

8 December 2023

Northern Beaches Council
PO Box 82
MANLY NSW 1655

Dear Sir/Madam,

SECTION 4.55(1a) APPLICATION

Premises:	Lot 2 in DP 23008, No. 46 Narrabeen Park Pde, Warriewood
Amendments:	Delete Conditions 8 & 9
Development Application:	DA2023/0007
Date of Determination:	05/05/2023

INTRODUCTION

On behalf of the Ms Karen Steele I seek Council consent pursuant to Section 4.55(1a) of the Environmental *Planning & Assessment Act* 1979 to amend Development Consent 2023/0007 relating to the construction of dwelling alterations and additions including a new carport.

BACKGROUND

Development Consent (DA2023/0007) for the construction of dwelling alterations and additions and new carport was approved by Council on 5 May 2023.

At the time of assessment and approval there was a large Norfolk Island Hibiscus on the adjoining northern property at No. 48 Narrabeen Park Parade. This tree is an exempt species under the Council's Tree Preservation Order, however as it was located on the adjoining property conditions were imposed to ensure protection of this tree. The relevant conditions are provided below:

8. Tree Root Investigation and Tree Root Map

- a) *Prior to the issue of a Construction Certificate a tree root mapping investigation shall be undertaken along the extent of excavation on the northern side of the works and a Tree Root Map must be documented that will be the basis for determining construction methodology near existing trees located in the adjoining property at No. 48 Narrabeen Park Parade.*

- b) *An Arborist with minimum AQF Level 5 in arboriculture shall supervise the works to verify tree root locations. A non-destructive root investigation shall be conducted complying with clause 3.3.4 of AS 4970-2009 Protection of Trees on Development Sites.*
- c) *The root investigation shall map existing roots of significance that must not be impacted by construction works. The tree root investigation shall be conducted to confirm the following data to be used for the location/alignment of any new proposed works:*
 - i) *confirmation of the location of any tree roots at or >25mm (Ø) diameter to areas that require excavation for proposed works. Alternative alignment of proposed works shall be provided as necessary to avoid major roots, and*
 - ii) *mapping of the suitable location/alignment of proposed works.*
- d) *The Tree Root Map shall be issued to a qualified Structural Engineer as a basis for structural design, and for determining the final location/alignment and construction methodology of proposed works (including stormwater) within the tree protection zone (TPZ).*
- e) *Prior to the issue of a Construction Certificate, the Arborist shall provide certification to the Certifier that the tree root investigation and clear distance recommendations have been adequately addressed in the Construction Certificate plans.*

Reason: To ensure protection of vegetation proposed for retention adjacent to the site.

9. Tree Protection Plan

- a) *A Tree Protection Plan shall be submitted to the Certifier for approval prior to the issue of a Construction Certificate demonstrating tree protection measures to protect the trees in the vicinity of excavation on the adjoining property at No. 48 Narrabeen Park Parade:*
- b) *The Tree Protection Plan shall be prepared by an Arborist with minimum AQF Level 5 in arboriculture incorporating the following:*
 - i) *layout of the development, including existing and proposed underground services,*
 - ii) *location of all trees identified for retention, including extent of canopy,*
 - iii) *access routes throughout the site for construction activity,*
 - iv) *location of tree protection fencing / barriers,*
 - v) *root protection in the form of mulching or boards proposed within the tree protection zone,*
 - vi) *trunk and branch protection within the tree protection zone,*
 - vii) *location of stockpile areas and materials storage,*
 - viii) *inspection hold points,*
 - ix) *other general tree protection measures.*

- c) *Tree protection methods are to address the findings of the Tree Root Investigation and Tree Root Map and be in accordance with AS4970-2009 Protection of Trees on Development Sites.*

Reason: Tree protection.

Since approval, the tree has since been removed by the owner of the adjoining property.

This application seeks to delete those conditions requiring protection and root mapping of the Norfolk Island Hibiscus.

PROPOSED MODIFICATION

The proposal seeks to delete Conditions 8 & 9.

In support of the modification the following information is provided:

- Photographs of trees removed.
- Owner's consent from the adjoining property owners.
- Original Arborist Report prepared by RainTree Consulting dated 11 November 2023.

LEGISLATION

Environmental Planning & Assessment Act, 1979

Section 4.55(1a) of the Act states:

*(1a) **Modifications involving minimal environmental impact** A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if -*

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and*

Comment: The adjoining tree was an exempt species, requiring no consent for its removal. The removal of this tree does not alter the approved development.

- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*

Comment: Consent was granted for construction of alterations and additions to an existing dwelling including a new carport. This modification does not alter the approved built form, but merely seeks to delete conditions relating to

a tree on an adjoining property that has since been removed. Therefore the proposed as modified is considered to be substantially the same as the original development.

- (c) *it has notified the application in accordance with—*
 - (i) *the regulations, if the regulations so require, or*
 - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) *it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

Comment: It is not considered that neighbour notification is required.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Trees within the Northern Beaches Local Government Area, including trees on private land, are protected under Chapter 2 (Vegetation non-rural areas) of SEPP (Biodiversity and Conservation). However, it is noted in Clause 2.8 that clearing of vegetation is permitted without development consent if the clearing does not require a permit or approval. Council's Tree Preservation Order identifies Norfolk Island Hibiscus as an exempt species and therefore consent is not required. The Arborist report submitted with the application identifies the tree in question as a Norfolk Island Hibiscus.

Pittwater LEP

The site is zoned C4 Environmental Living and dwelling alterations and additions are permissible in this zone with the consent of Council.

There are no clauses that specifically relate to the proposed modification.

Pittwater Development Control Plan

The following numerical provisions of the DCP are considered relevant to the proposal:

Clause B4.22 Preservation of Trees and Bushland Vegetation

This application seeks to modify the Development Consent to remove Conditions No. 8 & 9 relating to protection of a tree on an adjoining property. The tree on the adjoining property (T6 Norfolk Island Hibiscus) is an exempt species and has since been removed. As such Conditions 8 & 9 are no longer relevant.

JUSTIFICATION

The proposed amendments to the Development Consent to delete Conditions 8 & 9 are justified on the following basis:

- Conditions 8 & 9 were included to protect a tree on the adjoining property. This tree (T6 – Norfolk Island Hibiscus) is an exempt species under Council's Tree Preservation Order and has since be removed. These conditions are no longer relevant.

CONCLUSION

For the reasons stated above it is considered that this application to amend the Development Consent to delete Conditions 8 & 9 should be supported. Should you require any further information please do not hesitate to contact me.

Yours faithfully,



Natalie Nolan

Photographs



Photo of Tree 6 being removed



Photo of tree removed.