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ABN 50 105 256 228

Mr Ray Brownlee
General Manager
Northern Beaches Council
PO Box 82
Manly NSW 1655
Attention: Planning Department

02 August 2021

Dear Sir/Madam,

SECTION 4.55(1A) – MODIFICATION TO STORMWATER CONSENT CONDITIONS | WARRINGAH MALL | REF: DA 2008/1742

This Statement of Modification has been prepared by Urbis Pty Ltd and is submitted to Northern Beaches Council (Council) on behalf of Scentre Group (the applicant) to modify the approved DA 2008/1742 for the existing Warringah Mall Shopping Centre located at the corner of Old Pittwater Road and Condamine St, Brookvale, pursuant of section 4.55 (1A) of the *Environmental Planning and Assessment Act 1979*.

This application seeks consent to modify the historical development approval pertaining to the positive covenant relevant to drainage works under DA2008/1742. The application seeks approval for the amendment of three (3) Consent Conditions of DA 2008/1742 as listed below:

- *Condition 57 Registration of Encumbrances for Trunk drainage network and Flood Barrier System.*
- *Condition 61 Creation of Positive Covenant and Restriction as User and*
- *Condition 63 Positive Covenant to allow access for maintenance and rectification.*

A complete description of the proposed conditions is included in Section 3 of this report and further described in the Terms of Positive Covenant at Attachment A.

This Statement of Modification letter includes:

- Identification of site and locality
- Description of the proposed conditions
- Assessment of the proposal against all relevant state and local councils

This letter is accompanied by:

- Completed DA form (completed online through the planning portal);
- Letter of owner's consent; and

- Terms of Positive Covenant (**Attachment A**)

The proposal is subject to a Section 4.55 (1A) application, as the proposed amendments will result in substantially the same development as approved under DA2008/1742 on 16 May 2012 and are minor and administrative in nature. The proposed modifications are suitable for the site and are not considered to result in any adverse impacts on the surrounding locality. Accordingly, it is recommended that approval be granted.

1. THE SITE AND SURROUNDING CONTEXT

1.1. LOCALITY

This site is located at 145 Old Pittwater Road, Brookvale and is legally described as Lot 100 in DP 1015283. The site comprises a total site area of 170,600sq.m.

The site is located in the suburb of Brookvale, in the Northern Beaches Local Government Area (LGA) and is approximately 18 kilometres from the Sydney CBD. Brookvale is identified in the North District Plan as a Strategic Centre. A locality diagram indicating the location of the site relative to Sydney CBD is provided at **Figure 1**.

Figure 1 Site Location



Source: Urbis

The site is situated at the junction of several land use zones and therefore land use in the locality is varied. Land uses along Pittwater Road are characterised by low scale commercial development.

Beyond the subject site to the north, to the west and to the east, land use is characterised by industrial development. Low density residential development interspersed by public and private reserves is located at the perimeter of the above described commercial and industrial lands.

The site accommodates Warringah Mall which is a partially enclosed centre with provision of open-air and undercover multi-storey car parking. The site has a gradual natural slope that falls from the northwest to the southeast of the site and contains limited vegetation, with the only substantial planting located along the street frontages of the site and within the open-air car parking areas. Vehicle access to the site is currently available at several locations along the Old Pittwater Road, Pittwater Road and Cross Street frontages of the site.

An aerial image of the site is provided at **Figure 2**.

Figure 2 – Aerial Image



The surrounding development includes:

- North: Super Cheap Auto and Bunnings Warehouse
- East: Warringah Golf Course
- South: Northern Beaches Tafe; and
- West: Industrial and Office Premises

A photomontage of the surrounding sites is provided at **Figure 3** below.



Picture 1 Southern Pedestrian to Warringah Mall
Source: Urbis



Picture 2 View of Car Park from Old Pittwater Road
Source: Urbis



Picture 3 Looking south along Green Street
Source: Urbis



Picture 4 Exiting bus stop and collective zone
Source: Urbis

Figure 3 Photos of surrounding development



Picture 5 Existing at grade car park at Condamine Street

Source: Urbis



Picture 6 Looking north from junction of Condamine Street and Old Pittwater Road

Source: Urbis

2. PROJECT HISTORY

2.1. DA2008/1742

A Development Application was approved on 16 March 2012 by Northern Beaches Council for the construction of drainage works through the Warringah Mall Shopping Centre site extending under Condamine Street and linking into the existing infrastructure located within the adjoining Warringah Golf Club site to the east.

