

9 October 2023
Our Ref: 21643B_s4.55(1A)



planning consultants

**STATEMENT OF ENVIRONMENTAL EFFECTS
SECTION 4.55(1A) APPLICATION TO MODIFY
DEVELOPMENT CONSENT NO. DA2022/0581
Mona Vale Golf Club, 3 Golf Avenue, Mona Vale**

1.0 Introduction

DFP has been commissioned by HGW Projects, on behalf of Mona Vale Golf Club to prepare an application under section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to modify development consent No. DA2022/0581 for alterations and additions to a Recreation Facility (Outdoor) known as Mona Vale Golf Club.

The section 4.55(1A) application seeks to modify Condition No. 40 relating to hours of operation of a restaurant space on the ground floor of the clubhouse.

This report has been prepared in support of the section 4.55(1A) application and includes the information necessary for Council to assess and determine the application including:

- A background outlining the approved development;
- A brief description of the site context;
- Description and reasons for the proposed modification;
- An environmental assessment; and
- Our conclusion and recommendations.

This report is accompanied by:

- Acoustical Report prepared by Koikas Acoustics, 3 October 2023; and
- Operational Management Plan – Ground Floor Function Room, October 2023

We have concluded that the proposed modifications will result in a development that is substantially the same as the approved development and will have minimal environmental impact and accordingly, the proposal is considered to satisfy the requirements to enable these modifications to be approved by Council pursuant to s4.55(1A) of the EP&A Act.

2.0 Background

On 31 August 2022, the Northern Beaches Local Planning Panel granted development consent to Development Application No. DA2022/0581 for alterations and additions to a Recreation Facility (Outdoor) at 3 Golf Avenue, Mona Vale.

Condition No. 40 of the Development Consent relates to hours of operation and states:

“The hours of operation are to be restricted to:

- *Monday to Friday – 8:00am - 9:00pm*
- *Saturday – 8:00am - 9:00pm*
- *Sunday and Public Holidays – 8:00am - 9:00pm*

No more than 1 (one) ancillary function/event to the approved land use shall occur per week which operates until midnight (12:00). Note: this requirement does not preclude the number of ancillary functions/events held within the above hours of operation.

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

Reason: Information to ensure that amenity of the surrounding locality is maintained.”

Section 4.0 of this submission outlines the proposed modifications to the consent.

3.0 Site Context

3.1 Site Description

The Mona Vale Golf Club site is located on multiple allotments. The approved works (DA2022/0581) are located on land that is legally described as:

- Lot 249 DP 752046 (3 Golf Avenue, Mona Vale);
- Lot 323 DP 824000 (3 Golf Avenue, Mona Vale); and
- Lot 2 DP 1275526 (1 Golf Avenue, Mona Vale).

Lot 249 contains a two-storey brick clubhouse building with a metal roof, an at-grade car park and a smaller single storey brick building with a metal roof, which operates as a ‘pro-shop’ for the golf club (see **Figure 1**).

Lot 249 has a 142.19 metre frontage to Golf Avenue and a total area of 7,820m².



Figure 1 Site Aerial

The site is Crown Land. A Crown Lease applies to Lot 249 (Crown Account id 76319) and Lot 323 (Crown Account id 200108). Council is the landowner and the Crown Land Manager of Lot 2, known as Beeby Park Reserve (R45244). On 26 October 2021 Council resolved to apply to the Minister for Local Government for a renewed lease of the site to Mona Vale Golf Club for a further 20 years under Section 47 of the *Local Government Act 1993*.

3.2 Surrounding Development

To the north of the clubhouse, land improvements consist of low, medium and high density residential developments. The Mona Vale Golf Club course is predominantly located to the south of the clubhouse.

The site is located 400 metres east of the Mona Vale Strategic Centre which the North District Plan (2018) describes as:

“a mixed use area including retail, commercial, community, light industrial and residential uses. It is a thriving centre during business hours, providing amenity, convenience and a sense of community for residents”.

