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APPLICATION FOR MODIFICATION ASSESSMENT REPORT

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Application Number:	Mod2018/0219
Responsible Officer:	Lashta Haidari
Land to be developed (Address):	Lot 3 DP 212382, 884 - 896 Pittwater Road DEE WHY NSW 2099 Lot B DP 371110, 884 - 896 Pittwater Road DEE WHY NSW
	2099 Lot A DP 371110, 884 - 896 Pittwater Road DEE WHY NSW 2099
	Lot 2 DP 212382, 884 - 896 Pittwater Road DEE WHY NSW 2099
	Lot 1 DP 212382, 884 - 896 Pittwater Road DEE WHY NSW 2099 Lot 1 DP 209503, 884 - 896 Pittwater Road DEE WHY NSW
	2099 Lot 7 DP 8172, 884 - 896 Pittwater Road DEE WHY NSW
	2099 Lot 1 DP 307937, 884 - 896 Pittwater Road DEE WHY NSW 2099
	Lot 3 DP 307937, 884 - 896 Pittwater Road DEE WHY NSW 2099
	Lot A DP 416469, 884 - 896 Pittwater Road DEE WHY NSW 2099 Lot 1 DP 504212, 884 - 896 Pittwater Road DEE WHY NSW
	2099 Lot 10 DP 231418, 884 - 896 Pittwater Road DEE WHY NSW 2099
	Lot 11 DP 231418, 884 - 896 Pittwater Road DEE WHY NSW 2099
	Lot A DP 339410, 884 - 896 Pittwater Road DEE WHY NSW 2099
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:	Warringah LEP2011 - Land zoned B4 Mixed Use Warringah LEP2011 - Land zoned B4 Mixed Use

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	Warringah LEP2011 - Land zoned B4 Mixed Use Warringah LEP2011 - Land zoned B4 Mixed Use Warringah LEP2011 - Land zoned B4 Mixed Use	
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:	04/05/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Mixed
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
	Lot B DP 371110, 884 - 896 Pittwater Road DEE WHY
	NSW 2099
	Lot A DP 371110, 884 - 896 Pittwater Road DEE WHY
	NSW 2099
	Lot 2 DP 212382 , 884 - 896 Pittwater Road DEE WHY
	NSW 2099 Lot 1 DP 212382 , 884 - 896 Pittwater Road DEE WHY
	NSW 2099
	Lot 1 DP 209503 , 884 - 896 Pittwater Road DEE WHY
	NSW 2099
	Lot 7 DP 8172 , 884 - 896 Pittwater Road DEE WHY NSW
	2099
	Lot 1 DP 307937, 884 - 896 Pittwater Road DEE WHY
	NSW 2099
	Lot 3 DP 307937, 884 - 896 Pittwater Road DEE WHY
	NSW 2099 Lot A DP 416469, 884 - 896 Pittwater Road DEE WHY
	NSW 2099
	Lot 1 DP 504212, 884 - 896 Pittwater Road DEE WHY
	NSW 2099
	Lot 10 DP 231418, 884 - 896 Pittwater Road DEE WHY
	NSW 2099
	Lot 11 DP 231418, 884 - 896 Pittwater Road DEE WHY
	NSW 2099
	Lot A DP 339410, 884 - 896 Pittwater Road DEE WHY NSW 2099
Detailed Site Description:	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.
	The site is centrally located within the Dee Why Town
	Centre as defined in the Dee Why Town Centre Master Plan
	2013 (DYTC Masterplan).
	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.





SITE HISTORY

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

<u>DA2016/0705</u> 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 seeks amendments to Conditions 43 and 72 to delete any requirement for street lighting from the Development Consent.

The applicant has indicated that in the absence of an Ausgrid approved strategy, Meriton is unable to install street lighting within the public domain as required by conditions 43 and 72 and this is jeopardising completion of the project within a reasonable timeframe, Accordingly, the applicant is requesting the following modification to Conditions 43 and 72 (changes shown in Strikethrough) 43. Footpath / Streetscape Upgrade Works

The applicant shall reconstruct the footpaths in Pittwater Road, Howard Avenue and Oaks Avenue. The works shall be in accordance with the following:

a) All footpath works are to be constructed in accordance with Council's minor works policy and the Tract streetscape upgrade plans for the Dee Why Town Centre.

