

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0709
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Responsible Officer:	Adam Mitchell
Land to be developed (Address):	Lot 1 DP 219265, 1797 Pittwater Road MONA VALE NSW 2103 Lot 2 DP 219265, 38 Park Street MONA VALE NSW 2103 Lot 4 DP 76695, 1795 Pittwater Road MONA VALE NSW 2103
Proposed Development:	Modification of Development Consent DA2019/1072 for Demolition works and construction of a Seniors Housing development with basement parking & associated landscaping
Zoning:	R2 Low Density Residential
Development Permissible:	Yes, under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Mona Vale 3 Pty Ltd
Applicant:	Mona Vale 3 Pty Ltd

Application Lodged:	16/09/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	Not Notified
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

This Section 4.55(1A) Modification Application seeks to amend the approved Development Consent no. DA2019/1072 (the Parent consent) for demolition and construction of a Seniors Housing Development at 1795 and 1797 Pittwater Road and 38 Park Street, Mona Vale, approved on 09 July 2020.

Subsequent to the above application, the adjoining property at 1793 Pittwater Road, Mona Vale was acquired by the same developer and another development application (DA2020/1179) was approved on 10 February 2021 to consolidate all four sites and construct an additional 6 seniors housing units.

That second development consent required the lots to be consolidated prior to the issue of an Occupation Certificate.

To enable the two development consents to be dealt with concurrently and to remove a duplication of conditions, the applicant is seeking the deletion of DA2019/1072 Conditions 23, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71 and 72, and seeks to replace these conditions with a new condition which reads:

An Occupation Certificate [for DA2019/1072] cannot be issued until the Occupation Certificate for Development Consent no. DA2020/1179 has been issued.

The modifications sought do not result in any physical changes to the approved building.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

There are no assessment issues.

SITE DESCRIPTION

Property Description:	Lot 1 DP 219265 , 1797 Pittwater Road MONA VALE NSW 2103 Lot 2 DP 219265 , 38 Park Street MONA VALE NSW 2103 Lot 4 DP 76695 , 1795 Pittwater Road MONA VALE NSW 2103
Detailed Site Description:	The subject site consists of four (4) adjoining allotments that sit to the the southwest of Pittwater Road and northeast of Park Street, Mona Vale. Those lots are identified as follows: <ul style="list-style-type: none"> • Lot 2, DP 219265 - No. 38 Park Street, Mona Vale.

- Lot 1, DP 219265 - No. 1797 Pittwater Road, Mona Vale.
- Lot 4, DP 76695 - No 1795 Pittwater Road, Mona Vale.
- Lot 5, DP 77493 - No. 1793 Pittwater Road, Mona Vale.

The overall site has a frontage of 64.2m to Pittwater Road and 63.9m to Park Street and depths between 36m and 68m equating to an overall surveyed area of 3,240.42sqm.

The site falls within the R2 Low Density Residential zone pursuant to the Pittwater Local Environmental Plan 2014 and presently accommodates single storey dwellings.

Detailed Description of Adjoining/Surrounding Development

Adjoining development is characterised by weatherboard dwelling houses to the north-west and south-east. The immediately adjoining neighbour to the south is Pittwater Medical Practice and a Health Space clinic.

Surrounding development to the west on the opposite side of Park Street includes The Sacred Heart Catholic Church and the Woolworths arcade connecting to the Mona Vale Town Centre further to the south-west. To the east, on the opposite side of Pittwater Road are a number of attached townhouse developments.

Map:



SITE HISTORY

- **Development Application no. DA2019/1072** for demolition and and construction of a Seniors Housing development, approved 09 July 2020. This consent applies to 38 Park Street and 1795 and 1797 Pittwater Road, Mona Vale.
- **Development Application no. DA2020/1179** for demolition works and the construction of a Seniors Housing development with basement parking and associated landscaping. Approved on 10 February 2021. This consent applies to 38 Park Street, 1793, 1795 and 1797 Pittwater Road, Mona Vale. This is the parent consent of this modification.
- **Section 4.55 (1A) Modification Application no. MOD2021/0711** for the removal of a jacaranda trees, approved 03 November 2021.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2019/1072, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(1A) - Other Modifications	Comments
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	<p>Yes</p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <ul style="list-style-type: none"> • The modifications sought result in no physical changes to the development nor affectations to the end product. The modifications are administrative only in nature and are sought to reduce duplication of conditions and pre-Construction Certificate and Occupation

Section 4.55(1A) - Other Modifications	Comments
	Certificate obligations.
(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	<p>The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2019/1072 for the following reasons:</p> <ul style="list-style-type: none"> • Whilst the modifications sought entail the deletion of a number of conditions, the aim of those conditions is still achieved by virtue of the duplicated conditions in the later DA2020/1179 which apply to the whole of the land. Therefore the modifications sought are substantially the same (identical) to the approved 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 under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has not been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	The application has not been publicly exhibited as above.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of

Section 4.15 'Matters for Consideration'	Comments
instrument	Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter has been addressed via a condition in the original consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.

