

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2018/0140
Responsible Officer:	Lashta Haidari
Land to be developed (Address):	<p>Lot 3 DP 212382, 884 - 896 Pittwater Road DEE WHY NSW 2099</p> <p>Lot B DP 371110, 884 - 896 Pittwater Road DEE WHY NSW 2099</p> <p>Lot A DP 371110, 884 - 896 Pittwater Road DEE WHY NSW 2099</p> <p>Lot 2 DP 212382, 884 - 896 Pittwater Road DEE WHY NSW 2099</p> <p>Lot 1 DP 212382, 884 - 896 Pittwater Road DEE WHY NSW 2099</p> <p>Lot 1 DP 209503, 884 - 896 Pittwater Road DEE WHY NSW 2099</p> <p>Lot 1 DP 307937, 884 - 896 Pittwater Road DEE WHY NSW 2099</p> <p>Lot 3 DP 307937, 884 - 896 Pittwater Road DEE WHY NSW 2099</p> <p>Lot A DP 416469, 884 - 896 Pittwater Road DEE WHY NSW 2099</p> <p>Lot 1 DP 504212, 884 - 896 Pittwater Road DEE WHY NSW 2099</p> <p>Lot 10 DP 231418, 884 - 896 Pittwater Road DEE WHY NSW 2099</p> <p>Lot 11 DP 231418, 884 - 896 Pittwater Road DEE WHY NSW 2099</p> <p>Lot A DP 339410, 884 - 896 Pittwater Road DEE WHY NSW 2099</p>
Proposed Development:	Modification of Development Consent DA2016/0705 granted for Construction of a Mixed Use Development comprising retail commercial and residential uses and a child care centre
Zoning:	<p>Warringah LEP2011 - Land zoned B4 Mixed Use</p> <p>Warringah LEP2011 - Land zoned B4 Mixed Use</p> <p>Warringah LEP2011 - Land zoned B4 Mixed Use</p> <p>Warringah LEP2011 - Land zoned B4 Mixed Use</p> <p>Warringah LEP2011 - Land zoned B4 Mixed Use</p> <p>Warringah LEP2011 - Land zoned B4 Mixed Use</p> <p>Warringah LEP2011 - Land zoned B4 Mixed Use</p> <p>Warringah LEP2011 - Land zoned B4 Mixed Use</p> <p>Warringah LEP2011 - Land zoned B4 Mixed Use</p> <p>Warringah LEP2011 - Land zoned B4 Mixed Use</p> <p>Warringah LEP2011 - Land zoned B4 Mixed Use</p> <p>Warringah LEP2011 - Land zoned B4 Mixed Use</p> <p>Warringah LEP2011 - 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:	22/03/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New multi unit
Notified:	Not Notified
Advertised:	Not Advertised
Submissions Received:	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 the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

There are no assessment issues.

SITE DESCRIPTION

Property Description:	Lot 3 DP 212382 , 884 - 896 Pittwater Road DEE WHY NSW 2099
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	<p>Lot B DP 371110 , 884 - 896 Pittwater Road DEE WHY NSW 2099</p> <p>Lot A DP 371110 , 884 - 896 Pittwater Road DEE WHY NSW 2099</p> <p>Lot 2 DP 212382 , 884 - 896 Pittwater Road DEE WHY NSW 2099</p> <p>Lot 1 DP 212382 , 884 - 896 Pittwater Road DEE WHY NSW 2099</p> <p>Lot 1 DP 209503 , 884 - 896 Pittwater Road DEE WHY NSW 2099</p> <p>Lot 1 DP 307937 , 884 - 896 Pittwater Road DEE WHY NSW 2099</p> <p>Lot 3 DP 307937 , 884 - 896 Pittwater Road DEE WHY NSW 2099</p> <p>Lot A DP 416469 , 884 - 896 Pittwater Road DEE WHY NSW 2099</p> <p>Lot 1 DP 504212 , 884 - 896 Pittwater Road DEE WHY NSW 2099</p> <p>Lot 10 DP 231418 , 884 - 896 Pittwater Road DEE WHY NSW 2099</p> <p>Lot 11 DP 231418 , 884 - 896 Pittwater Road DEE WHY NSW 2099</p> <p>Lot A DP 339410 , 884 - 896 Pittwater Road DEE WHY NSW 2099</p>
<p>Detailed Site Description:</p>	<p>The site is irregular in shape and is bound by Howard Avenue to the north, Oaks Avenue to the south and Pittwater Road to the west. The site is further bound by shared boundaries between itself and several other development sites both to the east and south-west. The site has a total area of 14.466m².</p> <p>The site is centrally located within the Dee Why Town Centre as defined in the Dee Why Town Centre Master Plan 2013 (DYTC Masterplan).</p> <p>The existing topography of the site slopes from west to east, with a cross-fall of approximately 4m from the highest point on the south-western corner of the Pittwater Road frontage, to the lowest point at the north-eastern corner of the site on Howard Avenue.</p>

