

Samuel Sebastian Funch
31 Carr Street
WAVERTON NSW 2060

D347/18
LD (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 347/18/2 – APPROVAL**

Development Consent Number: 347/18/3

Land to which this applies: 31 Carr Street, Waverton
Lot No.: 42, DP: 966

Applicant: Samuel Sebastian Funch

Proposal: A Section 4.55 (2) Application to modify DA347/18 with regards to increased first floor RL, increased roof height, increased bay window height, new skylights and solar panels.

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. **347/18** and registered in Council's records as Application No. **347/18/3** relating to the land described as **31 Carr Street, Waverton**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 8 February 2019, has been determined in the following manner: -

1. Add Conditions A4 and C13 as follows:

- A4. 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:

Drawing Number	Revision/Issue	Title	Drawn by	Dated
DA-120	F	Demolition Floor Plans	Place Studio	3/09/2020
DA-201	F	Ground Floor Plan	Place Studio	3/09/2020
DA-202	F	First Floor Plan	Place Studio	3/09/2020
DA-203	F	Roof & Stormwater Concept Plan	Place Studio	3/09/2020
DA-300	F	Section 1	Place Studio	3/09/2020
DA-301	F	Section 2	Place Studio	3/09/2020
DA-400	F	West (Front) Elevation & Fence Detail	Place Studio	3/09/2020

DA-401	F	East (Rear) Elevation	Place Studio	3/09/2020
DA-402	F	South (Side) Elevation	Place Studio	3/09/2020
DA-403	F	North (Side) Elevation	Place Studio	3/09/2020

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)

Skylights, solar panels and polycarbonate roof

C13. Skylight flashings and frames to be coloured to match the roof material. Skylights to sit no higher than 100mm above roof plane when in a closed position.

Solar panels to sit flush with colorbond roof cladding.

The polycarbonate roof, on the eastern side of the colorbond roof, must be translucent.

Plans and specifications which comply 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 fully satisfy the requirements of this condition.

(Reason: To minimise the visual impact of the skylights and solar panels on the roof plane and to ensure reasonable privacy is maintained with 29 Carr Street)

2. Modify Condition C10 and II as follows:

BASIX Certificate

C10. 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. A322674_02 (Unit 1) and No. A322744_02 (Unit 2) both dated 10 August 2020 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)

Roof terrace

II. For the life of the development, no temporary or permanent structures including, but not limited to, screens (with the exception of that indicated on the plans forming part of Condition A4), umbrellas, shade sails, pergolas or the like are to be erected on the roof terrace.

(Reason: To ensure a reasonable level of view sharing for the properties to the north of the subject site)

Reason for approval:

The proposed modification has been assessed against Section 4.55(2) of the Environmental Planning and Assessment Act 1979 (as amended) and found to be generally acceptable in the site circumstances.

The proposed modifications result in the raising of the level 1 floor level and roof terrace level to achieve compliance with the minimum floor to ceiling height of 2.41m. Whilst this will result in a minor increase to the height of the rear part of the building (329mm), there will be no material increase to the form, massing and scale of the building or adverse amenity impacts for adjoining properties. The view study diagrams demonstrate that this increase will not result in any unreasonable view impacts for surrounding properties.

The amended plans provided for a “rafter style” privacy screen for a length of 1200m (with a 300mm eave overhang) in lieu of 1500mm eastern eave overhang (that was not constructed from the approval). The “rafter style” privacy screen with 100mm spacing between rafters will provide for improved privacy for 29 Carr Street (as compared to if there was no 1500mm eastern eave overhang) and will reduce the trafficable area to same (<16m²) as the approval. That is because the height between the top of the rafter (centre) and floor level of terrace is 1.9m and therefore likely to only be used for storage and not as a trafficable part of the terrace.

The proposed modification will not result in any material increase in overshadowing of surrounding properties during the winter solstice.

The proposed modifications will also not adversely impact the heritage significance of the conservation area. The proposed skylights and solar panels will not be highly visible from the public domain.

Consequently, the Section 4.55(2) application is considered reasonable in the circumstances and therefore can be approved subject to modified and additional conditions of consent.

How community views were taken into account:

The S4.55 application was notified to the Precinct Committee and surrounding properties between 24 July and 7 August 2020. Two (2) submissions (1 in objection and 1 in support) were received. The issues raised in the objection to the application were summarised in delegated report.

The applicant submitted amended plans on 8 September 2020. The amended plans provided for a “rafter style” privacy screen for a length of 1200mm (with 300mm eave overhang) in lieu of 1500mm eastern eave overhang (that was not constructed from the approval). The “rafter style” privacy screen with 100mm spacing between rafters will provide for improved privacy (as compared to if there was no 1500mm eastern eave overhang) and will reduce the trafficable area to same (<16m²) as the approval. That is because the height between the ridge and floor level of terrace is 1.9m and will likely be used as storage rather than as a trafficable area. Given this amendment which will result in reduced privacy impacts to 29 Carr Street and no additional view impacts for 35 Carr Street the amended plans were not required to be notified in accordance with the Community Engagement Protocol.

The conditions attached to the original consent for Development Application No. 347/18 by endorsed date of 8 February 2019 still apply.

ADVISINGS

- (a) Council is always prepared to discuss its decisions and in this regard, please do not hesitate to contact **the undersigned**. 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 & 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 & Assessment Act.

Endorsed for and on behalf of North Sydney Council

DATE

Signature on behalf of consent authority
LUKE DONOVAN
SENIOR ASSESSMENT OFFICER