

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2014/0283
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<b>Responsible Officer:</b>	Luke Perry
<b>Land to be developed (Address):</b>	<p>Lot 100 DP 1015283 , 145 Old Pittwater Road BROOKVALE NSW 2100</p> <p>Lot 2741 DP 752038 , 2741 / 9999 Condamine Street MANLY VALE NSW 2093</p> <p>Lot 2 DP 600059 , 75 Old Pittwater Road BROOKVALE NSW 2100</p> <p>Lot 30 DP 204107 , 30 / 0 Old Pittwater Road BROOKVALE NSW 2100</p> <p>Lot 2742 DP 752038 , 2742 / 9999 Condamine Street MANLY VALE NSW 2093</p>
<b>Proposed Development:</b>	Modification of DA2008/1742 granted for the construction of stormwater upgrade works for Warringah Mall and watercourse bank stabilisation works
<b>Zoning:</b>	<p>LEP - Land zoned B3 Commercial Core</p> <p>LEP - Land zoned IN1 General Industrial</p> <p>LEP - Land zoned IN1 General Industrial</p> <p>LEP - Land zoned RE1 Public Recreation</p> <p>LEP - Land zoned RE1 Public Recreation</p> <p>LEP - Land zoned RE1 Public Recreation</p>
<b>Development Permissible:</b>	<p>Yes - Zone B3 Commercial Core</p> <p>Yes - Zone IN1 General Industrial</p> <p>Yes - Zone RE1 Public Recreation</p>
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Warringah Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	<p>AMP Warringah Mall Pty Ltd</p> <p>Westfield Management Ltd</p>
<b>Applicant:</b>	Scentre Group Ltd

<b>Application lodged:</b>	16/12/2014
<b>Application Type:</b>	Integrated

<b>State Reporting Category:</b>	Commercial/Retail/Office
<b>Notified:</b>	13/01/2015 to 28/01/2015
<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 100 DP 1015283 , 145 Old Pittwater Road BROOKVALE NSW 2100 Lot 2741 DP 752038 , 2741 / 9999 Condamine Street MANLY VALE NSW 2093 Lot 2 DP 600059 , 75 Old Pittwater Road BROOKVALE NSW 2100 Lot 30 DP 204107 , 30 / 0 Old Pittwater Road BROOKVALE NSW 2100 Lot 2742 DP 752038 , 2742 / 9999 Condamine Street MANLY VALE NSW 2093
<b>Detailed Site Description:</b>	The application relates to the following land:  • Lot 100, DP 1015283, No. 145 Old Pittwater Road, Brookvale (Warringah Mall Shopping Centre) • Lots 2741 and 2742, DP 752038, Condamine Street, Manly

Vale (Warringah Golf Course)

- Lot 2, DP 600059, No. 75 Old Pittwater Road, Brookvale
- Lot 30, DP 204107, Old Pittwater Road, Brookvale
- A portion of the Condamine Street road corridor

#### Warringah Mall Shopping Centre

The majority of the works proposed under DA2008/1742 will be on Lot 100, DP 1015283, No. 145 Old Pittwater Road, Brookvale. The site is occupied by the Warringah Mall Shopping Centre which is commonly known as 'Warringah Mall'.

The Warringah Mall site has an area of 170,600m<sup>2</sup>. It is bound to the north by Cross Street, to the south by Old Pittwater Road and to the east by Condamine Street / Pittwater Road. The principal street frontage is to Condamine / Pittwater Road and secondary street frontages are to Old Pittwater Road and Cross Street.

Warringah Mall has a total floor area of 127,838m<sup>2</sup> with a provision of 103,400m<sup>2</sup> of enclosed retail floor space provided mainly over two levels with some areas three levels.

Warringah Mall accommodates Myer and David Jones department stores, Big W and Target discount department stores, Woolworths and Coles supermarkets, 15 mini-major tenants (floor space greater than 400m<sup>2</sup>) and 239 retail specialty shops.

Warringah Mall includes an entertainment precinct incorporating a nine screen Hoyts Cinema Complex as well as some other non-retail facilities.

The site is extensively built upon with bituminised and concrete hard surface areas located around the perimeter of the building to facilitate car parking and traffic flow. It has a total of 4,468 car spaces with 2,998 open-air spaces and 1,470 under cover spaces.

Warringah Mall provides a mix of indoor and outdoor spaces that are suitable for the surrounding coastal community and setting.

Topographically, the site has a gradual natural slope that falls from the north-west to the south-east of the site.

Vehicle access to the site is currently available at various locations along Pittwater Road, Old Pittwater Road and Cross Street.

## Other Land

The proposed stormwater works extend under Condamine Street and therefore a portion of the Condamine Street road corridor forms part of the subject site.

Works are required on Lots 2741 and 2742, DP 752038, Condamine Street, Manly Vale. These lots are currently owned by Council and leased to the Warringah Golf Club.

Bank stabilisation works are proposed upstream of the proposed site. The application therefore also includes the following land;

- Lot 2, DP 600059, No. 75 Old Pittwater Road, Brookvale which is owned by Harrison Investments Pty Ltd and used for industrial purposes.
- Lot 30, DP 204107, Old Pittwater Road, Brookvale which is owned by Council.

Map:



## **SITE HISTORY**

### Development Application No. 2008/1742

This application for the construction of drainage works through the Warringah Mall Shopping Centre site, extending under Condamine Street and linking to the existing infrastructure located within the adjoining Warringah Golf Club site to the east. The application also seeks consent for bank stabilisation works immediately upstream of the Warringah Mall site was granted deferred commencement approval by

Council's Applications Determination Panel (ADP) on 16 May 2012.

#### Deferred Commencement Conditions

The original Development Application (DA2008/1742) as discussed above, was granted deferred commencement approval. The applicant was required to satisfy two conditions prior to activating the consent. The applicant submitted information of 2 April 2015 seeking to satisfy the requirements of the conditions of consent.

The information submitted satisfied the requirements of the conditions and the consent become operative on 14 April 2015.

#### MOD2014/0285

This application for the re-alignment of Culverts, re-design of Condamine Street Culverts and other augmentation works and changes to the wording of a number of conditions was approved on 04/05/2015.

### **PROPOSED DEVELOPMENT IN DETAIL**

The proposal seeks consent to modify Development Consent No. 2008/1742 granted for Construction of stormwater augmentation works, bank stabilisation works and deletion of conditions 24 and 26 of DA1996/137(Development Consent No.96/335).

Specifically the modifications involve the rationalisation of conditions of consent to allow the necessary Construction and Occupations Certificates to be issued in a timely manner. A number of other changes are proposed relating to the specific requirements of conditions and responsibility of certain owners to undertake monitoring and reporting.

The proposed modifications are discussed in detail below and modifications are shown in strike-through and bold:

**Note:** For the purposes of this report, modifications where wording is proposed to be deleted is shown in strike-through, modifications where wording is proposed to be added is shown in bold

#### Amendment to Condition No. 5

It is proposed to amend condition 5 as follows:

*(c) If the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:*

- (i) protect and support the adjoining premises from possible damage from the excavation, and*
- (ii) where necessary, underpin the adjoining premises to prevent any such damage.*

Condition 2 5(c) does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

Amendment to Condition No. 8

It is proposed to delete Condition 8 S94A Contributions in place of a Voluntary Planning Agreement to be entered into between the applicant and Council.

