



CE Waters Development Pty Ltd
Suite 5, Level 17, 100 Miller Street
NORTH SYDNEY NSW 2060

D92/21
RT (CPE)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 92/21/7 - APPROVAL**

Development Consent Number: 92/21

Land to which this applies:

12-14 Waters Road, Neutral Bay
Lot No.: 18, DP: 537700
SP 68360, SP 75048, SP 88483

Applicant: CE Waters Pty Ltd

Proposal:

Section 4.55(1A) application seeking removal of two (2) street trees during construction, planting of placement street trees and associated modifications to Conditions C23, C26, C27, C28, C43, D4, E16, G14 and G15

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. **92/21** and registered in Council's records as Application No. **92/21/7** relating to the land described as **12-14 Waters Road, Neutral Bay**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **22 December 2021**, has been determined in the following manner:

- To modify Conditions C23, C26, C27, C28, C43, D4, E16, G14 and G15 to read as follows:***

Tree Bond for Public Trees

- C23. Prior to the issue of any construction certificate, security in the sum of \$95,000.00 must be provided to Council for the protection of trees in public places, including the making good of any damage caused to such trees. The security is to be provided in accordance with the Schedule below.

The security required by this condition and in the schedule contained later in these conditions must be provided by way of a deposit with the Council; or other such guarantee that is satisfactory to Council (such as a bank guarantee). Any guarantee provided as security must name North Sydney Council as the nominated beneficiary and must not be subject to an expiry date.

The security will be refundable following the expiration of 6 months from the issue of any final Occupation Certificate but only upon inspection and release by Council's Landscape Development Officer.

If any tree is removed or damaged Council may deduct from this security the reasonable cost of replacement with a tree of the same species and to a similar stage of growth it would have attained at the completion of the work.

In the case of any tree, which cannot be replaced with a similar specimen, the security for that tree will be forfeited to Council and used to provide replacement street plantings.

SCHEDULE

Tree Species	Location	Bond
T1-T5 <i>Platanus orientalis</i> (14-18m)	Council verge - Waters Lane, opposite rear 12-14 Waters Road	\$7,500 per tree x 5 = Total \$37,500
T7 <i>Lophostemon confertus</i> (11mx12m)	Council verge -Waters Road frontage-12-14 Waters Road	\$15,000
T11 and T12 <i>Livistona australis</i> (6-7m)	Council verge -Cnr Grosvenor Street and Waters Road	\$7,500 per tree x 2 = Total \$15,000
T13, T16 & T17 <i>Lophostemon confertus</i> (5-9m)	Council verge outside 12-14 Waters Road - Grosvenor Street frontage	\$7,500 per tree x 5 3 = Total \$22,500
<i>Pittosporum rhombifolium</i> (6m)	Council verge Cnr Grosvenor Street and Waters Lane	\$5,000

(Reason: Protection of existing environment public infrastructure, community assets and significant trees)

Protection of Trees

C26. The following tree(s) are required to be protected and retained as part of the development consent in accordance with AS 4970-2009 - Protection of trees on development sites:

Tree	Location	Height
T1-T5 <i>Platanus orientalis</i>	Council verge in Waters lane, opposite rear 12 Waters Road	(var. 14-18m)
T7 <i>Lophostemon confertus</i>	Council verge -Waters Road frontage-12-14 Waters Road	11m x 12m
T11 and T12 <i>Livistona australis</i>	Council verge -Corner Grosvenor Street and Waters Road	6-7m
T13, T16 & T17 <i>Lophostemon confertus</i>	Council verge outside 12-14 Waters Road - Grosvenor Street frontage	5-9m
<i>Pittosporum rhombifolium</i>	Council verge Corner Grosvenor Street and Waters Lane	6m

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.

Any tree(s) shown as being retained on the approved plans (regardless of whether they are listed in the above schedule or not) must be protected and retained in accordance with this condition.

