

Original signed by Robyn Pearson on 3/9/2021

Casey Brown Architecture  
119 High Street  
NORTH SYDNEY NSW 2060

D481/07  
AB7 (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 MODIFICATION 481/07/03 - APPROVAL**

**Development Consent Number:** 481/07

**Land to which this applies:** 119 High Street, North Sydney  
Lot No.: 11, DP: 1133455

**Applicant:** Casey Brown Architecture

**Proposal:** Modification of Consent No 481/07 - relocation of approved car hard stand, new retaining walls, stairs, planter, and fence/gate

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. **481/07/03** and registered in Council's records as Application No. **481/07** relating to the land described as 119 High Street, North Sydney.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 7 March 2008, has been determined in the following manner:

**1. Condition A5 is inserted as follows:**

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

A5. 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:

Drawing No.	Title	Revision	Drawn by	Dated	Received
S4.55_01	Car Stand Relocation	05	Casey Brown Architecture	25/06/2021	28/06/2021
S4.55_02	Elevations	03	Casey Brown Architecture	25/06/2021	28/06/2021

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)

2. Condition A3 is modified as follows:

**Hardstand Car Parking Space**

- A3. No roof structure shall be erected on the new hardstand car parking space. Drawings lodged with any Construction Certificate application must delete the supporting frame and roofing to the car stand as shown on drawing numbered S4.55\_01, dated 25/06/2021, and prepared by Casey Brown Architecture.

(Reason: Clarification of terms of condition)

3. Condition C1 is deleted as follows:

**~~Pedestrian and Sliding Gate~~**

- ~~C1. The pedestrian and vehicular gates to the front boundary must be constructed of timber battens that match with the materials and profile of those to the car stand. Details demonstrating compliance with this condition must be submitted with the Construction Certificate.~~

~~(Reason: To ensure the proposed works do not adversely erode the significance of the conservation area or the heritage value of the property through the provision of uncomplimentary external finishes and compliance with Council's car parking controls)~~

4. Condition C2 is modified as follows:

**Porous Paving**

- C2. The car stand deck shall be constructed to have a Fibreglass Grating surface as shown on the drawing numbered S4.55\_01, dated 25/06/2021, and prepared by Casey Brown Architecture, to allow stormwater infiltration to the substrate. Details demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of a Construction Certificate.

(Reason: To improve the capacity of the site to absorb water runoff)

5. Condition C4 is deleted and a new Condition C4 is inserted as follows:

**~~Bond for Engineering Construction Works (Kerb and Gutter, Footpaths, Vehicular Crossing and Road Pavement)~~**

- ~~C4. A Bond of \$3000.00 shall be deposited with Council against any damage or failure to complete to the relevant specification the construction of any vehicular crossing, kerb and gutter, footpath paving and road pavement/shoulder reconstruction works required as part of this consent prior to the issue of any Construction Certificate. (See schedule).~~

~~(Reason: To ensure appropriate security for works on public land and an appropriate quality for new public infrastructure)~~

**Bond for Damage and Completion of Infrastructure Works - Stormwater, Kerb and Gutter, Footpaths, Vehicular Crossing and Road Pavement**

C4. Prior to the issue of any Construction Certificate, security deposit or bank guarantee must be provided to Council to the sum of \$5,500.00 to be held by Council for the payment of cost for any/all of the following:

- a) making good any damage caused to any property of the Council as a consequence of the doing of anything to which this consent relates,
- b) completing any public work (such as road work, kerbing and guttering, footway construction, stormwater drainage and environmental controls) required in connection with this consent
- c) remedying any defects in any such public work that arise within six months after the work is completed.

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 six months from the issue of any final Occupation Certificate or completion of public work required to be completed (whichever is the latest) but only upon inspection and release by Council's Engineers.

Council shall have full authority to make use of the bond for such restoration works as deemed necessary by Council in circumstances including the following:

- where the damage constitutes a hazard in which case Council may make use of the security immediately;
- the applicant has not repaired or commenced repairing damage within 48 hours of the issue by Council in writing of instructions to undertake such repairs or works;
- works in the public road associated with the development are to an unacceptable quality; and
- the Certifying Authority must ensure that security is provided to North Sydney Council prior to issue of any Construction Certificate.

