



Ingham Planning Pty Ltd  
Se 19, 303 Pacific Highway  
LINDFIELD NSW 2070

D137/23  
DWH (PE)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 MODIFICATION 137/23/2 - APPROVAL**

**Development Consent Number:** 137/23

**Land to which this applies:** 5-7 Lower Wycombe Road, Neutral Bay  
Lot No.: 19 & 20, DP: 3183  
Lot No.: 1061, DP: 752067

**Applicant:** Ingham Planning Pty Ltd

**Proposal:** Section 4.55(1) Modification to correct errors in relation to tree numbering and date of determination

Pursuant to Section 4.55(1) of the Act notice is hereby given of the determination by the consent authority of your request for a modification to Development Consent No. **137/23** and registered in Council's records as Application No. **137/23/2** relating to the land described as **5-7 Lower Wycombe Road, Neutral Bay**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **1 November 2023**, has been determined in the following manner:

- The date of operation on the Notice of Determination is to be corrected and amended to read "30 November 2023" with a lapsing date of 1 December 2028.**
- To amend Conditions C25, C26 and E16 to read as follows:**

**Protection of Trees**

C25 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:

SCHEDULE

Tree	Location	Height
T16 1 x Water Gum, <i>Tristaniopsis laurina</i>	Within road reserve, immediately adjacent to Nos. 5-7 Lower Wycombe Road, Neutral Bay.	8m x 12m
T19 1 x Chinese Tallowwood, <i>Sapium sebiferum</i>	Within road reserve, in front of Nos. 5-7 and 3 Lower Wycombe Road, Neutral Bay.	5m x 5m

Site Trees

Tree	Location	Height
T1 1 x Lemon-scented Gum <i>Corymbia citriodora</i>	Front setback	20m x 16m
T2 1 x Lemon-scented Gum <i>Corymbia citriodora</i>	Western side setback	15m x 7m
T3 1 x Broad-leaved Paperbark <i>Melaleuca quinquenervia</i>	Western side setback	10m x 7m
T4 1 x Lemon-scented Gum <i>Corymbia citriodora</i>	Western side setback	20m x 16m
T6 1 x Lemon-scented Gum <i>Corymbia citriodora</i>	Western side setback	18m x 12m
T7 1 x River She-Oak <i>Casuarina cunninghamiana</i>	Rear, south-western corner next to building	15m x 7m
T11 & T13 River She-Oak <i>Casuarina cunninghamiana</i>	Southern landscaped area to rear of the site adjacent to existing stair	7m x 8m
T14 1 x Lemon-scented Gum <i>Corymbia citriodora</i>	Front setback, planter bed adjacent to driveway	18m x 18m

Plans and specifications complying with this condition must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The Principal Certifier must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

Sensitive construction techniques including hand excavation, pier and beam, flexible location of piers/footings must be used within the TPZ of any protected tree. No roots greater than 40mm shall be cut.

All work within the TPZ of protected trees (including realignment of SW and utilities pits) shall be carried out using sensitive construction techniques including hand excavation, final location of pits shall be flexible to avoid cutting roots or further impacting trees, no roots greater than 40mm shall be cut.

Any canopy pruning shall be carried out by a AQ3 qualified arborist in accordance with AS4373. Only minor pruning shall be permitted, no more than 10% canopy shall be removed.

No stormwater or other services shall be directed through the TPZ of any protected tree.

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**

C26. The following tree(s) are approved for removal in accordance with the development consent:

Street Tree that is acceptable to remove	Location	Height
1 x Chinese Tallowood Tree reference T17	Within the central road reserve, in front of Nos. 5-7 Lower Wycombe Road	4m

Trees that are acceptable to remove	Location	Height
T5 <i>Corymbia citriodora</i>	Western setback-5-7 Lower Wycombe Road	9m x 2m
T8 <i>Casuarina cunninghamiana</i>	Southern setback-5-7 Lower Wycombe Road	5m x 4m
T9 <i>Acacia implexa</i>	Southern setback-5-7 Lower Wycombe Road	5m x 3m
T10 <i>Casuarina cunninghamiana</i>	Southern setback-5-7 Lower Wycombe Road	5m x 3m
T12 <i>Casuarina cunninghamiana</i>	Southern setback-5-7 Lower Wycombe Road	5m x 6m

