

James Spenceley  
C/- Csquared Architects Pty Ltd  
15 Walter Street  
WILLOUGHBY NSW 2068

D305/11  
RT (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.56 MODIFICATION 305/11/3 – APPROVAL**

**Development Consent Number:** 305/11/3

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

**Applicant:** James Spenceley  
C/- Csquared Architects

**Proposal:** Section 4.56 modifications to D305/11 for various modifications to the approved development.

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. **305/11/3** 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 and Environment Court dated 22 January 2013, has been determined in the following manner: -

- 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)**

- 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:

<b>Drawing No. 0634</b>	<b>Issue</b>	<b>Date</b>	<b>Drawn by</b>	<b>Received</b>
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

(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 submitted schedule drawing numbered DA\_36 dated November 2019, prepared by Csquared Architects Pty Ltd and received by Council on 12 November 2019 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 & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. A24649\_04 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 condition A6 to read as follows:**

**Terms of Consent (D305/11/3)**

A6. Approval is granted for the following modifications only:

*Lower Ground Level (L1)*

- (a) Modifications to the approved internal layout to provide a rumpus room, a lift, a staircase connecting L1, L2 and L3 and the deletion of the approved spa and sauna room;
- (b) Additional excavation at the rear of the existing rumpus room to provide additional internal floorspace and to accommodate the re-configured staircase and a drainage void between the rear internal wall and the rock face;
- (c) Replacement of the existing columns with new structural steel columns; ‘
- (d) Installation of new full height aluminium framed sliding doors and windows to replace existing rumpus room glazed doors/windows; and
- (e) Installation of new glazed balustrades along the northern edge of the balcony.

*Bedroom Level (L2)*

- (a) Modifications to the approved internal layout to provide three bedrooms, two ensuite bathrooms, a bathroom, retention of the existing balcony;
- (b) Additional excavation at the rear of the existing building footprint to provide a study and to accommodate the staircase;
- (c) Replacement of the existing columns with new structural steel columns;
- (d) Installation of new full height aluminium framed sliding doors and windows to replace glazed doors/windows to the original bedrooms;
- (e) Installation of angled timber privacy louvres to the eastern edge of the balcony; and
- (f) Installation of new glazed balustrades along the northern edge of the balcony.

*Main Living Level (L3)*

- (a) Modifications to the approved balcony on the northern elevation to increase the depth of the balcony;
- (b) Installation of new structural steel columns;

- (c) Installation of glazed balustrades and angled timber privacy louvres to the eastern edge of the balcony;
- (d) Installation of new glazed balustrades along the northern edge of the balcony;
- (e) Modifications to the approved internal layout to provide an open plan living/dining and kitchen, a guest bedroom with ensuite, a media room, a cellar, a library, a laundry, a lift, and a staircase connecting L1, L2 & L3; and
- (f) Construction of a new access stair within the eastern side building setback to provide maintenance access to the landscaped zone along the southern (Shellbank Parade) boundary.

*New Entry Level*

- (a) Modifications to the approved internal layout to provide a main bedroom with ensuite bathroom, an entry foyer with a void to L3, a lift and a staircase to the lower levels;
- (b) Installation of new privacy screen to entry foyer window (W20);
- (c) A new pedestrian entrance gate adjacent to the driveway entrance gate to Shellbank Parade;
- (d) Reduction in height of the retaining wall of the landscape planter to the west of the forecourt by 1.3m; and
- (e) Construction of a 1.8m high masonry fence to the west of the driveway along property boundary with No.8 Shellbank Parade.

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)

**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 the proposed modifications will not alter the use, scale and form of the development as originally approved.

The non-compliance with the LEP maximum building height is considered to be acceptable due to the minor nature of the breach and no material impacts on the character of the locality and the amenity of the adjoining properties.

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 change the level of compliance with the key LEP and DCP planning standards/controls.

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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.

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**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 11 and 25 October 2019. The notification resulted in one (1) submission raising issues not related to the current S4.56 application.

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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 4.56 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 4.56 of the Environmental Planning & Assessment Act.

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

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DATE

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