(Reason: To ensure appropriate security for works on public land and an appropriate quality for new public infrastructure)

6. Conditions C6 and C8 are deleted as follows:

**~~Stormwater Disposal~~**

~~C6. Additional stormwater runoff generated by the approved development must be conveyed in a controlled manner by gravity to the existing stormwater system. Details which indicate a gravity fed system in accordance with this condition must be provided as part of the supporting documentation lodged with the Certifying Authority for approval of the Construction Certificate application.~~

~~(Reason: Proper disposal of stormwater)~~

**~~On-Site Rainwater Tank~~**

~~C8. Any overflow from the rainwater tank is to be directed into the existing stormwater drainage system. The completed works shall comply with Australian Standard 3500.3.2, National Plumbing and Drainage Code and Sydney Water regulations.~~

~~(Reason: To ensure appropriate provision is made for the management of stormwater generated by the development)~~

7. Condition C7 is modified as follows:

**Colours, Finishes and Materials (Heritage Items)**

C7. A traditional palette of finishes, materials and colour schemes must be selected for the new building works appropriate to the architectural style of the original building and 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 fully satisfy the requirements of this condition prior to the release of the Construction Certificate.

(Reason: To ensure that exterior colours, finishes, and materials are sympathetic to the significance of the heritage item)

8. Condition C11 is modified as follows

**Security Bond Schedule**

C11. All fees and security deposits/guarantees in accordance with the schedule below must be provided to Council prior to the issue of any Construction Certificate:

Security Deposit/Guarantee	Amount (\$)
Engineering Construction Bond	\$5,500.00
<b>TOTAL BONDS</b>	<b>\$5,500.00</b>

(Reason: Compliance with the development consent)

**9. Condition C12 is inserted as follows:**

**Heritage Requirements**

C12. The following heritage requirements are to be met:

- a) The new sandstone walls are to utilise rock-faced or split-faced sandstone.
- b) Paint colours to match the existing dwelling's colour scheme.
- c) Climbing plants to be incorporated into the garden bed to the south of the new parking area to climb over the new privacy screens.
- d) The new pedestrian and vehicular gates are to have greater transparency with an open timber picket style construction. No approval is granted to gates that are of an entirely solid construction.

The Certifying Authority must ensure that the building plans and specifications submitted fully satisfy the requirements of this condition prior to the release of the Construction Certificate.

(Reason: To retain the significance of the item and conservation area)

**10. Condition C13 is inserted as follows:**

**Tree Protection Measures to be shown on Construction Drawings**

C13. The tree protection measures contained in the arborist report prepared by Growing My Way Tree Services dated November 2020, 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)

**11. Condition C14 is inserted as follows:**

**Protection of Trees**

C14. 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
All significant site trees	Within the site of 119 High Street	Various

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)

**12. Condition C15 is inserted as follows:**

**Approval for Removal of Trees**

C15. The following tree(s) are approved for removal in accordance with the development consent:

<b>Trees that are acceptable to remove</b>	<b>Location</b>	<b>Height</b>
T1 <i>Banksia integrifolia</i>	NE corner of the front setback of 119 High Street	7.5 m x 4.5 m
T2 <i>Banksia integrifolia</i>	NE corner of the front setback of 119 High Street	9.0 m x 5.0 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)

**13. Condition C16 is inserted as follows:**

**Amendments to the Site Plan**

C16. The site plans must be amended as follows to provide an appropriate landscaped setting:

- 1) 2 x *Banksia integrifolia* (75 litre pot size) shall be planted within the front setback (High Street frontage) of the subject site to replace the 2 x *Banksia integrifolia* that are to be removed.
- 2) 1 x *Tristaniopsis laurina* (75 litre pot size) shall be planted elsewhere on site but not in a location that is likely to cause view loss for adjoining properties.

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

(Reason: To ensure residential amenity and to demonstrate compliance with Council's controls)

**14. Condition C17 is inserted as follows:**

**Works to be Contained within Lot**

- C17. The approved works must be wholly contained within the lot of No. 119 High Street, North Sydney, and must not result in any encroachment into neighbouring lots or Council's road reserve without the prior written consent of the adjoining owner(s).

Plans and specifications which comply 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, in order to fully satisfy the requirements of this condition.