The applicant has been advised that this would not be supported as S94A Contributions cannot be replaced by a Voluntary Planning Agreement.

The applicant agreed and withdrew any changes to this condition by correspondence dated 27 January 2015.

Amendment to Condition No.s 11, 12, 24, 25, 27 and No. 28

It is proposed to amend the last paragraph of each of the conditions as follows and as shown in strike-through:

*Details demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of ~~any~~ the Construction Certificate.*

Amendment to Condition No.'s 55, 56, 57, 58, 59, 61, 62 and No. 63

The application seeks to modify the wording of the last paragraph of the following Condition/s No. 55, 56, 57, 58, 59, 61, 62 and No. 63 to allow for the requirements of the conditions to be fulfilled at the time of the issue of a Final Occupation Certificate rather than 'any interim / final Occupation Certificate'.

The proposed modified wording is as follows with reference made to the deletion of the word 'interim' shown in strike-through:

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

Amendment to Condition No. 14

It is proposed to amend condition 14 as follows and as shown in strike-through:

*The 10 metre by 7.2 metre high capacity grate located immediately to the west of the Green Street road reserve, as shown on drawing W4548 -116 by Cardno, is to be designed by a suitably qualified structural engineer to accommodate ~~heavy traffic loads and any~~ anticipated hydraulic loads. The design of the grate system shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified structural engineer.*

*Details demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.*

Reason for Amendment (as stipulated in the applicants SEE):

The condition was imposed to ensure the structural integrity of the inlet grate. The inlet grate is located within the landscape zone located along the frontage to Green Street. Accordingly, it is not in a location

designed to accommodate vehicle traffic and therefore the structural design should be to meet hydraulic loads only, rather than to also accommodate heavy traffic loads.

Amendment to Condition No. 63 - Positive Covenant to allow access for maintenance and rectification

It is proposed to amend condition 63 as follows and as shown in strike-through and bold:

*(b) The positive covenant is to permit access to Lot DP 600059 and Lot 30 DP 204107 to allow the owners of Lot 100, DP 1015283, No.145 Old Pittwater Road to meet the obligations **of conditions 66 and 67(a)** of this Development Consent.*

*(d) All **reasonable** costs related 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. **The covenant is to be released by Council as soon as practical following the expiration of the maintenance period required by conditions 66 and 67(a) of this Development Consent.***

*(f) Details demonstrating compliance with this conditions is to be submitted to the satisfaction of the Principal Certifying Authority prior to the release of any ~~interim~~/final occupation certificate.*

Reason for Amendment (as stipulated in the applicants SEE):

The consent conditions require that a legal right of access to Lot DP 600059 and Lot 30 DP 204107 is created in favour of the owners of Lot 100, DP 1015283 to fulfil the requirements of the consent. However it is important to specifically reference the conditions where such access and maintenance is required and note that this right of access is not required in perpetuity. Accordingly, the proposed amendments to subclause (b) and (e) seek to provide this clarification.

It is proposed that sub section (d) of the condition be amended to include the word 'reasonable', to ensure that any re-imbursement of costs by the applicant are fair and reasonable.

Amendment to Condition No. 64 - Modification of Consent

It is proposed to amend condition 64(a) as follows:

*(a) Prior to the issue of the ~~issue of the~~ Occupation Certificate, Condition 24 of Development Consent No. 96/335 for DA1996/137 is to be deleted as the bank stabilisation works satisfy the intent of this condition.*

Reason for Amendment (as stipulated in the applicants SEE):

Typographical error only.

Amendment to Condition No. 65 - Maintenance of the Trunk Drainage Network and Flood Barrier System

It is proposed to amend condition 65 as follows and as shown in strike-through and bold:

**65. Maintenance of the Trunk Drainage Network and Flood Barrier System**

*The land owners of Lot 100 DP 1015283, are required to maintain the trunk drainage network traversing Lot 100 DP 1015283 and all associated flood barrier systems required to provide a minimum 300mm freeboard to the existing retail floor levels in perpetuity.*

*The maintenance must include the following:*

*(a) A maintenance regime to ensure that the trunk drainage network and flood barrier system are adequately maintained to operate as per the design intent and as detailed in the Warringah Mall Flood Impact Assessment Addendum, prepared by Cardno, dated 25 January 2010.*

*(b) The regime must include regular inspections to detect and clear any blockages to the network.*

~~*(c) Provision for a suitably qualified structural engineer to assess the structural integrity of the trunk drainage network traversing the site. A certificate is to be submitted to Council documenting the findings of the assessment. The certificate is to include recommendations for any rectification works which the structural engineer deems are necessary to maintain the structural integrity of the trunk drainage network. A certificate is to be submitted to Council every five (5) years.*~~

~~*Any rectification works required for the above must be undertaken by the proprietor at no expense to Council. Rectification works are to be carried out within twelve (12) months of the initial assessment, or where there is risk of failure, immediately. A certificate signed by a suitably qualified structural engineer is to be submitted to Council stating that the rectification works have been carried out in accordance with an approved design.*~~

Reason for Amendment (as stipulated in the applicants SEE):

This application was imposed to ensure ongoing maintenance of the trunk stormwater drainage and flood barrier systems. The owners are committed to on-going maintenance of the stormwater culverts traversing through the shopping centre site and indeed it is part of good asset management practice to do so, given the significant nature of the assets and the consequences of system failure.

The imposition of conditions that require on-going assessment and the issue of certificates to Council is an unreasonable and unnecessary burden that should be deleted, hence the proposed removal of condition 65(c). To impose such a requirement is akin to asking any applicant to undertake a periodic structural assessment of a building and issue a certificate. This is not a burden imposed on other land owners, so it is not reasonable to apply in this instance either noting that this is an asset owned and maintained solely by the owners of Westfield Warringah Mall.

#### Amendment to Condition No. 66 - Geo-technical and Channel Structure

It is proposed to amend condition 66 as follows and as shown in strike-through and bold:

#### **66. Geo-technical and Channel Structure**

**A. In order to monitor or rectify any**

- (i) creek or bank instability; ~~and~~
- ~~(ii) structural stability and integrity of the channel structure~~

The persons responsible undertake the requirements of this condition as follows:

- a) the land owner of Lot 100, DP 1015283 to monitor and rectify any creek or bank instability works undertaken under this consent in accordance with (B) as detailed in this condition, for a period of 24 months after the issue date of the ~~Final~~**relevant** Occupation Certificate ~~for the entire development.~~
- b) the land owner of Lot 100, DP 1015283 is to monitor the structural integrity of concrete lined channel (and associated upstream development works of Lot 100, DP 1015283, No 145 Old Pittwater Road to Old Pittwater Road as works undertaken under this consent and rectify for a period of 12 months after the issue date of the Final Occupation Certificate for the entire development in accordance with (B) as detailed in this condition,
- ~~c) the land owner of Lot 2 DP 600059 (upon the completion of the 24 month period stipulate in (a) above) is required to undertake the requirements detailed in (B)(I) as detailed in this condition in perpetuity~~
- ~~d) the land owners of Lot 2 DP 600059 and Lot 30 DP 204107 (upon the completion of the 12 month period stipulate in (b) above) is required to undertake the requirements detailed in (B)(II) as detailed in this condition below in perpetuity.~~

