

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/1934
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Responsible Officer:	Olivia Ramage
Land to be developed (Address):	Lot 1 DP 515041, 129 Barrenjoey Road MONA VALE NSW 2103
Proposed Development:	Use of Premises as a business premises (hairdressing salon)
Zoning:	C4 Environmental Living
Development Permissible:	No
Existing Use Rights:	Yes
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Callumalex Pty Ltd
Applicant:	Christine Rees

Application Lodged:	30/11/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	07/12/2022 to 12/01/2023
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 87,362.00
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PROPOSED DEVELOPMENT IN DETAIL

The proposal is for the change of use of the existing retail/commercial premises to a business premises for a hairdressing salon.

The hours of operation are:

- Monday to Friday - 9am to 6pm
- Saturday - 8am to 5pm
- Sunday - Closed

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 Local Environmental Plan 2014 - Zone C4 Environmental Living
 Pittwater 21 Development Control Plan - B3.11 Flood Prone Land
 Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements
 Pittwater 21 Development Control Plan - D9.1 Character as viewed from a public place

SITE DESCRIPTION

Property Description:	Lot 1 DP 515041 , 129 Barrenjoey Road MONA VALE NSW 2103
Detailed Site Description:	The subject site consists of one (1) allotment located on the corner of Barrenjoey Road and Waterview Street. The site is generally regular in shape and has an area of 834.7m². The site is currently occupied by a single storey commercial building providing two tenancies. A dentistry clinic is currently trading on the site as the Smile Doctor and occupies the north-western portion of the site. There is a total of 11 parking spaces provided within the site. The site has been occupied by various commercial premises for an extended period of time. The surrounding development consists of residential dwellings of varying sizes and styles.

Map:



SITE HISTORY

The land has been used for commercial purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

- **N0548/01** - Development application for Demolition of part of the existing ground floor and addition of a new first floor with carparking, landscaping and change of use to part professional medical suites and part commercial. Approved 4 March 2002.
- **N0986/02** - Modification of Development Consent for Alterations and additions to existing building and use. Approved 25 March 2003.
- **N0242/11** - Development application for the Fitout of a Commercial Suite. Approved 9 August 2011.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under 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	<u>Part 4, Division 2</u> of the EP&A Regulation 2021

Section 4.15 Matters for Consideration	Comments
Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	requires the consent authority to consider "Prescribed conditions" of development consent. This clause is not relevant to this application. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to existing use rights and parking. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application. <u>Clauses 62 and/or 64</u> 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. <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. <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.
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	(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. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (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.
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

Section 4.15 Matters for Consideration	Comments
	justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

- Does the existing use satisfy the definition of "existing use" under the *Environmental Planning and Assessment Act 1979* (the 'Act')?

Section 4.65 of the Act defines an existing use as:

"(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for this Division, have the effect of prohibiting that use, and

(b) the use of a building, work or land:

- (i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
- (ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse."*

This necessarily requires the following questions to be answered:

1. Was the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for this Division, have the effect of prohibiting that use?

Comment:

The Applicant has provided evidence in the form of a Development Consent, which reveals that the use of the building commenced as a lawful purpose on 4 March 2002, prior to the coming into force of Pittwater Local Environmental Plan 2014 on 30 May 2014.

2. Was the use of the building granted development consent before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use?

Comment:

The use of the building was lawfully approved by Council on 4 March 2002, prior to the coming into force of Pittwater Local Environmental Plan 2014 on 30 May 2014.

3. Has the use of the building been carried out within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse?

Comment:

The applicant and owner of the site have confirmed that the use of the site for commercial/business purposes has not ceased for a continuous period in excess of 12 months from the date upon the use commenced.

- **What is “the land on which the existing use was carried out” for the purposes of cl 162-167 of the Environmental Planning and Assessment Regulation 2021 (“the Regulation”)?**

Meagher JA in *Steedman v Baulkham Hills Shire Council* [No. 1] (1991) 87 LGERA 26 stated (at 27) the rule to be applied as follows: “if the land is rightly regarded as a unit and it is found that part of its area was physically used for the purpose in question it follows that the land was used for that purpose”.

Comment:

Having regard to the above case law, it is noted that the whole of the area of the land was physically used for the purpose in question and therefore, it is considered that the land was used for that purpose and that existing use rights apply to the whole of the subject site.