4.0 Proposed Modification

This Section 4.55(1A) application seeks to amend Condition No. 40 relating to hours of operation to extend the approved trading hours of a restaurant space on the ground floor of the clubhouse from 8am – 9pm to 8am - 11pm daily.

The proposed modified condition is as follows:

“Hours of Operation

The hours of operation of the restaurant located on the ground floor of the clubhouse are to be restricted to:

- *Monday to Sunday and Public Holidays – 8:00am – 11:00pm*

The hours of operation for all other activities on site are to be restricted to:

- *Monday to Sunday and Public Holidays – 8:00am - 9:00pm*

No more than 1 (one) ancillary function/event to the approved land use shall occur per week which operates until midnight (12:00). Note: this requirement does not preclude the number of ancillary functions/events held within the above hours of operation.

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

Reason: Information to ensure that amenity of the surrounding locality is maintained.”

5.0 Statutory Provisions

Section 4.55 of the EP&A Act contains the provisions that must be considered by Council in determining an application to modify a Notice of Determination. In this regard, the relevant section is s4.55(1A) of the EP&A Act.

This application is lodged under s4.55(1A) as the proposed modifications are considered to be minor in nature and will have only minimal environmental impact (see **Section 6.0**).

In addition to the EP&A Act, section 100 of the *Environmental Planning and Assessment Regulation 2021* (EP&A Regulation) contains the information that must be submitted with an application to modify a consent. The requirements under the EP&A Act and EP&A Regulation are detailed below.

5.1 Section 4.55(1A) of the Act

Section 4.55(1A) of the Act applies to modifications where a minimal environmental impact may occur. Specifically, section 4.55(1A) provides that a number of matters be addressed, as discussed below:

“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”***

The modification relates only to hours of operation of an existing on-site restaurant. The modification proposed is considered to be minor in nature and have only minimal environmental impact for the reasons detailed in this report.

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

The modification relates only to hours of operation of an existing on-site restaurant. The proposed hours do not alter the character of the approved use and the development will remain substantially the same development as the development for which the consent was originally granted.

- “(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 modifications of a development consent,”

In accordance with Council's Community Participation Plan, notification of a s4.55(1A) modification is not required where, in the opinion of Council, such changes would not unreasonably cause an environmental impact.

It is anticipated that the modification application will have no cause to be notified.

- “(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”***

Should Council decide to notify the subject application, it must consider any submissions made during a notification period.

Subsections (1) and (2) of section 4.55 do not apply to the proposed modification. Subsection (3) is addressed in Section 6.0 of this submission.

5.2 EP&A Regulation 2021

In accordance with section 99 of the EP&A Regulation, this application will be made in the form approved by the Planning secretary via the NSW Planning Portal and is accompanied by all necessary information and documents required by the EP&A Regulation.

Pursuant to section 100(1) of the Regulation, **Table 1** provides the information required to be submitted with an application to modify a development consent under section 4.55.

Table 1 Information Required by Section 100(1) of the EP&A Regulation

Requirement	Details
(a) Name and address of applicant	The Mona Vale Golf Club Ltd, Golf Avenue, Mona Vale NSW 2103
(b) Description of development	Alterations and additions to a Recreation Facility (Outdoor) - Mona Vale Golf Club
(c) Site address	Lot 2 DP 1275526, 1 Golf Avenue Mona Vale; Lot 249 DP 752046, 3 Golf Avenue Mona Vale; and Lot 323 DP 824000, 3 Golf Avenue Mona Vale
(d) Description of the proposed modifications	To modify Condition 40, specifically the hours of operation for a restaurant located on the ground floor of the clubhouse as detailed within this Planning Submission.
(e) Statement describing intent of modification	Modification under Section 4.55(1A) of the EP&A Act as outlined in this Planning Submission.
(f) Description of expected impacts	The proposal relates to modifications to operational hours of an existing restaurant on the ground floor. The assessment under this Planning Submission and the accompanying acoustic assessment prepared by Koikas Acoustics demonstrates that the proposal will have minimal environmental impacts.
(g) Undertaking that the development will remain substantially the same as that originally approved	The proposal remains substantially the same as the development for which consent was originally granted as the modification relates to hours of operation only and does not change the nature of the approved use.
(h) Biodiversity credits	n/a
(i) Owner's consent	The site is Crown Land. A Crown Lease applies to Lot 249 (Crown Account id 76319) and Lot 323 (Crown Account id 200108). Council is the landowner and the Crown Land Manager of Lot 2, known as Beeby Park Reserve (R45244). Letters of owners' consent is being prepared by Council and the Crown and will be uploaded to the planning portal with this modification application.
(j) Application to Court or Council	The modification application is being lodged with Northern Beaches Council.