B. ~~The responsible person~~ owner of Lot 100, DP 1015283 must undertake the following:

- I). ~~An annual~~ A geo-technical investigation regime ~~is~~ to be conducted by an appropriately qualified and practicing geo-technical engineer to review the following:
  - a) Undertake a geotechnical assessment of the creek banks, from Warringah Mall (on land at Lot 100, DP 1015283, No 145 Old Pittwater Road) boundary, upstream to Old Pittwater Road. The assessment is to include (but not be limited to) the following:
    - i) The stability of the creek bank and potential geotechnical hazards present within and surrounding the site,
    - ii) Any impacts of the works on creek bank stability,
    - iii) Current levels of risk to both life and property; and
    - iv) Creek bank remediation risk management measures.
  - b) A copy of the report is to be provided to all land owners and tenancy holders affected and / or adjacent to the creek.

A certificate is to be submitted to Council advising that the requirements of this conditions have been carried out. **The assessment and reporting is to be carried out on a minimum of 3 occasions periodically over a 10 year period from the issue of the Final Occupation Certificate.**

~~II). Provision for a suitably qualified structural engineer to assess the structural integrity of concrete lined channel (and associated upstream development works of Lot 100, DP 1015283, No 145 Old Pittwater Road to Old Pittwater Road as approved by this consent). A certificate is to be submitted to Council~~

~~documenting the findings of the assessment. The certificate is to include recommendations for any rectification works which the structural engineer deems are necessary to maintain the structural integrity of the concrete lined channel. A certificate is to be submitted to Council every five (5) years.~~

~~Any rectification works required for the above must be undertaken by the persons stipulated within (A) of this condition at no expense to Council. Rectification works are to be carried out within twelve (12) months of the initial assessment, or where there is risk of failure, immediately. A certificate signed by a suitably qualified structural engineer is to be submitted to Council stating that the rectification works have been carried out in accordance with an approved design.~~

Reason for Amendment (as stipulated in the applicants SEE):

This condition has been amended to reflect the direction arising from pre-DA discussions and written advice from Council. In essence, the amended condition:

- Deletes any requirement for a structural assessment of the concrete lined channel;
- Removes the obligations from the owners of Lot 2 DP 600059 to undertake geotechnical reviews of bank stability upstream from the Mall and instead requires this assessment to be undertaken by the owners of Westfield Warringah Mall.
- Limits this assessment to three occasions over a 10 year period, which is considered a reasonable period to monitor change post development.

#### Amendment to Condition No. 67 - Riparian Lands Vegetation

It is proposed to amend condition 67 as follows and as shown in strike-through and bold:

#### *67. Riparian Lands Vegetation*

*In order to appropriately and adequately manage the riparian zones and revegetated areas of Lot 2 DP 600059 and Lot 30 DP 204107 the lands are to be managed in accordance with the approved Environmental Management Plan (incorporating Biodiversity Management Plan and Vegetation Management Plan) detailed within this consent, the management is to be undertaken by:*

- a. the land owner of Lot 100, DP 1015283 to monitor and rectify works undertaken under this consent for a period of 24 months after the issue date of the **Final relevant** Occupation Certificate ~~for the entire development~~*
- b. the land owner of Lot 2 DP 600059 (upon the completion of the 24 month period stipulated in (a) above) is required to undertake the requirements detailed in this condition in perpetuity, **but limited to the management of land contained in Lot 2 DP600059**.*

*A certificate signed by a suitably qualified ecologist is to be submitted to Council ~~annually~~ stating that the site monitoring has been undertaken and rectification works (if required) have been undertaken in accordance with the requirements of ~~the~~ condition (a) above.*

Reason for Amendment (as stipulated in the applicants SEE):

The condition is proposed to be amended to reflect that the two year maintenance/management period

should commence on completion of the specific works in the riparian corridor which is likely to be prior to the completion of the overall project.

In terms of the requirements for site monitoring and certification, this is considered appropriate for the first two years under the direct supervision of a qualified ecologist. Beyond this period, the obligation for on-going management is maintained as a responsibility of the land owner, but it is unreasonable and excessive to require that this be certified annually by a qualified ecologist.

It is further noted that the co-owners have previously agreed to provide an updated evacuation plan as part of the development consent. The amendments to point (b) simply seek to clarify that the obligations by the owners of Lot 2 DP600059 are limited to that land and not all the land subject to the development consent.

## AMENDMENTS TO THE APPLICATION

A preliminary assessment of the application was undertaken by the relevant departments of Council which identified a number issues with the proposed modifications. A meeting was held between the applicant, Scentre Group and the relevant departments of Council to work through the concerns raised. The applicant was given time to respond to the concerns and for the response to be considered in the final assessment and determination of the application. The concerns raised and the applicants response to those concerns are addressed as follows:

### Council's Issue

In summary, concerns were raised regarding the proposed modification of the wording of the last paragraph of the following Condition/s No. 11, 12, 24, 27 and No. 28 to read as follows:

*'Details demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of **any the** Construction Certificate.'*

The concern was raised that the proposed amendment would essentially stage the delivery of the critical certifications to the relevant construction certificate which is not satisfactory. Modifications to the proposal are such that the determination of impacts at different 'stages' need to be identified in the management plan including identification of when certification by the the relevant and qualified persons or PCA is necessary.

### Applicants Response

The applicant provided 'staging plans' to identify the intended stages of construction and to allow the conditions to be modified to reflect the construction certificate to be issued for the individual relevant stage of construction which will provide Council with certainty that the certifications occur at the appropriate time and prior to construction of each stage. The construction is to be split into the following four stages:

- Stage 1: Culvert and Ancillary Works including stormwater culvert upstream of Green Street and ancillary flood works on Scentre Group land (approximately mid-March 2015 to September 2015).
- Stage 2: Upstream Works to Brookvale Creek on land owned by Harrison and Council (approximately July 2015 to December 2015).
- Stage 3: Culvert and sewer works including the diversion of the sewer and completion of the stormwater culvert on Scentre Group land (approximately September 2015 to December 2016).

- Stage 4: Works under Condamine Street including RMS land (approximately September 2015 to December 2016).

The applicant no longer proposes changes to Condition No. 24 and No. 25.

#### Council's Issue

In summary, concerns were raised regarding the proposed modification of the wording of the last paragraph of the following Condition/s No. 55, 56, 57, 58, 59, 61, 62 and No. 63 to allow for the requirements of the conditions to be fulfilled at the time of the issue of a Final Occupation Certificate rather than 'any interim / final Occupation Certificate'.

The concern was raised that Council's records indicate the current development is operating under interim occupation certificates and a final occupation certificate has never been issued for the development. Therefore, given the existing circumstances, Council has no certainty and is not satisfied that a final occupation certificate will be issued nor will the requirements of these conditions ever be satisfied. As such, the modifications to these conditions would not be supported.

