

Peter Procopio
14 Johnson Street
CHATSWOOD NSW 2064

D273/20
RT (CIS)

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 273/20/2 - APPROVAL

Development Consent Number:	273/20
Land to which this applies:	31 Fitzroy Street, Kirribilli Lot No.: 1, DP: 1017212
Applicant:	Peter Procopio
Proposal:	Section 4.55 (1A) modifications to consent condition C7 in D273/20 relating to fire safety upgrades within the existing building

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. **273/20** and registered in Council's records as Application No. **273/20/2** relating to the land described as **31 Fitzroy Street, Kirribilli**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 24 May 2021, has been determined in the following manner:

To delete condition C7 of the consent and insert in lieu thereof the following new condition, namely:

Upgrade of existing building - Fire Spread and Safe Egress

- C7. Pursuant to clause 94 of the EP&A Regulation 2000, aspects of the existing building must be brought into partial conformity with the Building Code of Australia (BCA)/National Construction Code (NCC).

Work must be carried out as part of the development so as to upgrade the building to bring it into partial compliance with the BCA in accordance with the recommendations contained within:

- (a) BCA Report dated 6 September 2021, prepared by John Briggs of John J Briggs Associates.

Plans and specifications showing the upgrading works which must be carried out under this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

A copy of the plans and specifications showing the required upgrading works must be submitted to Council for record.

Notes:

1. The Certifying Authority must be satisfied that the plans and specifications submitted prior to the issue of any Construction Certificate comply with the requirements of this condition.
2. The Certifying Authority issuing the Construction Certificate has no power to remove the requirements to upgrade the existing building as required by this condition.
3. Where this condition specifies compliance with the performance requirements of the NCC/BCA, the Certifying Authority, subject to their level of accreditation, may be satisfied as to such matters.
4. Should significant changes to the existing building/approved development be required to achieve compliance with the findings/recommendations of the above-mentioned BCA report, a Section 4.55 application would be required.

(Reason: Application of Regulations relating to Fire and Life Safety)

Reasons for Approval:

The proposed modifications are considered to be generally consistent with the originally approved development application and s.4.55 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 granted of development consent to the originally approved development and is considered to be acceptable.

The proposal only involves changes to the wording of Condition C7 (Upgrade of Building - Fire Spread and Safe Egress) to provide a specific reference to the latest BCA/NCC fire safety report. The proposed changes would not alter the overall appearance of the approved development and would have no material impacts for adjoining properties.

Having regard to the provisions of section 4.55 & 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. The application is therefore recommended for **approval**.

How community views were taken into account:

Notification of the subject application was waived in accordance with Section 3.4.2 of Council's Community Engagement Protocol because the application only involves changes to the wording of Condition C7 (Upgrade of Building - Fire Spread and Safe Egress) to provide a specific reference to the latest BCA/NCC fire safety report. The proposal would not change the overall appearance of the approved development and would have no material impacts for adjoining properties.

The conditions attached to the original consent for Development Application No. [File No] by endorsed date of 24 May 2021 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

8 November 2021

DATE

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