- **What are the planning principles that should be adopted in dealing with an application to alter enlarge or rebuild and existing use?**

The judgement in *Fodor Investments v Hornsby Shire Council* (2005) NSWLEC 71, sets out the planning principles that should be applied in dealing with development applications seeking to carry out development on the basis of existing use rights.

The following four principles adopted by the NSW Land and Environment Court in this case will have general application in dealing with development applications that rely on existing use rights:

1. How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?

While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessments.

Comment:

The application is for a change of use and does not involve any physical works. The bulk and scale of the built form remains unchanged and is therefore considered acceptable.

2. What is the relevance of the building in which the existing use takes place?

Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists. However, where the existing building is proposed for demolition, while its bulk is clearly an important consideration, there is no automatic entitlement to another building of the same floor

space ratio, height or parking provision.

Comment:

The change of use is proposed within an existing building and there are no changes to the built form of the building.

3. What are the impacts on adjoining land?

The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.

Comment:

The subject site contains two tenancies including a dentistry clinic which is already in operation on the site. The tenancies have been continually used for commercial purposes for an extended period of time. As the built form of the building is not changing, the proposal will not cause solar access, privacy or visual impacts to adjoining land. The parking and traffic impacts have been assessed by Council's Traffic Engineer deeming the proposal acceptable. The proposed hairdressing salon is not considered to cause unreasonable amenity impacts in terms of noise given the nature of the services provided by the business.

4. What is the internal amenity?

Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.

Comment:

This application proposes the change of use of a premises with no physical works proposed. It is considered that internal amenity will be maintained for both tenancies on the subject site.

Conclusion

The commercial use of the site has a lawful approval. Therefore, the proposed ongoing commercial use of the site is acceptable.

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 07/12/2022 to 12/01/2023 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 process council is in receipt of 1 submission/s from:

Name:	Address:
Karina Joan Page	Po Box 1043 MONA VALE NSW 1660

The following issues were raised in the submissions:

- Parking
- Zoning and Suitability

The above issues are addressed as follows:

- **Parking**

The submissions raised concerns that there is not enough parking to accommodate the business leaving limited parking for residents.

Comment:

The application has been reviewed by Council's Traffic Engineer with regards to parking who deemed it acceptable. As there is no change to the internal dimensions of the premises and the overall site provides parking for 11 vehicles, the parking facilities are considered adequate.

- **Zoning and Suitability**

The submissions raised concerns that the area is zoned residential not commercial and the business trades into the evenings and on Saturdays which is not appropriate for a residential zone.

Comment:

The subject site benefits from existing use rights which allows the permissibility of the business premises. The adjoining tenancy is a commercial premises and the site has been continually used for commercial purposes for an extended period of time. A detailed assessment of Existing Use Rights is provided in this report.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.
Environmental Health (Food	General Comments

Internal Referral Body	Comments
Premises, Skin Pen.)	No skin penetration has been applied for, therefore no conditions recommended Recommendation APPROVAL - no conditions
Traffic Engineer	Additional comments - 7/3/23 The applicant has provided additional information which confirms that there are two tenancies on the site, a dentistry clinic and the proposed hairdressing salon. The applicant has also confirmed that all 5 parking spaces on the site are unallocated and therefore available for use by both tenancies. Two of those spaces are however in a tandem formation and the "buried" space could therefore only be considered suitable for staff parking. The 6 x 90 degree angle parking bays fronting Waterview Street are constructed largely on Council property and are therefore publicly accessible however, as they are 2P time restricted, they can be considered as customer parking. The overall site therefore has parking for 11 vehicles. The previous DA consent for the site assessed the parking requirements on the basis of the dentistry use (professional consulting rooms) requiring 6 spaces i.e 3 spaces for each of the 2 consulting rooms with the commercial retail uses on the remainder of the site requiring 5 spaces. The 11 spaces were deemed adequate to support the uses. As the proposed hairdressing salon will have 4 staff and may cater for up to 12 clients at a time there is potential for it to generate a greater parking demand than can be accommodated by the 5 spaces that are available on site however as there is no change to internal dimensions of the premises and the parking available has previously been deemed acceptable, with parking generally also available on-street within reasonable proximity of the premises, the parking requirements for the use are considered adequate. The site is also unlikely to generate levels of traffic that will impact to a significant extent upon the surrounding road network. In light of the above the Transport Network team does not oppose the development application Original comments - 3/2/23 The proposal is for change of use of the existing retail/commercial premises on the site to a hairdressing salon. The material provided suggests that there will be 4 staff and provision to accommodate up to 12 clients at a time. It is noted that the site currently provides offstreet

