

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2016/0008
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<b>Responsible Officer:</b>	Lashta Haidari
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<b>Land to be developed (Address):</b>	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 10 DP 231418, 890 Pittwater Road DEE WHY NSW 2099 Lot 11 DP 231418, 888 Pittwater Road DEE WHY NSW 2099 Lot A DP 339410, 884 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 371110, 14 Oaks Avenue DEE WHY NSW 2099 Lot B DP 371110, 16 Oaks Avenue DEE WHY NSW 2099
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<b>Proposed Development:</b>	Modification of Development Consent No. DA2015/0612 granted for Drainage and Stormwater Management Works and Installation of Shoring Walls and Bulk Excavation to remove a street tree (Tree 16)
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<b>Zoning:</b>	LEP - Land zoned B4 Mixed Use LEP - Land zoned B4 Mixed Use
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<b>Development Permissible:</b>	Yes
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<b>Existing Use Rights:</b>	No
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<b>Consent Authority:</b>	Warringah Council
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<b>Land and Environment Court Action:</b>	No
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<b>Owner:</b>	Karimbla Properties (No41) Pty Ltd
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<b>Applicant:</b>	Karimbla Constructions Services (Nsw) Pty Ltd
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<b>Application lodged:</b>	18/01/2016
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<b>Application Type:</b>	Local
<b>State Reporting Category:</b>	Other
<b>Notified:</b>	16/02/2016 to 02/03/2016
<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, 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 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 10 DP 231418 , 890 Pittwater Road DEE WHY NSW 2099 Lot 11 DP 231418 , 888 Pittwater Road DEE WHY NSW 2099 Lot A DP 339410 , 884 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
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	<p>Lot 3 DP 212382 , 28 Oaks Avenue DEE WHY NSW 2099          Lot A DP 371110 , 14 Oaks Avenue DEE WHY NSW 2099          Lot B DP 371110 , 16 Oaks Avenue DEE WHY NSW 2099</p>
<p><b>Detailed Site Description:</b></p>	<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"> <li>• Lot 7, DP 8172, 9 Howard Avenue</li> <li>• Lot 1, DP 209503, 11 Howard Avenue</li> <li>• Lot 1, DP 212382, 15 Howard Avenue</li> <li>• Lot 2, DP 212382, 17 Howard Avenue</li> <li>• Lot 3, DP 212382, 28 Oaks Avenue</li> <li>• Lot A, DP 339410, 884 Pittwater Road</li> <li>• Lot 11, DP 231418, 888 Pittwater Road</li> <li>• Lot 10, DP 231418, 890 Pittwater Road</li> <li>• Lot 1, DP 504212, 892 Pittwater Road</li> <li>• Lot A, DP 416469, 894 Pittwater Road</li> <li>• Lot 1, DP 307937, 896 Pittwater Road</li> <li>• Lot 3, DP 307937, 896 Pittwater Road</li> </ul> <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 a period of demolition as per Development Consent No. DA2014/0805.</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:



## **SITE HISTORY**

### MOD2016/0010

Lodged ancillary to this application, MOD2016/0010 is for the amendment of Condition 16 of DA2015/0612 to allow for pruning of street trees. This application is current.

### DA2015/0612

This application for drainage and stormwater management works and installation of shoring walls and bulk excavation was granted approval on 22 December 2015.

### DA2014/0805

This application for demolition works of the subject site was granted approval on 9 September 2014.

### DA2013/1501

This application for demolition works at No. 14 and No. 16 Oaks Avenue, Dee Why was granted approval on 21 January 2014.

### DA2007/1249

Stage One Development Application for a concept mixed use development comprising residential, retail and commercial uses, including 3 storey street front buildings to Oaks Avenue and part of Howard Avenue, an 8 storey commercial office building fronting Pittwater Road, 7 storey mid-rise residential buildings, two residential tower buildings (one of part 15/part 18 storeys and one of part 14/part 17 storeys), a publicly accessible “town square” and north-south pedestrian link, 5 levels of carparking (4 basement levels and 1 above ground level), a bus bay and vehicular access. Approval was granted on 10 March 2009.

