



Barbro Constructions (NSW) Pty Ltd  
C/- CPS Planning  
PO Box 1074  
BOTANY NSW 2019

D335/20  
AB7 (PE)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 MODIFICATION 335/20/6 - APPROVAL**

<b>Development Consent Number:</b>	<b>335/20</b>
<b>Land to which this applies:</b>	287 Miller Street, Cammeray Lot No.: 5, DP: 4206
<b>Applicant:</b>	Barbro Constructions (NSW) Pty Ltd
<b>Proposal:</b>	Section 4.55 Modification Application to amend conditions of consent to remove and replace one (1) street tree.

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. **335/20** and registered in Council's records as Application No. **335/20/6** relating to the land described as **287 Miller Street, Cammeray**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **7 July 2021**, has been determined in the following manner:

**1. Condition A1 is amended as follows:**

**Development in Accordance with the Plans/Documentation**

A1. The development must be carried out in accordance with the following drawings and documents endorsed with Council's approval stamp: -

No.	Issue	Title	Drawn by	Dated
DA1001	C	Site Plan	Become	30/11/2022
DA2001	C	Lower Ground and Ground Floor	Become	30/11/2022
DA2002	C	Level 1 Level 2	Become	30/11/2022
DA3101	D	North Elevation South Elevation	Become	30/11/2022
DA3102	C	East Elevation West Elevation	Become	30/11/2022
DA3200	C	Miller Street Elevation/Section	Become	30/11/2022
L/01	A	Proposed Landscape Plan – Ground Floor	A Total Concept	16/02/2024
L/02	A	Proposed Landscape Plan – Lower Ground Floor	A Total Concept	10/08/2022
L/03	A	Proposed Landscape Plan – Level 2	A Total Concept	10/08/2022
L/04	A	Landscape Details	A Total Concept	10/08/2022

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

2. Condition C20 is deleted as follows:

~~Tree Bond for Public Trees~~

~~C20. Prior to the issue of any construction certificate, security in the sum of \$5,000.00 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~~

~~1 x street tree located on Council's verge adjacent to subject site.~~

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

3. Condition C21 is amended as follows:

**Tree Protection Measures to be shown on Construction Drawings**

C21. The tree protection measures contained in the Arboricultural Impact Assessment Report prepared by Advanced Treescape Consulting, dated 13/02/2024, and as modified by the conditions of this consent, shall be shown clearly on the Construction Certificate drawings.

Plans and specifications showing the said tree protection measures must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure the construction plans and specifications submitted, referenced on, and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure that appropriate tree protection measures are shown on construction drawings)

**4. Condition C22 is amended as follows:**

**Approval for Removal of Trees**

C22. The following tree(s) are approved for removal in accordance with the development consent:

<b>Trees that are acceptable to remove</b>	<b>Location</b>	<b>Height</b>
<i>Sapium sebiferum</i> (Chinese Tallow)	Rear garden of subject site	14m
<i>Lorus nobillis</i> (Bay Tree)	Adjacent to the northern boundary within the subject site	3m
<i>Celtis sinensis</i> (Chinese Hackberry)		4m
<i>Homalanthus populifolius</i> (Native Bleeding Heart)		5m
<i>Platanus x hybrida</i> (London Plane Tree)	Within Council's verge on Miller Street, adjacent to the western boundary of the site.	14m

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)

**5. Condition C35 is amended as follows:**

**Security Deposit/Guarantee Schedule**

C35. 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:

<b>Security Deposit/Guarantee</b>	<b>Amount (\$)</b>
Engineering Construction Bond	\$5,000.00
<b>TOTAL BONDS</b>	<b>\$5,000.00</b>

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)

**6. A new Condition C39 is inserted as follows:**

**Amendments to the Landscape Plans**

C39. The landscape plans must be amended as follows to provide an appropriate landscaped setting:

- i. The removal of the existing *Platanus x hybrida* (London Plane Tree) street tree in the Council verge in front of 287 Miller Street (with the removal to be undertaken by an AQ3-qualified arborist, with the stump ground according to standard), is subject to the replacement planting of 2 x *Liriodendron tulipifera* tree (100-litre pot size minimum, or a larger pot size if the planting hole permits) planted in the Council verge in front of 287 Miller Street.