Map:



SITE HISTORY

DA2015/0612 for Drainage and stormwater management works and installation of shoring walls and bulk excavation approved 22 December 2015; and

DA2016/0705 for the construction of a new mixed-use development including a town centre was approved on 10 May 2017. Construction has commenced and is at an advanced stage.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks to Modify Development Consent No. 2016/0705 by deleting condition 9(b). Condition 9 (b) requires the following bonds:

b) Construction, Excavation and Associated Works Bond (Drainage)

A Bond of \$250,000 as security against any damage to Councils existing drainage systems adjoining the site.

The proposed modification seeks to eliminate the need for duplicate bond amounts to be paid in respect of potential damage to public infrastructure during construction works under the two development consents for the site, being:

- DA2015/0612 Drainage and stormwater management works and installation of shoring walls and bulk excavation; and
- DA2016/0705 Construction of a mixed-use development comprising retail, commercial and residential uses and a child care centre.

The applicant is requesting the deleting of the condition 9(b) as a similar condition (Condition 7 Bonds) was applied to DA2015/0612 which included a requirement for the payment of a maintenance bond in

the amount of \$200,000 in respect of Council's stormwater drainage line. furthermore, it should be noted that DA2016/0705 did not include any excavation works as was approved as part DA2015/0612.

Council Development Engineer has reviewed the request and has raised no objection. Therefore Condition 9(b) can be deleted from the consent.

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, 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 DA2016/0705, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(1A) - Other Modifications	Comments
A consent authority may, on the 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, as proposed amendments relate to the removal of condition relating to bond.
(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 proposed development is substantially the same as that approved pursuant to DA2016/0705 as the proposed modification would not alter the use, the bulk and scale of the building or its built form. Generally, the appearance of the approved development would remain unchanged.
(c) it has notified the application in	The application has been publicly exhibited in

Section 4.55(1A) - Other Modifications	Comments
<p>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>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.</p>
<p>(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.</p>	<p>No submissions were received in relation to this application.</p>

Section 4.15 Assessment

In accordance with Section 4.55(3) of the Environmental Planning and Assessment Act 1979, in determining a modification application made under Section 4.55 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 relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See the discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15(1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A	<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.

Section 4.15 'Matters for Consideration'	Comments
Regulation 2000)	<p>Clause 50(1A) of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation is not required for this application.</p> <p>Clauses 54 and 109 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>
Section 4.15 (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 have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The proposed modification does not change the suitability of the site of the approved development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See the discussion on “Public Exhibition” in this report.
Section 4.15(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
NECC (Development Engineering)	Development Engineers raise no objections to the proposal to delete condition 9 (b).

