

Cong Yi  
8 Myrtle Street  
LEICHHARDT NSW 2040

D190/20  
MS3 (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED**  
**SECTION 4.55 MODIFICATION 190/20/2 - APPROVAL**

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**Development Consent Number:** 190/20

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**Land to which this applies:** Unit 2, 53 Amherst Street, Cammeray  
Lot No.: 2 DP: 30675

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**Applicant:** Cong Yi

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**Proposal:** Section 4.55(2) modification relating to alterations and additions to an existing dwelling

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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. **190/20** and registered in Council's records as Application No. **190/20/2** relating to the land described as **Unit 2, 53 Amherst Street, Cammeray**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 29 February 2021 has been determined in the following manner:

***A1. Development in Accordance with Plans (s4.55 Amendments)***

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	Title	Dated	Prepared	Received
3 of 8 B	Proposed Ground Floor Plan	6/10/2021	3D Works	6/10/2021
4 of 8 B	Proposed First Floor Plan	6/10/2021		6/10/2021
5 of 8 B	Proposed Roof Plan	6/10/2021		6/10/2021
6 of 8 B	Eastern and Western Elevations	6/10/2021		6/10/2021
7 of 8 B	Southern Elevation & Section A	6/10/2021		6/10/2021
8 of 8 B	Window and Door Schedule	6/10/2021		6/10/2021

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)

**1. *Impose Condition C13 Heritage Requirements***

**C13. Heritage Requirements**

The following heritage requirements are to be met:

- a) New roofing shall be terracotta tile to match the original Federation style dwelling or shall be corrugated profile metal roof sheeting. Standing seam roofing is not to be used.
- b) Weatherboards are to be natural weatherboard or composite material cladding equal to 'Scyon Linear' cladding, with a traditional profile and painted finish (not stained) laid in a horizontal pattern.
- c) New windows and doors are to have aluminium or steel framing sections of a width 45 mm or wider or are to be timber framed.
- d) New balustrades, louvres and the privacy screen are to have a painted finish, not a stained finish.
- e) The exterior paint colour scheme shall match the existing colour scheme on the original Federation dwelling or, any new scheme shall be related and sympathetic and related.

The Certifying Authority must also 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 be sympathetic to the character of the conservation area)

**2. *Impose Condition C14 Balcony Depth***

**C14. Balcony Depth**

The first-floor level rear balcony is to be limited to a depth of 1.2 m measured perpendicularly from the rear (southern) wall of the first level bedrooms. Plans and specifications

The Principal Certifier 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 that the use of the rear balcony is consistent with the approved use to minimise any privacy impacts to No. 55 Amherst Street.)

**3. *Impose Condition C15 Air Conditioners in Residential Premises***

**C15. 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 7.00am or after 10.00 pm on any other day
- (b) 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)

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**Reason for Approval:**

The modification application meets the requirements of section 4.55(2) and has been assessed with regard to the original reasons for approval and the matters for consideration as outlined in section 4.15(1) of the Act, which have been satisfied. The proposed development benefits from existing use rights, 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 are considered substantially the same development. The proposed internal reconfiguration would not result in any additional impact to the privacy of the adjoining property. The modification to the rear first floor balcony is considered acceptable provided that the balcony be limited to the approved depth of 1.2m to ensure that the use of the balcony is consistent with its anticipated passive use. The design and detailing of the proposed works are considered acceptable within the Cammeray Conservation Area subject to a condition to specify appropriate finishes.

The proposed modification is therefore considered reasonable and is recommended for approval.

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**How community views were taken into account:**

The application was notified in accordance with Council’s Community Engagement Protocol from 13 August 2021 until 27 August 2021. No submissions were received. Nevertheless, the potential impacts to the amenity of the surrounding properties were considered. Conditions of consent have previously been imposed which seek to minimise potential construction impacts.

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The conditions attached to the original consent for Development Application No. 190/20 by endorsed date of 29 February 2021 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**

**November 2021**

\_\_\_\_\_  
DATE

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