

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2024/0129
Responsible Officer:	Olivia Ramage
Land to be developed (Address):	Lot 7 DP 1251955, 121 Dove Lane WARRIEWOOD NSW 2102
Proposed Development:	Modification of Development Consent DA2020/1727 granted for Subdivision of one lot into three
Zoning:	R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Morehuman Warriewood Pty Ltd
Applicant:	The Trustee For Morehuman Warriewood Unit Trust

Application Lodged:	05/04/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	16/04/2024 to 30/04/2024
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The modification seeks consent to remove two additional trees, Tree 42 and 46 as they will be impacted by the approved civil works.

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 7 DP 1251955 , 121 Dove Lane WARRIEWOOD NSW 2102
Detailed Site Description:	<p>The subject site consists of one allotment located on the north-western corner of the currently vacant land at the end of the existing section of Fern Creek Road. The site will be accessed by the Fern Creek Road extension, to be built as approved under DA2018/1044.</p> <p>The site is irregular in shape with a width total southern boundary length of 104 metres and a depth of 29.65 metres. The site has a surveyed area of 2,383.3m².</p> <p>The site is located within the R3 Medium Density Residential zone and is currently under construction.</p> <p>The site has a moderate slope from the south to the north, with a row of vegetation along the south-western boundary of the site, a mixture of medium and tall trees.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by Fern Creek to the north, vacant land identified for future residential development, and new residential dwelling development to the south along the existing section of Fern Creek road.</p>

Map:



SITE HISTORY

The land has been subject to a number of recent development applications to create residential development in the Warriewood Valley release area. A search of Council's records has revealed the following relevant history:

- DA2018/1044 for subdivision to create road reserve and three development lots, extension of Fern Creek Road and remediation of contaminated land was approved by Council on 15 May 2019.
- Prelodgement meeting PLM2020/0251 was held on 3 November 2020 to discuss subdivision of the land into 33 residential lots (and integrated housing) on 3 November 2020.
- DA2020/1727 for subdivision of one lot into three was approved by Council on 20 August 2021.
- DA2021/0053 for Subdivision of land and construction of dwelling houses, semi-detached dwellings and attached dwellings. Approved 7 September 2021.
- DA2022/0550 for Construction of two (2) dwelling houses and swimming pools each upon an unregistered lot. Approved with Deferred Commencement on 8 November 2022.
- Mod2022/0733 Modification of Development Consent DA2021/0053 granted for Subdivision of land and construction of dwelling houses, semi-detached dwellings and attached dwellings. Approved 4 April 2023.
- Mod2023/0375 Modification of Development Consent DA2020/1727 granted for Subdivision of one lot into three. Approved 29 August 2023.

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 DA2020/1727, 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 modification proposes the removal of two trees which cannot be retained due to the approved civil infrastructure works. • The proposed tree removal is supported by Council's Landscape Officer and Bushland and Biodiversity Officer and is therefore considered to be of minimal environmental impact.
(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 consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2020/1727 for the following reasons:</p> <ul style="list-style-type: none"> • The proposal remains for subdivision of one lot into three and no changes are proposed to the approved lot layout.
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(ii) a development control plan, if the consent authority is a council that has made a</p>	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.</p>

Section 4.55(1A) - Other Modifications	Comments
development control plan under section 72 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 any period prescribed by the regulations or provided by the development control plan, as the case may be.	No submissions were received in relation to this application.

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 instrument	There are no current draft environmental planning instruments.
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)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 2001: The Demolition of Structures. This clause is not relevant to this application.</p>

Section 4.15 'Matters for Consideration'	Comments
	<p><u>Clauses 62</u> and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of 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 the locality	<p>(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.</p> <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.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the original application DA2020/1727 and was supported by

the NSW Rural Fire Service. This modification proposes tree removal and does not propose any changes to the approved built form.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 16/04/2024 to 30/04/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The application is for modification of development consent DA2020/1727, to approve removal of two existing trees that are impacted by civil infrastructure as approved under MOD2023/0375. The Arboricultural Impact Assessment issued with MOD2023/0375 indicated that existing trees 42 and 46 were capable of being retained but may be affected by disturbances from demolition and construction works.</p> <p>Works in proximity to both existing trees 42 and 46 and presenting a detrimental impact include excavation works for stormwater near tree 42 and a 1:3 batter near tree 46, and the Arboricultural Impact Assessment submitted with this modification application determines that both existing trees 42 and 46 should be removed.</p> <p>Landscape Referral are satisfied with the recommendation, however two replacement native canopy trees shall be imposed in conditions to offset the loss of existing canopy, as Condition 1. Approved Plans and Supporting Documentation, shall accordingly be modified to list the Arboricultural Impact Assessment submitted with this modification application.</p>
NECC (Bushland and Biodiversity)	<p>The comments in this referral relate to the following applicable controls and provisions:</p> <ul style="list-style-type: none"> Pittwater LEP - Clause 7.6 Biodiversity Protection Pittwater DCP - Clause B4.18 Heathland/Woodland Vegetation <p>The modifications require the removal of two trees previously slated for retention and identified as trees 42 and 46 (both <i>Eucalyptus botroyides</i>). No replacement planting has been considered in the application and therefore conditions are recommended to include like for like tree replacements.</p> <p>The development is designed, sited and will be managed to avoid any significant adverse environmental impact.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs 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 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)

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been vacant for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

Pittwater Local Environmental Plan 2014

Is the development permissible?	Yes
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

This application proposes the removal of two additional trees and there are no applicable principal development standards under Part 4 of the PLEP 2014 to consider as part of this assessment.