#### Applicants Response

The applicant provided 'staging plans' to identify the intended stages of construction and to allow the conditions to be modified to reflect the occupation certificate to be issued at the completion of each stage of construction which will provide Council with certainty that the certifications occur within the appropriate timeframes.

#### Councils Issue

The proposed change to Condition No. 14 to replace the words 'heavy traffic loads and any' to 'anticipated hydraulic loads'. This change is agreed to with a minor change to the wording to read as follows: *"to accommodate any anticipated structural and hydraulic loads"*

#### Councils Issue

The proposed change to Condition No. 63 was raised as an issue as the proposed changes to Conditions 66 and 67 (a) were not supported therefore inclusion of these in Condition No. 63 would not be satisfactory. The addition of the wording 'reasonable costs' is accepted.

#### Applicants Response

The applicant did not propose a change to the wording of this condition as per the proposed modifications above on the basis that the proposed changes to Conditions 66 and 67 (a), which are detailed below, are satisfactory.

#### Councils Issue

The modifications to Condition No. 65 are not supported as it is Council's position that the property owner is

to take responsibility for the asset maintenance and the structural integrity of the system as the majority of the system is located within the Warringah Mall property.

#### Applicants Response

The applicant has provided a copy of the existing maintenance regime that is used for all of its assets on site to further provide Council with comfort as to the on going maintenance of the trunk drainage network and flood barrier system.

#### Councils Issue

The proposed modifications to Condition No. 66 are not supported as the proposed wording removes any requirement to undertake structural assessment and rectification of the concrete lined channel after 12 months. The proposed modification provides for monitoring of creek bank stability for 10 years, however removes the requirement to undertake rectification works of any sort on the entire reach after 24 months.

The proposed monitoring period of 10 years implies the end of the period of responsibility, which is unsatisfactory as the works are being undertaken for the purposes of the mall development and therefore it is the responsibility of the owners of the mall to monitor and undertake any rectification works.

#### Applicants Response

It was explained at the meeting that the proposed amendments have been prepared in consultation with the owners of Lot 2 DP 600059 (Harrisons) as part of negotiations to facilitate access on their land in order for Scentre Group to carry out the works.

The proposed amendment:

- Seeks to remove obligation from the owners of Lot 2 DP 600059 and Council to undertake geotechnical reviews of bank stability upstream from the Mall and instead requires this assessment to be undertaken by the owners of Westfield Warringah Mall. This modification was required by Harrisons owners of Lot 2 DP 600059 and as a compromise, Scentre Group is also offering this to Council.
- Deletes any requirement for a structural assessment of the concrete lined channel;
- Limits this assessment to three occasions over a 10 year period, which is considered a reasonable period to monitor change post development.

The adjacent land owner requires these amendments (and those specified in Condition 63) to be made prior to provision of access to carry out the required works. Should the conditions remain as currently worded, the condition cannot be met and Scentre Group would be in breach of the consent.

#### Councils Issue

The proposed modifications to Condition No. 67 is not supported as it limits and reduces the maintenance are to land contained within Lot 2 DP600059 which is unacceptable.

#### Applicants Response

The condition is proposed to be amended to reflect that the two year maintenance/management

period should commence on completion of the specific works in the riparian corridor which is likely to be prior to the completion of the overall project in accordance with the construction program.

In terms of the requirements for site monitoring and certification, this is considered appropriate for the first two years under the direct supervision of a qualified ecologist. Beyond this period, the obligation for on-going management is maintained as a responsibility of the land owner, but it is unreasonable and excessive to require that this be certified annually by a qualified ecologist.

The amendments to point (b) simply seek to clarify that the obligations by the owners of Lot 2 DP600059 are limited to that land and not all the land subject to the development 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 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 DA2008/1742, 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	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 DA2008/1742.

<b>Section 96(1A) - Other Modifications</b>	<b>Comments</b>
consent as originally granted was modified (if at all), and	
(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 development control plan, as the case may be.	No submissions were received in relation to this application.

### 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:

<b>Section 79C 'Matters for Consideration'</b>	<b>Comments</b>
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)(iia) – 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)	<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 79C 'Matters for Consideration'	Comments
	<p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</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 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 insurance requirements under the Home Building Act 1989. 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 the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
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	<p>(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.</p> <p>(ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p>

Section 79C 'Matters for Consideration'	Comments
	(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

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>From a Building Certification viewpoint, the redrafting of references to "interim/ final occupation certificate" and /or "relevant Construction Certificate", is a practical method of achieving desirable outcomes so as to effectively comply with Building Certification regulatory requirements.</p> <p>Accordingly there are No objections to the proposal to modify the specified Consent conditions in relation to these matters.</p>
Development Engineers	<p>The application was referred to Council's Development Engineers for comment. The following comments were made to the amended application as detailed within the 'Proposed Development in Detail' section of this report:</p> <p>The applicant has submitted staging plans for the stormwater drainage augmentation works which are noted. Condition No.s 11, 12 and No. 27</p>

Internal Referral Body	Comments																											
	<p>are recommended to be modified to allow the requirements of the conditions to be satisfied at the time of the issue of the construction certificate for the individual stage of works (Stages 1 - 4 as shown on Staging Plans SW-001, SW-002, SW-003 and SW-004 Revision B).</p> <p>Further, Condition No.s 57, 58, 59, 61 and No. 62 are recommended to be modified to allow the requirements of the conditions to be satisfied at the time of the issue of the relevant occupation certificate for the individual stage of works as detailed within the staging plans above.</p> <p>The maintenance schedule submitted by the applicant is satisfactory. The proposed modifications to Condition No. 65 are accepted as proposed.</p> <p>Conditions to this effect have been included in the recommendation of this report.</p>																											
Environmental Investigations (Acid Sulphate)	<table><tr><td>Was sufficient documentation provided appropriate for referral?</td><td>YES</td></tr><tr><td>Are the reports undertaken by a suitably qualified consultant?</td><td>YES</td></tr><tr><td>What class is the site in on the WLEP2011 Acid Sulfate Soils Map?</td><td>Class 5</td></tr><tr><td>Is there risk of acid sulfate soil disturbance?</td><td>NO</td></tr><tr><td>Will the excavations exceed the depth determined in the risk map?</td><td>N/A</td></tr><tr><td>Does the report adequately address acid sulfate risk mitigation?</td><td>N/A</td></tr><tr><td>Have you considered disposal of water during excavation, pump out etc.</td><td>N/A</td></tr><tr><td>Have you considered disposal of contaminated soil.</td><td>N/A</td></tr><tr><td colspan="2"><b>General Comments</b></td></tr><tr><td colspan="2">Modification assessed by Environmental Investigations. No objection to this proposal</td></tr><tr><td><b>Recommendation</b></td><td>APPROVAL - no conditions</td></tr><tr><td colspan="2">Comments completed by: Mary Shimon</td></tr><tr><td colspan="2">Date: 5 January 2015</td></tr></table>		Was sufficient documentation provided appropriate for referral?	YES	Are the reports undertaken by a suitably qualified consultant?	YES	What class is the site in on the WLEP2011 Acid Sulfate Soils Map?	Class 5	Is there risk of acid sulfate soil disturbance?	NO	Will the excavations exceed the depth determined in the risk map?	N/A	Does the report adequately address acid sulfate risk mitigation?	N/A	Have you considered disposal of water during excavation, pump out etc.	N/A	Have you considered disposal of contaminated soil.	N/A	<b>General Comments</b>		Modification assessed by Environmental Investigations. No objection to this proposal		<b>Recommendation</b>	APPROVAL - no conditions	Comments completed by: Mary Shimon		Date: 5 January 2015	
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Comments completed by: Mary Shimon																												
Date: 5 January 2015																												

