



Progressive Plans
The Trustee for the Varley Family Trust
16 Bowling Green Lane
AVALON BEACH NSW 2107

D329/23
AB7 (CPE)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
NOTICE OF DETERMINATION - Approval**

| | |
|--|--|
| Development Application Number: | 329/23 |
| Land to which this applies: | 54 Barry Street, Neutral Bay Lot No.: 37, DP: 258409 |
| Applicant: | Progressive Plans |
| Proposal: | Tree removal |
| Determination of Development Application: | Subject to the provisions of Section 4.17 of <i>the Environmental Planning and Assessment Act 1979</i> , approval has been granted subject to conditions in the notice of determination. |
| Date of Determination: | 22 March 2024 |

Reasons for Approval

The development application has been assessed against the relevant planning instruments and policies, in particular the North Sydney Local Environmental Plan 2013 and the North Sydney Development Control Plan 2013, and generally found to be satisfactory.

The proposed removal of the *Archontophoenix cunninghamiana* palm tree adjacent to the garage has been considered with regard to the streetscape and landscaped context of the site, and its removal is considered to be acceptable subject to appropriate replacement tree planting within the front setback by consent conditions.

Subject to these conditions, the development will generally be sympathetic with the existing dwelling, the character of the Forsyth Neighbourhood, and nearby bushland and foreshore areas. There would be no adverse amenity impact for any adjoining property as a result of the proposal.

The application is considered to be acceptable in the circumstances and it is recommended for approval subject to standard and site-specific conditions.

Consent to operate from: 22 March 2024

Consent will lapse on: 22 March 2029

Period of Consent

Subject to Section 4.20 of the Act, this consent becomes effective and operates from the date listed above. The consent lapses five years after the date of consent in accordance with Section 4.53 of the Act and cannot be extended. To activate this consent, works must physically commence onsite 22 March 2029.

How community views were taken into account:

The subject application was notified to adjoining properties and the Neutral Precinct Committee seeking comment and no submissions were received. Nevertheless, as demonstrated in this report it is considered that the proposal will not have any impact upon the general amenity, privacy, views, stability, or solar access for adjoining properties, subject to appropriate conditions of consent to maintain an appropriate landscaped context.

Review of determination and right of appeal:

Within six months after the date of notification of the decision, a review of this determination can be requested under Division 8.2 of the Act or an appeal to the Land and Environment Court made pursuant to the provisions of Section 8.7 of the Act. A review of determination should be lodged as soon as possible, and preferably no later two months after the date of notification of the decision to enable the review to be completed within the six-month period.

Plans endorsed by the consent authority - please refer to condition A1.

Endorsed for and on behalf of North Sydney Council

22 March 2024

DATE



Signature on behalf of consent authority
ANDREW BEVERIDGE
SENIOR ASSESSMENT OFFICER

(i) **Conditions**

Consent is granted subject to the following conditions imposed pursuant to Section 4.17 of *the Environmental Planning and Assessment Act 1979* ("the *Act*") and the provisions of the Environmental Planning and Assessment Regulation 2021 ("the *Regulation*") such conditions being reasonable and relevant to the development as assessed pursuant to Section 4.17 of the *Act*.

(ii) **Definitions**

Unless specified otherwise, words have the same meaning as defined by the *Act*, the *Regulation*, and the *Interpretation Act 1987* as in force at the date of consent.

Applicant means the applicant for this consent.

Approved Plans means the plans endorsed by Council referenced by this consent as amended by conditions of this consent.

AS or **AS/NZS** means Australian Standard® or Australian/New Zealand Standard®, respectively, published by Standards Australia International Limited.

NCC means the National Construction Code as published by the Australian Building Codes Board as in force at the date of issue of any *Construction Certificate*.

Council means North Sydney Council.

Court means the Land and Environment Court.

Local Native Plants means species of native plant endemic to North Sydney LGA.

Stormwater Drainage System means all works, facilities and documentation relating to:

- The collection of stormwater,
- The retention of stormwater,
- The reuse of stormwater,
- The detention of stormwater,
- The controlled release of stormwater; and
- Connections to easements and public stormwater systems.

Owner means the owner of the *site* and successors in title to the *site*.

Owner Builder has the same meaning as in the *Home Building Act 1989*.