(Reason: Protection of existing environmental and community assets)

Approval for Removal of Trees

C27. The following trees are approved for removal in accordance with the development consent:

Trees to be removed	Location	Height
T6 <i>Lophostemon confertus</i>	Council verge -Waters Road frontage-12-14 Waters Road	13m x 11m
T8 <i>Syagrus romanzoffianum</i>	Front setback- Waters Road frontage-12-14 Waters Road	11m
T14 & T15 <i>Lophostemon confertus</i>	Council verge outside 12-14 Waters Road - Grosvenor Street frontage	5-9m

A report detailing the measures to be employed during construction shall be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

All measures required by the said report must be complied with at all times in the carrying out of the development.

(Reason: To ensure the protection and longevity of existing significant trees)

Pruning of Trees

C28. All pruning works shall to the following tree(s) shall be undertaken under the guidance of an appropriately qualified arborist/tree surgeon in accordance with Australian Standard AS 4373-2007 - Pruning of Amenity Trees:

Trees that may require Pruning	Location	Height
T1-T5 <i>Platanus orientalis</i>	Council verge-Waters lane, opposite rear 12-14 Waters Road	14-18m
T7 <i>Lophostemon confertus</i>	Council verge -Waters Road frontage-12-14 Waters Road	11m x 12m
T13, T16 & T17 <i>Lophostemon confertus</i>	Council verge outside 12-14 Waters Road - Grosvenor Street frontage	5-9m

A report detailing the measures to be employed during construction shall be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

All measures required by the said report must be complied with at all times in the carrying out of the development.

Minor pruning only shall be permitted. All pruning to be carried out as detailed in the arborist report prepared by Earthscape Horticultural Services dated March 2021, and under supervision of the project arborist.

(Reason: To ensure the protection and longevity of existing significant trees)

Security Deposit/Guarantee Schedule

C43. All fees and security deposits/guarantees in accordance with the schedule below must be provided to Council prior to the issue of any Construction Certificate:

Security Deposit/Guarantee	Amount (\$)
Street Tree Bond (on Council Property)	\$95,000.00
Infrastructure Damage Bond	13,000.00
Drainage Construction Bond	7,100.00
Engineering Construction Bond	328,000.00
TOTAL BONDS	\$443,100.00

Note: The following fees applicable

Fees	Amount (\$)
Section 7.11 contribution	354,631.74
TOTAL FEES	\$354,631.74

The security required by the above schedule must be provided by way of a deposit with the Council; or other such guarantee that is satisfactory to Council (such as a bank guarantee). Any guarantee provided as security must name North Sydney Council as the nominated beneficiary and must not be subject to an expiry date.

(Reason: Compliance with the development consent)

Protection of Public Trees

D4. The following tree(s) are required to be protected and retained as part of the development consent in accordance with AS 4970-2009 - Protection of trees on development sites:

Tree Height	Location	Protection
T1-T5 <i>Platanus orientalis</i> 14-18m	Council verge: Waters Lane, opposite rear 12-14 Waters Road	Trunk & branch protection
T7 <i>Lophostemon confertus</i> 11m x 12m	Council verge: Waters Road frontage-12-14 Waters Road	Trunk & branch protection
T11 & T12 <i>Livistona australis</i> 6-7m	Council verge: Corner Grosvenor Street and Waters Road	1.8m high steel mesh tree protection fencing
T13, T16 & T17 <i>Lophostemon confertus</i> 5-9m	Council verge outside 12-14 Waters Road - Grosvenor Street frontage	1.8m high steel mesh tree protection fencing
<i>Pittosporum rhombifolium</i> 6m	Council verge: Corner Grosvenor Street and Waters Lane	1.8m high steel mesh tree protection fencing

Trunk protection to be installed by first wrapping the stem of the tree in hessian or like material then strapping timber battens over the top. It is recommended that timber battens with the dimensions of length 2000 mm, width 75 mm and depth 50 mm are used. The battens are not to be directly screwed or nailed into the tree.

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: Protection of existing environmental and community assets)

Trees to be Removed

E16. All trees on the site must be protected and retained save for those expressly identified below as being approved for removal:

Trees to be Removed	Location	Height
T6 <i>Lophostemon confertus</i>	Council verge: Waters Road frontage - 12-14 Waters Road	13m x 11m
T8 <i>Syagrus romanzoffianum</i>	Front setback- Waters Road frontage - 12-14 Waters Road	11m
T14 & T15 <i>Lophostemon confertus</i>	Council verge outside 12-14 Waters Road - Grosvenor Street frontage	5-9m

(Reason: To ensure compliance with the terms of this development consent)

Required Tree Planting

G14. On completion of works and prior to the issue of an Occupation Certificate trees in accordance with the schedule hereunder must be planted in Council’s nature strip/footpath: - (as per landscape plan prepared by Arcadia dated March 2021).

