

Development Consent No. 198/17

Section 4.55 Application

Applicant's Name

Mirvac Real Estate Pty Ltd, C/- Urbis

Land to which this applies

101-103 Miller Street, North Sydney (AKA 36 Blue Street "Greenwood Plaza")
Lot No.: 1, DP: 814292

Proposal

Modification of DA 198/17 to amend conditions to permit the removal of Tree No. 2 (Tuckeroo).

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. **198/17** and registered in Council's records as Application No. **198/17/2** relating to the land described as **101-103 Miller Street, North Sydney (AKA 36 Blue Street "Greenwood Plaza"**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 2 August 2018, has been determined in the following manner:

1. That the consent be amended to permit the removal of Tree 2 *Cupaniopsis anacardioides* (Tuckeroo) located within the landscape garden approximately 3 metres to the south of the suspended concrete walkway. The recommendations of the Arboricultural addendum report on tree protection measures prepared by Guy J Sturt of Stuart Noble Arboriculturalists, dated 18 September 2018 have been noted by Council. The Council agrees that the tree is compromised by the location of the approved structures and should be removed.
2. **That Condition Nos C5, C6 & C7 be amended to read as follows:**

Tree Protection Measures to be shown on Construction Drawings

- C5. The tree protection measures contained in the arborist report and addendum prepared by Apex Tree & Garden Experts, dated 16 May 2017 and 5 May 2018 respectively, and submitted to Council with the development application, must be shown clearly on the Construction Certificate drawings.

The tree protection measures shall be amended to provide for the removal of Tree 2 *Cupaniopsis anacardioides* (Tuckeroo) as outlined in the arboricultural addendum report on tree protection prepared by Guy J Sturt of Stuart Noble Arboriculturalists, dated 18 September 2018.

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)

Protection of Trees

C6. 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 (m) |
|---|---|---|
| Tree 1 <i>Ficus macrophylla</i> (Moreton Bay Fig) | Large Moreton Bay Fig tree within the landscape garden approximately 10 metres to the south of the nominated construction area. | ~26 metres (canopy spread of ~35 metres) |

Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority 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)

Pruning of Trees

C7. All pruning works shall to the following tree(s) shall be undertaken under the guidance of an appropriately qualified arborist/tree surgeon in accordance with Australian Standard AS 4373-2007 - Pruning of Amenity Trees:

| Tree | Location | Height (m) |
|---|---|------------------------------------|
| Tree 1 <i>Ficus macrophylla</i> (Moreton Bay Fig) | Large Moreton Bay Fig tree within the landscape garden approximately 10 metres to the south of the nominated construction area. | ~26 metres (canopy spread ~35m) |

The excavation beneath the suspended slab will need to be carried out by hand as there is no practical way for this to be done with larger machinery. In this case, excavation by hand is also preferable so that any disturbance to the tree will be able to be minimised.

A report detailing the measures to be employed during construction shall be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

All measures required by the said report must be complied with at all times in the carrying out of the development.

(Reason: To ensure the protection and longevity of existing significant trees)

Reason for approval

The proposed modifications are considered to be of minimal environmental impact and are 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 modification retains the intent of originally approved development and is considered to be acceptable.

Having regard to the provisions of section 4.55 & 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.

How were community views taken into account in making the decision

In accordance with the provisions of Section 4 of NSDCP 2013, 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. 198/17 by endorsed date of 2 August 2018 still apply.

ADVISINGS

- (a) Council is always prepared to discuss its decisions and in this regard, please do not hesitate to contact **the undersigned**. 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
DAVID HOY
TEAM LEADER (ASSESSMENTS)