Internal Referral Body	Comments
	parking for 5 vehicles including one accessible parking space with another 6 parking spaces that appear to be partly on street and partly on private property. The floor plans provided with the application do not indicate how the subject premises sit in comparison with the other business premises at the address. It is noted in the Statement of Environmental Effects that The Smile Doctor Dentistry Clinic also operates from the site overall site however it is unclear what portion of the site it occupies or if any other businesses also operate from the site. A site plan of the entirety of the site showing how the hair salon sits alongside the other premises is requested. Additional information with regard to the allocation of parking spaces on site is also requested as it is unclear how many spaces will actually be available for staff and clients of the hair salon. Once the requested information is provided further consideration of the proposal can be undertaken.

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 used for commercial purposes 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 commercial land use.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

The proposal is for a change of use and does not include any physical works. Therefore there are no development standards relevant to this application.

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone C4 Environmental Living

The subject site benefits from existing use rights and a detailed assessment has been provided in this report.

Pittwater 21 Development Control Plan

Built Form Controls

The proposal is for a change of use and does not involve any physical works. Therefore, there are no built form controls that are relevant for this application.

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
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
C2.8 Energy and Water Conservation	Yes	Yes
C2.9 Waste and Recycling Facilities	Yes	Yes
C2.10 Pollution Control	Yes	Yes
C2.12 Protection of Residential Amenity	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D9.1 Character as viewed from a public place	Yes	Yes

Detailed Assessment

B3.11 Flood Prone Land

The subject site is located within flood prone land. As the proposal is for change of use with no physical works, the application is considered to be consistent with the flood requirements.

B6.3 Off-Street Vehicle Parking Requirements

The proposal has been reviewed by Council's Traffic Engineer with regards to parking.

The site provides parking for 11 vehicles which is to be shared between both premises on the site. The proposed hairdressing salon will have 4 staff and may cater for up to 12 clients at a time which creates a potential for greater parking demand. However, as there is no change to the internal dimensions or external built form of the premises and there is unrestricted on-street parking available, the existing parking facilities are considered adequate for the use.

D9.1 Character as viewed from a public place

The application is for a change of use and does not include any physical works. The appearance of the building when viewed from Barrenjoey Road and Waterview Street remains unchanged.

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 2022

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this 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 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 Development Consent to DA2022/1934 for Use of Premises as a business premises (hairdressing salon) on land at Lot 1 DP 515041, 129 Barrenjoey Road, MONA VALE, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

The development must be carried out in compliance with the endorsed stamped plans and documentation listed below, except as amended by any other condition of consent:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A01 - 2D Floor Plan	Undated	Three Pama Interior Plans and Design

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

2. Approved Land Use

Nothing in this consent shall authorise the use of the tenancy as detailed on the approved plans for any land use beyond the definition of a business premises, in accordance with the Dictionary of the Pittwater Local Environmental Plan 2014, as follows:

business premises means a building or place at or on which—

(a) an occupation, profession or trade (other than an industry) is carried on for the provision of services directly to members of the public on a regular basis, or

(b) a service is provided directly to members of the public on a regular basis,

and includes funeral homes, goods repair and reuse premises and, without limitation, premises such as banks, post offices, hairdressers, dry cleaners, travel agencies, betting agencies and the like, but does not include an entertainment facility, home business, home occupation, home occupation (sex services), medical centre, restricted premises, sex services premises or veterinary hospital.

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

Reason: To ensure compliance with the terms of this consent.

3. No Approval for Physical Works

No approval is granted under this Development Consent for any physical works or the internal fitout.

Reason: To ensure compliance with the terms of this consent.

4. No Approval for Signage

No approval is granted under this Development Consent for the display or installation of any signage. That is, notwithstanding any signage under the provisions of exempt development as per the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

Reason: To ensure compliance with the terms of this consent.

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

5. Landscaping/signage adjoining vehicular access

The applicant must ensure that any planting or signage chosen for any land immediately adjacent to the driveway does not exceed a height of 1m

Reason: To maintain unobstructed sight distance for motorists.

6. Hours of Operation

The hours of operation are to be restricted to:

- Monday to Friday – 9am to 6pm
- Saturday – 8am to 5pm
- Sunday – Closed

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.

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

Signed



Olivia Ramage, Planner

The application is determined on 08/03/2023, under the delegated authority of:



Adam Richardson, Manager Development Assessments