

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2017/0067
<b>Responsible Officer:</b>	Adam Mitchell
<b>Land to be developed (Address):</b>	Lot 1 DP 1193308, 40 Kingsway DEE WHY NSW 2099 Part Lot 100 DP 1041823, 725 Pittwater Road DEE WHY NSW 2099
<b>Proposed Development:</b>	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
<b>Zoning:</b>	LEP - Land zoned B4 Mixed Use LEP - Land zoned RE1 Public Recreation
<b>Development Permissible:</b>	Yes - Zone B4 Mixed Use Yes - Zone RE1 Public Recreation
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Warringah Council
<b>Applicant:</b>	Northern Beaches Council Central

<b>Application lodged:</b>	21/03/2017
<b>Application Type:</b>	Local
<b>State Reporting Category:</b>	Community facility
<b>Notified:</b>	Not Notified
<b>Advertised:</b>	Not Advertised, in accordance with A.7 of WDCP
<b>Submissions:</b>	0
<b>Recommendation:</b>	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,

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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

<b>Property Description:</b>	Lot 1 DP 1193308 , 40 Kingsway DEE WHY NSW 2099 Part Lot 100 DP 1041823 , 725 Pittwater Road DEE WHY NSW 2099
<b>Detailed Site Description:</b>	<p>The subject site is located on a large parcel of Council owned land which includes Council Chambers, a library and public car park.</p> <p>The subject area is located in the north western corner of the site and is bound by Fisher Road to the west, Kingsway to the north and Civic Parade to the east. Combined the site has a total area of approximately 5,100m<sup>2</sup>.</p> <p>The site has recently undergone significant redevelopment that has seen an at-grade car park be demolished and replaced with a four storey carpark and community facility. The building, known as the PCYC, is iconic in it's own right given the unique and striking roof form consisting of an undulating folded-metal parametric form.</p> <p>Presently the PCYC is not operation, and the final internal fit out and surrounding works are being completed.</p>

Map:



## SITE HISTORY

**Development Application No. 2014/0344**

Application for demolition of existing car parking and construction of a multi-purpose community facility (PCYC) including car parking, landscaping and signage. Approved 6 August 2014

**Section 96 Modification Application No. 2015/0005**

Application for additional tree removal which was not included in the parent development application. Approved 16 February 2015.

**Section 96 Modification Application No. 2016/0023**

Application for alterations and additions to the approved development. Approved 30 May 2016.

**Section 96 Modification Application No. 2016/0172**

Application for amendment to conditions relating to hours of operation (car park). Approved 19 July 2016.

**PROPOSED DEVELOPMENT IN DETAIL**

This application pursuant to Section 96(1A) of the Environmental Planning and Assessment Act 1979 seeks to modify development consent No. 2014/0344 granted on 6 August 2014.

Specifically, this application seeks to amend several engineering related conditions which specify that works are to be done prior to the issue of any interim or final Occupation Certificate. The application seeks to remove the word 'interim' from the conditions listed below, which in effect will allow the facility to operate prior to the issuing of the final Occupation Certificates and thus relies upon the issuing of an interim Occupation Certificate to suffice.

The conditions subject to change in by this application include:

- 39 - *Authorisation of Legal Documentation Required for On-site Stormwater Detention;*
- 40 - *Registration of Encumbrances for On-site Stormwater Detention;*
- 41 - *Restriction as to User for On-site Stormwater Detention;*
- 44 - *Positive Covenant for the Maintenance of Stormwater Pump-out Facilities;*
- 45 - *Positive Covenant for On-site Stormwater Detention;*
- 46 - *Creation of Positive Covenant and Restriction as a User;*
- 47 - *Certification of Road Works and Works as Executed Data; and*
- 48 - *Road Widening Dedication.*

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 C.

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)**

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:  
The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant,

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persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2014/0344, 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	<b>Yes</b> 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 DA2014/0344.
(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.	This application was not publicly notified in accordance with Cl. A7 of the Warringah DCP as it is without impact on adjoining properties or the environment.

## 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)(iia) – 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&amp;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&amp;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&amp;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>Clause 98</u> of the EP&amp;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	<p>(i) <b>Environmental Impact</b> 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.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 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	This application was not publicly notified in accordance with Cl. A7 of the Warringah DCP as it is without impact on adjoining properties or the environment.
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 was not notified.

## MEDIATION

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

## REFERRALS

Internal Referral Body	Comments
Development Engineers	<p>The modification seeks to remove the word interim in conditions 39,40,41,44,45,46,47, and 48 of DA 2014/0344 for the development at 40 Kingsway Dee Why. This is acceptable pending the inclusion of a condition to ensure that the drainage system is functional prior to the occupation of the building(s).</p> <p>There is no objection to the modification of the consent subject to the condition of approval.</p> <p><u>Planner Note:</u> Recommended condition added as No. 53 A</p>

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)\*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

## State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

Nil

## Warringah Local Environment Plan 2011

Is the development permissible?	<p>Zone B4 : Yes</p> <p>Zone RE1: Yes</p>
After consideration of the merits of the proposal, is the development consistent with:	

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aims of the LEP?	Yes
zone objectives of the LEP?	Yes

## Principal Development Standards

This application does not propose the amendment of the approved Principal Development Standards and as such, as assessment against the applicable clauses is not included within this report.

## Compliance Assessment

Clause	Compliance with Requirements
5.3 Development near zone boundaries	Yes
5.10 Heritage conservation	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

## **Warringah Development Control Plan**

### Built Form Controls

This application does not propose the amendment of the approved built form controls and as such, as assessment against the applicable clauses is not included within this report.

## Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C4 Stormwater	Yes	Yes
D14 Site Facilities	Yes	Yes
D18 Accessibility	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	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. Mod2017/0067 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 Lot 1 DP 1193308,40 Kingsway, DEE WHY, Part Lot 100 DP 1041823,725 Pittwater Road, DEE WHY, subject to the conditions printed below:

### **Modify Condition No. 39 - Authorisation of Legal Documentation Required for OSD - to read as follows:**

The original completed request forms (Department of Lands standard forms 13PC and/or 13RPA) must be submitted to Council, with a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan),



hydraulic engineers certification and Compliance Certificate issued by an Accredited Certifier in Civil Works.

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

Reason: To create encumbrances on the land. (DACENF01)

**Modify Condition No. 40 - Registration of Encumbrances for OSD - to read as follows:**

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for onsite storm water detention as to user is to be submitted.

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

Reason: To identify encumbrances on land. (DACENF02)

**Modify Condition No. 41 - Restriction as to User for OSD - to read as follows:**

A restriction as to user shall be created on the title over the on-site stormwater detention system, restricting any alteration to the levels and/or any construction on the land. The terms of such restriction are to be prepared to Council's standard requirements, (available from Warringah Council), at the applicant's expense and endorsed by Council prior to lodgement with the Department of Lands.

Warringah Council shall be nominated as the party to release, vary or modify such restriction.

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

Reason: To ensure modification to the on-site stormwater detention structure is not carried without Council's approval. (DACENF04)

**Modify Condition No. 44 - Positive Covenant for the Maintenance of Stormwater Pump out Facilities- to read as follows:**

A Positive Covenant (under the provisions of Section 88B of the Conveyancing Act 1919) is to be created on the property title to ensure the on-going maintenance of the stormwater pump-out facilities on the property being developed.

Warringah Council shall be nominated in the instrument as the only party authorised to release, vary or modify the instrument. Warringah Council's delegate shall sign these documents prior to the submission to the Land & Property Information Department.

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

Reason: To ensure adequate provision is made for the stormwater pump out system to be maintained to an appropriate operational standard. (DACENF11)

**Modify Condition No. 45 - Positive Covenant for OSD- to read as follows:**

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the on-site stormwater detention structure in accordance with the standard requirements of Council. The terms of the positive covenant are to be prepared to Council's standard requirements, (available from Warringah Council), at the applicant's expense and endorsed by Warringah Council's delegate prior to lodgement with the Department of Lands. Warringah Council shall be nominated as the party to release, vary or modify such covenant.

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

Reason: To ensure ongoing maintenance of the on-site stormwater detention system. (DACENF12)

**Modify Condition No. 46 - Creation of Positive Covenant and Restriction as a User - to read as follows:**

Where any conditions of this Consent require the creation of a positive covenant and/or restriction as a user, the original completed request forms, (Department of Lands standard forms 13PC and/or 13RPA), shall be submitted to Warringah Council for authorisation.

A certified copy of the documents shall be provided to Warringah Council after final approval and registration has been affected by the "Department of Lands".

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

Reason: To identify encumbrances on land. (DACENF14)

**Modify Condition No. 47 - Certification of Road Works & WAE Data - to read as follows:**

A suitably qualified Civil Engineer shall certify that the completed road works including the kerb, gutter, footpath, bus bay and associated road works have been constructed in accordance with this consent and the approved Construction Certificate plans. Work as Executed data certified by a registered surveyor prepared in accordance with Council's requirements shall be submitted to Council for approval prior to the issue of the Occupation Certificate.

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

Reason: To ensure compliance of road works with Council's specification for engineering works. (DACENFPOC2)

**Modify Condition No. 48 - Road Widening Dedication - to read as follows:**

The proposed bus bay on Fisher Road may require the relocation of public utility services within the site to ensure that they are located within the road reserve.

Where required to facilitate the location of the services, the dedication to Council of a strip of land a minimum of 2.5 metres wide and variable to enable the widening of the road reserve in order to permit the construction of the proposed bus bay, associated footpath alignment and public utility service relocation along the Fisher Road frontage. All affected services are to be relocated in accordance with respective service authority requirements. Documentation of the approval for the relocated services from each public service authority is to be provided prior to

dedication of the land.

The dedication is to be registered with the 'Land and Property Information NSW' prior to release of the Occupation Certificate. The original documentation for the dedication is to be submitted to Council for authorisation. All costs associated with the dedication are to be borne by the developer/applicant.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of a final Occupation Certificate.

Reason: To facilitate the construction of the bus bay and ensure the new footpath and associated public utility services are located within the road reserve. (DACENFPOC3)

**Add Condition No. 53 A - Stormwater Management for the Development - to read as follows:**

The approved stormwater management for the development must be completed and functional, generally in accordance with the approved stormwater management plans, prior to the issue of any occupation certificate.

Reason: To ensure stormwater management is provided for the development.

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**

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**Adam Mitchell, Planner**

The application is determined under the delegated authority of:

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**Rodney Piggott, Development Assessment Manager**








**ATTACHMENT A**

No notification plan recorded.

**ATTACHMENT B**

No notification map.

## ATTACHMENT C

Reference Number	Document	Date
 MOD2017/0067	40 Kingsway DEE WHY NSW 2099 - Section 96 Modifications - Section 96 (1a) Minor Environmental Impact	21/03/2017
 2017/080740	Modification Application form	23/03/2017
 2017/080741	Applicant Details	23/03/2017
 2017/080742	DA Acknowledgement Letter - Northern Beaches Council Central	23/03/2017
 2017/083468	Building Assessment - Fire and Disability upgrades - Assessment Referral - Mod2017/0067 - 725 Pittwater Road DEE WHY NSW 2099 - PR	23/03/2017
 2017/095613	Development Engineering Referral Response	30/03/2017
 2017/091613	Building Assessment Referral Response	03/04/2017