

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0711
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Responsible Officer:	Adam Mitchell
Land to be developed (Address):	Lot 4 DP 76695, 1795 Pittwater Road MONA VALE NSW 2103 Lot 1 DP 219265, 1797 Pittwater Road MONA VALE NSW 2103 Lot 2 DP 219265, 38 Park Street MONA VALE NSW 2103 Lot 5 DP 77493, 1793 Pittwater Road MONA VALE NSW 2103
Proposed Development:	Modification of Development Consent DA2020/1179 granted 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 Disabilities) 2004
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Mona Vale 3 Pty Limited
Applicant:	Mona Vale 3 Pty Ltd

Application Lodged:	16/09/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Seniors Living
Notified:	19/10/2021 to 02/11/2021
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 modify the approved development application DA2020/1179 for the construction of a seniors housing development. The scope of works sought under this application include:

- Removal of Tree T22 (*Jacaranda mimosifolia*) due to newly identified encroachments of the

basement into the TPZ thereby increasing the risk of failure of the tree.

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

Pittwater 21 Development Control Plan - B4.22 Preservation of Trees and Bushland Vegetation

Pittwater 21 Development Control Plan - D9.1 Character as viewed from a public place

SITE DESCRIPTION

Property Description:	<p>Lot 4 DP 76695 , 1795 Pittwater Road MONA VALE NSW 2103</p> <p>Lot 1 DP 219265 , 1797 Pittwater Road MONA VALE NSW 2103</p> <p>Lot 2 DP 219265 , 38 Park Street MONA VALE NSW 2103</p> <p>Lot 5 DP 77493 , 1793 Pittwater Road MONA VALE NSW 2103</p>
Detailed Site Description:	<p>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:</p> <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. MOD2021/0709** seeks consent to modify conditions of DA2019/1072 and is undetermined at the time of writing.

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 DA2020/1179, 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 works are limited to the removal of one tree and replacement with another tree. The scope of works considered to have a minimal environmental impact which will lessen over time as the tree establishes.
(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 DA2020/1799 for the following reasons:</p> <ul style="list-style-type: none"> • The modifications do not alter the approved building footprint, height or design;

Section 4.55(1A) - Other Modifications	Comments
	<ul style="list-style-type: none"> The modifications do not alter the approved building use; The modifications do not alter the approved density or operation of the land; and Whilst the tree to be removed is pleasant, its removal does not create a substantial change to the approved development.
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require, or</p> <p>(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</p>	The application has 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.	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	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of 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	None applicable.

Section 4.15 'Matters for Consideration'	Comments
of any planning agreement	
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>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>
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 not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 19/10/2021 to 02/11/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 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 proposes to modify Condition 20 of development consent DA2020/1179, and permit the removal of the existing tree identified as T22 - <i>Jacaranda mimosifolia</i>.</p> <p>It is noted that the Statement of Environmental Effects proposes the removal of the <i>Jacaranda mimosifolia</i> as it is an exempt species under the Development Control Plan.</p> <p>The development application documents, including architectural and landscape plans, nominated retention of this tree and other exempt trees along the boundary and the application determination thus was based on the amenity provided by such trees in maintaining privacy to neighbouring properties and reducing the built form, and satisfying relevant privacy and built form controls of the DCP. Conditions were therefore imposed for retention.</p> <p>Therefore any exempt species under a development consent does not provide automatic exemption thereafter to remove any of the exempt species under the exempt provisions. The modification application is provided based on current arboricultural review of the extent of basement excavation works in proximity to T22 - <i>Jacaranda mimosifolia</i>. The arboricultural investigation submitted with this application provides assessment "<i>that a number of significant roots will be severed during construction, and this will put the tree at an increased risk of failure. The result of this would be the whole tree falling into the neighbouring property</i>".</p> <p>Based on the current arboricultural investigation, Council raises no issues with removal of T22 - <i>Jacaranda mimosifolia</i>. The proposal to install the transplanted <i>Livistona australis</i> identified as T38, in place of T22, is not supported as a direct canopy tree replacement, and conditions shall be imposed requiring a canopy tree replacement, rather than the tall trunked <i>Livistona australis</i>.</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 alter the approved built form and the level of compliance achieved against the Principal Development Standards remains the same, and therefore no further assessment on this matter is required.