Internal Referral Body	Comments
Landscape Officer	No objections to the proposed modification.
Natural Environment (Flood)	<p>The proposal has been reviewed by Council's Flood Plain Management Officer has reviewed the application and additional information submitted and provided the following comments:</p> <p><i>'The modifications to Condition No. 27 are satisfactory. The details of all flood protection works are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate for Stage 1 works.</i></p> <p><i>The flood management plan is to be completed prior to the issue of any Occupation Certificate.'</i></p>
Natural Environment (Riparian Lands/Creeks)	<p>Riparian assessment complete. Only conditions relevant to riparian land are listed below. .</p> <p><u>Proposed amendment to Condition 63</u></p> <p>No objection except for (d) All reasonable costs related to the review and approval of the positive covenant by Council shall be borne by the applicant.</p> <p><u>Proposed amendment to Condition No. 66</u></p> <p>It is proposed to amend condition 66 as follows and as shown in strike-through and bold:</p> <p><b>66. Geo-technical and Channel Structure</b></p> <p><b>A. In order to monitor or rectify any</b></p> <p><b>(i) creek or bank instability; and</b></p> <p><b>(ii) structural stability and integrity of the channel structure</b></p> <p><i>The persons responsible undertake the requirements of this condition as follows:</i></p> <p><i>a) the land owner of Lot 100, DP 1015283 to monitor and rectify any creek or bank instability works undertaken under this consent in accordance with (B) as detailed in this condition, for a period of 24 months after the issue date of the Final relevant Occupation Certificate for the entire development.</i></p> <p><i>b) the land owner of Lot 100, DP 1015283 is to monitor the structural integrity of concrete lined channel (and associated upstream development works of Lot 100, DP 1015283, No 145 Old Pittwater Road to Old Pittwater Road as works undertaken under this consent and rectify</i></p>

Internal Referral Body	Comments
	<p>for a period of 12 months after the issue date of the Final Occupation Certificate for the entire development in accordance with (B) as detailed in this condition,</p> <p><del>e) the land owner of Lot 2 DP 600059 (upon the completion of the 24 month period stipulate in (a) above) is required to undertake the requirements detailed in (B)(I) as detailed in this condition in perpetuity</del></p> <p><del>d) the land owners of Lot 2 DP 600059 and Lot 30 DP 204107 (upon the completion of the 12 month period stipulate in (b) above) is required to undertake the requirements detailed in (B)(II) as detailed in this condition below in perpetuity.</del></p> <p>B. The <del>responsible person</del> owner of Lot 100, DP 1015283 must undertake the following:</p> <p>I). <del>An annual</del> A geo-technical investigation regime <b>is</b> to be conducted by an appropriately qualified and practicing geo-technical engineer to review the following:</p> <p>a) Undertake a geotechnical assessment of the creek banks, from Warringah Mall (on land at Lot 100, DP 1015283, No 145 Old Pittwater Road) boundary, upstream to Old Pittwater Road. The assessment is to include (but not be limited to) the following:</p> <p>i) The stability of the creek bank and potential geotechnical hazards present within and surrounding the site,  ii) Any impacts of the works on creek bank stability,  iii) Current levels of risk to both life and property; and  iv) Creek bank remediation risk management measures.</p> <p>b) A copy of the report is to be provided to all land owners and tenancy holders affected and / or adjacent to the creek.</p> <p>A certificate is to be submitted to Council advising that the requirements of this conditions have been carried out. <b>The assessment and reporting is to be carried out on a minimum of 3 occasions periodically over a 10 year period from the issue of the Final Occupation Certificate.</b></p> <p><del>II). Provision for a suitably qualified structural engineer to assess the structural integrity of concrete lined channel (and associated upstream development works of Lot 100, DP 1015283, No 145 Old Pittwater Road to Old Pittwater Road as approved by this consent). A certificate is to be submitted to Council documenting the findings of the assessment. The certificate is to include recommendations for any rectification works which</del></p>

Internal Referral Body	Comments
	<p><del>the structural engineer deems are necessary to maintain the structural integrity of the concrete lined channel. A certificate is to be submitted to Council every five (5) years.</del></p> <p><del>Any rectification works required for the above must be undertaken by the persons stipulated within (A) of this condition at no expense to Council. Rectification works are to be carried out within twelve (12) months of the initial assessment, or where there is risk of failure, immediately. A certificate signed by a suitably qualified structural engineer is to be submitted to Council stating that the rectification works have been carried out in accordance with an approved design.</del></p> <p><u>Comment:</u></p> <p>The proposed modifications to Condition No. 66 are not supported.</p> <p>The owner of Lot 100, DP 101528 (Warringah Mall) is to monitor and rectify any creek or bank instability and structural stability and integrity of the channel structure in perpetuity. Council does not support the deletion of the requirement to monitor and rectify structural stability and integrity of the channel structure. This structure has been built by the applicant for private purposes and therefore it is the responsibility of the applicant to maintain this asset.</p> <p>The assessments are to be carried out every two years in perpetuity. The proposed time frame of a minimum of 3 occasions periodically over a 10 year period from the issue of the Final Occupation Certificate is not accepted by Council. A 10 year time frame is unacceptable as it would potentially leave Council with the responsibility to maintain or rectify and asset that has been constructed on public and private (Lot 2 DP 600059) land for private benefit.</p> <p>A modified condition to this effect has been included in the recommendation of this report.</p> <p><u>Amendment to Condition No. 67 - Riparian Lands Vegetation</u></p> <p>The applicant proposes to amend condition 67 as follows and as shown in strike-through and bold:</p> <p><b>67. Riparian Lands Vegetation</b></p> <p><i>In order to appropriately and adequately manage the riparian zones and revegetated areas of Lot 2 DP 600059 and Lot 30 DP 204107 the lands are to be managed in accordance with the approved Environmental</i></p>

Internal Referral Body	Comments
	<p><i>Management Plan (incorporating Biodiversity Management Plan and Vegetation Management Plan) detailed within this consent, the management is to be undertaken by:</i></p> <p><i>a. the land owner of Lot 100, DP 1015283 to monitor and rectify works undertaken under this consent for a period of 24 months after the issue date of the <del>Final</del> <b>relevant</b> Occupation Certificate <del>for the entire development</del></i></p> <p><i>b. the land owner of Lot 2 DP 600059 (upon the completion of the 24 month period stipulated in (a) above) is required to undertake the requirements detailed in this condition in perpetuity, <b>but limited to the management of land contained in Lot 2 DP600059</b>).</i></p> <p><i>A certificate signed by a suitably qualified ecologist is to be submitted to Council <del>annually</del> stating that the site monitoring has been undertaken and rectification works (if required) have been undertaken in accordance with the requirements of <del>the</del> condition (a) above.</i></p> <p><u>Comment:</u></p> <p>The modification proposed to part a) of the condition is accepted however it is amended to be satisfied at the time of the issue of the Occupation Certificate for the Stage 2 works.</p> <p>The condition is to be further amended to make the owners of Lot 100, DP 1015283 solely responsible for the management and any rectification works required of the riparian lands and revegetated areas inclusive of Lot 30, DP 204107 (Council land) and Lot 2, DP 600059 in perpetuity.</p> <p>As detailed throughout this report the works are being undertaken on these lands for private benefit and therefore it is the responsibility of the owners of Lot 100, DP 1015283</p>
Parks, reserves, beaches, foreshore	No objections are raised to the development.
Traffic Engineer	No objection to the proposed modification on traffic grounds, subject to the provision of a detailed Construction Traffic Management Plan (Condition 21).