Section 4.15 'Matters for Consideration'	Comments
the locality	<p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

CONDITIONS TO BE DELETED

For clarity, the headings of the conditions that are sought for removal are copied below. The boldened numbers in parenthesis represents the revised equivalent conditions of DA2020/1179 to the preceding condition numbers of DA2019/1072.

- 23 - Tree Protection Plan **(20)**
- 51 - Landscape Works **(47)**
- 52 - Condition of Retained Vegetation **(48)**
- 53 - Certification for the Installation of Stormwater Treatment Measures **(50)**
- 54 - Positive Covenant, Restriction as to User and Registration of Encumbrances for Stormwater Treatment Measures **(51)**
- 55 - Stormwater Treatment Measure Operation and Maintenance Plan **(52)**
- 56 - Works as Executed Drawings - Stormwater Treatment Measures **(53)**
- 57 - Post-Construction Dilapidation Report **(54)**
- 58 - Reinstatement of Kerb **(56)**
- 59 - Positive Covenant for the Maintenance of Stormwater Pump-out Facilities **(57)**
- 60 - Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures **(58)**
- 61 - Community/Strata Management Statement **(59)**
- 62 - Post-Construction Dilapidation Report (Major Development) **(60)**
- 63 - Geotechnical Certification Prior to Occupation Certificate **(61)**
- 64 - Garbage and Recycling Facilities **(63)**
- 65 - Unit Numbering for Multi Unit Developments (Residential, Commercial and Industrial) **(65)**
- 66 - House / Building Number **(64)**
- 67 - Undergrounding of Telecommunications Services **(66)**
- 68 - *Sydney Water*
- 69 - Occupation of Seniors Housing or Housing for Persons with a Disability **(67)**
- 70 - *Certification of Completion of Requirements for Seniors Housing or Housing for Persons with a Disability*
- 71 - *Signage and Linemarking - external*
- 72 - *Signage and Linemarking - Implementation*

In addition to the above, Council's Landscape Officer has identified several other conditions which are duplicates between the two Development Consents and thus, the following conditions are also proposed for deletion from DA2019/1072:

- 12 - On-slab Planter Works **(10)**
- 24 - Transplanting Methodology **(21)**
- 35 - Tree Removal within the Property **(32)**
- 36 - Tree Removal within the Road Reserve **(33)**
- 46 - Project Arborist **(29)**
- 47 - Tree and Vegetation Protection **(41)**

Comment

As per the above comparative analysis the conditions proposed to be deleted from DA2019/1072 are mostly covered by equivalent conditions in DA2020/1179 which applies to the whole of the site and thereby, their deletion from one consent does not mean that the intent of the condition does not have to be adhered to (as it must be by law pursuant to DA2020/1179). Rather, the proposed deletion just negates the requirement of duplicated submissions to the certifying authority.

The italicised text above is conditions 68, 70, 71 and 72 which are also sought for deletion. There is no equivalent to these conditions in Development Consent DA2020/1179 and therefore these four conditions shall not be deleted.

Council's Development Engineers do not support the removal of their conditions as there is not considered to be an adequate mechanism under DA2020/1179 to secure the approved outcomes - i.e., the stormwater concept of DA2019/1072 is not displayed or described on the approved documents for DA2020/1179. The applicant has been advised of this issue.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application was not notified.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The application is to modify conditions of consent to enable development consents DA2019/1072 and DA2020/1179 to be dealt with concurrently, and thus remove unnecessary duplication of conditions.</p> <p>In this regard, the application seeks the deletion of Conditions 23, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72 under DA2019/1072 and their replacement with the following condition: An Occupation Certificate cannot be issued until the Occupation Certificate for Development Consent DA2020/1179 has been issued.</p> <p>It is noted that the following landscape conditions apply to both development consents over and above the conditions identified in the</p>

