

Original signed by Robyn Pearson on 28/10/2021

Danny Fizza
7-9A Harriette Street
NEUTRAL BAY NSW 2089

D379/18
RT (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 379/18/3 - APPROVAL**

Development Consent Number: 379/18

Land to which this applies: 7-9A Harriette Street, Neutral Bay
Lot No.: 2, DP: 1075581

Applicant: Danny Fizza

Proposal: Section 4.55(2) modifications to DA379/18, which permitted the construction of a residential flat building comprising 10 apartments with basement parking for 17 cars. The proposed modifications include an extension of the bedroom 1 southern balcony on Level 3 and the associated re-orientation of the air conditioning condenser units.

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. **379/18** and registered in Council's records as Application No. **379/18/3** relating to the land described as 7-9A Harriette Street, Neutral Bay.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 5 June 2019, has been determined in the following manner:

- 1. To modify the development consent (DA 379/18) and modify conditions A1 and G17 to read as follows:**

Development in Accordance with Plans (S 4.55 Amendments)

- A1. The development being carried out in accordance with the following drawings:**

Drawing no.	Issue/ Revision	Title	Drawn by	Dated
DA 000	F	Cover Sheet	PBD Architects	21/05/19
DA 001	B	Demolition Plan	PBD Architects	15/02/19
DA 002	D	Site Analysis Plan	PBD Architects	24/04/19
DA 100	E	Basement 2 Plan	PBD Architects	24/04/19
DA 101	E	Basement 1 Plan	PBD Architects	24/04/19
DA 102	E	Lower Ground Floor	PBD Architects	24/04/19
DA 103	D	Ground Floor	PBD Architects	24/04/19
DA 104	D	Level 1 Floor Plan	PBD Architects	24/04/19
DA 105	E	Level 2 Floor Plan	PBD Architects	03/06/19
DA 106	F	Level 3 Floor Plan	PBD Architects	03/06/19
DA 107	F	Roof Plan	PBD Architects	03/06/19
DA 200	D	Elevations - 01	PBD Architects	24/04/19
DA 201	D	Elevations - 02	PBD Architects	24/04/19
DA 202	E	Elevations - 03	PBD Architects	03/06/19
DA 300	C	Sections 01	PBD Architects	15/02/19
DA 301	E	Sections 02	PBD Architects	21/05/19
DA 302	E	Sections 03	PBD Architects	21/05/19
DA 303	E	Sections 04	PBD Architects	03/06/19
DA 304	D	Sections 05	PBD Architects	21/05/19
DA 400	D	Material Finishes	PBD Architects	24/04/19
DA 401	C	Photomontage 01	PBD Architects	24/04/19
DA 402	C	Photomontage 02	PBD Architects	24/04/19
DA01	5	Lower Ground Floor	Wyer & Co	07/06/19
DA02	5	Ground Floor	Wyer & Co	07/06/19
DA03	5	Level 1	Wyer & Co	07/06/19
DA04	5	Level 2	Wyer & Co	07/06/19
DA05	5	Level 3	Wyer & Co	07/06/19

and endorsed with Council's approval stamp, except as modified and highlighted as such in red clouded areas on the following drawings for DA379/18/2:

Drawing no.	Issue/ Revision	Title	Drawn by	Dated
DA 100	G	Basement 2 Plan	PBD Architects	22/04/20
DA 101	G	Basement 1 Plan	PBD Architects	22/04/20
DA 102	H	Lower Ground Floor	PBD Architects	22/04/20
DA 103	F	Ground Floor	PBD Architects	22/04/20
DA 104	F	Level 1 Floor Plan	PBD Architects	22/04/20
DA 105	G	Level 2 Floor Plan	PBD Architects	22/04/20

DA 200	D	Elevations - 01	PBD Architects	24/04/19
DA 201	D	Elevations - 02	PBD Architects	24/04/19
DA 202	E	Elevations - 03	PBD Architects	03/06/19

and endorsed with Council's approval stamp, except as modified and highlighted as such in red clouded areas on the following drawings for DA379/18/3:

Drawing no.	Issue	Title	Drawn by	Dated
DA 106	G	Level 3 Floor Plan	PBD Architects	10.05.21
DA 107	G	Roof Plan	PBD Architects	10.05.21
DA 200	E	Elevations 01	PBD Architects	10.05.21
DA 202	G	Elevations 03	PBD Architects	10.05.21
DA 301	F	Sections 02	PBD Architects	10.05.21
DA 302	F	Sections 03	PBD Architects	10.05.21
DA 303	F	Sections 04	PBD Architects	10.05.21
DA 304	E	Sections 05	PBD Architects	10.05.21

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

Compliance with Certain Conditions

G17. Prior to the issue of any Occupation Certificate, Conditions C5, C12, C13, C17, C18, C23, C24, C26, C34, C35, E7, E14, G3, G5, G11, G13 and G14 must be certified as having been implemented on site and complied with.

(Reason: To ensure the development is completed in accordance with the requirements of this consent)

2. To insert a new conditions A7, C34, C35 and I6 as follows:

Terms of Consent (D379/18/3)

A7. Approval is granted for the following modifications only:

- (a) Extension of Level 3-bedroom balcony as amended by Condition C34 of this consent; and
- (b) Re-orientation of the air conditioning condenser units on the Level 3 non-trafficable area and associated screening.

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)

Level 3 Balcony

C34. The design of the proposed Level 3 balcony must be modified and as marked in red on the approved plans as follows:

- (a) The setback of the western edge of the proposed Level 3 balcony from the Level 3 western parapet wall be increased to 4m; and
- (b) A 1.5 m wide planter be provided on the eastern end of the proposed balcony.

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 amenity of the surrounding properties)

Screening for Air Conditioning Units

- C35. The height of the aluminium slats screens along the perimeter of the Level 3 air conditioning condenser units shall be 1.5 m as measured from the finished floor level to minimise visual impacts for the surrounding properties.

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 minimise visual impacts for the surrounding properties.)

Level 3 Balcony Lighting

- I6. The design and placement of the lighting for the Level 3 balcony must:
- (a) be directed away from any residential dwelling;
 - (b) not create a nuisance or negatively affect the amenity of the surrounding neighbourhood; and
 - (c) comply with AS4282-1997 control of obtrusive effects of outdoor lighting.

(Reason: To ensure residential premises are not affected by inappropriate or excessive illumination)

Reason for Approval:

The proposed modifications within this application satisfy the provisions of Section 4.55 (2) in that the proposed development remains substantially the same as what was approved by DA379/18. The proposed modifications will not materially alter the building height, setbacks, bulk and scale and the overall appearance as well as the use of the development as approved in the original DA.

The new exceedance in building height by 120mm/1% resulting from the new balcony balustrades would not change the approved maximum height of the apartment building. The non-compliance with the LEP building height limit would not cause material amenity impacts for the adjoining properties subject to the imposition of new conditions requiring design modifications.

The proposed modifications would be generally consistent with the requirements of the ADG and privacy for the adjoining properties would be protected by the imposition of additional conditions.

The issues raised in the submissions have been addressed in this report.

The proposal was found to be acceptable in the site circumstances and is recommended that the subject Section 4.55(2) application be approved subject to modifications to existing conditions and imposition of new conditions of consent.

How community views were taken into account:

The owners of the adjoining properties and the Hayes/Neutral Precincts were notified about the application between 18 June and 2 July 2021. The notification has attracted six (6) submissions including two (2) submissions from one (1) address and three (3) late submissions from one (1) household. The issues raised in the submissions have been addressed in this report.

The conditions attached to the original consent for Development Application No. 379/18 by endorsed date of 5 June 2019 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 4.55 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
ROBYN PEARSON
TEAM LEADER (ASSESSMENTS)