



INNER WEST COUNCIL

DEVELOPMENT ASSESSMENT REPORT

Application No.	2019.103.1
Address	33 Tintern Road, Ashfield
Proposal	Review of Determination of 2019.103.1 which was refused seeking consent for the removal of a Jacaranda Tree located within the northern side setback at the rear of the subject site
Date of Lodgement	10 January 2020
Applicant	Ms C Stott
Owner	Mrs C E Stott
Number of Submissions	No submissions at time of preparing report
Value of works	\$1,650.00
Reason for determination at Planning Panel	Confirm original determination by way of refusal
Main Issues	Tree removal
Recommendation	Refusal
Attachment A	Draft conditions (if not refused)



LOCALITY MAP

Subject Site		Objectors		N
Notified Area		Supporters		

1. Executive Summary

This report is an assessment of the application submitted to Council for a review of 2019.103.1 (refused on 18 September 2019) in accordance with Section 8.2 of the Environmental Planning and Assessment Act 1979. The application seeks a change of determination to the previous refusal of an application for the removal of one Jacaranda Tree located within the northern side setback at the rear of the subject site at 33 Tintern Road, Ashfield.

At the time of preparing this report, the application was on notification to surrounding properties. No submissions have been received to date, however, the notification period concludes 24 January 2020. Any submissions received prior between the preparation of the report and the application's consideration at the Inner West Planning Panel will be addressed in a future Supplementary Report.

The main issues that have arisen from the application include:

- Insufficient information to justify tree removal
- Loss of landscape amenity

The proposal is inconsistent with the requirements of Section 2, Chapter C – Sustainability under the Comprehensive Inner West Council Development Control Plan 2016.

Given the proposal does not adequately justify the removal of a tree of high landscape amenity value and excellent health and condition, the application is not supported and is recommended for refusal.

2. Proposal

The application seeks a review of 10.2019.103.1 for the removal of one *Jacaranda mimosifolia* (Jacaranda) Tree located within the northern side setback at the rear of the subject site, which was determined by way of refusal on 18 September 2019. The location of the subject tree to be removed is indicated in the aerial photo below.



Figure 1: Subject site outlines in blue, tree to be removed circled in red.

3. Site Description

The subject site is located on the western side of Tintern Road, bounded by Robert Street to the north and Clissold Street to the south. The site area is a double lot with an approximate total site area of 1400m². An existing single storey dwelling with detached garage and pergola is located on the site.

Surrounding land uses are predominantly low density residential dwelling houses.

The subject site is listed as a local heritage item (item number 313 under the Ashfield LEP 2013) and is located within the Tintern Road Heritage Conservation Area.



Figure 2: Land zoning map, subject site outlined in red

4. Background

4(a) Site history

The following application outlines the relevant development history of the subject site and any relevant applications on surrounding properties.

Subject Site

Application	Proposal	Decision & Date
BA/1994/146	Garage and gazebo	Approved, 22/07/1994
DA/2003/53	New (building work) fence/wall – erection of two side boundary fences between 31 and 33A Tintern Road	Approved, 11/04/2003
2019.103.1	Removal of a Jacaranda Tree	Refused, 18/09/2019

Surrounding properties
31 Tintern Road, Ashfield

Application	Proposal	Decision & Date
1999.248.1	Demolish dwelling	Refused, 6/07/1999
2000.389.1	Alterations and additions to existing dwelling, including a rear deck	Approved, 6/02/2001
2009.60.1	Alterations and additions to existing dwelling	Approved, 8/04/2009

There are no recent planning determinations at 35 Tintern Road, Ashfield.

4(b) Application history

Not applicable

5. Section 8.2 Review

Section 8.2 of the Environmental Planning and Assessment Act, 1979 allows an applicant to request Council to review the determination of an application. The review is to be carried out in accordance with the requirements discussed in the following.

A review of a determination cannot be carried out on a complying development certificate, or a determination in respect of designated development, or a determination made by the council under section 4.33 in respect of an application by the Crown.

The subject application was not complying development, designated development or an application made by the Crown.

A determination cannot be reviewed after the time limit for making of an appeal under Section 8.7 expires, being 6 months from the original determination.

The subject application was determined on 18 September 2019. The request for review was received by Council on 10 January 2020 (and must therefore be determined by 18 March 2020).

The prescribed fee must be paid in connection with a request for a review.

The applicant has paid the applicable fee in connection with the request for a review.

