

NORTHERN BEACHES COUNCIL

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2016/0236
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Responsible Officer:	Lashta Haidari
Land to be developed (Address):	<p>Lot 3 DP 307937, 896 Pittwater Road DEE WHY NSW 2099</p> <p>Lot 1 DP 307937, 896 Pittwater Road DEE WHY NSW 2099</p> <p>Lot A DP 416469, 894 Pittwater Road DEE WHY NSW 2099</p> <p>Lot 1 DP 504212, 892 Pittwater Road DEE WHY NSW 2099</p> <p>Lot 7 DP 8172, 9 Howard Avenue DEE WHY NSW 2099</p> <p>Lot 1 DP 209503, 11 Howard Avenue DEE WHY NSW 2099</p> <p>Lot 1 DP 212382, 15 Howard Avenue DEE WHY NSW 2099</p> <p>Lot 2 DP 212382, 17 Howard Avenue DEE WHY NSW 2099</p> <p>Lot 3 DP 212382, 28 Oaks Avenue DEE WHY NSW 2099</p> <p>Lot A DP 339410, 884 Pittwater Road DEE WHY NSW 2099</p> <p>Lot 11 DP 231418, 888 Pittwater Road DEE WHY NSW 2099</p> <p>Lot 10 DP 231418, 890 Pittwater Road DEE WHY NSW 2099</p> <p>Lot A DP 371110, 14 Oaks Avenue DEE WHY NSW 2099</p> <p>Lot B DP 371110, 16 Oaks Avenue DEE WHY NSW 2099</p>
Proposed Development:	Modification of Development Consent DA2015/0612 granted for Drainage and Stormwater Management works and Installation of shoring walls and bulk excavation
Zoning:	<p>LEP - Land zoned B4 Mixed Use</p>
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Karimbla Properties (No41) Pty Ltd
Applicant:	Karimbla Constructions Services (Nsw) Pty Ltd

Application lodged:	25/08/2016

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Application Type:	Local
State Reporting Category:	Commercial/Retail/Office
Notified:	09/09/2016 to 26/09/2016
Advertised:	Not Advertised, in accordance with A.7 of WDCP
Submissions:	0
Recommendation:	Approval

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 (upto 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

There are no assessment issues.

SITE DESCRIPTION

Property Description:	Lot 3 DP 307937 , 896 Pittwater Road DEE WHY NSW 2099 Lot 1 DP 307937 , 896 Pittwater Road DEE WHY NSW 2099 Lot A DP 416469 , 894 Pittwater Road DEE WHY NSW 2099 Lot 1 DP 504212 , 892 Pittwater Road DEE WHY NSW 2099 Lot 7 DP 8172 , 9 Howard Avenue DEE WHY NSW 2099 Lot 1 DP 209503 , 11 Howard Avenue DEE WHY NSW 2099 Lot 1 DP 212382 , 15 Howard Avenue DEE WHY NSW 2099 Lot 2 DP 212382 , 17 Howard Avenue DEE WHY NSW 2099 Lot 3 DP 212382 , 28 Oaks Avenue DEE WHY NSW 2099 Lot A DP 339410 , 884 Pittwater Road DEE WHY NSW 2099 Lot 11 DP 231418 , 888 Pittwater Road DEE WHY NSW 2099 Lot 10 DP 231418 , 890 Pittwater Road DEE WHY NSW
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	2099 Lot A DP 371110 , 14 Oaks Avenue DEE WHY NSW 2099 Lot B DP 371110 , 16 Oaks Avenue DEE WHY NSW 2099
Detailed Site Description:	<p>The subject site comprises the following 12 individual lots in Oaks Avenue, Howard Avenue and Pittwater Road, Dee Why:</p> <ul style="list-style-type: none">• Lot 7, DP 8172, 9 Howard Avenue• Lot 1, DP 209503, 11 Howard Avenue• Lot 1, DP 212382, 15 Howard Avenue• Lot 2, DP 212382, 17 Howard Avenue• Lot 3, DP 212382, 28 Oaks Avenue• Lot A, DP 339410, 884 Pittwater Road• Lot 11, DP 231418, 888 Pittwater Road• Lot 10, DP 231418, 890 Pittwater Road• Lot 1, DP 504212, 892 Pittwater Road• Lot A, DP 416469, 894 Pittwater Road• Lot 1, DP 307937, 896 Pittwater Road• Lot 3, DP 307937, 896 Pittwater Road <p>The subject site is located on the eastern side of Pittwater Road, generally between Howard Avenue in the north and Oaks Avenue in the south.</p> <p>The sites are currently under construction.</p> <p>The land surrounding the subject site generally comprises 2 to 5 storey mixed use developments. Adjoining the site to the north on the opposite side of Howard Avenue, to the west on the opposite side of Pittwater Road and the south on the opposite side of Oaks Avenue is a mixture of older retail and commercial office buildings and newer shop top housing developments.</p>

