over the first-floor structure to match the existing structures (Annotation A-02 on the approved drawings);
- (d) Replacement of existing windows to the main dwelling with timber framed double glazed windows (Annotation A03 on the approved drawings); and
- (e) Inclusion of an existing window (EX-10) on the northern elevation and existing sandstone columns under the eastern sunrooms/balconies (Annotations A-04 and A-05 on the approved drawings respectively).

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)

Heritage Requirements (D384/18/2)

C22. The following are to be applied to works under D384/18/2:

- a) New roof tiles are to be unglazed terracotta Marseilles profile.
- b) New window and door frames are to be timber-framed.

The Certifying Authority must also 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 palette of materials is sympathetic to the heritage significance of the dwelling)

Deed of Agreement for minor Encroachments

G12. The owner of No. 1 Kareela Road, Cremorne Point must enter into a Deed of Agreement with North Sydney Council, in accordance with the Encroachment Management Policy to enable the "minor encroachment" of 0.4sqm comprising the sunrooms and balconies on the eastern elevation of the existing dwelling at No. 1 Kareela Road over Council's Cremorne Reserve, to be regularised.

Details:

- (a) A draft Deed of Agreement will be issued to the applicant once the Development Consent is granted and the applicant must agree in writing, within 14 days from the date of the consent to entering into the Deed of Agreement with Council. If the applicant does not concur with the conditions of the Agreement, the applicant may lodge a Section 4.55 Application to modify the conditions to enable the encroachments to be removed.
- (b) The Date of the Deed of Agreement between Council and the applicant will be the Date of Practical Completion. The Certificate of Practical Completion is to be presented to Council immediately upon its receipt, together with the required documents as indicated in Clause 4.2.2.4 of Council's Encroachment Management Policy.
- (c) The lessee will be responsible for all maintenance and insurance of the encroaching structures in accordance with the Council's Encroachment Management Policy.
- (d) Written consent will be issued to the Private Certifying Authority (PCA) for the relevant Certificate/Certificates, such as the (Strata/Construction/Subdivision/Occupation Certificate), whichever is applicable, to be issued on receipt of a valid Insurance Certificate and the executed Deed of Agreement.
- (e) The encroachment will be notated on a Section 10.7 Certificate.

Additional Clauses:

(a) **Insurance**

"In the event that part of the proposed development encroaches upon or over Council land, the land owner must defend and hold harmless, indemnify and keep indemnified, Council and its employees, officers, agents and contractors from and against all claims, expenses, losses including consequential losses, damages and costs (including costs on a solicitor and client basis and whether incurred by or awarded against Council) that Council may sustain or incur as a result, whether directly or indirectly, of the encroachment by the proposed development on Council land, including:

- (a) any injury or death to any person including any injury or death to the general public, employees, officers, agents and contractors, or invitees, or other entity of the Council; or
- (b) damage to or loss of any property; and
- (c) arising out of performance by the landowner of its obligations under the Conditions of Consent including claims by a person who is not a party to this development, except to the extent caused or contributed to by Council, its contractors, employees and agents.

Without limiting the generality of this condition, the landowner must ensure that:

- (a) the processes and methods to be used for carrying out the development will be completely suitable for the purposes for which they are required;
- (b) the development is carried out in accordance with the Conditions of Consent;

- (c) it will obtain for the benefit of Council all available product and work warranties from any suppliers, contractors and subcontractors in respect of equipment and materials used in the development that encroaches on Council land and assign such benefit to Council where the warranty is not in favour of Council.

The landowner must provide Council with a copy of its Certificate of Insurance on an annual basis so that Council can satisfy itself that the landowner holds adequate public liability insurance in relation to the development that encroaches on Council land.

The encroaching owner is required to maintain public liability insurance of \$20 million, noting Council's interest on the Certificate of Currency."

(b) **Maintenance**

Maintenance Responsibility

The Encroaching owner is responsible for the maintenance, repair and upkeep of the Encroaching Structure.

- (i) Owners Consent is required to undertake any additional works, other than the general maintenance and upkeep of the encroaching structure.

(ii) **Costs**

All associated costs in relation to the encroachment will be borne by the property owners of No. 1 Kareela Road, Cremorne Point.

All other terms and Conditions are to be in accordance with the Encroachment Management Policy.

(Reason: To ensure that the development is consistent with the Encroachment Management Policy)

Reason for Approval:

It is concluded that the proposal would have no material impacts on neighbouring properties in terms of the characteristic built forms within the conservation area and the general amenity of adjoining properties. Having regard to the above, the variation to the LEP building height control is considered well-founded and strict compliance with the standards is unnecessary.

How community views were taken into account:

The proposed modifications would result in a development which is substantially the same development as originally approved as the proposed works would not change the building height, setbacks, bulk and scale and the overall appearance as approved in the original DA384/18.

The proposed modifications would have no further impacts on the amenity of the surrounding properties.

The proposed modifications would have no adverse impacts on the significance of the subject property and the conservation area subject to the imposition of appropriate conditions.

The proposal was found to be acceptable in the site circumstances and is recommended that the subject Section 4.55(1A) application be approved with modifications to existing conditions of consent and addition of new conditions.

The conditions attached to the original consent for Development Application No. 384/18 by endorsed date of **17 June 2019** 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

23 July 2021

DATE

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