An amended landscape plan complying with this condition must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate. The Principal Certifier must ensure that the amended landscape plan and other plans and specifications submitted fully satisfy the requirements of this condition.

(Reason: To ensure residential amenity and an appropriate landscaped setting)

**7. Condition E16 is amended as follows:**

**Protection of Trees**

E16. 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. All recommendations contained within the Arboricultural Impact Assessment Report prepared by Advanced Treescape Consulting, dated 13/02/2024, and as modified by the conditions of this consent, must be implemented for the duration of the works.

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:

- 1) 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.
- 2) 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)

**8. Condition E17 is amended as follows:**

**Trees to be Removed**

E17. 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>
<i>Sapium sebiferum</i> (Chinese Tallow)	Rear garden of subject site	14m
<i>Lorus nobillis</i> (Bay Tree)	Adjacent to the northern boundary within the subject site	3m
<i>Celtis sinensis</i> (Chinese Hackberry)		4m
<i>Homalanthus populifolius</i> (Native Bleeding Heart)		5m
<i>Platanus x hybrida</i> (London Plane Tree)	Within Council's verge on Miller Street, adjacent to the western boundary of the site.	14m

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

9. **Condition G17 is amended as follows:**

**Landscaping**

G17. The landscaping shown in the approved landscape plan numbered L/01 (Rev A, dated 16/02/2024), L/02 and L/03 (Rev A, dated 10/12/2020), prepared by A Total Concept Landscape Architects, and as amended by conditions **C39** and **G22**, must be completed prior to the issue of any Occupation Certificate.

(Reason: To ensure compliance)

10. **A new Condition G22 is inserted as follows:**

**Required Tree Planting**

G9. On completion of works and prior to the issue of the Occupation Certificate for the whole of the building, trees in accordance with the schedule hereunder as per the requirements of **Condition C39**, must be planted in Council's nature strip/footpath: -

**Schedule**

Tree Species	Location	Pot Size
2 x <i>Liriodendron tulipifera</i> tree	Council verge in front of 287 Miller Street.	100-litre (or larger if the planting hole permits)

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)

11. **A new Condition I13 is inserted as follows:**

**Maintenance of Approved Landscaping**

G9. The owner of the premises at 287 Miller Street, Cammeray, is to maintain the landscaping approved by this consent generally in accordance with drawing numbers L/01 (Rev A, dated 16/02/2024), L/02 and L/03 (Rev A, dated 10/12/2020), prepared by A Total Concept Landscape Architects, and as modified by conditions **C39** and **G22**,

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.

Should it be desired to substitute plants which are not of the same mature height, canopy density and nature (particularly flowering for non-flowering, native for exotic, deciduous for non-deciduous or the reverse of any these) a modification to this consent will be required.

(Reason: To ensure maintenance of the amenity of adjoining properties, and an appropriate landscaped context)

The proposed modifications satisfy the provisions of Section 4.55(1A) in that the proposed development remains substantially the same as what was approved by DA 335/20. The proposed modifications to the site landscaping will not alter the use of the development as originally approved and subject to conditions will have a minimal environmental impact. The conditioned replacement of the existing London Plane tree within Council's verge in front of the site with two new trees is considered to be acceptable as the existing tree is not able to be retained given the scope of the approved works, and it will be appropriately replaced by condition with two new trees that will enhance the streetscape in the longer term.

**Reasons for Approval:**

The proposed modifications would not significantly change the level of compliance with the relevant development standards and controls as contained in North Sydney LEP 2013 and North Sydney DCP 2013. There would be no significant long-term impacts on the residential amenity of any adjoining properties, or on the character of the locality, and the proposal remains consistent with the objectives of the R4 High Density Residential zone, and the original reasons for granting consent.

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

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

The subject application was notified to adjoining properties and the precinct committee seeking comment and one submission were received. Nevertheless, it is considered that, subject to conditions including appropriate replacement trees, the proposal would facilitate the effective completion of the approved development without causing significant long term unreasonable impacts to the streetscape, and/or upon the amenity of adjoining properties.

The conditions attached to the original consent for Development Application No. **335/20** by endorsed date of **7 July 2021** still apply.

**ADVISINGS**

- (a) Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact **Mr Andrew Beveridge**. 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**

**30 April 2024**

DATE



Signature on behalf of consent authority  
ANDREW BEVERIDGE  
**SENIOR ASSESSMENT OFFICER**