Map:

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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 DADA2015/0612, in full, with amendments detailed and assessed as follows:

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

Section 96(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	Yes The modification, as proposed in this application, is considered to be of minimal environmental impact.
(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	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 DA2015/0612.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Warringah Local Environment Plan 2011 and Warringah Development Control 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.	See discussion on "Public Exhibition" in this report.

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

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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, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. 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> <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 clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. 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 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 Development Control Plan section 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.

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Section 79C 'Matters for Consideration'	Comments
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 development 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.

As a result of the public exhibition of the application Council received no submissions.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
Development Engineers	The applicant proposes to excavate part of the site by an additional 600mm to enable another level of carparking. The applicant must provide details/certification that the existing shoring wall has been constructed to support the increased excavation or additional support/retaining wall works are required. No objections to the modification subject to conditions.
Environmental Investigations (Acid Sulphate)	There are no objections to this proposal.
Environmental Investigations (Contaminated Lands)	There are no objections to this proposal.
Natural Environment (Flood)	The proposed additional excavation is not considered to increase flood risk. No flood related development controls applied.
Parks, reserves, beaches, foreshore	No objection to the proposed development.
Road Reserve	There are no objections or conditions to the proposed increase in excavation to enable the provision of additional car parking for the development. This approval should be conditional on DA for building to ensure both are consistent. There is no impact on existing Road Assets infrastructure.
Traffic Engineer	There are no objections or conditions to the proposed increase in excavation to enable the provision of additional car parking for the development. Development Assessment should ensure that the

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Internal Referral Body	Comments
	proposed level of excavation suits the proposed basement car parks and relevant proposed design levels, which is subject to a separate development application.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.
NSW Dept of Transport (Roads and Maritime Services) (Dev. On Classified Roads)	The application (as amended) was referred to Road and Maritime Services (RMS) for comments. RMS by letter dated 27 September 2016 advised that no objection is raised to the proposed modification subject to conditions, which are to be included in the modified consent.
Integrated Development – NSW OFFICE OF WATER (Site Dewatering)	The proposal was referred to the NSW Office of Water who raise no objections to the proposed development subject to amended General Terms of Approval, dated 21 October 2016.

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)

SEPP 55 - Remediation of Land

The requirement of SEPP 55 was addressed in the original assessment. No changes are proposed to the conditions that were imposed in relation to the requirement of SEPP 55.

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure

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supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21-day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

Roads and Maritime Service (RMS)

Clause 104 and Schedule 3 of the SEPP requires that the following development(s) are referred to the RMS as Traffic Generating Development:

Purpose of Development	Size or Capacity (Site with access to any road)	Size of Capacity (Site with access to classified road or to a road that connects to classified road if access is within 90m of connection, measured along alignment of connecting road)
Any other purpose	200 or more motor vehicles	

Note: Under Clause 104(2) of the SEPP, 'relevant size of capacity' is defined as meaning:

“(2) (a) in relation to development on a site that has direct vehicular or pedestrian access to any road - the size or capacity specified opposite that development in Column 2 of the Table to Schedule 3, or

(b) in relation to development on a site that has direct vehicular or pedestrian access to a classified road or to a road that connects to a classified road where the access (measured along the alignment of the connecting road) is within 90m of the connection - the size or capacity specified opposite that development in Column 3 of the Table to Schedule 3.”