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	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.
NSW Dept of Transport (Roads and Maritime Services) (Dev. On Classified	The application was referred to the RMS who provided the following comments:

External Referral Body	Comments
Roads)	<p><i>'Reference is made to Council's letter dated 7 January 2015 regarding the abovementioned Section 96 application which was referred to Roads and Maritime Services (Roads and Maritime) for comment.</i></p> <p><i>Roads and Maritime has reviewed the submitted Section 96 application and raise no objection to the proposed condition modifications as per Urbis Statement of Environmental Effects document SA5067.'</i></p>

## 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 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for commercial purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the commercial land use.

### 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?	Zone B3 : Yes Zone IN1: Yes Zone RE1: 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

#### Principal Development Standards

There is no changed to the approved and existing Height of Buildings. The development standards do not apply to this application.

#### Compliance Assessment

Clause	Compliance with Requirements
6.1 Acid sulfate soils	Yes
6.3 Flood planning	Yes
6.4 Development on sloping land	Yes

### **Warringah Development Control Plan**

#### Built Form Controls

The built form controls do not apply to this application.

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
D3 Noise	Yes	Yes
D10 Building Colours and Materials	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D14 Site Facilities	Yes	Yes
D18 Accessibility	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
E1 Private Property Tree Management	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E10 Landslip Risk	Yes	Yes
E11 Flood Prone Land	Yes	Yes
G4 Warringah Mall	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 Modification Application No. Mod2014/0283 for Modification of DA2008/1742 granted for the construction of stormwater upgrade works for Warringah Mall and watercourse bank stabilisation works on land at Lot 100 DP 1015283,145 Old Pittwater Road, BROOKVALE, Lot 2741 DP 752038,2741 / 9999 Condamine Street, MANLY VALE, Lot 2 DP 600059,75 Old Pittwater Road, BROOKVALE, Lot 30 DP 204107,30 / 0 Old Pittwater Road, BROOKVALE, Lot 2742 DP 752038,2742 / 9999 Condamine Street, MANLY VALE, subject to the conditions printed below:

### A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

#### a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
SW-001 Rev B	2 April 2015	Scentre Group
SW-002 Rev B	2 April 2015	Scentre Group
SW-003 Rev B	2 April 2015	Scentre Group
SW-004 Rev B	2 April 2015	Scentre Group

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans. (DACPLB01)

**B. Modify Condition Condition No. 11 to read as follows:**

**11. Dilapidation Survey**

A dilapidation survey of any adjacent buildings and roads associated with each construction stage shown on approved Staging Plans SW-001- SW-004 (Rev B) must be conducted prior to any site work commencing. The lateral extent of the survey must cover the likely "zone of influence" of any excavation or construction induced vibration. The survey must be properly documented. The dilapidation report must be submitted to Council for records purposes.

Details demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of the relevant Construction Certificate for the construction stage.

**C. Modify Condition Condition No. 12 to read as follows:**

**12. Sewer I Water Quick check**

The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre prior to works commencing on each construction stage shown on approved Staging Plans SW-001- SW-004 (Rev B) to determine whether the development will affect any Sydney Water asset's sewer and water mains, stormwater drains and/or easement, and if further requirements need to be met. Plans will be appropriately stamped.

Please refer to the website [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

- Quick Check agents details - see Building Developing and Plumbing then Quick Check; and
- Guidelines for Building Over/Adjacent to Sydney Water Assets - see Building
- Developing and Plumbing then Building and Renovating.
- Or telephone 13 20 92

Details demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of the relevant Construction Certificate for the construction stage.

**D. Modify Condition Condition No. 14 to read as follows:**

**14. Inlet Grate Adjacent to the Green Street Road Reserve**

The 10 metre by 7.2 metre high capacity grate located immediately to the west of the Green Street road reserve, as shown on drawing W4548 -116 by Cardno, is to be designed by a suitably qualified structural engineer to accommodate any anticipated structural and hydraulic loads.

The design of the grate system shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified structural engineer.

Details demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

**E. Modify Condition Condition No. 27 to read as follows:**

## 27. Flood

In order to provide protection from flood inundation the following is required:

### A. Flood Protection

All flood barrier systems shall be designed to withstand the hydraulic forces of the floodwaters up to a minimum level of 300mm above the 1 in 100 year ARI flood levels as a result of the augmentation works. Buoyancy (particularly in relation to cars in the ground floor car park), flowing water with debris, wave action, the flood compatibility of materials and waterproofing shall be addressed. Structural details for the construction for all elements are to be prepared by a suitably qualified Engineer.

Details demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate for Stage 1 works.

### B. Movement Prevention Devices

(i) Car storage/parking areas are to provide Movement Prevention Devices (e.g. bollards) adequate for the 1 in 100 year ARI flood levels which can be engaged in a flood event to prevent movement of vehicles downstream and onto roadways.

(ii) At a minimum Movement Prevention Devices are to be provided:

- a) On Lot 2 DP 600059 and within 10 metres of the common boundary of Lot 2 DP 600059 and Lot 30 DP 204107
- b) On Lot 100 DP 1015283 and within 10 metres of the common boundary of Lot 100 DP 1015283 and Pittwater Road
- c) On Lot 100 DP 1015283 and within 10 metres of the common boundary of Lot 100 DP 1015283 and Old Pittwater Road

(iii) Structural details for all elements and confirmation of adequacy to prevent vehicle movement downstream and onto roadways is to be prepared by a suitably qualified Engineer with experience in flood design I management who is eligible for Membership to Engineers Australia.

Details demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

### C. Flood Management Plan

A flood management plan for Lot 100, DP 1015283, No 145 Old Pittwater Road (Warringah Mall) and Lot 2 DP 600059 No. 75 Old Pittwater Road, Brookvale is to be prepared by a suitably qualified Engineer with experience in flood management who is eligible for Membership to the Engineers Australia.

The management plan shall include as a minimum:

(i) A detailed description of the flood threat. This is to include plans showing the route of the trunk drainage network and areas which will be subject to overland flow. Locations where overland flow will enter the site are to be clearly identified. The characteristics of overland flow through the site are to be described (such

as expected depth and velocity of flow, etc.). The description is to be aided by a suitable sized set of plans.

