



Mr Brian Song
6 Devonshire Street
CHATSWOOD NSW 2067

D357/15
TH2 (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.56 MODIFICATION 357/15/3 - APPROVAL**

Development Consent Number: 357/15/3

Land to which this applies: 2 Waruda Street, Kirribilli
Lot No.: B, DP: 346417

Applicant: Brian Song

Proposal: To modify a consent for relocation of air conditioning units,
internal alterations and removal of a fire hydrant

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. **357/15/2** and registered in Council's records as Application No. **357/15/3** relating to the land described as **2 Waruda Street, Kirribilli**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **28 November 2016** has been determined in the following manner:

A. Add Condition A3 and A4 as follows:

Development in accordance with Plans (s4.55 Amendments)

A3. The development being carried out in accordance with plans identified in Condition A1 of the consent and A3 of the modification to consent endorsed with Council's approval stamp, except as modified by the modifications shown on:

Plan No.	Rev	Title	Drawn by	Received
A102	1	Basement	Attena Group Pty Ltd	19/01/2023
A103	1	Ground Level	Attena Group Pty Ltd	19/01/2023
A104	2	Level 1	Attena Group Pty Ltd	19/01/2023
A105	1	Level 2	Attena Group Pty Ltd	19/01/2023
A106	1	Level 3	Attena Group Pty Ltd	19/01/2023
A107	1	Roof	Attena Group Pty Ltd	19/01/2023
A140	1	North Elevation	Attena Group Pty Ltd	19/01/2023

A141	1	South Elevation	Attena Group Pty Ltd	19/01/2023
A142	2	West Elevation	Attena Group Pty Ltd	19/01/2023
A143	2	East Elevation	Attena Group Pty Ltd	19/01/2023
A144	1	Section 1	Attena Group Pty Ltd	19/01/2023
A145	1	Section 2	Attena Group Pty Ltd	19/01/2023
A146	1	Section 3	Attena Group Pty Ltd	19/01/2023
18-3838 LO1	A	Landscape Plan	Zenith Landscape Designs	19/01/2023

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

Terms of Consent

A4. Approval is granted under Modification Application No. DA 357/15/3 for the following works only:

1. Relocation of 3 x air conditioner units from basement to Ground Level and Level 3 landscaped roof.
2. Internal alterations to alter the size/layout of the circulation core comprising lobby/stairs and lift and internal amendments to the size/layout of Unit 1 on the Ground Floor, Unit 2 on Level 1 and Unit 3 on Levels 2 and 3.
3. Removal of fire hydrant located in the south eastern corner of the site.
4. Replacement of 2 x trees (1 x Tibouchina and 1 x Plumeria) with 2 x Cupaniopsis anacardioides within the south eastern corner of the site.

No approval is given or implied under this modification application for any other works under Modification Application DA 357/15/3.

(Reason: To ensure the terms of consent are clear)

B. Modify Condition C1 and G8 as follows:

Heritage Amendments

C1. The following amendments must be made to the colours and materials of the building to maintain the character of the Kirribilli Conservation Area:

- a) No approval is given for the use of slate or other roofing materials. The roof must be tiled with unglazed terracotta Marseilles pattern roof tiles.
- b) No approval is given for the use of glazed balustrades to the balconies on either the first or second floor of the building.
- c) ~~No approval is given for a cedar colour finish to the metal louvers. The louvers are to be powdercoated or painted in a light, neutral colour.~~

Details are to be provided to Council's Conservation Planner for written approval prior to the issue of a Construction Certificate.

(Reason: To ensure the use of colours and finishes characteristic to the conservation area)

Landscaping

- G8. The landscaping shown in the approved landscape plan numbered 15173-LDA-A drawn by NBRS + Partners dated 4/09/15 except where amended by Condition C3 - Amendments to the Landscape Plan and the landscaping shown in the approved landscape plan 18-3838 LO1 Rev A detailing replacement tree planting in the south eastern corner of the site with '2 x *Cupaniopsis anacardioides*' – pot size 75l, must be completed prior to the issue of any Occupation Certificate.

(Reason: To ensure compliance)

The proposed modifications are considered to be generally consistent with the originally approved development application and s.4.56 of the EP&A Act 1979. Furthermore, the modifications do not result in any material amenity impact to adjoining properties or the surrounding area. The proposed modifications are consistent with the reasons for the granting of development consent to the originally approved development and are considered to be acceptable.

The relocation of the air conditioner units is suitably sited so as not to compromise the amenity of residents at the subject site or residents of adjoining properties and appropriately sited not adversely impacting on the significance of the Kirribilli Conservation Area. The deletion of the fire hydrant within the southeastern corner of the site and replacement tree planting within the front setback improves the natural amenity of the area and the internal alterations to the lobby and circulation core retains a high level of amenity for each unit. The development therefore as modified meets the objectives of the R4 High Density Residential Zone and conserves the significance of the Kirribilli Conservation Area.

Reasons for Approval:

Having regard to the provisions of section 4.56 & 4.15(1) of the *Environmental Planning and Assessment Act 1979*, the proposed development as modified is substantially the same development as originally consented to maintaining the development as a four storey residential flat building comprising three apartments with basement car parking. The application is therefore recommended for **approval**.

However, a condition of consent is recommended detailing the terms of consent noting the building has been subject to amendments to the façade and fenestration approved under Construction Certificate 4311.2 on 06 April 2016 contrary to the plans approved by the Land and Environment Court (Case No. 2016/00278327) and unauthorised works have occurred including installation of privacy louvres with a colour finish contrary to Condition C1 c) Heritage Amendments of Development Consent No. 357/15/2.

How community views were taken into account:

The subject application was notified to adjoining properties and the Bradfield Precinct inviting comment between 5 August to 19 August 2022. There were no submissions raised following notification of the modification application. Nevertheless, the assessment considered the amenity impact to adjoining properties and relocation of air conditioner units are considered not to have an adverse impact.

The conditions attached to the original consent for Development Application No. **357/15/2** by endorsed date of **28 November 2016** still apply.

ADVISINGS

- (a) Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact **Thomas Holman**. However, if you wish to pursue your rights of appeal in the Land and Environmental Court pursuant to Section 8.9 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 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 4.56 of *the Environmental Planning and Assessment Act*.

Endorsed for and on behalf of North Sydney Council

27 February 2023

DATE



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