In requesting a review, the applicant may make amendments to the development described in the original application, provided that Council is satisfied that the development, as amended, is substantially the same as the development described in the original application.

The proposal remains unchanged from the original application and as such, this test is satisfied.

The review of determination has been notified in accordance with the regulations, if the regulations so require, or a development control plan, if the council has made a development control plan that requires the notification or advertising of requests for the review of its determinations.

The application was advertised for a period of 14 days. The advertising period was between 10 January 2020 to 24 January 2020.

Consideration of any submissions made concerning the request for review within any period prescribed by the regulations or provided by the development control plan.

Refer to discussion under Section 7 of this Report.

As a consequence of a review, Council may confirm or change the determination.

After reviewing the determination of the application, it is recommended that the IWLPP confirm the original determination of the application, which was by way of refusal.

The review must not be made by the person who determined the original but is to be made by another delegate of the council who is not subordinate to the delegate who made the determination. If the original determination was made by the Council then the review is also to be considered by the Council.

The review of the application is reported to the IWLPP meeting on 11 February 2020 in accordance with the above requirement.

6. Reasons for Refusal

The original Development Application was refused on 18 September 2019. The reasons for refusal and discussion on how the proposal addresses these reasons are as follows.

1. *The removal of the tree would adversely affect the heritage significance of the heritage items and heritage conservation areas and is not acceptable having regard to Clause 10(3)(d) of State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017.*

Comment: The subject site is located within the Tintern Road Conservation Area and is a local heritage item, the existing building is of significance not the vegetation proposed to be removed. It is considered that the proposal will not result in any adverse impacts to biodiversity values but is inconsistent with the aim of the Policy under Clause 3(b) to preserve the amenity of non-rural areas of the State though the preservation of trees.

2. *The removal of the tree will impact upon the heritage significance of the site and therefore does not comply with Clause 5.10 of Ashfield Local Environmental Plan 2013.*

Comment: The proposal will have an adverse impact on the locality in regards to the loss of significant trees within the heritage conservation area.

3. *Insufficient information and justification has been submitted to support the removal of the tree as part of the application and it therefore does not comply with Section 2, Chapter C, Part 4 of the Comprehensive Inner West Development Control Plan 2016.*

Comment: As the proposal does not provide adequate justification to support removal of the tree, it fails to be consistent with this Part of the CIWCDCP 2016.

4. *Incomplete and insufficient information was submitted with the application relating to tree management to enable a proper assessment of the likely impacts of the development in accordance with Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979.*

Comment: As the proposal does not provide adequate justification to support removal of the tree, it fails to be consistent with this Part of the Act.

5. *It is considered that the proposal will have an adverse impact on the subject site and adjoining properties and therefore it is considered that the site is unsuitable to accommodate the proposed development pursuant to Section 4.15(1)(c).*

Comment: Refer to discussion under Section 7 of this Report.

6. *The proposal is not in the public interest.*

Comment: Refer to discussion under Section 7 of this Report.

7. Section 4.15 Assessment

The following is a summary of the assessment of the application in accordance with Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

7(a) Environmental Planning Instruments

The application has been assessed against the relevant Environmental Planning Instruments listed below:

- *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*
- *Ashfield Local Environmental Plan 2013*

The following provides further discussion of the relevant issues:

7(a)(i) State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

A permit under Part 3 of the Policy cannot be issued for the clearing of vegetation that is or forms part of a heritage item or that is within a heritage conservation area. An appropriate application for development consent relating to the subject tree removal has been made.

7(a)(ii) Ashfield Local Environmental Plan 2013

The application was assessed against the following relevant clauses of the Ashfield Local Environmental Plan 2013:

- Clause 2.2 – Zone objectives and Land Use Table
- Clause 5.10 – Heritage Conservation

The following provides further discussion of the relevant issues:

Clause 1.2 Aims of Plan

As the proposal does not provide adequate justification to support the removal of the tree, it fails to be consistent with following aims of the ALEP 2013:

- (c) *to identify and conserve the environmental and cultural heritage of Ashfield,*
- (h) *to ensure that development has proper regard to environmental constraints and minimises any adverse impacts on biodiversity, water resources, riparian land and natural landforms.*

Clause 2.3 – Zone objectives and Land Use Table

As the proposal does not provide adequate justification to support the removal of the tree, it fails to be consistent with following objectives of the R2 low Density Residential zone:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Clause 5.10 Heritage Conservation

The subject site is listed as a local heritage item (item number 313 under the ALEP 2013) and is located within the Tintern Road Heritage Conservation Area. The proposal seeks consent for tree removal located within the northern side setback at the rear of the subject site. As no building works are proposed and in this instance Council does not require the submission of a heritage impact statement or heritage management plan. The proposal will have an adverse impact on the locality in regards to the loss of significant trees within the heritage conservation area.