This proposal is considered ancillary to the approved use of the site and provides revised consent conditions to meet the requirements of the current consent authority.

2.2. PRE-LOGEMENT DISCUSSIONS

Since the issue of the development consent, negotiations have been occurring between Scentre Group and Council as well as adjoining land owners.

Agreement has been reached on the drafting of the conditions, as detailed in this application. The issuing of this modification, if approved, will allow for the eventual issue of a Final Occupation certificate.

3. PROPOSED MODIFICATION TO CONDITIONS

This Section 4.55 (1A) application seeks consent for an amendment to three consent conditions outlined in the consent for DA2008/1742, including rewording of Conditions 57, 61 and 63 to reflect the proposed changes to stormwater covenants. The sections below discuss each proposed modification in detail. Importantly the exact wording of the proposed conditions align with discussions with Council, where prior 'in principle' agreement has been reached.

3.1. CONDITION 57

Condition 57 pertains to the Registration of Encumbrances for the trunk drainage network and the Flood Barrier System. Condition 57 requires that:

“A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user for the trunk drainage network and flood barrier system is to be submitted to Council.

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

Reason: To identify encumbrances on land. (DACENF02)”

It is proposed that the wording of the DA consent be modified to reflect each stage of construction, as follows:

“A copy of the certificate of title demonstrating the creation of a public positive covenant and restriction as to user, for the trunk drainage network and floor barrier system is to be submitted to Council for approval and execution.

Details demonstrating compliance as relevant to each stage of construction as shown on the approved staging plans SW-001-SW-004 (Rev B) are to be submitted to the Certifying Authority prior to the issue of the interim / Occupation certificate for each stage.”

3.2. CONDITION 61

Condition 61 pertains to Creation of Public Positive Covenant and Restriction as to User, Positive Covenant and Easement. Condition 61 requires that:

“Where any conditions of this Consent require the creation of a public positive covenant and/or restriction as a user, the original completed request forms, (NSW Department of Finances and Services 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 the approval and registration has been affected by the NSW Department of Finances and Services.

Details demonstrating the compliance are to be submitted to the Certifying Authority prior to the issue of an Interim/Final Occupation Certificate.

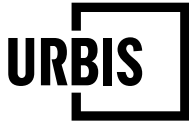
Reason: to identify encumbrance on land. (DACENF02)”

It is proposed that the wording of the DA consent be updated to reflect Northern Beaches Council as the consent authority and OC is provided for each stage of construction, as follows:

“Where any conditions of this Consent require the creation of a public positive covenant and/or restriction as to user, positive covenant and easement, the dealing forms shall be provided to Northern Beaches Council for approval and as necessary, execution.

A certified copy of the documents shall be provided to Northern Beaches Council after final approval and registration has been affected by the NSW Land Registry Services.

Details demonstrating compliance as relevant to each stage of construction as shown on the approved staging plans SW001-SW004 (Rev B) are to be submitted to the Principle Certifying Authority prior to the issue of the Interim / Occupation certificate for each stage.”



3.3. CONDITION 63

Condition 63 pertains to the Public Positive Covenant and Positive Covenant and Easement. Condition 63 requires that:

- a) *A positive covenant (under the provision of Section 88B of the Conveyancing Act) is to be registered on the title of Lot 2 DP 600059 and Lot 30 DP 204107*
- b) *The positive covenant is to permit access to Lots 2 DP 600059 and Lot 30 DP 204107 to allow the owners of Lot 100 DP 1015283, No 145 Old Pittwater Road to meet the obligation of this development consent.*
- c) *The terms of the positive covenant are to be prepared to the satisfaction of council and the requirements and shall be attached to all land holding benefiting this consent*
- d) *All costs relate to the review and approval of the positive covenant by Council shall be borne by the applicant*
- e) *Warringah Council shall be nominated as the sole authority empowered to release, vary or modify such covenant*
- f) *Details demonstrating compliance with this condition is to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of an Interim/Final Occupation Certificate.*

It is proposed that the wording of the DA consent be modified to reflect the updated Positive Covenant, as follows:

- a) **“A Form 13PC Public Positive Covenant approved by Northern Beaches Council is to be registered on the title of Lot 100 DP 1015283C and Lot 100 DP 1015283D to require the owners of Lot 100 DP 1015283C and Lot 100 DP 1015283D to access Lot 30 DP 204107 in order to meet the obligations of conditions 66 and 67 of this Development Consent and to meet the obligations of conditions 66 and 67 of this Development Consent in respect to Lot 2 DP600059.**
- b) **A Positive Covenant and Easement (under Section 88B of the Conveyancing Act 1919 (NSW)) approved by Council to allow the owners of Lot 100 DP 1015283C and Lot 100 DP 1015283D to access Lot 2 DP 600059 in order to meet the obligations of conditions 66 and 67 of this Development Consent.**
- c) **Northern Beaches Council shall be nominated as the sole authority empowered to release, vary or modify the Form 13PC Public Positive Covenant referred to in condition 63(a) and the Positive Covenant and Easement referred to on condition 63(b).**
- (d) **All reasonable costs related to the review and approval of the positive covenant by Council shall be borne by the applicant.**
- e) **Details demonstrating compliance with this condition is to be submitted to the satisfaction of the Principal Certifying Authority prior to the release of the final occupation certificate.”**

4. SECTION 4.55 ASSESSMENT

The matters referred to in Section 4.55(1A) of the EP&A Act need to be considered in the assessment of the proposed modifications. Each of the matters relevant to the proposal are assessed below.

4.1. MINIMAL ENVIRONMENTAL IMPACT

The proposed modifications to the consent are considered to result in minor environmental impacts, are limited to wording amendments and do not affect the approved land-uses, total gross floor area, external layout of the existing development or the key fundamentals of the consent. The modifications are integral to the securing a final Occupation Certificate for the approved (and constructed) stormwater works. It is considered that the proposed conditions will have a minor impact upon the surrounding environment and simply seek to revise the wording of three conditions.

The proposed development will have a negligible difference on the existing stormwater drainage and management system. The overall intensity of use of the development and overall built form will therefore be commensurate with that originally approved development.

4.2. SUBSTANTIALLY THE SAME DEVELOPMENT

The proposed modifications will result in substantially the same development approved under DA2088/1742. This is because the proposed modifications:

- Do not result in a significant departure from the approved stormwater plans.
- Do not impact the following approved building elements:
 - Total floor space ratio
 - Total gross floor area
 - Total number of car parking spaces
 - Total number of bicycle spaces
- Do not result in any changes to the approved land-uses at the site. No new land-uses are proposed; and
- Do not result in any changes to the approved internal or external structure of the existing development.

There will be marginal changes to the approved consent conditions in order to secure a final Occupation Certificate for the proposed works.

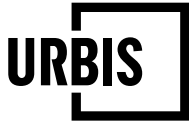
Considering the above, it is our opinion that the proposed modifications are minimal and will result in substantially the same development for which consent has already been granted.

4.3. PUBLIC NOTIFICATIONS AND SUBMISSIONS

It is acknowledged that any submissions arising from the public notification of this application will need to be assessed by Council.

5. SECTION 4.15 ASSESSMENT

The matters referred to in Section 4.15 of the EP&A Act need to be considered in the assessment of the proposed modifications. Each of the matters relevant to the proposal are assessed below.



5.1. ENVIRONMENTAL PLANNING INSTRUMENTS

The environmental planning instruments applicable to the site and development are:

- Warringah Local Environmental Plan 2011

Consistency with the relevant controls within the above environmental planning instrument is discussed within the subsection below.

5.2. WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011

The original Development Application prepared for the stormwater augmentation works, DA 2008/1742, assessed the proposed development against all relevant requirements of the Warringah Local Environmental Plan 2000 . WLEP 2000 was comprehensively considered and the proposed amendments do not bring rise to any new considerations and the proposal remains compliant with the relevant provisions,

Since time has passed since the consent was issued, the Warringah Local Environmental Plan (WLEP) 2011 is now the current principal environmental planning instrument governing development at the site.

The site is zoned B3 Commercial Core in accordance with the LEP. The existing development is consistent with the zone objectives as outlined below:

- To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.
- To encourage appropriate employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To recognise and support the role of Warringah Mall as a retail centre of sub-regional significance.