6.0 Environmental Planning Assessment

Section 4.55(3) of the EP&A Act requires that such of the matters referred to in section 4.15(1) as are of relevance to the proposed modification must be taken into consideration in determining the application for modification.

In addition, 4.55(3) requires the consent authority to take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

Accordingly, the following subsections provide an assessment of any such relevant matters.

6.1 Section 4.15(1)(a) – Planning Controls

The following subsections assess the modification proposal against the relevant provisions of applicable Environmental Planning Instruments (EPIs), Draft EPIs, Development Control Plans (DCPs), Planning Agreements and matters prescribed by the Regulation in accordance with section 4.15(1)(a) of the EP&A Act.

6.1.1 State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 2 Coastal Management and Chapter 4 Remediation of Land of SEPP RH apply to the land. However, the modification does not relate to any physical works and therefore no further contamination or coastal management consideration is necessary as part of this modification application.

6.1.2 State Environmental Planning Policy (Industry and Employment)

Chapter 3 Advertising and Signage of SEPP IE applies to the land. However, the modification does not relate to any new signage or amendments to existing signage and therefore no consideration of (approved) signage is necessary as part of this modification application.

6.1.3 Pittwater Local Environmental Plan 2014

The site is zoned RE1 Public Recreation (the RE1 zone), under the *Pittwater Local Environmental Plan 2014 (the LEP)*. The proposed development is for alterations and additions to an existing *recreation facility (outdoor)*, including *signage*. Pursuant to the LEP, a *recreation facility (outdoor)*, and *signage* are all permissible with consent in the RE1 zone.

The objectives of the RE1 zone under the LEP are:

- *To enable land to be used for public open space or recreational purposes.*
- *To provide a range of recreational settings and activities and compatible land uses.*
- *To protect and enhance the natural environment for recreational purposes.*
- *To allow development that does not substantially diminish public use of, or access to, public open space resources.*
- *To provide passive and active public open space resources, and ancillary development, to meet the needs of the community.*

The approved restaurant is ancillary to the use of the site as a recreation facility (outdoor). The proposed modification to extend the operational hours of an existing restaurant is consistent with the objectives of the zone as it would extend the utilisation of public use of the site and better meet the needs of the community without compromising other uses or the natural environment on site.

6.1.4 Pittwater 21 Development Control Plan

Table 2 provides a summary assessment of the proposed development against the relevant provisions of Pittwater 21 Development Control Plan (the DCP).

Table 2 Assessment against relevant provisions of the DCP		
Provision	Assessment	Consistent
C5.2 Safety and security	The proposed modification would extend the hours of passive surveillance on site to improve safety and security on and around the site.	Yes
C5.10 Protection of Residential amenity	The golf club operates in accordance with the Operational Management Plan, and Noise and Complaint Policy prepared by Mona Vale Golf Club dated 2022 in accordance with condition No. 1 of approval DA2-22/0581. The development, as proposed to be modified, does not have an unreasonable adverse impact upon adjoining residential development as documented in this planning report.	Yes
C5.17 Pollution Control	The development, as per the proposed modification complies with the NSW EPA Noise Policy for Industry 2017 (formally known as the NSW Environment Protection Authority Industrial Noise Policy January 2000). This assessment is detailed in the Acoustical Report prepared by Koikas Acoustic, October 2023.	Yes
C5.20 Liquor Licensing Applications	The premises holds a current liquor license.	Yes

6.2 Section 4.15(1)(b) – Natural and Built Environmental Impacts

No physical works are proposed in this modification application. The potential natural and built environmental impacts of the proposed extension of hours are addressed in the subsection below.

