

Shammi Kabir
C/- Contemporary Architecture
104 Cremorne Road
CREMORNE POINT NSW 2090

D268/12
MS4 (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 268/2012/3 - APPROVAL**

Development Consent Number: 268/2012

Land to which this applies: 104 Cremorne Road, Cremorne Point
Lot No: 34; Sec: B; DP: 4150

Applicant: Shammi Kabir

Proposal: Modifications to Development Consent DA268/2012 relating to alterations and additions to an existing dwelling house including a first-floor addition

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. **268/2012** and registered in Council's records as Application No. **268/2012/3** relating to the land described as **104 Cremorne Road, Cremorne Point**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **14 March 2013**, has been determined in the following manner:

A. Condition A4 Development in accordance with Section 4.55 Plans and Documentation is to be inserted:

Development in Accordance with Section 4.55 Plans and Documentation

A1 The development being carried out in accordance with plans identified in Condition A1 of the consent and endorsed with Council's approval stamp, except as modified by the modifications shown in colour on:

Plan No	Issue	Title	Dated	Prepared	Received
S4.55-01	C	Site Plan	14/02/2022	Contemporary Architecture	18/02/2022
S4.55-06	C	Ground Floor Plan	14/02/2022		18/02/2022
S4.55-07	C	Ground Floor Plan	14/02/2022		18/02/2022
S4.55-08	A	Level 1 Plan	14/02/2022		18/02/2022
S4.55-09	A	Roof Plan	14/02/2022		18/02/2022
S4.55-10	C	Elevations	14/02/2022		18/02/2022
S4.55-11	D	Elevation 2	21/02/2022		22/02/2022
S4.55-12	B	Elevation 4	14/02/2022		18/02/2022
S4.55-13	B	Sections	14/02/2022		18/02/2022
L-100	D	Landscape Plan	21/09/2021	Space Landscape Designs	23/09/2021
L-101	D	Landscape Plan	21/09/2021		23/09/2021
L-101	C	Specification Plan	21/09/2021		23/09/2021

except as amended by the following conditions and this consent.

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

B. Condition C1 Privacy is to be amended as follows:

Privacy

C1 The plans shall be amended to provide for the following privacy devices or elements:

- a) The stairwell window (**W1.1**) on the northern elevation of the dwelling shall be fitted with fixed obscure or frosted glazing;
- b) The double hung windows of the first-floor **bathrooms 2 and 3 (W2.6 and W2.5)** shall have fixed frosted or obscure glazing to the lower panels;
- c) The casement window (**W2.4**) to bedroom 3 on the northern elevation of the dwelling shall be fitted with frosted or obscure glazing to a minimum height of 1.5 m above the floor level of the bedroom, with fittings to ensure that the maximum opening of the windows is 150 mm;
- d) The casement window (**W2.1**) to bedroom 2 on the southern elevation of the dwelling shall be fitted with frosted or obscure glazing to a minimum height of 1.5 m above the floor level of the bedroom, with fittings to ensure that the maximum opening of the windows is 150 mm;
- e) Fixed timber louvre/lightweight/lattice privacy screen shall be attached to the northern side of the balcony to bedroom 1 to a height of 1.5 m above the floor level of the balcony; and
- f) Fixed timber louvre/lightweight/lattice privacy screen shall be attached to the southern side of the new entry porch to the dwelling to a height of 1.5 m above the floor level of the porch.

The Certifying Authority must ensure that the building plans and specifications submitted by the Applicant, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure an adequate level of privacy is provided to adjoining properties located at No 3 Hodgson Avenue and No. 102 Cremorne Road)

C. The following conditions are to be inserted.

Amendments to the Landscape Plan

C22. The landscape plan must be amended as follows to provide an appropriate landscaped setting:

- The proposed hedge of “Teddy Bear” Magnolias is to be substituted with an appropriate species with a mature height not exceeding 1.5 m for the portion directly adjacent the northern side of the car parking hard stand (i.e., the 6 m length measured from the rear boundary).

An amended landscape plan 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 amended landscape plan and other plans and specifications submitted fully satisfy the requirements of this condition.

(Reason: To ensure retain the view corridor from No. 3 Hodgson Avenue, Cremorne Point)

Landscaping

G7. The landscaping shown in the approved landscape plan, incorporating the amendments required by Condition C22, numbered L-100, L-101 and L-102 prepared by Space Landscape Design dated 21 September 2021 and received by Council on 23 September 2021 must be completed prior to the issue of any Occupation Certificate.

(Reason: To ensure compliance)

Maintenance of Approved Hedging

I3. The approved hedging adjacent to the northern side of the car parking hard stand shall be trimmed so that it does not exceed 1.5 m in height.

(Reason: To ensure retain the view corridor from No. 3 Hodgson Avenue, Cremorne Point)

Reasons for Approval:

The proposed modifications have been considered having regard to the requirements of section 4.55 (2) of the Act. The proposed modified development is considered to be substantially the same as the development originally approved by Council. The existing consent has not lapsed in accordance with section 4.53 of the Act.

The matters for consideration as outlined in section 4.15(1) of the Act have been satisfied. The proposed development is permissible, meets the development standards and relevant provisions of NSLEP 2013 and is generally in accordance with the objectives of the NSDCP 2013.

The proposed modifications would have an acceptable impact on the heritage significance of the dwelling which is listed as contributory item within the Cremorne Point Conservation Area.

The minor increase in the non-compliant site coverage of 1.5% is offset by the significant improvements to the landscaped and unbuilt upon areas to achieve, and exceed compliances, and would allow the introduction of the proposed awning over the front entry of the dwelling which is design having regard to the character of the dwelling.

The proposed modifications would not adversely impact the amenity of the adjoining properties or the character of the area.

On balance, the application to modify development consent **DA268/2012** is considered reasonable and is recommended for approval.

How community views were taken into account:

The development application was notified in accordance with Council's Community Engagement Protocol from 8 October 2021 until 21 October 2021. Two submissions were received which have been addressed and were appropriate conditions recommended to ensure the amenity of adjoining properties is reasonably maintained.

The conditions attached to the original consent for Development Application No. **268/2012** by endorsed date of **14 March 2013** still apply.

ADVISINGS

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

7 March 2022

DATE

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