

North Sydney Council
200 Miller Street
NORTH SYDNEY NSW 2060

D347/19
LH (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 347/19/4 - APPROVAL**

Development Consent Number: 347/19/4

Land to which this applies: 4 Alfred Street South, Milsons Point
Lot 100 DP 875048; Lot 101 DP880 236; Lot 102 DP
854064; Lot 103 DP 1007291; Lot 6 DP127637
Lot No.: 100, DP: 8750

Applicant: North Sydney Council

Proposal: To modify a consent for alterations and additions to
North Sydney Pool

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. **347/19** and registered in Council's records as Application No. **347/19/4** relating to the land described as **4 Alfred Street South, Milsons Point**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 1 July 2020, has been determined in the following manner:

To modify Conditions C18, C19, C20, D10, D11, E12, E15 and G6 as follows:

Protection of Trees

C18. 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
T11 and T12 <i>Phoenix canariensis</i>	Eastern boundary of the subject site	7 m
T13-T19 <i>Phoenix canariensis</i>	Olympic Drive, adjacent to the subject site	(6 m - 8 m)
T20-T22, T24, T25 <i>Ficus macrocarpa</i> var. <i>Hillii</i>	Council verge on the eastern side of Alfred Street	2.5 m - 12 m
T23 <i>Angophora costata</i>	Council verge on the eastern side of Alfred Street	12 m - 13 m

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

C19. The following tree(s) are approved for removal in accordance with the development consent:

Trees that are acceptable to remove	Location	Height
T1 & T2 <i>Lagerstroemia indica</i>	Northern boundary (Paul St)	6 m x 8 m and 5 m x 7 m
T3 <i>Lagerstroemia indica</i> - transplanting preferred	Northern boundary (Paul St)	5 m x 6 m
T4 <i>Livistona australis</i>	Olympic Park	5 m x 5 m
T5 <i>Livistona australis</i>	Olympic Park	6 m x 5 m
T6 <i>Livistona australis</i>	Olympic Park	6 m x 5 m
T7 <i>Livistona australis</i>	Olympic Park	6 m x 5 m
T8 <i>Livistona australis</i>	Olympic Park	6 m x 5 m
T9 <i>Livistona australis</i>	Olympic Park	5 m x 6 m
T10 <i>Livistona australis</i>	Olympic Park	6 m x 5 m
T28 <i>Nerium oleander</i>	Hopkins Park	2 m x 2 m

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)

Amendments to the Landscape Plan

C20. The landscape plan must be amended as follows to provide an appropriate landscaped setting:

- a) Relocate bin enclosure outside the TPZ of T12 *Phoenix canariensis*
- b) Relocate the site office and storage area shown on Figure 3 of the Draft Construction Management Plan prepared by Brewster Hjorth received by Council on 31 October 2019 outside the TPZ of any trees to be protected.
- c) Provide for the planting of two *Lagerstroemia indica* (100 litre) in lieu of the two *Lagerstroemia indica* (to be transplanted).

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 Public Trees

D10. 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	Protection
T13-T19 <i>Phoenix canariensis</i>	Olympic Drive, adjacent to the subject site	45 mm x 90 mm softwood timber boards, 1.8 m high, placed evenly around tree trunks at 150 mm centres affixed with galvanised wire or hoop strap over carpet underfelt or similar
T20-T22, T24, T25 <i>Ficus macrocarpa</i> var. <i>Hillii</i>	Council verge on the eastern side of Alfred Street	1.8 m steel mesh tree protection fencing, branch protection to any branches overhanging Alfred Street
T23 <i>Angophora costata</i>	Council verge on the eastern side of Alfred Street	1.8 m steel mesh tree protection fencing, branch protection to any branches overhanging Alfred 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.

(Reason: Protection of existing environmental and community assets)

Temporary Fences and Tree Protection

D11. All protected trees on-site that are specifically nominated as per condition C18 to be retained by notation on plans or by condition as a requirement of this consent must be tagged with luminous tape or the like for purposes of identification prior to demolition, excavation or construction works and must remain so for the duration of works on the site. No materials or builder's waste are to be stored in the vicinity of the nominated tree/trees at any time.