T15 <i>Tristaniopsis laurina</i>	Front setback-5-7 Lower Wycombe Road	6m x 5m
T17 <i>Sapium sebiferum</i>	Council verge in front of 5-7 Lower Wycombe Road	8m x 9m
T18 <i>Melaleuca quinquenervia</i>	Front setback-5-7 Lower Wycombe Road	10m x 9m
T20 Broad-leaved Paperbark <i>Melaleuca quinquenervia</i>	Front setback-5-7 Lower Wycombe Road	9m
T21 <i>Melaleuca quinquenervia</i>	Front setback-5-7 Lower Wycombe Road	9m x 2m

Removal or pruning of any other tree on the site is not approved, excluding species exempt 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)

**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: -

<b>Trees that are acceptable to remove</b>	<b>Location</b>	<b>Height</b>
T5 <i>Corymbia citriodora</i>	Western setback-5-7 Lower Wycombe Road	9m x 2m
T8 <i>Casuarina cunninghamiana</i>	Southern setback-5-7 Lower Wycombe Road	5m x 4m
T9 <i>Acacia implexa</i>	Southern setback-5-7 Lower Wycombe Road	5m x 3m
T10 <i>Casuarina cunninghamiana</i>	Southern setback-5-7 Lower Wycombe Road	5m x 3m
T12 <i>Casuarina cunninghamiana</i>	Southern setback-5-7 Lower Wycombe Road	5m x 6m
T15 <i>Tristaniopsis laurina</i>	Front setback-5-7 Lower Wycombe Road	6m x 5m
T17 <i>Sapium sebiferum</i>	Council verge in front of 5-7 Lower Wycombe Road	8m x 9m
T18 <i>Melaleuca quinquenervia</i>	Front setback-5-7 Lower Wycombe Road	10m x 9m
T20 Broad-leaved Paperbark <i>Melaleuca quinquenervia</i>	Front setback-5-7 Lower Wycombe Road	9m
T21, <i>Melaleuca quinquenervia</i>	Front setback-5-7 Lower Wycombe Road	9m x 2m

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

In accordance with the provisions of Section 4.55(1) of the Environmental Planning and Assessment Act 1979 a consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify a development consent granted by it to correct a minor error, misdescription or miscalculation.

**Reasons for Approval:**

In respect of the current application, modification of the consent is sought on the basis that Condition Nos. C25, C26 and E16, have been imposed with erroneous reference to tree numbering. On review of landscape comments and consideration of the Local Planning Panel it is agreed that the changes requested by the applicant are in fact errors in the condition references.

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In respect of the requirements to correctly identify the date of operation, this is to be corrected to reflect 30 November 2023 with a lapsing date of 30 November 2028. The terms of the consent may be considered to have been applied in error.

In order that the development consent be able to be acted on in accordance with the request of the applicant, it is recommended that the condition be deleted from the consent.

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

In accordance with the provisions of Section 3.4.1 of Council's Community Engagement Protocol, the subject application was not required to be notified. Therefore, no submissions have been received.

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The conditions attached to the original consent for Development Application No. **137/23** by endorsed date of **1 November 2023** still apply.

**ADVISINGS**

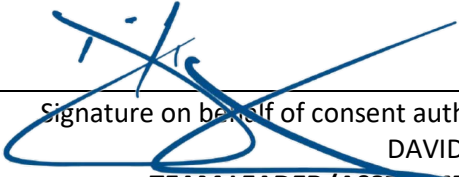
- (a) Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact **David Hoy**. However, if you wish to pursue your rights of appeal in the Land and Environmental Court pursuant to Section 8.7 of the *Environmental Planning and Assessment Act 1979* (as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

**15 May 2024**

DATE



Signature on behalf of consent authority  
DAVID HOY  
**TEAM LEADER (ASSESSMENTS)**