Tree Species	Location	Pot Size
2 x <i>Lophostemon confertus</i>	Council verge: Waters Road frontage – 12-14 Waters Road	200 L
2 x <i>Lophostemon confertus</i>	Council verge: Grosvenor Street frontage – 12-14 Waters Road	200 L

The installation of such trees, their current health and their prospects for future survival must be certified upon completion by an appropriately qualified horticulturalist.

Upon completion of installation and prior to the issue of an Occupation Certificate an appropriately qualified horticulturalist must certify that any trees planted in accordance with this condition are healthy and have good prospects of future survival. The certification must be submitted with any application for an Occupation Certificate.

(Reason: To ensure that replacement plantings are provided to enhance community landscaped amenity and cultural assets)

Certification of Tree Condition

- G15. Prior to the issue of an Occupation Certificate, a report prepared by an appropriately qualified person (being an arborist or the like) must be submitted to the Certifying Authority, describing the health of the tree(s) specifically nominated below:

Tree	Location	Height
T1-T5 <i>Platanus orientalis</i>	Council verge in Waters lane, opposite rear 12 Waters Road	(var. 14-18m)
T7 <i>Lophostemon confertus</i>	Council verge -Waters Road frontage-12-14 Waters Road	11m x 12m
T11 & T12 <i>Livistona australis</i>	Council verge -Corner Grosvenor Street and Waters Road	6-7m
T13-T17 <i>Lophostemon confertus</i>	Council verge outside 12-14 Waters Road - Grosvenor Street frontage	5-9m
<i>Pittosporum rhombifolium</i>	Council verge Corner Grosvenor Street and Waters Lane	6m
2 x <i>Lophostemon confertus</i>	Council verge : Waters Road frontage – 12 - 14 Waters Road	200 L pot size
2 x <i>Lophostemon confertus</i>	Council verge: Grosvenor Street frontage – 12-14 Waters Road	200 L pot size

The report must detail the condition and health of the nominated tree(s) upon completion of the works and shall certify that the tree(s) has/have not been significantly damaged during the works on the site and has/have reasonable prospects for survival.

(Reason: To ensure compliance with the terms of this consent)

Reasons for Approval:

The proposal satisfies the provisions of Section 4.55(1A) in that the development would be substantially the same as what was approved under DA 92/21 as the proposed modifications will not alter the use and the general form of the development as originally approved.

The proposed modifications would not change the overall level of compliance with the relevant SEPP65/ADG, LEP and DCP provisions and requirements.

The proposed modifications would not change the development outcome in terms of height, bulk and scale, envelope and appearance of the approved mixed-use development.

The proposed modifications would have no material amenity impacts for the adjoining properties.

The proposal was found to be acceptable in the site circumstances and is recommended that the subject Section 4.55(1A) application be approved with modifications to the relevant conditions.

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 proposal relates to the removal of street trees during the construction phase of the development and planting of replacement trees after the completion of construction works. The proposed changes would not result in changes to the appearance of the approved development as seen from the adjoining properties and would have no additional impacts for these properties.

The conditions attached to the original consent for Development Application No. **92/21** by endorsed date of **22 December 2021** still apply.

ADVISINGS

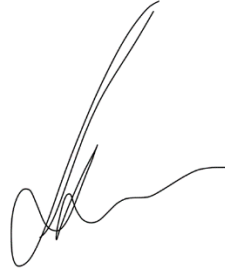
- (a) Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact **Robin Tse**. However, if you wish to pursue your rights of appeal in the Land and Environmental Court pursuant to Section 8.7 of *the Environmental Planning and Assessment Act 1979* (as 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

10 October 2023

DATE



Signature on behalf of consent authority
ISOBELLA LUCIC
TEAM LEADER (ASSESSMENTS)