Internal Referral Body	Comments
	<p>modification application, referenced here firstly in DA2019/1072 and secondly in DA2020/1179, as follows:</p> <ul style="list-style-type: none"> • Condition 12 / 10 on slab planter works; Condition 23 / 20 tree protection plan; • Condition 24 / 21 transplanting methodology; • Condition 35 / 32 tree removal within the property; • Condition 36 / 33 tree removal within the road reserve; • Condition 46 / 29 project arborist; • Condition 47 / 41 tree and vegetation protection; • Condition 51 / 47 landscape works completion; • Condition 52 / 48 condition of retained vegetation; and • Condition 73 / 79 landscape maintenance. <p>Landscape Referral raise no objections to the removal of landscape conditions 12, 23, 24, 35, 36, 46, 47, 51, 52, and 52 from development consent DA2019/1072 as these are included and updated as necessary in landscape conditions 10, 20, 21, 32, 33, 29, 41, 47, 48 and 79 of development consent DA2020/1179, subject to the imposition of conditions that a Occupation Certificate cannot be issued until the Occupation Certificate for development consent DA2020/1179 has been issued.</p>
NECC (Development Engineering)	<p>Development Engineers cannot support the removal of the following conditions as they are not appropriately secured under DA2020/1179:</p> <ul style="list-style-type: none"> • 53 - Certification for the Installation of Stormwater Treatment Measures • 54 - Positive Covenant, Restriction as to User and Registration of Encumbrances for Stormwater Treatment Measures • 55 - Stormwater Treatment Measure Operation and Maintenance Plan • 56 - Works as Executed Drawings - Stormwater Treatment Measures • 57 - Post-Construction Dilapidation Report • 58 - Reinstatement of Kerb • 59 - Positive Covenant for the Maintenance of Stormwater Pump-out Facilities • 60 - Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures • 62 - Post-Construction Dilapidation Report (Major Development) • 63 - Geotechnical Certification Prior to Occupation Certificate <p>No objections are raised to the removal of the other conditions sought, or those identified by Council's Landscape Officer.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and

Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

Nil

Pittwater Local Environmental Plan 2014

Is the development permissible?	No
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

The proposal does not modify the previous assessment of the Principal Development Standards or any physical works and therefore no further assessment on these matters is required.

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes

Detailed Assessment

Pittwater 21 Development Control Plan

Built Form Controls

The proposal does not modify the previous assessment of the Built Form Controls or any physical works and therefore no further assessment on these matters is required.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.9 Mona Vale Locality	Yes	Yes

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2021/0709 for Modification of Development Consent DA2019/1072 for Demolition works and construction of a Seniors Housing development with basement parking & associated landscaping on land at Lot 1 DP 219265, 1797 Pittwater Road, MONA VALE, Lot 2 DP 219265, 38 Park Street, MONA VALE, Lot 4 DP 76695, 1795 Pittwater Road, MONA VALE, subject to the conditions printed below:

- A. **Delete Condition 12 – On-slab Planter Works.**
- B. **Delete Condition 23 - Tree Protection Plan.**
- C. **Delete Condition 24 – Transplanting Methodology.**
- D. **Delete Condition 35 – Tree Removal within the Property.**
- E. **Delete Condition 36 – Tree Removal with the Road Reserve.**
- F. **Delete Condition 46 – Project Arborist.**
- G. **Delete Condition 47 – Tree and Vegetation Protection.**
- H. **Modify Condition 51 - Landscape Works to read as follows:**

Condition 51 - Works to be Completed prior to the issue of an Occupation Certificate

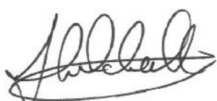
An Occupation Certificate cannot be issued for this development until the Occupation Certificate for Development Consent No. DA2020/1179 has been issued.

Reason: To ensure that all works are carried out in accordance with the intent of this Development Consent.

- I. **Delete Condition 52 - Condition of Retained Vegetation.**
- J. **Delete Condition 61 - Community/Strata Management Statement.**
- K. **Delete Condition 64 - Garbage and Recycling Facilities.**
- L. **Delete Condition 65 - Unit Numbering for Multi Unit Developments (Residential, Commercial, and Industrial).**
- M. **Delete Condition 66 - House / Building Number.**
- N. **Delete Condition 67 - Undergrounding of Telecommunications Services.**
- O. **Delete Condition 69 - Occupation of Seniors Housing or Housing for Persons with a Disability.**

In signing this report, I declare that I do not have a Conflict of Interest.

Signed



Adam Mitchell, Principal Planner

The application is determined on 18/01/2022, under the delegated authority of:



Tony Collier, Acting Development Assessment Manager