

Original signed by: Lara Huckstepp Dated:20/12/2020

Gittany Antoine
402/100 Glover Street
MOSMAN NSW 2088

D454/18
LH (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 454/18/2 – APPROVAL**

Development Consent Number: 454/18/2

Land to which this applies: 11 Wyagdon Street, Neutral Bay
Lot No.: 1, DP: 598179

Applicant: Gittany Antoine

Proposal: To modify a development consent DA454/18/2 with regards to the removal of two trees

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. **454/18** and registered in Council's records as Application No. **454/18/2** relating to the land described as **11 Wyagdon Street, Neutral Bay**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 2 October 2019, has been determined in the following manner: -

- To delete the following conditions of the consent and insert in lieu thereof the following new conditions, namely:*

Tree Protection Measures to be shown on Construction Drawings

C24. The tree protection measures contained in the arborist report prepared by Advanced Tree Consulting dated 17/12/18, and received by Council on 21/12/18, and updated tree protection measures to be determined by the project arborist, to reflect the retention and protection of trees 10, 11 & 12 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)

Protection of Trees

C25. 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
Tree 10 <i>Casuarina cunninghamiana</i>	Western boundary	15m
Tree 11 <i>Casuarina cunninghamiana</i>	Western boundary	10m
Tree 12 <i>Casuarina cunninghamiana</i>	Western boundary	14m
<i>Tree 5 Livistona chinensis</i>	Eastern boundary of the adjacent property to the west of 11 Wyagadon Street	10m

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)

Approval for removal of Trees

C26. The following tree(s) are approved for removal in accordance with the development consent:

Trees that are acceptable to remove	Location	Height
Tree 1 <i>Eucalyptus scoparia</i>	Front planter box	18m
Tree 2 <i>Washingtonia robusta</i>	Front planter box	18m
Trees 3 & 4 <i>Glochidion ferdinandii</i>	Front planter box	4m
Trees 6 & 7 <i>Casuarina cunninghamiana</i>	Western boundary	16m
Tree 8 <i>Fraxinus</i> spp. (10m)	Western boundary	10m
Trees 9 <i>Casuarina cunninghamiana</i>	Western boundary	15m
Tree 20 <i>Ligustrum lucidum</i>	Eastern boundary	6m
Tree 13 <i>Casuarina cunninghamiana</i>	Eastern boundary	16m
Tree 14 <i>Casuarina cunninghamiana</i>	Eastern boundary	4m

Removal 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)

Pruning of Trees

- C27. 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:

Trees that may Require Pruning	Location	Height
Tree 10 <i>Casuarina cunninghamiana</i>	Western boundary	15m
Tree 11 <i>Casuarina cunninghamiana</i>	Western boundary	10m
Tree 12 <i>Casuarina cunninghamiana</i>	Western boundary	14m

All pruning shall be carried out prior to commencement of construction and shall include the removal of any dead wood and “crossing over” of limbs. Any further pruning to trees 10, 11 or 12 shall be undertaken in such a way as to remove as little canopy as possible, whilst allowing for construction, and shall only be carried out after notification to, and in consultation with council.

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)

Amendments to the Landscape Plan

- C28. The landscape plans numbered 00-10 (inclusive) and LS01 received at Council on 18/9/2019 and prepared by Taylor Brammer Landscape Architects must be amended as follows to provide an appropriate landscaped setting:

- Drawing LA07 – Planting Plan Ground Level shows a tree to be planted approximately halfway along the eastern boundary. This tree is denoted as Ac-sm but not noted in the plant schedule. The species and pot size of this tree shall be included.
- Drawing LA03 – Planting Plan Ground Level shows Design Note 7 as “steppers on turf” but there is no corresponding item 7 shown on the drawing. The drawing shall be amended to reflect the proposed landscape. It should be noted that if it were intended that Design Note 7 referred to the access path along either boundary, the proposed grass shall be replaced with a suitable groundcover alternative such as *Viola hederacea*, *dichondra repens*, *Ophiopogon japonicus* ‘Nana’ or similar.
- A *Sapium sebiferum* (100l) shall be planted in the council verge towards the north western boundary of 11 Wyagadon Street.
- A fully automatic drip irrigation system covering all garden areas shall be installed, by a qualified contractor at the time of planting.

An amended landscape plan 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 amended landscape plan and other plans and specifications submitted fully satisfy the requirements of this condition.

(Reason: To ensure residential amenity)

Protection of Trees

- E8. 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 tree report prepared by Advanced Tree Consulting dated 17/12/18, and received by Council on 21/12/18, and updated tree protection measures to be determined by the project arborist, to reflect the retention and protection of trees 10,11 & 12 shall 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:

- a. 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.
- b. An application to modify this consent pursuant to Section 96 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)

Trees to be Removed

- E9. All trees on the site must be protected and retained save for those expressly identified below as being approved for removal: -

Trees that are acceptable to remove	Location	Height
Tree 1 <i>Eucalyptus scoparia</i>	Front planter box	18m
Tree 2 <i>Washingtonia robusta</i>	Front planter box	18m
Trees 3 & 4 <i>Glochidion ferdinandii</i>	Front planter box	4m
Trees 6 & 7 <i>Casuarina cunninghamiana</i>	Western boundary	16m
Tree 8 <i>Fraxinus</i> spp. (10m)	Western boundary	10m
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Tree 13 <i>Casuarina cunninghamiana</i>	Eastern boundary	16m
Tree 14 <i>Casuarina cunninghamiana</i>	Eastern boundary	4m

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

Certification of Tree Condition

- G20. 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: -

<i>Tree 10 Casuarina cunninghamiana</i>	Western Boundary	15m
<i>Tree 11 Casuarina cunninghamiana</i>	Western Boundary	10m
<i>Tree 12 Casuarina cunninghamiana</i>	Western Boundary	14m
<i>Tree 5 Livistona chinensis</i>	Eastern boundary of the adjacent property to the west of 11 Wyagdon Street	10m

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)

2. New Condition G22 shall be imposed as follows:

Required Tree Planting

G22. On completion of works and prior to the issue of an Occupation Certificate trees in accordance with the schedule hereunder must be planted:

Schedule

Tree Species	Location	Pot Size
<i>4 x Cupaniopsis anacardioides</i> (Tuckeroo)	Eastern setback in location to replace existing Tree 13 and Tree 14. Trees shall be placed offset and equidistant along the pathway.	150L

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)

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.

Reason for approval:

Whilst the removal of two existing trees is not desirable, the trees have been identified by the applicant's Arborist Report as being affected by ivy and of low significance. It is considered that the opportunity to replace these trees with 4 new trees will ensure that long term, quality landscaping is provided and maintained on the site.

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 community views were taken into account:

The subject application was notified to adjoining properties and Neutral Precinct inviting comment between 5-19 June 2020. There were no submissions received.

The conditions attached to the original consent for Development Application No. 454/18 by endorsed date of 2 October 2019 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.
- (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

DATE

Signature on behalf of consent authority
**LARA HUCKSTEPP
EXECUTIVE PLANNER**