(ii) Details of the advance weather warning system which is to be used to detect the possibility of flood producing rainfall approaching the lands.

(iii) Details on the water level trigger(s) which are to be incorporated in the Flood Management Plan and the actions associated with each.

(iv) Details on how land owners/ site management will manage a flood threat. This is to include details on the alerts/warnings/messaging which will be issued to occupants and how land owners/ site management will prevent occupants from accessing the various carparks during a flood threat.

(v) A plan showing the location(s) where occupants on the lands are to evacuate to during a flood threat.

(vi) A set of instructions detailing the installation and operation of the flood barrier system. The instructions are to include details showing where the equipment is stored and the location where each flood barrier is to be installed.

(vii) Details of a regular training programme which is to be implemented by land owners/ site management dealing with the various aspects of the Flood Management Plan. The training programme is to include an awareness session for Centre Management staff highlighting the locations where floodwater will impact the site and the critical doorways which will need to be manned in order to prevent patrons from entering the carparks during a flood threat.

(viii) Details and locations of appropriate flood warning and evacuation signage.

(ix) A system 'testing regime'

(x) The Flood Management Plan is to include provision for the dissemination of flood warnings to the owner/occupiers of the sites to which the plan applies.

Flood warnings are to be broadcast audibly and electronically to allow owners and occupiers effective warning time to undertake the appropriate actions. Clear instructions dealing with the dissemination of flood warnings to the upstream land owner/occupiers are to be incorporated in the Flood Management Plan.

(xi) The Flood Management Plan is to provide review regime (ongoing) of the plan in its entirety. The time period for ongoing plan reviews is to be determined by the Engineer certifying the Flood Management Plan. The review is to be conducted and certified by a suitably qualified Engineer with experience in flood management who is eligible for Membership to Engineers Australia as being appropriate for the management of a flood event, the review is to ensure at a minimum:

- a) the requirements of the plan are being implemented;
- b) the requirements of the plan are still adequate and appropriate.

The Flood Management Plan is to be certified by a suitably qualified Engineer with experience in flood management who is eligible for Membership to Engineers Australia as being adequate and appropriate for the management of a flood event.

Details demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the

issue of any Occupation Certificate.

**F. Modify Condition Condition No. 28 to read as follows:**

**28. Energy Australia (Ausgrid)**

The relocation of Energy Australia (Ausgrid) substations and associated Energy Australia (Ausgrid) electrical mains (with specific reference to substation and mains located within the vicinity of the onsite HCF tenancy). Works are to be carried out at no cost to Council or Energy Australia (Ausgrid). All work must comply with Energy Australia's (Ausgrid) requirements. The location of the substation shall comply with the setback requirements detailed within the site specific provisions of Warringah Development Control Plan, shall not exceed three (3) metres in height above natural ground level, shall be screened by landscaping to not be visible from the public domain and will not impact upon the flood regime for the site.

Details demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of any the relevant Construction Certificate for Stage 4 of the construction staging as shown on approved Staging Plan SW-004 (Rev B).

**G. Modify Condition Condition No. 55 to read as follows:**

**55. Required Planting**

Tree planting is to be implemented as indicated on the approved plans and in the Environmental Management Plan.

Details demonstrating compliance as relevant to each stage of construction as shown on the approved Staging Plans SW-001 Rev B are to be submitted to the Principal Certifying Authority prior to the issue of any the interim I final Occupation Certificate for each construction stage.

Reason: To maintain environmental amenity. (DACLAF01)

**H. Modify Condition Condition No. 56 to read as follows:**

**56. Contamination Report Certification**

A suitably qualified person (eg, Environmental Consultant, Geo-technical/ Hydrogeological engineer), is to provide written certification that all that the recommendations detailed in the Contamination Reports and relevant to the management of the contamination on the site for each stage of construction as shown on the approved Staging Plans SW-001 Rev B, Staging Plans SW-002 Rev B, Staging Plans SW-003 Rev B and Staging Plans SW-004 Rev B, have been undertaken and completed. The written certification shall be submitted to the Principal Certifying Authority and Warringah Council prior to the issue of an the relevant Interim /Final Occupation Certificate for each construction stage.

Reason: To protect sensitive environment and ensure potentially contaminated land is appropriately managed.

**I. Modify Condition Condition No. 57 to read as follows:**

**57. Registration of Encumbrances for Trunk drainage network and Flood Barrier System**

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 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.

**J. Modify Condition Condition No. 58 to read as follows:**

**58. Authorisation of Documentation Required for Drainage Augmentation works and Flood Barrier System**

The original completed request forms (NSW Department of Finances and Services standard forms 13PC and/or 13RPA) must be submitted to Council, with a copy of the Works-as- Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers certification for each stage of construction as shown on the approved Staging Plans SW-001- SW-004 (Rev B) and Compliance Certificate issued by an Accredited Certifier in Civil Works.

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 Certifying Authority prior to the issue of the interim /Occupation certificate for each stage.

**K. Modify Condition Condition No. 59 to read as follows:**

**59. Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes for each stage of construction as shown on the approved Staging Plans SW-001 – SW-004 (Rev B) by a suitably qualified person.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the relevant interim /Occupation Certificate for each construction stage.

**L. Modify Condition Condition No. 61 to read as follows:**

**61. Creation of Positive Covenant and Restriction as a User**

Where any conditions of this Consent require the creation of a 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 final approval and registration has been affected by the NSW Department of Finances and 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.

**M. Modify Condition Condition No. 62 to read as follows:**

**62. Certification Civil Works - Stormwater Quality Management Device**

The Civil Engineer responsible for the supervision of the civil works shall certify that the completed works have been constructed in accordance with this consent and the approved Construction Certificate for each stage of construction as shown on the approved Staging Plans SW-001 – SW-004 (Rev B). A "work as executed" (WAE) plan certified by a registered surveyor and overdrawn in red on a copy of the approved civil works plans are to be provided to Council.

The WAE drawing shall show the alignment, depth and grade of the stormwater drainage pipelines, easement and associated structures.

A maintenance manual for the above device must be provided by the applicant to Council.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the relevant Interim /Occupation Certificate for each construction stage.

**N. Modify Condition Condition No. 63 to read as follows:**

**63. Positive Covenant to allow access for maintenance and rectification**

- a) A positive covenant (under provisions 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 obligations of conditions 66 and 67(a) 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 holdings benefiting this consent.
- d) All reasonable costs related 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 conditions is to be submitted to the satisfaction of the Principal Certifying Authority prior to the release of the final occupation certificate.

**O. Modify Condition Condition No. 64 to read as follows:**

**64. Modification of Consent**

After the issue of the final occupation certificate Development Consent No. 96/335 is to be modified in accordance with the provisions of Clause 97 of the Environmental Planning and Assessment Regulation 2000 as follows:

- (a) Prior to the issue of the Occupation Certificate, Condition 24 of Development Consent No. 96/335 for DA1996/137 is to be deleted as the bank stabilisation works satisfy the intent of this condition.