Comment:

The application was referred to the RMS who did not raise any objection to the proposal.

Warringah Local Environment Plan 2011

Is the development permissible?	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

Compliance Assessment

Clause	Compliance with Requirements
4.6 Exceptions to development standards	Yes
5.3 Development near zone boundaries	Yes

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Clause	Compliance with Requirements
5.9AA Trees or vegetation not prescribed by development control plan	Yes
6.2 Earthworks	Yes
6.3 Flood planning	Yes
6.4 Development on sloping land	Yes
Part 7 Dee Why Town Centre	Yes
7.3 Objectives for development within Dee Why Town Centre	Yes
7.4 Development must be consistent with objectives for development and design excellence	Yes
7.5 Design excellence within Dee Why Town Centre	Yes
7.6 Height of buildings	Yes
7.8 Site B Oaks Avenue above podium elements	Yes
7.10 Allowance for external ancillary plant and roof access	Yes
7.13 Mobility, traffic management and parking	Yes

Warringah Development Control Plan

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D3 Noise	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Private Property Tree Management	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E10 Landslip Risk	Yes	Yes

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect 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

Warringah Section 94A Development Contribution Plan

Section 94 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;
- Warringah Local Environment Plan;
- Warringah 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 approval Modification Application No. Mod2016/0236 for Modification of Development Consent DA2015/0612 granted for Drainage and Stormwater Management works and Installation of shoring walls and bulk excavation on land at Lot 3 DP 307937,896 Pittwater Road, DEE WHY, Lot 1 DP 307937,896 Pittwater Road, DEE WHY, Lot A DP 416469,894 Pittwater Road, DEE WHY, Lot 1 DP 504212,892 Pittwater Road, DEE WHY, Lot 7 DP 8172,9 Howard Avenue, DEE WHY, Lot 1 DP 209503,11 Howard Avenue, DEE WHY, Lot 1 DP 212382,15 Howard Avenue, DEE WHY, Lot 2 DP 212382,17 Howard Avenue, DEE WHY, Lot 3 DP 212382,28 Oaks Avenue, DEE WHY, Lot A DP 339410,884 Pittwater Road, DEE WHY, Lot 11 DP 231418,888 Pittwater Road, DEE WHY, Lot 10 DP 231418,890 Pittwater Road, DEE WHY, Lot A DP 371110,14 Oaks Avenue, DEE WHY, Lot B DP 371110,16 Oaks Avenue, 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:

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
CV-0001 (Revision 07)	15/08/2016	Enstruct Group Pty Ltd
CV-0002 (Revision 05)	15/08/2016	Enstruct Group Pty Ltd
CV -0005 (Revision 04)	15/08/2016	Enstruct Group Pty Ltd

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Excavation Works - Noise and Vibration Impact Assessment	Revision 1 - 18/08/2016	Acoustic Logic

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

c) The development is to be undertaken generally in accordance with the following:

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

B. Modify Condition <2 - Compliance with Other Department, Authority or Service Requirements> to read as follows:

The development must be carried out in compliance with the following:

Other Department, Authority or Service	eServices Reference	Dated
Ausgrid	Response Ausgrid Referral	21 July 2015
NSW Office of Water	Response NSW Office of Water	14 September 2015 & 21 Oct
Road & Maritime Services	Response NSW RMS	27 September 2016

(NOTE: For a copy of the above-referenced document/s, please see Council's 'E-Services' system at www.warringah.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other Department, Authority or Body's. (DACPLB02)

C. Add Condition <22A - Certification of the existing shoring wall> to read as follows:

Structural Engineers certification is to be provided stating the existing concrete shoring wall is adequate to support the additional 600mm basement excavation or alternatively structural engineering plans prepared by an NPER registered Structural Engineer are to be provided to the Principal Certifying Authority demonstrating that the additional excavation works are adequately supported for the design loadings. Structural engineering plans and an engineering report for the excavation works are to be provided to the Principal Certifying Authority prior to the issue of the Construction Certificate. The PCA approved plans are also to be sent to Council for their records.

