



# Minto Planning Services

Town Planning Consultants

30<sup>th</sup> October 2020

The General Manager  
Northern Beaches Council  
725 Pittwater Road  
DEE WHY 2099

Dear Sir/Madam

**SECTION 4.56 MODIFICATION - CENTRE BASED CHILDCARE CENTRE  
727 WARRINGAH ROAD, FORESTVILLE  
DA 2018/0697**

I refer to the subject application and on behalf of the applicant, Warringah Road Developments P/L, application is hereby made pursuant to Section 4.56 of the Environmental Planning & Assessment Act 1979, as amended, for the modification of the subject consent.

By way of background it is advised that Land & Environment Court Appeal No. 2018/00282754 was approved on the 3<sup>rd</sup> May 2019 and granted consent to DA No. 2018/0697 which approved demolition works and construction of a centre-based childcare facility for a maximum of 146 children, subject to a number of conditions.

This application is to be read in conjunction with the following documentation:

- Revised Ground Floor Architectural Plan prepared by Liquid Design, Project No. 3318, Sheet No. A2000, Revision M and dated 7/9/20.
- Traffic & Parking Certification prepared by TEF Consulting and dated 21/10/20.
- Voluntary Planning Agreement prepared by Hones Lawyers on behalf of Warringah Road Developments P/L.

**Modifications Proposed by this Application**

This application seeks approval for the following modifications as detailed on the accompanying revised Architectural Plan:

1. Provision of a combined pedestrian footpath and cycleway within the adjoining road reserve in accordance with the accompanying Voluntary Planning Agreement.

There are no other changes proposed as part of this application.

## **Impacts of the Proposal**

It is my opinion that the proposed modifications sought by this application will not result in any detrimental impacts upon the streetscape of the locality, the character of the surrounding area or upon the amenity of adjoining property owners.

In forming this opinion, it is noted that:

1. The proposed changes are contained within the land originally proposed to be dedicated to the Council as part of the approval of DA 2018/0697.
2. The proposed provision of a combined pedestrian footpath and cycleway within the road reserve is made at the request of the Council.
3. The proposal does not seek approval for any change to the approved childcare centre.
4. The proposal does not seek approval for any amendment to the number of approved childcare places or carparking spaces.
5. The development, when viewed from the public domain, will appear as substantially the same development.
6. The proposal will remain substantially the same development as that which was originally approved by the Court.
7. The proposal will continue to provide for a compliant area of unencumbered indoor play area.
8. The proposal will continue to provide for a compliant area of unencumbered outdoor play area.

## **Section 4.56 – Modification by consent authorities of consents granted by the Court - Environmental Planning & Assessment Act 1979, as amended**

Section 4.56 of the Environmental Planning & Assessment Act 1979, as amended, permits an applicant to seek approval for the modification of a development consent in the following circumstances:

### ***(1) Modifications involving minimal environmental impact***

*A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the consent if:*

- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*

- (b) *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 that requires the notification or advertising of applications for modification of a development consent, and*
- (c) *it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and*
- (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.*

*(1A) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.*

In response to the requirements of Section 4.56(1)(a) of the Act it is submitted that the proposal will remain substantially the same development for which consent was originally granted.

In forming this opinion, it is submitted that:

- The proposal will remain a centre-based childcare facility.
- The proposed development will have a built form which is the same as the approved development in that the proposed changes are contained within the adjoining road reserve.
- The proposal will continue to provide for 146 child care places.
- The proposal will not result in any additional external impacts.

### **Section 4.15(1) of the Environmental Planning & Assessment Act 1979**

The following assessment is provided against the requirements of Section 4.15(1) of the Act.

#### **Environmental Planning Instruments – Section 4.15(1)(a)(i)**

The proposed development remains permissible with the consent of the Council under the provisions of the Warringah LEP 2011.

The proposal will not modify the approved building and will remain compliant with the numerical standards of the LEP in relation to height of building.

The proposal will remain compliant with Clause 25 of the SEPP (Educational Establishments and Child Care Facilities) 2017 in relation to unencumbered indoor and outdoor play space.

The proposal will continue to provide for car parking in accordance with the requirements of the Council.

The proposal is therefore considered to remain consistent with the determination of the Court dated 3<sup>rd</sup> May 2018 in relation to DA 2018/0697 and therefore should be supported by Council.

#### **Draft Environmental Planning Instruments – Section 4.15(1)(a)(ii)**

It is not considered that there are any Draft Environmental Planning Instruments applicable to the proposal.

#### **Development Control Plans – Section 4.15(1)(a)(iii)**

The proposal is considered to remain compliant with the requirements of Council's DCP except where they were previously varied by the Court granted consent. The proposal does not seek to increase the extent of any variation.

#### **Impacts of the Development – Section 4.15(1)(b)**

It is my opinion based upon the findings of this report and the accompanying documentation that there will not be any unreasonable impacts resulting from the proposal.

This is particularly the case in relation to impacts upon the streetscape, adjoining properties and existing and proposed landscape character.

**Suitability of the Site – Section 4.15(1)(c)**

It is my opinion that the suitability of the site for this form of development has previously been demonstrated through the granting of the original consent.

It is therefore considered that in the absence of any unreasonable impacts attributable to the proposal that the site is suitable for the modified development as proposed.

**Public Interest – Section 4.15(1)(e)**

It is my opinion that the proposed development is in the public interest as it will ensure that the provision of high quality child care is provided upon the site in a manner which is compliant with all applicable controls.

It is not considered that the proposed modifications will result in any adverse impacts upon adjoining properties or the locality.

**Summary**

In summary, it is my opinion that the modifications proposed by this application will result in development substantially the same as that previously approved by the Court and will not result in any unreasonable impacts.

Accordingly, it is considered that the proposed modification of the approved development as detailed within this submission is worthy of the support of the Council.

It is requested that should you have any queries regarding this matter that you do not hesitate to contact me to discuss.

Andrew Minto  
DIRECTOR  
MINTO PLANNING SERVICES PTY LTD  
Graduate Diploma (Urban & Regional Planning), Associate Diploma (Health & Building Surveying). MPIA.