7(b) Development Control Plans

The application has been assessed and the following provides a summary of the relevant provisions of Inner West Comprehensive Development Control Plan (DCP) 2016 for Ashbury, Ashfield, Croydon, Croydon Park, Haberfield, Hurlstone Park and Summer Hill.

IWCDCP2016	Compliance
Section 1 – Preliminary	
B – Notification and Advertising	Yes
Section 2 – General Guidelines	
C – Sustainability	
4 – Tree Preservation and Management	No – see discussion

The following provides discussion of the relevant issues:

The reasons for removal provided by the applicant, this being fallen flowers caused by the tree is a slip/trip hazard are not sufficient to warrant its removal. The Jacaranda tree is mature in nature and is visible from the Tintern Road streetscape. The removal of the tree is not supported as it is in good health and vigour and should be retained.

Given the above, it is considered that the application does not achieve the purpose of the Section 2, Chapter C, Part 4 of CIWDCP 2016.

7(d) The Likely Impacts

The assessment of the Development Application demonstrates that the proposal will have an adverse impact on the locality in terms of landscape amenity:

7(e) The suitability of the site for the development

The subject site is zoned R2 – Low Density Residential. It is considered that the proposal will have an adverse impact on the adjoining properties, and therefore, it is considered that the site is unsuitable to accommodate the proposed development.

7(f) Any submissions

The application was notified in accordance with Inner West Comprehensive Development Control Plan (DCP) 2016 for Ashbury, Ashfield, Croydon, Croydon Park, Haberfield, Hurlstone Park and Summer Hill for a period of 14 days to surrounding properties. At the time of preparing this report, no submissions have been received, however, the notification period concludes on 24 January 2020. Any submissions received prior between the preparation of the report and the application's consideration at the Inner West Planning Panel will be addressed in a future Supplementary Report.

7(g) The Public Interest

The public interest is best served by the consistent application of the requirements of the relevant Environmental Planning Instruments, and by Council ensuring that any adverse effects on the surrounding area and the environment are appropriately managed.

The proposal is contrary to the public interest given the broader streetscape and environmental benefits associated with the retention of a mature, healthy canopy tree.

8 Referrals

8(a) Internal

The application was referred to the following internal sections/officers and issues raised in those referrals have been discussed in section 5 above.

Landscape:

Tree removal not supported due to inadequate justification and loss of landscape amenity. A site inspection of the tree was undertaken on 10 January 2020 and the following was noted:

- The tree was found to be of good health and vigour with a small amount of deadwood retained within the canopy.
- The tree bifurcates close to ground level with the union appearing sound.
- The tree is very prominent within the surrounding landscape and can be seen clearly from the street.
- Minor displacement of segmented paving was noted to the paving between the garage and the boundary fencing.
- Paving to the front of garage was observed to be in good order with minimal debris present.
- Branch clearance to the garage was considered acceptable however, minor pruning could be undertaken in accordance with the exempt provisions of Chapter C – Sustainability, Part 4 – Tree Preservation and Management of the CIWCDCP 2016.

The dropping of flowers is a normal part of the tree's lifecycle and is a seasonal matter which could be remedied by regular external household maintenance. Hard surface areas will exacerbate the build of debris.

*A court case (*Barker v Kyriakides* [2007] LEC 292) found that: for people who live in urban environments, it is appropriate to expect that some degree of house exterior and grounds maintenance will be required in order to appreciate and retain the aesthetic and environmental benefits of having trees in such an urban environment. In particular, it is reasonable to expect people living in such an environment might need to clean the gutters and the surrounds of their houses on a regular basis.*

The dropping of leaves, flowers, fruit, seeds or small elements of deadwood by urban trees ordinarily will not provide the basis for ordering removal of or intervention with an urban tree.

In other words, there is a reasonable expectation for people living in urban areas that there will be some amount of debris from street trees. In addition, there is also a reasonable expectation that property owners will maintain their own gutters and property to accommodate that reasonable debris. However, this principle only relates to ordinary and anticipated debris from trees (such as flowers and fruit) and in reasonable quantities.