The works are also to include the construction of street furniture, bus shelters, street lighting, landscaping and signage.

b) Council is to inspect the formwork prior to pouring of concrete to ensure the works are in accordance with Council's policies and specifications.

Details demonstrating compliance are to be submitted to the PCA.



72. Section 138 Roads Act Approval – Road and Streetscape Works

a) Engineering plans are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993. The submission is to include four copies of Civil Engineering plans for the design and construction of half road reconstruction works, kerb & gutter, footpath paving, street tree planting and garden beds, construction of bus shelters, street lights, street signage, pedestrian ramps and crossings, kerb blisters and associated drainage works (Pittwater Road, Oaks Avenue and Howard Avenue frontages) which are to be in accordance with the streetscape upgrade plans prepared by Tract for the

Dee Why Town Centre and approved with the Development Application, Warringah Public Spaces Design Guidelines and Council's specification for engineering works – AUS-SPEC #1 and or Council's Minor Works Policy.

Where kerb and gutter and road reconstruction works are required within the Pittwater Road frontage and Engineering Plans are to be approved by the Roads and Maritime Services and Transport for NSW.

The Engineering design plans are to include:

i. Details of all public utility services which are to be located and detailed on the plan and cross sections. Utility services must be relocated at the applicant's expense if they are in conflict with the required engineering works.

ii. Removal of the indented car parking spaces in Oaks Avenue and reconstruction as road pavement. iii. Full-width construction of Pedestrian Crossings along the Oaks Avenue and Howard Avenue frontages.

b) The Section 138 and 139 engineering plan approval fee is to be lodged with the assessment and approval of the plans in accordance with Council's Fees and Charges prior to the issue of the construction certificate.

Council Development Engineer has reviewed the request and has indicated that rather than modifying the above conditions, that an additional condition be imposed requiring a bond in the event that the street lights cannot be completed in time.

Accordingly, Condition 43 and 72 are to remain but an additional condition is imposed requiring the bond for the street lights.

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 accordance with:(i) the regulations, if the regulations so require,	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.	
(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		
(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.	No submissions were received in relation to this application.	



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 Regulation 2000)	Division 8A 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. <u>Clause 50(1A)</u> 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. <u>Clauses 54 and 109</u> 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.
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 Section 4.15 (1) (c) – the	 (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. The proposed modification does not change the suitability of the site
suitability of the site for the development	of the approved development.
Section 4.15 (1) (d) – any	See the discussion on "Public Exhibition" in this report.



Section 4.15 'Matters for Consideration'	Comments
submissions made in accordance with the EPA Act or EPA Regs	
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)	Reference is made to the information submitted by the applicant (trim no. 2018/357035).
	In the event of the applicant failing to complete the street lighting works along the Oaks Avenue and Howard Avenue frontages of the development site in accordance with conditions 43 and 72 of the Consent prior to issue of the Final Occupation Certificate, Development Engineers would be prepared to accept a bond related to street lighting only.
	The bond of \$106,094.00 is the calculated average of the two quotes submitted by the applicant.
	Conditions 43 and 72 do not need to be modified as Development Engineers are prepared to impose the following condition to ensure street lighting works are completed.
	Street lighting bond
	A Bond of \$106,094.00 as security against any failure to complete the street lighting works along the Howard Avenue and Oaks Avenue frontages of the development site.
	This bond shall be deposited with Council prior to issue of any interim Occupation Certificate - details demonstrating payment are to be submitted to the Principal Certifying Authority prior to the issue any interim Occupation Certificate.



Internal Referral Body	Comments	
	To process the bond payment a Bond Lodgement Form must be completed with the payment (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/yourcouncil/forms).	
	The Bond lodged to Council can be in the form of an unconditional Bank Guarantee with no expiration date.	
	In the event the applicant fails to complete the street lighting works in accordance with conditions 43 and 72 of the Consent when the Final Occupation Certificate is issued, Council will draw upon this bond in full to undertake the works.	
	Reason : To ensure completion of street lighting works.	

