

Original signed by: Luke Donovan Dated: 5/12/2019

Corben Architects  
**Attention Phil Corben**  
PO Box 1021  
NEUTRAL BAY NSW 2089

D95/19  
LD(CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED**  
**SECTION 4.55 MODIFICATION 95/19/2 – APPROVAL**

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**Development Consent Number:** 95/19/2

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**Land to which this applies:** 19 and 19A Bennett Street, Cremorne  
Lot No. 1, DP 1060193

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**Applicant:** Phil Corben, Corben Architects

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**Proposal:** A Section 4.55 (1A) application to modify DA 95/19 with regards to modifications to Conditions C1 (1) and (2), C8 and C12.

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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. **95/19** and registered in Council's records as Application No. **95/19/2** relating to the land described as **19 and 19A Bennett Street, Cremorne**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 5 July 2019, has been determined in the following manner: -

**1. Add Conditions A4 and G11 to read as follows:**

**Development in Accordance with Plans (S4.55 Amendments)**

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:

<b>Drawing Number</b>	<b>Title</b>	<b>Drawn by</b>	<b>Dated</b>
DA01 Rev D	Site Plan	Corben Architects	23/10/2019
DA02 Rev D	Bennett St Elevation	Corben Architects	23/10/2019

KEL.03.01	Landscape Plan	Andrew Pearce Landscape Design	23/10/2019
KEL.03.02	Landscape Plan	Andrew Pearce Landscape Design	23/10/2019
KEL.03.03	Landscape Plan	Andrew Pearce Landscape Design	23/10/2019

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)

**Required Tree Planting**

G11 On completion of works and prior to the issue of an Occupation Certificate trees in accordance with the schedule hereunder must be planted in Council’s nature strip/footpath: -

**Schedule**

Tree Species	Location	Pot Size
2 x Lagerstoemia indica “Tuscarora”	Council’s verge in front of 19 and/or 19A Bennett Street	75L

The above nominated tree species and pot size may be substituted only with prior written approval of Council’s Tree Management Team.

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 for Trees 13 and 14 are provided to enhance community landscaped amenity and cultural assets)

**2. Modify Conditions C6, C8, G7, G8 and I1 to read as follows:**

**Tree Bond for Public Trees**

C6. 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**

Tree 15 *Sapium sebiferum* in the Council verge outside 19A Bennett Street

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

**Protection of Trees**

C8 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:

<b>Tree</b>	<b>Location</b>	<b>Height</b>
T1 <i>Jacaranda mimosifolia</i>	Southern end of driveway	10m
T2 <i>Magnolia grandiflora</i> ‘L.Gem’	Southern end of driveway	5m
T3 <i>Olea europaea</i>	Southern end of driveway	3m
T15 – <i>Sapium sebiferum</i>	Council verge 19A Bennett St	6m
T16-T27 <i>Lagerstroemia indica</i>	Western side of drive	6m
T28-T29 <i>Liquidambar styraciflua</i>	eastern boundary of #19 Bennett St	4m
T30 <i>Ulmus parvifolia</i>	8 Bertha Road frontage	16m
T31 <i>Magnolia</i> sp.	Centre of #19 Bennett St	16m
T31b <i>Eucalyptus</i> sp	Centre of #19 Bennett St	16m
T31c <i>Phoenix canariensis</i>	Centre of #19 Bennett St	16m

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)

**Certification of Tree Condition**

G7. 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 Certifying Authority, describing the health of the tree(s) specifically nominated below: -

T1 <i>Jacaranda mimosifolia</i>	Southern end of driveway	10m
T16-T27 <i>Lagerstroemia indica</i>	Western side of drive	6m
Tree 15	Council verge 19a Bennett St	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)

### **Landscaping**

G8. The landscaping shown in the approved landscape plans listed in Condition A1 of this consent, as amended by Condition A4 of this consent, must be completed in full prior to the issue of any Occupation Certificate.

(Reason: To ensure compliance and in the interests of the visual amenity of the site)

### **Maintenance of Approved Landscaping**

I1. The owners of 19 and 19A Bennett Street are to maintain the landscaping approved by this consent within the confines of their new respective property boundaries, generally in accordance with the approved landscape plans listed in Condition A1 of this consent, as amended by Condition A4 of this consent. 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.

(Reason: To ensure maintenance of the amenity, solar access and views of adjoining properties)

### **3. Delete Conditions C1, C12, G10 and I2**

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The proposed modification has been assessed against Section 4.55(1A) of the Environmental Planning and Assessment Act 1979, and found to be generally acceptable in the site circumstances.

The proposed modifications to the boundary fence treatment and landscaping will largely maintain the status quo albeit in a slightly relocated position as a result of the approved boundary adjustment. The hedge plantings either side of the relocated timber lapped and capped fence as well as the retention of the existing trees (tree no's 16-29) on the transferred land ensure that the landscape character of the conservation area is maintained.

#### **Reason for approval:**

Council's Landscape Development Office concurs with the arboricultural advice associated with the transplanting of Tree 14. Tree 14 can therefore be removed, and a replacement tree can be planted to offset its removal.

Consequently, the Section 4.55(1A) application is considered to be reasonable in the circumstances and it is recommended for **approval** subject to changes to the conditions of consent.

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

The S4.55 application was notified to the Bennett Precinct Committee and surrounding properties between 8 November and 22 November 2019. No submissions were received.

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The conditions attached to the original consent for Development Application No. 95/19 by endorsed date of 5 July 2019 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.
- (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 & 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.

**Endorsed for and on behalf of North Sydney Council**

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DATE

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