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 Environmental 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

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 to Modification Application No. Mod2018/0140 for Modification of Development Consent DA2016/0705 granted for Construction of a Mixed Use Development comprising retail commercial and residential uses and a child care centre on land at Lot 3 DP 212382,884 - 896 Pittwater Road, DEE WHY, Lot B DP 371110,884 - 896 Pittwater Road, DEE WHY, Lot A DP 371110,884 - 896 Pittwater Road, DEE WHY, Lot 2 DP 212382,884 - 896 Pittwater Road, DEE WHY, Lot 1 DP 212382,884 - 896 Pittwater Road, DEE WHY, Lot 1 DP 209503,884 - 896 Pittwater Road, DEE WHY, Lot 1 DP 307937,884 - 896 Pittwater Road, DEE WHY, Lot 3 DP 307937,884 - 896 Pittwater Road, DEE WHY, Lot A DP 416469,884 - 896 Pittwater Road, DEE WHY, Lot 1 DP 504212,884 - 896 Pittwater Road, DEE WHY, Lot 10 DP 231418,884 - 896 Pittwater Road, DEE WHY, Lot 11 DP 231418,884 - 896 Pittwater Road, DEE WHY, Lot A DP 339410,884 - 896 Pittwater Road, DEE WHY, subject to the conditions printed below:

A. Modify Condition <9 - Work Bonds> to read as follows:

(a) Construction, Excavation and Associated Works Bond (Road and kerb and gutter works)

A Bond of \$1,000,000 as security against any damage or failure to complete half road construction works and kerb and gutter works including traffic control devices and line marking as specified, along with the Oaks Avenue and Howard Avenue frontages as required as part of this consent.

(b) Construction, Excavation and Associated Works Bond (Footpath Paving works and associated street furniture)

A Bond of \$1,000,000 as security against any damage or failure to complete the construction of any vehicular crossings, footpath paving/streetscape and associated works required as part of this consent. This bond is also to cover associated street furniture works, bus shelters, street lighting and street tree planting.

(c) Construction, Excavation and Associated Works Bond (Pollution)

A Bond of \$100,000 as security to ensure that there is no transmission of material, soil etc. off the site and onto the public road and/or drainage systems.

(d) Construction, Excavation and Associated Works Bond (Damage to Councils Roads and Stormwater Drainage systems)

A Bond of \$500,000 as security against damage to Council's road(s) fronting the site caused by the transport and disposal of materials and equipment to and from the site.

(d) Construction, Excavation and Associated Works Bond (Maintenance for civil works)

The developer/applicant must lodge with Council a Maintenance Bond of \$500,000. The maintenance bond is required to be submitted to Council after all road and footpath construction works are completed and accepted in writing by Council. This maintenance bond can be exchanged upon agreement with Council for all the other engineering works bonds that are held. The Maintenance Bond will only be refunded on completion of the 12-month maintenance period if work has been completed in accordance with the approved plans to the satisfaction of Council.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each road and footpath works inspection as determined by Council (minimum (20) twenty inspections).

All bonds and fees shall be deposited with Council prior to Construction Certificate or commencement, details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at www.warringah.nsw.gov.au/your-council/forms).

The Bonds lodged to Council can be in the form of an unconditional Bank Guarantee with no expiration date.

Reason: To ensure adequate protection of Councils infrastructure. (DACENZ01)

In signing this report, I declare that I do not have a Conflict of Interest.

Signed



Lashta Haidari, Principal Planner

The application is determined under the delegated authority of:





Steven Findlay, Manager Development Assessments










ATTACHMENT A

No notification plan recorded.

ATTACHMENT B

No notification map.

ATTACHMENT C

Reference Number	Document	Date
 2018/192925	Report - Statement of Environmental Effects	20/03/2018
 2018/192927	Report - ASIC - current extract	20/03/2018
 MOD2018/0140	9 Howard Avenue DEE WHY NSW 2099 - Section 96 Modifications - Section 96 (1a) Minor Environmental Impact	22/03/2018
 2018/190638	DA Acknowledgement Letter - Karimbla Constructions Services (NSW) Pty Ltd	22/03/2018
 2018/192908	Modification Application Form	22/03/2018
 2018/192912	Applicant Details	22/03/2018
 2018/192915	Letter - cover	22/03/2018
 2018/263793	Development Engineering Referral Response - superseded	30/04/2018
 2018/280739	Development Engineering Referral Response	08/05/2018