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	

Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
Land Use Table	Yes
Part 7 Dee Why Town Centre	Yes



Clause	Compliance with Requirements
7.3 Objectives for development within Dee Why Town Centre	Yes

Warringah Development Control Plan

Compliance Assessment

		Consistency Aims/Objectives	
Part A Introduction	Yes	Yes	
A.5 Objectives	Yes	Yes Yes	
Part D Design	Yes		
D20 Safety and Security	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 to Modification Application No. Mod2018/0219 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 209503,884 - 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 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 231418,884 - 896 Pittwater Road, DEE WHY, Lot 1 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. Add a new Condition No. 8 (A) (Street Lighting Bond) to read as follows:

A Bond of \$106,094.00 as security against any failure to complete the street lighting works along the Howard Avenue and Oaks Avenue frontages of the development site.

This bond shall be deposited with Council prior to the issue of any interim Occupation Certificate, details demonstrating payment are to be submitted to the Principal Certifying Authority prior to the issue any interim Occupation Certificate.

To process the bond payment a Bond Lodgement Form must be completed with the payment (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/yourcouncil/forms).

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

In the event the applicant fails to complete the street lighting works in accordance with conditions 43 and 72 of the Consent when the Final Occupation Certificate is issued, Council will draw upon this bond in full to undertake the works.

Reason: To ensure completion of street lighting works.

B. Modify Condition No. 72 (Section 138 Roads Act Approval - Road and Streetscape Works) to read as follows:



a) Engineering plans are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993. The submission is to include four copies of Civil Engineering plans for the design and construction of half road reconstruction works, kerb & gutter, footpath paving, street tree planting and garden beds, construction of bus shelters, street lights, street signage, pedestrian ramps and crossings, kerb blisters and associated drainage works (Pittwater Road, Oaks Avenue and Howard Avenue frontages) which are to be in accordance with the streetscape upgrade plans prepared by Tract for the Dee Why Town centre and approved with the Development Application, Warringah Public Spaces Design Guidelines and Council's specification for engineering works - AUS-SPEC #1 and or Council's Minor Works Policy.

Where kerb and gutter and road reconstruction works are required within the Pittwater Road frontage the Engineering Plans are to be approved by the Roads and Maritime Services and Transport for NSW.

The Engineering design plans are to include:

i. Details of all public utility services which are be located and detailed on the plan and cross sections. Utility services must be relocated at applicant's expense if they are in conflict with the required engineering works.

ii. Removal of the indented car parking spaces in Oaks Avenue and reconstruction as road pavement.

iii. Full-width construction of Pedestrian Crossings along the Oaks Avenue and Howard Avenue frontages.

b) The Section 138 and 139 engineering plan approval fee is to be lodged with the assessment and approval of the plans in accordance with Council's Fees and Charges prior to the issue of the construction certificate.

c) Should the street lighting not form part of the approved engineering plans required under this condition, the bond as required by Condition 8A will cover this aspect of the works within the public domain.

Reason: To ensure compliance with Council's Streetscape upgrade plans and specification for engineering works. (DACENFPOC2)

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
~	2018/278892	ASIC - Current Extract	27/04/2018
\sim	2018/278893	Report - Statement of Environmental Effects	02/05/2018
	MOD2018/0219	9 Howard Avenue DEE WHY NSW 2099 - Section 96 Modifications - Section 96 (1a) Minor Environmental Impact	04/05/2018
	2018/276306	DA Acknowledgement Letter - Karimbla Constructions Services (NSW) Pty Ltd	04/05/2018
A	2018/278873	Modification Application Form	07/05/2018
J.	2018/278875	Applicant Details	07/05/2018
¥	2018/278889	Letter - Cover	07/05/2018
	2018/287705	MOD2018/0219	10/05/2018
	2018/290939	RE: MOD2018/0219	11/05/2018
	2018/303956	mod2018/0219 - deletion of street lighting works from the Consent DA2016/0705	18/05/2018
	2018/329166	street lighting quote	24/05/2018
	2018/329190	Meriton Modifications	30/05/2018
, Annolan	2018/357035	Quotes obtained by the applicant - Oaks & Howard ave Street lighting	08/06/2018
	2018/356792	RE: Oaks & Howard ave Street lighting	12/06/2018
	2018/357646	street lighting bond - MOD2018/0219	13/06/2018
	2018/357825	RE: street lighting bond - MOD2018/0219	13/06/2018
<u>لم</u>	2018/358406	Engineering Referral Response	13/06/2018