

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2017/0286
Assessment by:	Natalie Nolan, Nolan Planning Consultants (External Consultant)
Land to be developed (Address):	Part Lot 100 DP 1041823 , 725 Pittwater Road DEE WHY NSW 2099 Lot 1 DP 1193308 , 40 Kingsway DEE WHY NSW 2099
Proposed Development:	Modification of Development Consent DA2014/0344 granted for Demolition of existing car parking and construction of a Multi-Purpose Community facility (Police and Citizens Youth Club) including car parking, landscaping and signage
Zoning:	LEP - Land zoned B4 Mixed Use LEP - Land zoned RE1 Public Recreation
Development Permissible:	Yes - Zone B4 Mixed Use Yes - Zone RE1 Public Recreation
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Northern Beaches Council
Applicant:	Northern Beaches Council
Application lodged:	03/11/2017
Application Type:	Local
State Reporting Category:	Other
Notified:	17/11/2017 to 20/12/2017
Advertised:	Not Advertised in accordance with A.7 of WDCP
Submissions:	Nil
Recommendation:	Approval with conditions

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 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 provided by relevant Council / Government / Authority Officers on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 – 5.9 Preservation of Trees

Warringah Development Control Plan – C2 Traffic Access and Safety

SITE DESCRIPTION

Property Description:	Part Lot 100 DP 1041823, 725 Pittwater Road DEE WHY NSW 2099 Lot 1 DP 1193308, 40 Kingsway DEE WHY NSW 2099
Detailed Site Description:	<p>SITE DESCRIPTION</p> <p>The site comprises two lots bounded by Fisher Road to the west, the Kingsway to the north, Civic Drive to the east and a residential flat building and Council owned land (including the Council Chambers and Library) to the south. The site is approximately 5,100m² in area and is generally rectangular. It falls from the south-eastern corner to the north-western corner with a level change of approximately 5.17 metres. It has a frontage to the Kingsway of approximately 100 metres and to Fisher Street of approximately 50 metres.</p> <p>A multi-purpose community facility (Police and Citizens Youth Club) with public car park, landscaping and signage was recently constructed on site as per the approved by Development Consent DA2014/0344.</p> <p>A mix of residential, community and government land surrounds the site. Two and three storey residential apartments are located to the north across the Kingsway, to the east across Civic Drive as well as immediately adjoining the south of the site. Further to the south is the Pacific Lodge Aged Care facility. Single and two storey dwellings are located to the west across Fisher Road. Further to the north and north-west along Fisher Road is the Dee Why Public School.</p> <p>The Council Chambers and Dee Why Community Library lie to the south-east of the site.</p>

Map:



SITE HISTORY

A Development Application (DA2014/0344) for demolition of the existing car park and construction of a multi-purpose community facility (Police and Citizens Youth Club) as well as a public car park, landscaping and signage was lodged on 28 March 2014.

The Development Application was approved subject to conditions by the Sydney Region East Joint Regional Planning Panel on 6 August 2014. The development has been constructed.

A Section 96(1A) MOD2015/005 to allow for the removal of an additional tree was approved by Council on 16 February 2015.

A Section 96(2) Application MOD2016/0023 was approved by Council on 30 May 2016. This Consent related to some change to external finishes, roof structure, tree removal and internal floor plan.

A Section 96(1) Application MOD2016/0172 to correct an error in relation to hours of operation was approved on 19 July 2016.

Consent was granted to a Section 96(1A) application MOD2017/0067 on the 7 April 2017 for amendments to engineering conditions.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent to modify Development Consent No. DA2014/0344 subject to

the provisions of 96 (1A) as described in details in the correspondence prepared by Ethos Urban dated 31 October 2017 and summarised below:

- To remove the bus bay drop off area located on the Fisher Road frontage.

