

N C & S C Marsh  
5 Spruson Street  
NEUTRAL BAY NSW 2089

D102/19  
RT (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 MODIFICATION 102/19/4 - APPROVAL**

**Development Consent Number:** **102/19**

**Land to which this applies:** 5 Spruson Street, Neutral Bay  
Lot No.: 2, DP: 303874

**Applicant:** Nigel Marsh

**Proposal:** Section 4.55 (1A) application seeking modifications to D102/19 for the removal of a street tree, planting of a replacement street tree and associated changes to relevant conditions

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. **102/19** and registered in Council's records as Application No. **102/19/4** relating to the land described as **5 Spruson Street, Neutral Bay**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 9 July 2019, has been determined in the following manner:-

1. *To modify the development consent (D102/19) and modify conditions C11, C20 and E14 to read as follows:*

**Approval for Removal of Trees**

C11. The following tree(s) are approved for removal in accordance with the development consent:

<b>Tree</b>	<b>Location</b>	<b>Height (m)</b>
Tree 3 <i>Glochidion ferdinandii</i>	Front Garden-5 Spruson Street	14 m
Tree 4 <i>Livistona chinensis</i>	Front Garden-5 Spruson Street - NW	8 m
Tree 5 <i>Jacaranda mimosifolia</i>	Southern boundary - upper	9 m
Tree 6 <i>Jacaranda mimosifolia</i>	Southern boundary - upper	9 m
Tree 7 <i>Banksia integrifolia</i>	Southern boundary - upper	7 m
Tree 8 <i>Elaeocarpus reticulatus</i>	Southern boundary - upper	4 m
Tree 9 <i>Syzigium paniculatum</i>	Southern boundary - upper	5 m
Tree 10 <i>Elaeocarpus reticulatus</i>	Northern boundary - upper	4 m
Tree 11 <i>Lagerstroemia indica</i>	North Western garden	5 m
Tree 13 <i>Pittosporum undulatum</i>	Council Verge - Southern	6 m
<i>Archontophoenix cunninghamiana</i>	Front Garden - 5 Spruson Street NW	8 m

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)

### **Protection of Trees**

C20. 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 (m)</b>
Tree 1 <i>Cinnamomum camphora</i>	Western Boundary	18 m
Tree 2 <i>Cinnamomum camphora</i>	Western Boundary	17 m
Tree 12 <i>Celtis occidentalis</i>	NW boundary 1a Spruson Street	12 m
Tree 14 <i>Archontophoenix cunninghamiana</i>	Council verge between 1a and 5 Spruson Street	
Tree 15 <i>Howea forsteriana</i> (x2)	Western Boundary of 1 Spruson Street	

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)

### **No Removal of Trees on Public Property**

E14. No trees on public property, with the exception of Tree 13 *Pittosporum undulatum* (6 m) located on the southern side of the Council verge in front of the subject site, (footpaths, roads, reserves, etc.) unless specifically approved by this consent shall be removed or damaged during construction including for the erection of any fences, hoardings or other temporary works.

(Reason: Protection of existing environmental infrastructure and community assets)

**1. To insert a new condition G13 to read as follows:**

#### ***Required Tree Planting***

G13. On completion of works and prior to the issue of an Occupation Certificate a tree in accordance with the schedule hereunder must be planted in Council's footpath to replace the existing Street Tree (T13 *Pittosporum undulatum*):-

<b>Schedule Tree Species</b>	<b>Location</b>	<b>Pot Size</b>
<i>Ceratopetalum apetalum</i>	Council verge on the southern side of Spruson Street in front of the subject site	75 L

Upon completion of installation and prior to the issue of an Occupation Certificate an appropriately qualified horticulturalist must certify that the tree 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.

The tree shall be hand watered on a weekly basis to ensure establishment of the tree and good prospect of its survival. The bond for this tree (\$1,500.00) shall be held for six (6) months after the issue of a Final Occupation Certificate.

(Reason: To ensure that replacement plantings are provided to enhance community landscaped amenity and cultural assets)

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**Reason for Approval:**

The proposed modifications involving the removal of an existing street tree and the planting of a replacement tree, satisfy the provisions of Section 4.55(1A) in that the proposed development is substantially the same as what was approved under DA 102/19 as the proposed works would not physically change the development as originally approved.

The subject site benefits from existing use rights and the proposal does not seek a change of the existing use and/or a further expansion of the existing use.

The proposed modifications would have no material impacts on the amenity of the surrounding properties.

The proposal was found to be acceptable in the site circumstances and is recommended that the subject Section 4.55(1A) application be approved with the addition of new conditions.

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

Notification of the subject application was waived in accordance with Section 3.4.2 of Council's Community Engagement Protocol because the proposal relates to the removal of an existing street tree and the planting of a replacement tree. The proposal would maintain the landscape quality along the Spruson Street. Therefore, the proposed changes would have no material impacts for adjoining properties.

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The conditions attached to the original consent for Development Application No. 102/19 by endorsed date of 9 July 2019 still apply.

**ADVISINGS**

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

\_\_\_\_\_  
DATE

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