

Original signed by: Robyn Pearson Dated: 24/8/2020

Henry Kuang
19A Durham Street
CARLTON NSW 2218

D178/16
MS3(CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 178/16/2 – APPROVAL**

Development Consent Number: 178/16/2

Land to which this applies: 19 Ben Boyd Road, Neutral Bay
Lot No.: 1, DP: 220254

Applicant: Henry Kuang

Proposal: Section 4.55(2) Modification

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. **178/16** and registered in Council's records as Application No. **178/16/2** relating to the land described as **19 Ben Boyd Road, Neutral Bay**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 2 November 2016, has been determined in the following manner: -

1. Insert Condition A4

Development in Accordance with Plans (s4.55 Amendments)

A4. 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 and additional details on:

Plan No.	Title	Date	Drawn by	Received
A103	First and Second Floor Plans	06/06/2020	2D House Design	01/07/2020
A104	East & West Elevations, and Section 1	05/08/2020	2D House Design	05/08/2020
A105	North & South Elevations	05/08/2020	2D House Design	05/08/2020
AU20215-0001	Specifications	23/06/2020	SMOKE CONTROL	06/08/2020

AU20215-0101	Window W1 and Section A & B	23/06/2020	SMOKE CONTROL	06/08/2020
AU20215-0102	Window W2 and Section A 7 B	23/06/2020	SMOKE CONTROL	06/08/2020
AU20215-0103	Window W3 and section A & B	23/06/2020	SMOKE CONTROL	06/08/2020

except as amended by the following conditions and this consent.

Reason for approval:

The proposed development, as modified, is considered substantially the same development and has regard to the original reasons for approval. The proposed development is permissible within the zone. The approved development sought variations to the floor space ratio and height of buildings development standards, however, were supported by written requests to vary the development standards. The proposed modification does not seek to increase the floor area, however, one of the proposed shutters would be mounted to the existing building above the height control. Whilst a further clause 4.6 is not required the potential impact of this height breach has been considered against the objectives of the standard and is considered to be inconsequential.

The proposed automated fire shutters are intended to achieve compliance with the National Construction Code and would have minimal impact to the overall built form character of the approved development and would not have any impacts to the residential amenity of the surrounding properties with regard to retention of views, privacy and solar access.

There are no changes proposed to the ground floor retail tenancy or the internal layout of the residential unit above.

The application to modify development consent D178/2016 is considered reasonable and is recommended for approval.

How community views were taken into account:

The application was notified in accordance with Council's Community Engagement Protocol. One submission was received, and additional information was provided to the submitter to gain further understanding of the proposed modification. Furthermore, the potential impact to surrounding properties has been considered and conditions have previously been imposed to ensure that amenity is reasonably retained throughout construction.

The conditions attached to the original consent for Development Application No. 178/16 by endorsed date of 2 November 2016 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 & 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 & Assessment Act.

Endorsed for and on behalf of North Sydney Council

DATE

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