Principal Certifier for building or subdivision work means the certifier appointed as the principal certifier for the building work under section 6.6 (1) or for the subdivision work under section 6.12 (1).

Principal Contractor for building work means the person responsible for the overall coordination and control of the carrying out of the building work.

Note: If any residential building work is involved, the principal contractor must be the holder of a contractor licence under the *Home Building Act 1989*.

Professional Engineer has the same meaning as in the *NCC*.

Public Place has the same meaning as in the *Local Government Act 1993*.

Road has the same meaning as in the *Roads Act 1993*.

SEE means the final version of the Statement of Environmental Effects lodged by the *Applicant*.

Site means the land being developed subject to this consent.

NSLEP 2013 means *North Sydney Local Environmental Plan 2013*

NSDCP 2013 means *North Sydney Development Control Plan 2013*

Work for the purposes of this consent means:

- the use of land in connection with development,
- the subdivision of land,
- the erection of a building,
- the carrying out of any work,
- the use of any site crane, machine, article, material, or thing,
- the storage of any waste, materials, site crane, machine, article, material, or thing,
- the demolition of a building,
- the piling, piercing, cutting, boring, drilling, rock breaking, rock sawing or excavation of land,
- the delivery to or removal from the *site* of any machine, article, material, or thing, or
- the occupation of the *site* by any person unless authorised by an *occupation certificate*.

Note: **Interpretation of Conditions** - Where there is any need to obtain an interpretation of the intent of any condition this must be done in writing to Council and confirmed in writing by Council.

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A. Conditions that Identify Approved Plans

Terms of the Consent

- A1. Approval is granted for the removal of a tree (*T8 Archontophoenix cunninghamiana*) within the front setback of 54 Barry Street, Neutral Bay. This tree is to be replaced with two new trees in accordance with the conditions of this consent.

No approval is given or implied in this consent for any other works, both internal and external, within the subject property.

(Reason: To ensure the terms of the consent are clear)

Development in Accordance with Plans/Documentation

- A2. The development must be carried out in accordance with the following drawings endorsed with Council's approval stamp and other documentation listed in the table to this clause, or cited by other conditions, and as amended by other conditions of this consent.

| No. | Title | Drawn by | Dated | Received |
|------|-------------------|-------------------|------------|------------|
| DA02 | Ground Floor Plan | Progressive Plans | 14/11/2023 | 22/11/2023 |
| DA03 | Site Plan | Progressive Plans | 14/11/2023 | 22/11/2023 |
| DA04 | South Elevation | Progressive Plans | 14/11/2023 | 22/11/2023 |

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information)

Plans on Site

- A3. A copy of all plans endorsed with Council's approval stamp, specifications, and documents (including the plans, specifications and documents submitted and approved with the Construction Certificate) must be kept on site at all times so as to be readily available for perusal by any officer of Council or the Principal Certifier.

All documents kept on site in accordance with this condition must be provided to any officer of the Council or the Principal Certifier upon their request.

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information and to ensure ongoing compliance)

C. Prior to the Commencement of any Works

Approval for Removal of Trees

- C1. The following tree(s) are approved for removal in accordance with the development consent:

| Trees that are acceptable to remove | Location | Height |
|--|---|---------|
| <i>T8 Archontophoenix cunninghamiana</i> | Within the front setback, adjacent to the garage, of 54 Barry Street. | 9m x 6m |

Removal of any other tree on the site is not approved, excluding species exempt or already approved for removal under Council's Tree Preservation Order.

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)

Amendments to the Landscape Plan

C2. The plans approved as per Condition A1 of this consent, must be amended as follows to provide an appropriate landscaped setting:

- 1) The removal of T8 *Archontophoenix cunninghamiana* (9m x 6m) as per **Condition C1** is permitted subject to the replacement planting of a minimum of 2 x 75-litre pot size canopy trees capable of achieving a minimum mature height of 7m. These trees must be planted within the front setback of the site.

Amended plans complying with this condition must be submitted to the Council as the consent authority for written approval prior to the commencement of any works.

(Reason: To ensure an appropriate landscaped context and to demonstrate compliance with Council's controls)

Protection of Trees

C3. All trees that are specifically nominated to be retained by notation on plans or by condition as a requirement of this consent must be maintained and protected during demolition, excavation, and construction on the site in accordance with AS4970-2009 (Protection of trees on development sites).

