



Charmaine Elizabeth Bourke
57 Ben Boyd Road
NEUTRAL BAY NSW 2089

D267/21
TH2 (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION - REFUSAL**

Development Number: 267/21

Land to which this applies: 57 Ben Boyd Road, Neutral Bay
Lot No.: 2, DP: 307267

Applicant: Charmaine Elizabeth Bourke

Date of Determination: 16 December 2022

Proposal: S4.55 application to modify development consent for alterations and additions including alterations to landscaping.

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. **267/21** and registered in Council's records as Application No. **267/21/2** relating to the land described as **57 Ben Boyd Road, Neutral Bay**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **1 December 2021**, has been refused.

Reasons for Refusal:

1. Landscaping

- (i) The modification application seeks removal of two trees within the front garden which includes a *Glochidion ferdinandi* and a *Plumeria* and planting of one replacement tree (species not specified). The modification application also seeks an average cut of 300mm below the existing ground level which is likely to require the removal of an additional *Plumeria* in the south west corner of the front garden.
- (ii) The Arboricultural Root Investigation Report prepared by Urban Arbor provides insufficient reasons for removal of either the existing *Glochidion ferdinandi* or the *Plumeria*. Council's Landscape Development Officer contends that the tree roots within the root investigation report can be successfully cut by a qualified arborist to construct a ventilation trench/drain at

the front of the dwelling. The removal of the trees cannot be supported contrary to Provision P2, s1.5.7 of NSDCP 2013 where the emphasis is to retain existing trees wherever practical.

- (iii) The proposed removal of trees and earthworks within the front garden will result in insufficient tree canopy within the front garden contrary to Provision P9, s1.5.7 'Landscaping' of the NSDCP 2013.
- (iv) The proposed regrading of the front garden would remove on average top soil to a depth of 300mm that cannot be supported due to the likely adverse impact to existing landscaping and trees within the front garden contrary to Objective O2, s1.3.1 of the NSDCP 2013 and the earthworks are likely to have detrimental effect on vegetation within the site contrary to Cl. 6.10(3)(a)(ii) in NSLEP 2013.

2. Front Gardens

- (i) The existing front garden has trees, shrubs and a grass groundcover which merges with the landscaped character of the street. The proposed works to the front garden includes excavation on average 300mm below the existing ground level and the removal of trees (1 x *Glochidion ferdinandii* and 1 x *Plumeria*) and the extent of excavation within the front garden would have an adverse impact to the remaining landscaping within the front garden.
- (ii) The loss of existing tree canopy and landscaping would result in a front garden that no longer complements the landscaped character of the street contrary to Provision P3, s1.5.8 of NSDCP 2013.
- (iii) The front garden currently comprises a mix of vegetation including mature trees, grass lawn and shrubs. The existing landscaped front garden has an existing tree canopy that softens the view of the dwelling as viewed from the street noting the front garden is on a prominent corner facing both Ben Boyd Road and Phillips Street.
- (iv) The proposed removal of the two trees and inevitable loss of landscaping due to excavation with no evidence of appropriate replanting within the front garden cannot be supported because the front garden will no longer soften the view of the dwelling from the street contrary to Provision P6, s1.5.8 of NSDCP 2013.

3. Context

- (i) The works to the front garden include the removal of 2 trees and excavation of the front garden at an average of 300mm which would affect remaining landscaping within the front garden therefore not having a positive response to the subject site and its wider context.
- (ii) The development seeks removal of trees and excavation of the front garden with insufficient retention or planting of vegetation therefore the development fails to respond to the opportunity of the site to contribute to the existing landscaped character of the street.
- (iii) The proposed works are considered contrary to Objective O1, s1.4.1 of the NSDCP 2013 not responding to its wider context being the landscaped character of the streetscape.
- (iv) The loss of landscaping as well as tree canopy would reduce the landscaped contribution of the site to the street compromising the amenity of the surrounding area not meeting an Objective of the R2 Low Density Residential Zone.

How community views were taken into account:

The subject application was not notified in accordance with directions in s3.4.2 of the North Sydney Community Engagement Protocol.

Review of determination and right of appeal:

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.

Section 4.55 of the Act confers on an applicant who is dissatisfied with the determination of a consent authority a right of appeal to the Land and Environment Court pursuant to Section 8.9 of the Environmental Planning and Assessment Act, 1979.

Endorsed for and on behalf of North Sydney Council

21 December 2022

DATE



Signature on behalf of consent authority
MICHAEL STEPHENS
A/TEAM LEADER ASSESSMENTS