



Ms S E Tan  
C/- Atelier M  
32/82 Myrtle Street  
CHIPPENDALE NSW 2008

D219/20  
MR3  
(CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 MODIFICATION 219/20/4 - APPROVAL**

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**Development Consent Number:** 219/20

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**Land to which this applies:** 31 King Street, Waverton  
Lot No.: 1, DP: 105627

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**Applicant:** S E Tan

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**Proposal:** Section 4.55 (1A) application to delete Conditions C19, C21, G4 and G5 to reflect the revised stormwater system

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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. **219/20** and registered in Council's records as Application No. **219/20/4** relating to the land described as **31 King Street, Waverton**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **2 December 2020**, has been determined in the following manner:

- 1. To delete Condition C19 of the consent.***
- 2. To delete Condition C21 of the consent.***
- 3. To amend Condition C26 of the consent so as to read as follows:***

**BASIX Certificate**

C26. Under clause 97A(3) of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. No. A383285\_03 for the development are fulfilled. Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. 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 proposed development will meet the Government's requirements for sustainability and statutory requirements)

4. **To delete Condition G4 in the consent.**

5. **To delete Condition G5 of the consent.**

The proposal (as modified) involves deletion of conditions to reflect the revised stormwater system of the approved dwelling house alterations and additions. The proposed modification will result in development that is substantially and materially the same as approved by DA219/20 (as demonstrated in the above considerations under Clause 4.55 of the *Environmental Planning and Assessment Act 1979*).

**Reasons for Approval:**

The merits of the proposed modification and an assessment of this modification against relevant provisions and controls under environmental planning instruments (including the NSLEP 2013) have been described and detailed throughout this report. In summary, the proposed modification is considered acceptable and supportable, satisfying the above requirements and the provisions under Section 4.55 of the *Environmental Planning and Assessment Act 1979*.

Accordingly, it is recommended that the following conditions are amended in the consent:

- Delete Condition C19 to reflect modified stormwater system.
- Delete Condition C21 to reflect modified stormwater system.
- Amend Condition C26 to reflect revised BASIX certificate.
- Delete Conditions G4 and G5 to reflect modified stormwater system.

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

The proposal as modified is considered to be in the public interest for the reasons stated throughout this report.

The conditions attached to the original consent for Development Application No. **219/20** by endorsed date of **2 December 2020** still apply.

**ADVISINGS**

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

**28 February 2023**

DATE



Signature on behalf of consent authority

MIGUEL RIVERA

**SENIOR ASSESSMENT OFFICER**