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
6.1 Warriewood Valley Release Area	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes

Clause	Compliance with Requirements
7.6 Biodiversity protection	Yes
7.10 Essential services	Yes

Pittwater 21 Development Control Plan

Built Form Controls

This application proposes the removal of two additional trees and there are no built form controls under the P21 DCP to consider as part of this assessment.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.16 Warriewood Valley Locality	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.2 Bushfire Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C6.1 Integrated Water Cycle Management	Yes	Yes
C6.2 Natural Environment and Landscaping Principles	Yes	Yes
C6.3 Ecologically Sustainable Development, Safety and Social Inclusion	Yes	Yes
C6.5 Utilities, Services and Infrastructure Provision	Yes	Yes
C6.6 Interface to Warriewood Wetlands or non-residential and commercial/industrial development	Yes	Yes
D16.1 Character as viewed from a public place	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.

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 2021;
- 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. Mod2024/0129 for Modification of Development Consent DA2020/1727 granted for Subdivision of one lot into three on land at Lot 7 DP 1251955,121 Dove Lane, WARRIEWOOD, subject to the conditions printed below:

Modification Summary

The development consent is modified as follows:

MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
PAN-419782 Mod2024/0129	The date of this notice of determination	Modification of Development Consent DA2020/1727 granted for Subdivision of one lot into three

		Add Condition No.1B - Modification of Consent - Approved Plans and Supporting Documentation Amend Condition No.31 - No Weeds Imported On To The Site Amend Condition No.32 - Priority Weed Removal and Management Add Condition No.33 - Replacement of Canopy Trees
PAN-348273 Mod2023/0375	29 August 2023	Modification of Development Consent DA2020/1727 granted for Subdivision of one lot into three Add Condition No.1A - Modification of Consent - Approved Plans and Supporting Documentation Amend Condition No.2 - Compliance with Other Department, Authority or Service Requirements

Modified conditions

A. Add Condition No.1B - Modification of Consent - Approved Plans and Supporting Documentation, to read as follows:

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
251-20C-DA-1001	B	Cover Sheet, Locality Plan and Index Sheet	Colliers International Engineering and Design NSW	11 March 2024
251-20C-DA-1101	B	Road and Drainage Plan	Colliers International Engineering and Design NSW	11 March 2024
251-20C-DA-1703	B	Post-Development Sub-Catchment Plan	Colliers International Engineering and Design NSW	11 March 2024
251-20C-DA-1711	B	Stormwater Drainage Longitudinal Sections	Colliers International Engineering and Design NSW	11 March 2024
251-20C-DA-1901	B	Sediment and Erosion Control Plan	Colliers International Engineering and Design NSW	11 March 2024

Approved Reports and Documentation	
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Document Title	Version Number	Prepared By	Date of Document
Arboricultural Impact Appraisal and Method Statement	B	Naturally Trees	19 February 2024

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

B. Amend Condition No.31 - No Weeds Imported On To The Site to read as follows:

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan) are to be imported on to the site prior to or during construction works.

Details demonstrating compliance are to be submitted to the Certifier prior to issue of the Subdivision Certificate.

Reason: To reduce the risk of site works contributing to spread of Priority and environmental weeds.

C. Amend Condition No.32 - Priority Weed Removal and Management to read as follows:

All Priority weeds (as specified in the Northern Beaches Local Weed Management Plan) within the development footprint are to be removed using an appropriate control method.

Details demonstrating compliance are to be submitted to the Certifier prior to issue of the Subdivision Certificate.

Reason: To reduce the risk of site works contributing to spread of Priority weeds.

D. Add Condition No.33 - Replacement of Canopy Trees to read as follows:

At least 2 Eucalyptus botryoides trees are to be planted on the site to replace protected trees approved for removal. Species are to have a minimum mature height of 8.5m and be consistent with the Native Planting Guide available on Council's website.

Tree plantings are to be retained for the life of the development and/or for their safe natural life. Trees that die or are removed must be replaced with another locally native canopy tree.

Replacement plantings are to be certified as being completed in accordance with these conditions of consent by a qualified landscape architect, and details submitted to the Certifier prior to issue of the Subdivision Certificate.

Reason: To establish appropriate native landscaping.

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

Signed



Olivia Ramage, Planner

The application is determined on 02/05/2024, under the delegated authority of:



Adam Richardson, Manager Development Assessments