Appropriate fencing or barricades in accordance with AS4970-2009 (Protection of trees on development sites), not less than the distance shown in the schedule hereunder, must be installed to the satisfaction of the Certifying Authority prior to demolition or commencement of any works and must be maintained for the duration of the works:

Tree	Location	Height
T11 and T12 <i>Phoenix canariensis</i>	Eastern boundary of the subject site	7 m
T13-T19 <i>Phoenix canariensis</i>	Olympic Drive, adjacent to the subject site	(6 m - 8 m)
T20-T22, T24, T25 <i>Ficus macrocarpa var. Hillii</i>	Council verge on the eastern side of Alfred Street	2.5 m - 12 m
T23 <i>Angophora costata</i>	Council verge on the eastern side of Alfred Street	12 m - 13 m

(Reason: Protection of existing environmental and community assets)

Trees to be Removed

E12. 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
T1 and T2 <i>Lagerstroemia indica</i>	Northern boundary (Paul Street)	6 m x 8 m and 5 m x 7 m
T3 <i>Lagerstroemia indica</i> - transplanting preferred	Northern boundary (Paul Street)	5 m x 6 m
T4 <i>Livistona australis</i>	Olympic Park	5 m x 5 m
T5 <i>Livistona australis</i>	Olympic Park	6 m x 5 m
T6 <i>Livistona Australia</i>	Olympic Park	6 m x 5 m
T7 <i>Livistona Australia</i>	Olympic Park	6 m x 5 m
T8 <i>Livistona Australia</i>	Olympic Park	6 m x 5 m
T9 <i>Livistona Australia</i>	Olympic Park	5 m x 6 m
T10 <i>Livistona Australia</i>	Olympic Park	6 m x 5 m
T28 <i>Nerium oleander</i>	Hopkins Park	2 m x 2 m

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

Construction Hours

E15. Construction activities and works approved under this consent must be carried out only within the hours stipulated in the following table:

Standard Construction Hours		
Location	Day	Hours
All other zones	Monday - Friday	7.00am - 5.00pm
	Saturday	8.00am - 1.00pm
	Sunday	No work permitted
	Public holiday	

Construction activities for development approved under this consent must be carried out in accordance with the standard construction hours above and any Construction Noise Management Plan required under this consent.

In the event of breach to the approved hours of construction Council take may take enforcement action under Part 9 of the EP&A Act 1979 and in accordance with Council's adopted Compliance and Enforcement Policy.

(Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community)

Certification of Tree Condition

G6. 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:

Tree	Location	Height
T11 and T12 <i>Phoenix canariensis</i>	Eastern boundary of the subject site	7 m
T13-T19 <i>Phoenix canariensis</i>	Olympic Drive, adjacent to the subject site	(6 m - 8 m)
T20-T22, T24, T25 <i>Ficus macrocarpa</i> var. <i>Hillii</i>	Council verge on the eastern side of Alfred Street	2.5 m - 12 m
T23 <i>Angophora costata</i>	Council verge on the eastern side of Alfred Street	12 m - 13 m

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)

The proposed modifications are considered to be of minimal environmental impact and are consistent with the originally approved development application and s.4.55(1A) 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.

Reason for approval:

The request to modify the conditions relating to tree protection are only partly recommended for approval. There is justification for the modification with regards to the trees on Olympic Drive as the proposed tree protection methods will better retain vehicle access to Luna Park when required. However, tree protection measures relating to other trees (being Trees T11 and T12 on site and those opposite the site on Alfred Street) are recommended to be retained as they provide better protection and there are no additional circumstances to justify a change to those protections.

The change to the approved construction hours to permit excavation and demolition is recommended for approval because it is consistent with the provisions of the NSDCP 2013, which were amended after the development consent was issued.

Having regard to the provisions of section 4.55(1A) and 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 application was notified from 4-19 June 2021 in accordance with the provisions of Council's Community Engagement Strategy. One submission was received regarding tree loss which is considered to be able to be addressed by conditions.

The conditions attached to the original consent for Development Application No. 347/19 by endorsed date of 1 July 2020 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 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

Signature on behalf of consent authority
LARA HUCKSTEPP
EXECUTIVE PLANNER