Note: Condition 24 of Development Consent No. 96/335 is as follows:

*'Adequate headwalls and stabilisation of the embankments and base of Brookvale Creek shall be undertaken upstream of the section proposed to be piped for this development. Full details, including computations, shall be provided for Council's approval prior to commencement of construction. Where any works are required for this purpose they shall be designed and carried out in a manner that is environmentally compatible, and where possible enhance the unpiped section upstream. Where necessary, written concurrence from adjoining property owners shall be obtained to undertaken work on their land.'*

(b) Prior to the issue of the Occupation Certificate, Condition 26 of Development Consent No. 96/335 for DA1996/137 is to be deleted as the positive covenant on the title related to the maintenance of the trunk drainage network and flood barrier system means that Council no longer requires the easement to be dedicated to Council. Condition 26 of Development Consent No. 96/335 is as follows:

*'An easement to Drain Water is to be dedicated to Council over the section of Brookvale Creek to be piped. The width of the easement is to be determined in consultation with, and to the satisfaction of Council.'*

Reason: To ensure the previous consent is consistent with this approval.

**P. Modify Condition Condition No. 65 to read as follows:**

**65. Maintenance of the Trunk Drainage Network and Flood Barrier System**

The land owners of Lot 100 DP 1015283 are required to maintain the trunk drainage network traversing Lot 100 DP 1015283 and all associated flood barrier systems required to provide a minimum 300mm freeboard to the existing retail floor levels in perpetuity.

The maintenance must include the following:

- a) A maintenance regime to ensure that the trunk drainage network and flood barrier system are adequately maintained to operate as per the design intent and as detailed in the Warringah Mall Flood Impact Assessment Addendum, prepared by Cardno, dated 25 January 2010.
- b) The regime must include regular inspections to detect and clear any blockages to the network
- c) The findings of the regular inspections are to be documented and made available to Council upon request.

Any rectification works required for the above must be undertaken by the proprietor at no expense to Council.

**Q. Modify Condition Condition No. 66 to read as follows:**

**66. Geo-technical Monitoring of Creek Bank and Concrete Channel Structure**

A) In order to monitor or rectify any

- (i) creek or bank instability; and

(ii) instability or potential failure of the channel structure;

The owner of Lot 100, DP 1015283 must undertake the following in perpetuity:

a) Conduct a geo-technical investigation every two (2) years using an appropriately qualified and practicing geo-technical engineer. This assessment is to include (but not be limited to) the following:

- The stability of the creek bank and potential geotechnical hazards present within and surrounding the creek banks,
- Any impacts on creek bank stability from any works related to this consent
- Current levels of risk to both life and property; and
- Creek bank remediation risk management measures.

A copy of the assessment is to be provided as soon as practicable to all land owners and tenancy holders affected and / or adjacent to the creek.

b) Conduct an assessment of the structural integrity of the concrete lined channel (and associated upstream development works of Lot 100, DP 1015283, No 145 Old Pittwater Road to Old Pittwater Road as approved by this consent) using a suitably qualified structural engineer. This assessment should be undertaken every five (5) years.

A certificate is to be submitted to Council documenting the findings of the assessment. The certificate is to include recommendations for any rectification works which are deemed necessary to maintain the structural integrity of the concrete lined channel. A certificate is to be submitted to Council every five (5) years.

B) Any rectification works required for the above must be undertaken by the persons stipulated within (A) of this condition at no expense to Council. Rectification works are to be carried out as soon as practicable, or where there is risk of failure, immediately.

A certificate signed by a suitably qualified geotechnical or structural engineer is to be submitted to Council stating that the rectification works have been carried out in accordance with an approved design.

**R. Modify Condition Condition No. 67 to read as follows:**

**67. Riparian Lands Vegetation**

In order to appropriately and adequately manage the riparian zones and revegetated areas of Lot 2 DP 600059 and Lot 30 DP 204107, the lands are to be managed in accordance with the approved Environmental Management Plan (incorporating Biodiversity Management Plan and Vegetation Management Plan) detailed within this consent. The management is to be undertaken by the land owner of Lot 100, DP 1015283 who shall:

a) monitor and rectify physical works undertaken under this consent for a period of 24 months after the issue date of the interim /Occupation certificate for staging plan SW001 page 2.

b) upon the completion of the 24 month period stipulated in (a) above, implement the ongoing requirements detailed in the approved Environmental Management Plan in perpetuity on land contained in Lot 2 DP

600059 and Lot 30 DP 204107.

c) appoint a suitably qualified ecologist to assess the implementation of the Environmental Management Plan on the riparian zones and revegetated areas of Lot 2 DP 600059 and Lot 30 DP 204107. The ecologist shall make recommendations for rectification works deemed necessary to maintain the integrity of the riparian zones and revegetated areas on those lands.

A certificate signed by the ecologist is to be submitted to Council every 3 years stating that the requirements of the approved Environmental Management Plan are being implemented as required. The certificate is to include recommendations for any rectification works.

Any rectification works required for the above must be undertaken by the land owner of Lot 100, DP 1015283 at no expense to Council. Rectification works are to be carried out as soon as practicable, or where there is risk of failure, immediately.

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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**Luke Perry, Senior Development Planner**

The application is determined under the delegated authority of:

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**Phil Lane, Development Assessment Manager**

**ATTACHMENT A**

No notification plan recorded.

**ATTACHMENT B**

No notification map.

## ATTACHMENT C

Reference Number	Document	Date
 2014/396203	Report - Statement of Environmental Effects from CD	15/12/2014
 MOD2014/0283	Warringah Mall 145 Old Pittwater Road BROOKVALE NSW 2100 - Section 96 Modifications - Section 96 (1a) Minor Environmental Impact	16/12/2014
 2014/384468	DA Acknowledgement Letter - Scentre Group Ltd	16/12/2014
 2014/396192	Modification Application Form	31/12/2014
 2014/396194	Applicant Details	31/12/2014
 2015/000750	Environmental Health and Protection (Acid Sulphate) - Assessment Referral - Mod2014/0283 - 75 Old Pittwater Road BROOKVALE NSW 2100	02/01/2015
 2015/000810	Environmental Health and Protection Referral Response - acid sulfate soils	05/01/2015
 2015/003424	File Cover	07/01/2015
 2015/003454	Referral to AUSGRID - SEPP - Infrastructure 2007	07/01/2015
 2015/003460	Referral DECCW Office of Water - Integrated - Site Dewatering	07/01/2015
 2015/003471	Integrated - Referral to Transport Roads and Maritime Services - Development on a classified Road	07/01/2015
 2015/006836	Building Assessment Referral Response	09/01/2015
 2015/008712	Notification Letters - 504	13/01/2015
 2015/008747	Sea Map Notification	13/01/2015
 2015/009028	Notification Letter (no plan attachment) posted on 13/01/2015	13/01/2015
 2015/012366	Parks, Reserves and Foreshores Referral Response	15/01/2015
 2015/013510	Superseded Natural Environment Referral Response - Riparian	16/01/2015
 2015/016943	Traffic Engineer Referral Response	21/01/2015
 2015/017912	Obsolete - template test	22/01/2015
 2015/018628	Landscape Referral Response	22/01/2015
 2015/037126	Response - MOD2014/0283 - Roads and Maritime	10/02/2015
 2015/046658	Referral Response - Roads and Maritime Services	19/02/2015