Given this, the removal of the tree is not supported.

8(b) External

The application was not referred to any external bodies.

7. Section 7.11 Contributions/7.12 Levy

Section 7.11 contributions are not payable for the proposal.

8. Conclusion

The application is considered unsupportable and in view of the circumstances, refusal of the application is recommended.

9. Recommendation

- A. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, confirm the original determination, being refusal of Development Application No. 2019.103.1 for the removal of one Jacaranda Tree at 33 Tintern Road, Ashfield, for the following reasons.
1. The removal of the tree would adversely affect the heritage significance of the heritage items and heritage conservation areas and is not acceptable having regard to Clause 10(3)(d) of State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017.
 2. The removal of the tree will impact upon the heritage significance of the site and therefore does not comply with Clause 5.10 of Ashfield Local Environmental Plan 2013.
 3. Insufficient information and justification has been submitted to support the removal of the tree as part of the application and it therefore does not comply with Section 2, Chapter C, Part 4 of the Comprehensive Inner West Development Control Plan 2016.
 4. The proposal is contrary to the aims and objectives under Clause 1.2 and 2.3 of the Ashfield Local Environmental Plan 2013.
 5. Incomplete and insufficient information was submitted with the application relating to tree management to enable a proper assessment of the likely impacts of the development in accordance with Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979.
 6. It is considered that the proposal will have an adverse impact on the subject site and adjoining properties and therefore it is considered that the site is unsuitable to accommodate the proposed development pursuant to Section 4.15(1)(c).
 7. The proposal is not in the public interest

Attachment A – Recommended conditions of consent

CONDITIONS

Section 8.2 of DA 2019.103.1
33 Tintern Road ASHFIELD 2131

Description of Work as it is to appear on the determination: Removal of tree

General Conditions

1. Works to Trees

Approval is given for the following works to be undertaken to trees on the site:

Tree №/location	Approved works
<i>Jacaranda mimosifolia</i> (Jacaranda) located at the rear of the site adjacent the garage.	Removal

Removal or pruning of any other tree (that would require consent of Council) on the site is not approved and shall be retained and protected in accordance with Council's *Development Fact Sheet—Trees on Development Sites*.

2. Canopy Replenishment

A minimum of 1 x seventy five (75) litre size replacement tree, which will attain a minimum mature height of twelve to fifteen (12 - 15) metres, is to be planted in a suitable location within the property at a minimum of 1.5 metres from any boundary and two metres from the dwelling or garage and allowing for future tree growth. The tree is to conform to AS2303—*Tree stock for landscape*. Trees listed as exempt species from Council's Tree Management Controls, palms, fruit trees and species recognised to have a short life span will not be accepted as suitable replacements.

If the replacement trees are found to be faulty, damaged, dying or dead within twelve (12) months of planting then they must be replaced with the same species (up to 3 occurrences). If the trees are found dead before they reach a height where they are protected by Council's Tree Management Controls, they must be replaced with the same species

Advisory notes

Consent of Adjoining property owners

This consent does not authorise the applicant, or the contractor engaged to do the tree works to enter a neighbouring property. Where access to adjacent land is required to carry out approved tree works, Council advises that the owner's consent must be sought. Notification is the responsibility of the person acting on the consent. Should the tree owner/s refuse access to their land, the person acting on the consent must meet the requirements of the *Access To Neighbouring Lands Act 2000* to seek access.

Arborists standards

All tree work must be undertaken by a practicing Arborist. The work must be undertaken in accordance with AS4373—*Pruning of amenity trees* and the Safe Work Australia Code of Practice—*Guide to Managing Risks of Tree Trimming and Removal Work*. Any works in the vicinity of the Low Voltage Overhead Network (including service lines—pole to house connections) must be undertaken by an approved Network Service Provider contractor for the management of vegetation conflicting with such services. Contact the relevant Network Service Provider for further advice in this regard.

Tree Protection Works

All tree protection for the site must be undertaken in accordance with Council's *Development Fact Sheet—Trees on Development Sites* and AS4970—*Protection of trees on development sites*.

Tree Pruning or Removal

Removal or pruning of any other tree (that would require consent of Council) on the site is not approved and must be retained and protected in accordance with Council's *Development Fact Sheet—Trees on Development Sites*.