

TESSERARCH Pty Ltd
31 Woodstock Road
CARLINGFORD NSW 2118

D415/19
HS2 (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 415/19/2 - APPROVAL**

Development Consent Number: 415/19

Land to which this applies: 125 Holtermann Street, Crows Nest
Lot No.: 2, DP: 439026

Applicant: Tesserarch

Proposal: Modification application to amended condition A1 in DA415/19 for the inclusion of an air conditioning unit on the roof the dwelling that is located within a conservation area

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. **415/19** and registered in Council's records as Application No. **415/19/2** relating to the land described as 125 Holtermann Street, Crows Nest.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 24 December 2019, has been determined in the following manner:-

- To modify the development consent (DA 415/19) and modify condition A1 as follows:*

A1 Development in Accordance with Plans

Plan No.	Dated	Issue	Title	Drawn by	Received
DA201	11.6.2020	F	Demolition Plan	TESSERARCH Pty Ltd	15.6.2020
DA202	14.7.2020	L	Proposed Site Plan 1	TESSERARCH Pty Ltd	15.7.2020
DA203	14.7.2020	L	Proposed Site Plan 2	TESSERARCH Pty Ltd	15.7.2020
DA204	14.7.2020	O	Proposed Ground Floor Plan	TESSERARCH Pty Ltd	15.7.2020
DA205	14.7.2020	O	Proposed First Floor Plan	TESSERARCH Pty Ltd	15.7.2020
DA206	14.7.2020	J	Proposed Roof Plan	TESSERARCH Pty Ltd	15.7.2020
DA207	14.7.2020	H	Proposed Northern Elevation	TESSERARCH Pty Ltd	15.7.2020
DA208	14.7.2020	K	Proposed Southern Elevation	TESSERARCH Pty Ltd	15.7.2020

DA209	14.7.2020	J	Proposed East and West Elevations	TESSERARCH Pty Ltd	15.7.2020
DA210	14.7.2020	J	Proposed Section A-A	TESSERARCH Pty Ltd	15.7.2020
DA301	14.7.2020	H	Landscape Plan 1	TESSERARCH Pty Ltd	15.7.2020
DA213	14.7.2020	G	Proposed Materials and Finishes Schedule	TESSERARCH Pty Ltd	15.7.2020

As amended by the following plans and additional conditions:

Plan No.	Issue	Title	Drawn by	Received
CC205	E	Proposed First Floor Plan	TESSERARCH Pty Ltd	21 April 2021

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

C. Prior to the issue of a construction certificate (and ongoing, where indicated)

C18 Air Conditioners in Residential Premises

The use of any air conditioner installed on the premises must comply with the requirements of the Protection of the Environment Operations (Noise Control) Regulations 2008 and State Environmental Planning Policy (Infrastructure) 2007 and must not:

- (a) emit a noise that is audible within a habitable room in any affected residence (regardless of whether any door or window to that room is open);
 - (i) before 8.00 am and after 10.00 pm on any Saturday, Sunday or Public Holiday; or
 - (ii) before 7.00 am or after 10.00 pm on any other day
- (a) cause an LAeq(15min) which exceeds the RBL background noise level by more than 5dB when measured at the boundary of any affected residence. The modifying factor adjustments in Section 4 of the EPA Industrial Noise Policy will be applied.

“affected residence” includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation and hospitals.

“boundary” includes any window or elevated window of an affected residence.

Terms in this condition have the same meaning as in the Noise Guide for Local Government and the Industrial Noise Policy published by the NSW Environment Protection Authority.

(Reason: To maintain residential amenity)

The proposed modifications satisfy the provisions of Section 4.55(1A) in that the proposal is considered to be substantially the same development as that which was originally approved by Council and will not have a substantial environmental impact.

Reason for Approval:

The proposed air conditioning unit is not visible from adjoining public land and is located within the breezeway of the approved development and does not result in adverse heritage impacts to the conservation area and is consistent for the reasons for approval granted in the original consent.

In summary, the proposal was found to be satisfactory for the reasons discussed throughout the report and that the Section 4.55(1A) application should be approved.

The development application as notified to adjoining properties in accordance with the North Sydney Community Participation Plan 2019.

How community views were taken into account:

The notification of the application resulted in **two** submissions. The concerns raised in the submissions have been addressed by additional conditions of consent to minimise the acoustic amenity impacts.

The conditions attached to the original consent for Development Application No. 415/19 by endorsed date of 24 December 2019 still apply.

ADVISINGS

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

DATE

Signature on behalf of consent authority
DAVID HOY
TEAM LEADER (ASSESSMENTS)