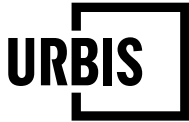
The proposed consent conditions will not result in any new works to the site. The modification merely seeks to amend the terms of consent in relation to title and covenant matters as outlined in Section 3. Therefore, this modification remains consistent with the zoning objectives for the site.

While no changes are proposed to the approved works, an assessment against flooding and stormwater controls has been provided below, even though the relevant planning instrument is WLEP 2000.

Table 1 WLEP 2011 Table of Compliance

Clause	Proposed	Complies
6.4 Development on sloping land Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that—	The approved stormwater drainage system provides an efficient and effective drainage system with minimal impact upon the local environment. The stormwater infrastructure will not be altered as a result of this proposal, nor are any additional works required.	Yes

Clause	Proposed	Complies
(b) the development will not cause significant detrimental impacts because of stormwater discharge from the development site, and	The modification relates to wording changes only.	
<p>5.21 Flood Planning</p> <p>Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development</p> <p>(a) is compatible with the flood function and behaviour on the land, and</p> <p>(b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and</p> <p>(c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and</p> <p>(d) incorporates appropriate measures to manage risk to life in the event of a flood, and</p> <p>(e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses</p>	<p>The drainage augmentation works approved under DA 2008/1742 were designed with consideration of extensive flood management modelling and studies. The approved works are considered vital to ensure effective stormwater management and flood risk mitigation for Warringah Shopping Centre. This proposal does not seek to alter the approved stormwater drainage system which satisfies councils conditions for flood planning and mitigation. The modification relates to wording changes only.</p>	<p>Yes</p>



5.3. DEVELOPMENT CONTROL PLAN

This proposal simply seeks the proposed amendment of three consent conditions approved under DA 2008/1742. The modification to these consent conditions will not result in any modified or additional works as already approved and therefore will not result in any new consideration as covered under the original DA.

5.4. DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS

No draft environmental planning instruments are relevant to this proposal.

5.5. PLANNING AGREEMENT

No planning agreements are relevant to this proposal.

5.6. REGULATIONS

This application has been prepared in accordance with the relevant provisions of the Environmental Planning and Assessment Regulations 2000.

5.7. LIKELY IMPACTS OF THE PROPOSAL

Given the minor nature of the revision of the approved consent conditions, the proposal will not have any adverse social, environmental or economic impacts. This is because the proposed modifications:

- Will not alter the approved stormwater drainage system works.
- Will ensure the provision of details demonstrating compliance relevant to each stage of construction as shown on the approved staging plans SW-001-SW-004.
- Will ensure Northern Beaches Council is the nominated sole authority empowered to release, vary or modify the Form 13PC Public Positive Covenant.

Accordingly, the proposed consent conditions are envisaged to be satisfactory.

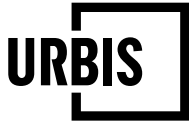
5.8. SUITABILITY OF THE SITE

The proposed development is considered suitable for the site, as no adverse impacts are anticipated on the surrounding built and natural environment. The proposal is permissible under all relevant planning controls, while building height and FSR controls remain unaffected.

The proposed consent conditions do not result in the alteration of the approved stormwater plans, therefore the development remains consistent with the relevant LEP and DCP provisions. Accordingly, the proposal does not create an undesirable precedent and is considered ancillary to the existing use of the site.

5.9. SUBMISSIONS

It is acknowledged that submissions arising from the public notification of this application will need to be assessed by Council.



5.10. PUBLIC INTEREST

The proposed development is considered in the public interest for the following reasons:

- The proposal is consistent with relevant State and local strategic plans and substantially complies with the relevant State and local planning controls.
- No adverse environmental, social or economic impacts will result from the proposal.
- The proposed conditions will satisfy

6. CONCLUSION

This Section 4.55 application has been prepared by Urbis Pty Ltd on behalf of Scentre Group to seek a revision to conditions 57, 61 and 63 of the approved DA 2020/0133 for stormwater drainage infrastructure in order to satisfy council's requirements.

Based on the content contained throughout this letter and the accompanying annexure, it is considered that the proposed modifications to conditions should be approved.

Please do not hesitate to contact Catherine Kelly should you wish to discuss our application in greater detail.

Yours sincerely,

A handwritten signature in cursive script that reads "Kelly".

Catherine Kelly
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