

Development Consent No. 227/17

Section 4.55 Application

Applicant's Name

Robert Virgona, Vergome Pty Ltd, C/- Bennett Murada Architects

Land to which this applies

12-14 Lower Wycombe Road, Neutral Bay
Lot No.: 8, DP: 3183

Proposal

A Section 4.55(1) application to modify 227/17 with regards to the modification to the wording of Condition C13

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. **227/17** and registered in Council's records as Application No. **227/17/2** relating to the land described as **12-14 Lower Wycombe Road, Neutral Bay**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 6 December 2017, has been determined in the following manner:

Add Condition A4 as follows:

Development in Accordance with Plans

- A4. The development being carried out in accordance with plans identified in Condition A1 of the consent and endorsed with Council's approval stamp, except as modified by the modifications shown in colour on:

Drawing Number	Revision/Issue	Title	Drawn by	Dated
000	02	Cover Sheet	Arcadia	13/06/18
101	02	Landscape Master Plan	Arcadia	13/06/18

except as amended by the following conditions and this consent.

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

Modify Condition C13 as follows:

Approval for Removal of Trees

C13. The following tree(s) are approved for removal in accordance with the development consent:

Tree	Location	Height (m)
Four (4) trees	Rear yard	Up to 12m
Umbrella Plant	Front garden bed	Approx. 5m
Japanese Hackberry	Front garden bed	Approx. 8m

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 and to allow more appropriate species)

Reason for approval

Condition C13 of DA227/17 should be amended to correctly identify the trees within the front garden bed of the site that are approved for removal.

Consequently, the Section 4.55 application is considered to be reasonable in the circumstances and it is recommended for **approval** subject to the modification of Condition C13.

How were community views taken into account in making the decision

The Section 4.55 application was not notified in accordance with Section 4.4.9 in Part A of NSDCP 2013 given the modification relates to the re-wording of a landscape condition.

The conditions attached to the original consent for Development Application No. 227/17 by endorsed date of 6 December 2017 still apply.

ADVISINGS

- (a) Council is always prepared to discuss its decisions and in this regard, please do not hesitate to contact **Luke Donovan**. 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. The use of the Section 34 Conference approach requires the appellant to agree, in advance and in writing, that the Court appointed assessor will be given the full authority to completely determine the matter at the conference.

- (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 Certifying Authority 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 & 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 & Assessment Act.

DATE

Signature on behalf of consent authority
ROBYN PEARSON
TEAM LEADER (ASSESSMENTS)