(Reason: To ensure the protection and structural integrity of adjoining properties, and that common law property rights are recognised)

**15. Condition E13 is inserted as follows:**

**Trees to be Removed**

- E13. 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 <i>Banksia integrifolia</i>	NE corner of the front setback of 119 High Street	7.5 m x 4.5 m
T2 <i>Banksia integrifolia</i>	NE corner of the front setback of 119 High Street	9.0 m x 5.0 m

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

**16. Condition G5 is inserted as follows:**

**Certification of Tree Condition**

- G5. 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, vigour, and likelihood for longevity of the trees specifically nominated below:

Tree	Location	Height/Size
2 x <i>Banksia integrifolia</i>	To be planted in the front setback (High Street frontage) of 119 High Street	75 litre pot size
1 x <i>Tristaniopsis laurina</i>	To be planted within the site of 119 High Street.	75 litre pot size

The report must detail the health, vigour and likelihood for longevity of replacement planting of the nominated trees upon completion of the works and shall certify that the trees have not been significantly damaged during the works on the site and have reasonable prospects for survival.

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

17. Conditions J1 and J2 are deleted as follows:

**~~Obtain Subdivision Certificate~~**

~~J1. To enable registration of the plan of subdivision at NSW Land and Property Information (Land Title) Office, for a subdivision certificate pursuant to section 109J of the Environmental Planning and Assessment Act 1979. To enable determination of the application for subdivision certificate by North Sydney Council, the applicant must submit the following:~~

- ~~a) The original plans of subdivision and administration sheets plus two (2) copies of each, and any original 88B instrument to be endorsed, all enclosed in a protective cardboard tube (to prevent damage during transfer).~~
- ~~b) 2 additional copies of both the plans and any 88B instrument for submission to Customer Services and records for electronic database scanning and copying.~~
- ~~c) Application for Subdivision Certificate form duly completed with payment of fee current at lodgement.~~
- ~~d) Written evidence that all applicable conditions of consent to be satisfied, prior to issue of the Subdivision Certificate, have been satisfied (including submission of all required certificates and the like).~~

~~Council will check the consent conditions on the relevant consent(s). Failure to submit the required information will delay endorsement of the subdivision certificate and may require payment of rechecking fees. Plans of subdivision and copies must not be folded. Council will not accept bonds in lieu of completing subdivision works.~~

~~{Reason: To ensure compliance with relevant legislative requirements and maintenance of up-to-date Council records}~~

**~~Submission of 88B Instrument pursuant to the Conveyancing Act 1919~~**

~~J2. In association with the plan of subdivision, any section 88B instrument used to create required easements, rights of carriageway, positive covenants, restrictions on use or any other burdens/benefits must be prepared and submitted in original form. North Sydney Council must be prescribed in the 88B instrument as an authority whose consent is required to release, vary or modify the burden/benefits. Four (4) copies of the instrument must also be included.~~

~~{Reason: To create legal entitlements with the subdivision, as required}~~

**Reasons for Approval:**

The development application has been assessed against the relevant planning instruments and policies, in particular the North Sydney Local Environmental Plan 2013 and the North Sydney Development Control Plan 2013, and generally found to be satisfactory.

There would be no unreasonable overshadowing, view loss, privacy loss and/or excessive bulk and scale as a result of the proposal given that the works will be sympathetic to the dwelling and surrounding development in the area. While two substantial mature Coast Banksia trees and some of the



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front garden will be removed to accommodate the new location of the car stand that was previously approved under DA481/07, it is considered to be acceptable as the new location will enable a greatly improved heritage outcome. This is achieved through greater separation between the cars stand and the dwelling, a substantial amount of landscaping is retained and enhanced elsewhere on site, and conditions have been recommended for new trees and materials and gate transparency that are appropriate for the conservation area.

It is therefore considered that the proposed works will provide additional resident amenity without significantly impacting upon the neighbourhood character of the locality or the amenity of adjoining properties. The modification application is considered to be acceptable in the circumstances and it is recommended for **approval** subject to several new conditions.

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

The subject application was notified to adjoining properties and the Milson Precinct Committee seeking comment and no submissions were received. Nevertheless, it is considered that the proposed modifications will provide improved amenity for residents of the subject site without having any adverse impact upon the streetscape, the amenity of adjoining properties and the character of the locality.

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The conditions attached to the original consent for Development Application No. 481/07/03 by endorsed date of 7 March 2008 still apply.

**ADVISINGS**

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

**3 September 2021**

\_\_\_\_\_  
DATE

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