(Reason: To ensure compliance with the requirement to retain significant planting on the site)

E. During Approved Works

No Removal of Trees on Public Property

E1. No trees on public property (footpaths, roads, reserves, etc.) unless specifically approved by this consent shall be removed or damaged during construction including for the erection of any fences, hoardings, or other temporary works.

(Reason: Protection of existing environmental infrastructure and community assets)

Protection of Trees

E2. All trees required to be retained, as part of this consent must be protected from any damage during construction works in accordance with AS4970-2009.

In the event that any tree required to be retained is damaged during works on the site, notice of the damage must be given to Council forthwith.

Notes:

- a. If the nominated tree is damaged to a significant degree or removed from the site without prior

written approval being obtained from Council, the issuing of fines or legal proceedings may be commenced for failure to comply with the conditions of this consent.

- b. An application to modify this consent pursuant to Section 4.55 of *the Environmental Planning and Assessment Act 1979* will be required to address the non-compliance with any of the conditions of consent relating to the retention of nominated trees, and Council may require tree replenishment.

(Reason: Protection of existing environmental infrastructure and community assets)

Trees to be Removed

- E3. All trees on the site must be protected and retained save for those expressly identified below as being approved for removal:

| Trees that are acceptable to remove | Location | Height |
|--|---|---------------|
| T8 <i>Archontophoenix cunninghamiana</i> | Within the front setback, adjacent to the garage, of 54 Barry Street. | 9m x 6m |

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

Construction Hours

- E4. All activities and works approved under this consent must be restricted to within the hours stipulated in the following table:

| Location | Standard Construction Hours | |
|--|------------------------------------|-------------------|
| | Day | Hours |
| All zones (Excl. E2 Commercial Centre MU1 Mixed-use | Monday - Friday | 7.00 am - 5.00 pm |
| | Saturday | 8.00 am - 1.00 pm |
| | Sunday, Public holiday | No work permitted |

Construction activities for development approved under this consent must be carried out in accordance with the standard construction hours above, the EPA Noise Policy for Industry 2017 and any Construction Noise Management Plan required under this consent.

In the event of breach to the approved hours of construction Council take may take enforcement action under Part 9 of the EP&A Act 1979 and in accordance with Council's adopted Compliance and Enforcement Policy.

(Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community)

Health and Safety

- E5. All work undertaken must satisfy applicable occupational health and safety and construction safety regulations, including any WorkCover Authority requirements to prepare a health and safety plan. Site fencing must be installed sufficient to exclude the public from the site. Safety signs must be erected that warn the public to keep out of the site and provide a contact telephone number for enquiries.

Further information and details regarding occupational health and safety requirements for construction sites can be obtained from the internet at www.workcover.nsw.gov.au.

(Reason: To ensure the health and safety of the community and workers on the site)

Plant and Equipment Kept Within Site

- E6. All plant and equipment used in the undertaking of the development/ works, including concrete pumps, wagons, lifts, mobile cranes, hoardings etc, must be situated within the boundaries of the site (unless a permit is obtained from Council beforehand) and so placed that all concrete slurry, water, debris, and the like must be discharged onto the building site, and is to be contained within the site boundaries.

Details of Council requirements for permits on public land for standing plant, hoardings, storage of materials and construction zones and the like are available on Council's website at www.northsydney.nsw.gov.au.

(Reason: To ensure public safety and amenity on public land)

G. Prior to the Completion of any Works

Certification of Tree Condition

- G1. Prior to the completion of works, a report prepared by an appropriately qualified person (being an arborist or the like) must be submitted to Council, notifying Council of the completion of the approved works, and describing the health of the trees specifically nominated below: -

| Tree | Location | Size |
|--|-----------------------------------|----------|
| 2 x Canopy Trees (as required by Condition C2) | Planted within the front setback. | 75-litre |

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)

I. Ongoing/Operational Conditions

Maintenance of Approved Landscaping

- I1. The owner of the premises at 54 Barry Street, Neutral Bay, is to maintain the landscaping approved by this consent generally in accordance with the approved plans, and as amended by the conditions of this consent.

Any replacement plants required shall be advanced in growth and be selected to maintain the anticipated mature height, canopy density and nature of those plant species as originally approved.

(Reason: To ensure maintenance of the amenity, solar access, and views of adjoining properties)