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment A.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under Section 96(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 96(1A) - Other Modifications	Comments
<p>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:</p>	
<p>(a) it is satisfied that the proposed modification is of minimal environmental impact, and</p>	<p>Yes The modification, as proposed in this application, is considered to be of minimal environmental impact.</p>
<p>(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>	<p>Yes The development as proposed is substantially the same as that already approved under DA2014/0344.</p>
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and</p>	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Warringah Local Environmental Plan 2011 and Warringah Development Control Plan.</p>
<p>(d) it has considered any</p>	<p>There were no submissions received.</p>

Section 96(1A) - Other Modifications	Comments
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.	

Section 79C Assessment

In accordance with Section 96(3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 79C(1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act, 1979, are:

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 79C (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 79C (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 79C (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 enable the consent authority to seek additional information. No Additional information was requested.</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>

Section 79C 'Matters for Consideration'	Comments
	Clause 98 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.
Section 79C (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) The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Local Environmental Plan 2011 and Warringah Development Control Plan sections in this report. (ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 79C (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” in this report.
Section 79C (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.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and Warringah Development Control Plan.

There were no submissions received by Council.

MEDIATION

No requests for mediation have been made in relation to this application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	No objections to the modification. A condition has been suggested requiring tree planting in the verge where the bus stop is proposed to be deleted. This condition has been included in the recommendation.
Traffic Engineer Officer	No objection is raised on the proposal subject to the Traffic Committee approval. The Officer suggested a condition of consent requiring the

Internal Referral Body	Comments
	applicant to obtain Traffic Committee Approval for parking restrictions in Fisher Road. However, there is no change to existing parking restrictions on Fisher Road which is currently 'No Parking'. Therefore this condition is not included in the recommendations.
Development Engineering Referral Response	No objection to approval and no conditions are recommended.

External Referral Body	Comments
Roads and Maritime Services	No objection to approval and no conditions are recommended.

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)

State and Regional Development SEPP

Clause 21 of the State and Regional Development SEPP sets out the circumstances in which the consent authority functions of a council are to be exercised by a regional panel. This includes Council related development valued at over \$5 million.

However, in accordance with clause 21(2) (j) of the SEPP, the functions conferred by section 96 (1A) of the EP&A Act are not to be exercised by a regional planning panel. As this application is for a modification pursuant to section 96(1A) it therefore does not need to be referred to the Sydney North Planning Panel and can be approved under delegated authority.

There are no other SEPPs that apply to the subject modification application.

Warringah Local Environment Plan 2011

Is the development permissible?	Zone B4 : Yes
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	Zone RE1: Yes
After consideration of the merits of the proposal, is the development consistent with:	
Aims of the LEP?	Yes
Zone objectives of the LEP?	Yes

Principal Development Standards

There are no maximum height or floor space ratio controls applying to the site under the Warringah LEP 2011.

Compliance Assessment

Clause	Compliance with Requirements
5.3 Development near zone boundaries	Yes
5.9 Preservation of trees or vegetation	Yes
5.9AA Trees or vegetation not prescribed by development control plan	N/A
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

Clause 5.9 Preservation of Trees

This Section 96(1A) application does not require the removal of any trees. However, the application was referred to Council's Landscape Officer. It was suggested that since the original approval required removal of a number of trees that the removal of the approved bus bay provided opportunity for additional replacement planting on the Council verge. A condition of consent has been incorporated into the recommendation.

Warringah Development Control Plan

Built Form Controls

None of the Built Form controls in Part B of the WDCP are applicable to the development.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C8 Demolition and Construction	Yes	Yes
D3 Noise	Yes	Yes
E1 Private Property Tree Management	No	Yes
E2 Prescribed Vegetation	N/A	N/A
E6 Retaining unique environmental features	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
E7 Development on land adjoining public open space	Yes	Yes
E10 Landslip Risk	Yes	Yes
G1 Dee Why Mixed Use Area	Yes	Yes
Area 10 Civic Centre	Yes	Yes

Detailed Assessment

C2 Traffic, Access and Safety

This application seeks to delete the requirement for a bus bay on the Fisher Road frontage. The applicant advises that during detailed design it was discovered that Sydney Water infrastructure is located within the area designated for the bus bay. A Traffic Statement was prepared by Taylor Thomas Whitting which in summary notes that the removal of the bus bay is not expected to result in any adverse impacts to the site or surrounding road networks noting it is not a necessary piece of infrastructure. It is proposed that the existing 'No Parking' restrictions with the exception of 'authorised private coaches' will be maintained on the Fisher Road frontages between the AM and PM peak periods.