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.7 Demolition requires development consent	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.4 Floodplain risk management	Yes
7.10 Essential services	Yes

Detailed Assessment

Pittwater 21 Development Control Plan

Built Form Controls

The proposal does not alter the approved built form and the level of compliance achieved against the Built Form Controls remains the same, and therefore no further assessment on this matter 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
B4.5 Landscape and Flora and Fauna Enhancement Category 3 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
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.21 Seniors Housing	Yes	Yes
D9.1 Character as viewed from a public place	Yes	Yes
D9.2 Scenic protection - General	Yes	Yes
D9.10 Landscaped Area - General	Yes	Yes

Detailed Assessment

B4.22 Preservation of Trees and Bushland Vegetation

The application seeks consent to remove a tree, Tree 22, a *Jacaranda Mimosifolia*.

Council's Landscape Officer raises no objections to the removal of this exempt tree, subject to its replacement with a *Syzygium luehmannii* tree in a minimum pot size of 200 litres.

Accordingly, whilst the works will remove one tree, that removal is substituted by a new tree that shall, over time, become a valuable component to the micro ecosystem.

D9.1 Character as viewed from a public place

Commensurate to the scale and proportions of the approved development on site along with the new plantings approved, the removal of one Jacaranda tree and replacement with a substitute tree in a similar location is not considered to materially impact on the quality or character of the development when viewed from the public or private domain.

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 EPs
- 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. Mod2021/0711 for Modification of Development Consent DA2020/1179 granted for demolition works and construction of a Seniors Housing development with basement parking & associated landscaping on land at Lot 4 DP 76695, 1795 Pittwater Road, MONA VALE, Lot 1 DP 219265, 1797 Pittwater Road, MONA VALE, Lot 2 DP 219265, 38 Park Street, MONA VALE, Lot 5 DP 77493, 1793 Pittwater Road, MONA VALE, subject to the conditions printed below:

A. Amend Condition 20 - Tree Protection Plan to read as follows:

In order to protect existing trees and vegetation the following existing trees shall be protected in accordance with a Tree Protection Plan, based on the recommendations of the Arboricultural Impact Assessment reports dated 25 September 2019 and 17 September 2020:

i) 25 September 2019 report:

- T2 and T3 *Melaleuca quinquernervia* along Pittwater Road within the road reserve,
- T27 *Corymbia maculata* along Park Street within the road reserve,
- T4 *Glochidion ferdinandi*, T7 *Michelia figo*, T8 *Magnolia grandiflora*, T43 *Cedrus deodara* and T24 *Brachychiton acerifolius* within the site,
- T25 *Melaleuca quinquernervia* and T26 *Callistemon salignus* within adjoining property.

ii) 17 September 2020 report:

- T10 *Melaleuca quinquernervia* along Pittwater Road within the road reserve,
- T1, T2, and T3 *Waterhousia floribunda* and T11 *Tibouchina grandulosa* within adjoining property.

a) A Tree Protection Plan prepared by a AQF Level 5 Arborist with qualifications in arboriculture/horticulture, in accordance with AS4970-2009 Protection of trees on development sites, and consistent with the recommendations of the Arboricultural Impact Assessment prepared by Jacksons Nature Works dated 25 September 2019 (section 4. Recommendations) and 17 September 2020 (section 4. Recommendations), demonstrating as a minimum, the following:

- Layout of the approved development,
- Extent of permitted basement,
- Location of trees including trunk, structural root zone and tree protection zone,
- Location of tree protection fencing / barriers,
- General tree protection measures, including ground and trunk protection.

b) A schedule of site inspections, hold points and related certification of construction works near the existing trees the subject of the Tree Protection Plan.

c) The Tree Protection Plan is to be submitted to the Certifying Authority for approval prior to issue of a Construction Certificate.

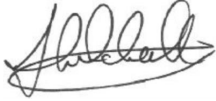
d) Tree protection measures identified on the plan are to be in place prior to commencement of works.

e) No objection is raised to the removal of tree T22 being a *Jacaranda mimosifolia* provided that one (1) *Syzygium luehmannii*, planted at a pre-ordered 200 litre container size, is planted in the area of tree T22.

Reason: to ensure compliance with the requirement to retain and protect significant planting on the site

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 03/11/2021, under the delegated authority of:



Tony Collier, Manager Development Assessments