



Ms Denise Wing Yin Barnett
C/- Bijl Architecture
7/100 Penshurst Street
WILLOUGHBY NSW 2068

D281/22
RW (PE)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 281/22/4 - APPROVAL**

Development Consent Number: 281/22

Land to which this applies: 16 Carter Street, Cammeray
Lot No.: 18, DP: 6259

Applicant: Denise Wing Yin Barnett, C/- Bijl Architecture

Proposal: To modify a consent DA281/22 to amend all tree conditions relating to the protection of the street tree, *Callistemon* (6m) on the Council verge fronting Arkland Street

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. **281/22** and registered in Council's records as Application No. **281/22/4** relating to the land described as 16 Carter Street, Cammeray.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **6 February 2023**, has been determined in the following manner:

To reflect removal and replacement of the previously existing *Callistemon* in Arkland Street, conditions C8, C9, D1, D3, and G4 of the consent and bond payments are amended as follows::

Tree Bond for Public Trees

C8. Prior to the issue of any construction certificate, security in the sum of **\$20,000.00** 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
2 x <i>Schinus areira</i> (7m)	Council verge in front of 16 Carter Street	\$4,000
2 x <i>Schinus areira</i> (4m)	Council verge in front of 16 Carter Street-Arkland Street frontage	\$8,000
1 x <i>Callistemon sp.</i> (6m) <i>Tristaniopsis laurina</i> 'Luscious' (2m)	Council verge in front of 16 Carter Street-Arkland Street frontage	\$4,000
1 x <i>Callistemon sp.</i> (9m x 16m)	Council verge in front of 16 Carter Street-Arkland Street frontage	\$4,000

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

Protection of Trees

C9. 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
2 x <i>Schinus areira</i>	Council verge in front of 16 Carter Street	7m
2 x <i>Schinus areira</i>	Council verge in front of 16 Carter Street/Arkland Street frontage	4m
1 x <i>Callistemon sp.</i> <i>Tristaniopsis laurina</i> 'Luscious'	Council verge in front of 16 Carter Street/Arkland Street frontage	6m 2m
1 x <i>Callistemon sp.</i>	Council verge in front of 1 Arkland Street	9m x 16m
All existing site trees, hedges and vegetation	16 Carter Street	var
Specific site trees noted for Protection:-		
2 x <i>Cupaniopsis anacardioides</i>	Front setback-16 Carter Street	7m
1 x <i>Banksia integrifolia</i>	Front setback-16 Carter Street	8m
1 x <i>Magnolia soulangiana</i>	Front setback-16 Carter Street	6m

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.

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)

Protection of Public Trees

D1. The following trees 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	Protection
2 x <i>Schinus areira</i> (7m)	Council verge in front of 16 Carter Street	1.8m high steel mesh tree protection fencing, branch protection
2 x <i>Schinus areira</i> (4m)	Council verge in front of 16 Carter Street and Arkland Street frontage	1.8m high steel mesh tree protection fencing, branch protection
1 x <i>Callistemon sp.</i> (6m) <i>Tristaniopsis laurina</i> 'Luscious' (2m)	Council verge in front of 16 Carter Street and Arkland Street frontage	1.8m high steel mesh tree protection fencing, branch protection
1 x <i>Callistemon sp.</i> (9m x 16m)	Council verge in front of 1 Arkland Street	1.8m high steel mesh tree protection fencing, branch protection

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.

(Reason: Protection of existing environmental and community assets)

Temporary Fences and Tree Protection

D3. All protected trees on-site that are specifically nominated as per ~~Condition C10~~ C9 to be retained by notation on plans or by condition as a requirement of this consent must be tagged with luminous tape or the like for purposes of identification prior to demolition, excavation or construction works and must remain so for the duration of works on the site. No materials or builders' waste are to be stored in the vicinity of the nominated tree/trees at any time.

Appropriate fencing or barricades in accordance with AS4970-2009 (Protection of trees on development sites), not less than the distance shown in the schedule hereunder, must be installed to the satisfaction of the Principal Certifier prior to demolition or commencement of any works and must be maintained for the duration of the works:

(Reason: To protect the trees to be retained on the site during construction works)

Certification of Tree Condition

- G4. 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 Principal Certifier, describing the health of the tree(s) specifically nominated below:

Tree	Location	Height
2 x <i>Schinus areira</i>	Council verge in front of 16 Carter Street	7m
2 x <i>Schinus areira</i>	Council verge in front of 16 Carter Street and Arkland Street frontage	4m
1 x <i>Callistemon</i> sp. <i>Tristaniopsis laurina</i> 'Luscious'	Council verge in front of 16 Carter Street- Arkland Street frontage	6m 2m
1 x <i>Callistemon</i> sp.	Council verge in front of 1 Arkland Street	9m x 16m
All existing site trees, hedges and vegetation	16 Carter Street	var
Specific site trees noted for Protection:-		
2 x <i>Cupaniopsis anacardioides</i>	Front setback-16 Carter Street	7m
1 x <i>Banksia integrifolia</i>	Front setback-16 Carter Street	8m
1 x <i>Magnolia soulangiana</i>	Front setback-16 Carter Street	6m

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 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 granted of development consent to the originally approved development and is considered to be acceptable.

The proposed modifications relate to a removed *Callistemon* (6m) on the Council verge fronting Arkland Street conditioned for protection in the original consent. The modification application seeks to amend all conditions relating to the removed tree and replace with details of the newly planted tree *Tristaniopsis laurina* 'Luscious' (2m) in a similar location.

Having regard to the provisions of section 4.55 and 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. **To ensure consistency with original approval, bond amounts have not been increased.**

How community views were taken into account:

In accordance with the provisions of Section 3.4.1 of Council's Community Participation Plan, the subject application was not required to be notified. No submissions have been received.

The conditions attached to the original consent for Development Application No. **281/22** by endorsed date of **6 February 2023** still apply.

ADVISINGS

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