The application was referred to Council's Traffic Engineer concur that the removal of the bus bay is satisfactory, with buses being able to park in the kerbside lane, subject to Traffic Committee approval and installation of appropriate signage. However, as the signage is existing it is not considered necessary that Traffic Committee approval be sought and therefore condition is not included in the recommendation.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CONCLUSION

The site has been inspected and the S96 (1A) Modification 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;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans and 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 modification to the development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority approve Modification Application No. Mod2017/0286 for Modification of Development Consent DA2014/0344 granted for Demolition of existing car parking and construction of a Multi-Purpose Community facility (Police and Citizens Youth Club) including car parking, landscaping and signage on land at Part Lot 100 DP 1041823,725 Pittwater Road, DEE WHY, Lot 1 DP 1193308, 40 Kingsway, DEE WHY, subject to the conditions printed below:

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

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

Architectural Plans – Endorsed with Council’s stamp		
Drawing No.	Dated	Prepared By
A-S96-2	20/09/2017	Francis-Jones Morehen Thorp

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Traffic Statement	5 October 2017	Taylor Thomson Whitting

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans (DACPLB01)

B. Add Condition No.53A – Required planting

Trees shall be planted in accordance with the following schedule:

No. of Trees Required	Species	Location
3 (75 Litre minimum pot size)	Angophora costata	On Fisher Road road reserve, forward of the property and generally in in alignment with other street trees

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To maintain environmental amenity. (DACLAF01)

D. Amend Condition No 13 – Submission of Civil Works within Road Reserve by deleting part (e) as follows:

Submissions of Engineering Plans for Civil Works within the Road Reserve Engineering plans are to be submitted to the Certifying Authority for approval. The submission is to include four (4) copies of Civil Engineering plans for the design of the following list of works which are to be generally in accordance with the civil design approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1 and or Council's Minor Works Policy.

- a) Reconstruction of the kerb and gutter with associated regrading of the cross fall to 3% [half road and beyond if necessary] of the southern side of the Kingsway to alleviate the scrapping at the intersection with Civic Drive. The pavement shall be designed for full depth AC to minimise traffic disruption.
- b) Reconstruction of the kerb & gutter and associated pavement to the frontages of the Kingsway and Fisher Road to 150mm high kerb.
- c) The provision of a concrete footpath 2.5 metres wide minimum along the Kingsway and Fisher Road frontages with a minimum cross fall of 2% to the kerb. The path design is to include all line marking and associated sign posting.

- d) The provision of pedestrian ramps on both sides of the intersection of the Kingsway with Fisher Rd and on the western side of the intersection of Kingsway with Civic Drive.
- e) ~~The provision of a bus parking bay on the Fisher Rd frontage. The bus bay must include a cross fall of 2% toward the new kerb alignment. Approval from all public utility service authorities for the proposal must be submitted with the design. This may require the dedication of a portion of the site as road reserve to accommodate the relocation of the services if required by the public service authority.~~
- f) The provision of a bicycle path extension 2.5 metres wide between the south-eastern corner of the Kingsway and Fisher Road to the south-eastern corner of the intersection of Regent Stand Fisher Road.
- g) The provision of a refuge island and associated blister islands on Kingsway at the intersection with Fisher Road to prevent the right turn movement from Kingsway. The island is to be designed to permit a bicycle path to cross at this point. Any adjustment to line marking and signposting is to be included in the design. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

The Application and Assessment Report has been reviewed by:

Lashta Haidari, Principal Planner

The application is determined under the delegated authority of:

Anna Williams, Development Assessment Manager