## **PROPOSED DEVELOPMENT IN DETAIL**

This application is for the modification of Condition 16 of DA2015/0612 for the removal of Tree 16 as identified in the Arboricultural Assessment Report dated 21 January 2015 prepared by TALC.

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 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, 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 DA2015/0612, 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	<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 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	No submissions were received in relation to this application.

Section 96(1A) - Other Modifications	Comments
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&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>Clauses 93 and/or 94</u> of the EP&amp;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&amp;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&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>

<b>Section 79C 'Matters for Consideration'</b>	<b>Comments</b>
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.
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**

<b>Internal Referral Body</b>	<b>Comments</b>
Landscape Officer	No objections to the proposed modification to remove tree 16 based on the approved construction management plan, which was submitted after referral comments and conditions were completed for DA2015/0612.

#### **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 (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 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.

**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
Part 1 Preliminary	Yes
Land Use Table	Yes
Part 5 Miscellaneous provisions	Yes
5.9 Preservation of trees or vegetation	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

**Warringah Development Control Plan**

Compliance Assessment

<b>Clause</b>	<b>Compliance with Requirements</b>	<b>Consistency Aims/Objectives</b>
Part A Introduction	Yes	Yes
A.5 Objectives	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
D12 Glare and Reflection	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E10 Landslip Risk	Yes	Yes

## **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. Mod2016/0008 for Modification of Development Consent No. DA2015/0612 granted for Drainage and Stormwater Management Works and Installation of Shoring Walls and Bulk Excavation to remove a street tree (Tree 16) 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 10 DP 231418,890 Pittwater Road, DEE WHY, Lot 11 DP 231418,888 Pittwater Road, DEE WHY, Lot A DP 339410,884 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 371110,14 Oaks Avenue, DEE WHY, Lot B DP 371110,16 Oaks Avenue, DEE WHY, subject to the conditions printed below:

**Modify Condition 16 - Tree protection and roots to read as follows:**

(a) Existing trees which must be retained (Tree Root Protection)

Trees numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20 and 21 in the Arboricultural Assessment Report dated 21 January 2015 prepared by TALC

(b) Tree protection

- i) No tree roots greater than 50mm diameter are to be cut from protected trees unless authorised
- ii) All structures are to bridge tree roots greater than 50mm diameter unless directed otherwise
- iii) All tree protection to be in accordance with the recommendations of the Arboricultural Assessment Report
- iv) All tree pruning within the subject site is to be in accordance with WDCP2011 Clause E1 Pr
- iv) All tree protection measures, including fencing, are to be in place prior to commencement of works

Reason: To ensure compliance with the requirement to retain and protect significant planting on the site. (DACLAC01)

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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**Lashta Haidari, Senior Development Planner**

The application is determined under the delegated authority of:

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**Steven Findlay, Development Assessment Manager**

**ATTACHMENT A**

No notification plan recorded.

**ATTACHMENT B**

	<b>Title</b>	<b>Date</b>
 2016/048799	Notification Map	16/02/2016

**ATTACHMENT C**

<b>Reference Number</b>	<b>Document</b>	<b>Date</b>
 2016/016686	Report Statement of Environmental Effects - Amended Condition 16	15/01/2016
 MOD2016/0008	896 Pittwater Road DEE WHY NSW 2099 - Section 96 Modifications - Section 96 (1a) Minor Environmental Impact	18/01/2016
 2016/013947	DA Acknowledgement Letter - Karimbla Constructions Services (Nsw) Pty Ltd	18/01/2016
 2016/016684	Modification Application Form	19/01/2016
 2016/016685	Applicant Details	19/01/2016
 2016/034296	File Cover	03/02/2016
 2016/048768	Notification Letter - Mod - Mod2016/0008 - 896 Pittwater Road DEE WHY NSW 2099	16/02/2016
 2016/048799	Notification Map	16/02/2016
 2016/059946	Landscape Referral Response	25/02/2016
 2016/062002	14 day letter - outstanding fees	26/02/2016
 2016/077093	Further Payment	10/03/2016