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Reason: To ensure the protection of adjoining properties and Council land (DACENCPC3)

I am aware of Warringah's Code of Conduct and, in signing this report, declare that I do not have a Conflict of Interest.

Signed

Lashta Haidari, Senior Development Planner

The application is determined under the delegated authority of:

Rodney Piggott, Development Assessment Manager

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ATTACHMENT A

Notification Plan	Title	Date
 2016/283421	Plan - Notification	29/08/2016

ATTACHMENT B

No notification map.

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ATTACHMENT C

Reference Number	Document	Date
 2016/283442	Report - Acoustic	18/08/2016
 2016/283426	Report - Statement of Environmental Effects	19/08/2016
 2016/283441	Report - Geotechnical	22/08/2016
 2016/283417	Plans - Survey	23/08/2016
 MOD2016/0236	896 Pittwater Road DEE WHY NSW 2099 - Section 96 Modifications - Section 96 (1a) Minor Environmental Impact	25/08/2016
 2016/281126	DA Acknowledgement Letter - Karimbla Constructions Services (Nsw) Pty Ltd	25/08/2016
 2016/283438	Plans - Excavation	29/08/2016
 2016/283404	Modification Application Form	29/08/2016
 2016/283409	Applicant Details	29/08/2016
 2016/283421	Plan - Notification	29/08/2016
 2016/284996	Environmental Investigations (Contaminated Lands) - Assessment Referral - Mod2016/0236 - 9 Howard Avenue DEE WHY NSW 2099	29/08/2016
 2016/285004	Environmental Investigations (Acid Sulphate) - Assessment Referral - Mod2016/0236 - 9 Howard Avenue DEE WHY NSW 2099	29/08/2016
 2016/303246	Notification Map - Mod	08/09/2016
 2016/303186	Delete - Notification Letters - 704 Mod	08/09/2016
 2016/303209	Notification Letters 704 - Mod	08/09/2016
 2016/303672	Natural Environment Referral Response - Flood	09/09/2016
 2016/308421	Parks, Reserves and Foreshores Referral Response	14/09/2016
 2016/321677	RMS Response	27/09/2016
 2016/321723	Referral Response - RMS	27/09/2016
 2016/322594	Development Engineering Referral Response	28/09/2016
 2016/322825	DPI - MOD2016/0236 - 868 Pittwater Rd	28/09/2016
 2016/323630	Environmental Investigations Referral Response - contaminated lands	28/09/2016
 2016/323637	Environmental Investigations Referral Response - acid sulfate soils	28/09/2016
 2016/324827	Traffic Engineer Referral Response	29/09/2016
 2016/325071	Road Assets Referral Response	29/09/2016
 2016/344963	regard referral cheque DPI - MOD2016/0236 - 868 Pittwater Rd	20/10/2016
 2016/344982	Referral to DECCW Office of Water Site Dewatering	20/10/2016
 2016/345135	Mod2016/0236 - 9, 11, 15 & 17 Howard Avenue and 14, 16 & 28 Oaks Avenue and 884, 888, 890, 892, 894 & 896 Pittwater Road DEE WHY	20/10/2016
 2016/346460	DPI - Mod2016/0236 - 9, 11, 15 & 17 Howard Avenue	20/10/2016

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and 14, 16 & 28 Oaks Avenue and 884, 888, 890,
892, 894 & 896 Pittwater Road DEE WHY