6.2.1 Acoustic Impact

An Acoustical Report has been prepared by Koikas Acoustics (October 2023) to undertake a comprehensive assessment of the proposed modification to the approved trading hours of the ground floor restaurant. The assessment has considered the potential impact of noise emissions from patrons and music within licenced areas of the golf club as well as noise emissions from mechanical plant equipment and movements within the car park.

The maximum noise levels occurring from the car park (car doors and engines being the highest transient noise levels) is found to be less than the sleep disturbance criterion at the most affected residential boundary. The report also documents that the use of plant equipment associated with the additional hours of use are compliant with project noise criteria.

Koikas Acoustics make the following recommendations:

- Windows and doors remain closed during functions that involve live or amplified music or entertainment; and
- Signage be erected to remind patrons when leaving to be respectful of the club's neighbours and to keep noise to a minimum.

Koikas Acoustics conclude that the resultant noise emissions to the nearest residential receivers are within the project noise limits with the implementation of the abovementioned noise mitigation recommendations.

6.3 Section 4.15(1)(b) – Social and Economic Impacts

No physical works are proposed in this modification application. The proposed extension of restaurant operating hours will provide for a more feasible restaurant operation that better supports the local night-time economy.

The proposed modification assists with the delivery of Direction 3 - Vibrant Economy of *Northern Beaches Economic Development Strategy (August 2023)* which encourages businesses to participate in the night-time economy.

6.4 Section 4.15(1)(c) – Suitability of the Site for Development

The golf club and the restaurant located on the ground floor are long-established uses on the site. Development consent DA2022/0581 imposed a condition of consent restricting the hours of the restaurant from 8am to 9pm. This planning report and accompanying acoustical report demonstrate that the proposed modification to the restaurant operating hours (8am to 11pm) will have no significant impact on residential amenity around the golf club and therefore the site is considered suitable for the proposed modification.

6.5 Section 4.15(1)(e) – Public Interest

In accordance with section 4.15(1)(e) of the EP&A Act, the proposed modification is considered to be in the public interest because the development will remain consistent with the relevant planning provisions applicable to the site and not have any significant adverse built or natural environmental impacts.

6.6 Reasons for the Grant of the Consent

In determining DA2022/0581, the Northern Beaches Local Planning Panel provided the following reasons why consent was granted:

“The assessment of this DA has found that the proposal is satisfactory in relation to the changes to the intensification and scale of upgrades to the existing clubhouse facilities and that those upgrades will not detrimentally affect the acoustic or visual amenity of neighbouring properties or the natural environment.”

And:

“The proposal provides enhanced dining and entertainment opportunities for members and their guests, without compromising the landscape and scenic qualities of the course, or the amenity of nearby residential properties.”

The abovementioned conclusions would continue to be applicable to the development as proposed to be modified. Accordingly, the proposed modifications do not offend any of the reasons for the original granting of consent.

7.0 Conclusion and Recommendations

This submission accompanies an application under section 4.55(1A) of the EP&A Act to modify Condition No. 40 of Development Consent No. DA2022/0581.

The application seeks to modify Condition No.40 to reinstate the hours of operation of the restaurant on the ground floor of the clubhouse approved under a former development consent. The modification to allow the restaurant to operate until 11:00pm daily will support a more viable restaurant space to service the local community without compromising the amenity of nearby residents.

The modifications have been assessed as resulting in a development that is substantially the same as the approved development and the proposed modifications will have minimal environmental impact.

Accordingly, the proposal is considered to satisfy the requirements to enable these modifications to be approved by Council pursuant to Section 4.55(1A) of the EP&A Act.

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