

Original signed by: Luke Donovan Dated: 3/2/2021

O2 Architecture Pty Ltd  
Unit 6, 13-15 Smail Street  
ULTIMO NSW 2007

D61/20  
LD(CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 MODIFICATION 61/20/2 – APPROVAL**

**Development Consent Number:** 61/20/2

**Land to which this applies:** 85 Bay Road, Waverton  
Lot No.: 0, SP: 77541

**Applicant:** O2 Architecture Pty Ltd

**Proposal:** To modify a consent with respect to increasing the height and floor level of the attic level of Unit 1 by 250 mm.

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. **61/20** and registered in Council's records as Application No. 61/20/2 relating to the land described as **85 Bay Road, Waverton**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 5 August 2020, has been determined in the following manner: -

**1. To add Condition A4 as follows:**

**Development in Accordance with Plans (S4.55 Amendments)**

A1. 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	Title	Drawn by	Dated
DA06	D	Attic Floor Plan	O2 Architecture	24/11/2020
DA08	D	Elevations	O2 Architecture	24/11/2020
DA09	D	Elevations	O2 Architecture	24/11/2020
DA10	D	Section	O2 Architecture	24/11/2020
DA17	B	Section	O2 Architecture	24/11/2020

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)

---

**Reason 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 granting of development consent to the originally approved development and is considered to be acceptable.

The additional building height of 250mm will not adversely impact views or solar access for surrounding properties. The height of the development remains compatible with surrounding developments in the locality. The justification provided by the applicant in support of the additional height variation is considered to be well founded in the site circumstances. The modification will allow for the retention of existing significant internal fabric to the first floor of Unit 1 (Wunderlich pressed metal ceilings) which will result in an improved heritage outcome for the development.

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:**

The subject application was notified to adjoining properties and Waverton Precinct Committee inviting comment between 18 December 2020 and 25 January 2021.

---

The conditions attached to the original consent for Development Application No. 61/20 by endorsed date of 5 August 2020 still apply.

**ADVISINGS**

- (a) Council is always prepared to discuss its decisions and in this regard, please do not hesitate to contact **Luke Donovan**. 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  
**DAVID HOY**  
**TEAM LEADER (ASSESSMENTS)**