

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2014/0253
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Responsible Officer:	Alex Keller
Land to be developed (Address):	Lot 2 DP 1136948 , 2 Clarence Avenue DEE WHY NSW 2099
Proposed Development:	Modification of Development Consent DA2007/0705 granted for Demolition of Structures & the Construction of a Two Storey Building for a Childcare Centre and RSL Offices.
Zoning:	LEP - Land zoned R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Warringah Council
Land and Environment Court Action:	No
Owner:	Dee Why RSL Club Ltd
Applicant:	Dee Why RSL Club Ltd

Application lodged:	26/11/2014
Application Type:	Local
State Reporting Category:	Other
Notified:	18/12/2014 to 02/01/2015
Advertised:	Not Advertised in accordance with A.7 of WDCP
Submissions:	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 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

Warringah Development Control Plan - C3 Parking Facilities

Warringah Development Control Plan - D3 Noise

SITE DESCRIPTION

Property Description:	Lot 2 DP 1136948 , 2 Clarence Avenue DEE WHY NSW 2099
Detailed Site Description:	<p>The site is an "L"shape and has a total area of 1,118.0 m2 with dual frontage to Clarence Street and Dee Why Parade. The property contains a two-storey building owned and used as offices/meeting rooms by the Dee Why RSL Club with a Childcare centre across the entire ground floor, including outdoor landscaped play areas for the childcare centre. The land is generally level with the gradient increasing gradually to the east and stormwater being managed by the existing on-site detention system.</p> <p>Lot 1 DP 706230, commonly known as the Dee Why RSL Club at No.932 Pittwater Road Dee Why contains all the car parking for the proposal that is allocated from within the Dee Why RSL carpark which links to the northern elevation of the building.</p> <p>The site is surrounded by the Dee Why RSL Club car park to the north, 2 x three storey residential buildings to the south at No.10 and No.16-18 Dee Why Parade. Some of the garage structures for the residential flat buildings are located along part of the common boundary with the site.</p>

Map:



SITE HISTORY

Development Application No.2007/0705 the demolition of selected structures & the construction of a two storey building for use as a childcare centre and office/ meeting rooms in association with the Dee Why RSL Club was approved by Council on 17 July 2008. The building has been completed and the childcare centre has been in operation since 2008.

PROPOSED DEVELOPMENT IN DETAIL

The proposal involves the following modification of consent:

- Change to the approved hours of operation to include Saturday's from 7:00am to 6:30pm, for up to 90 children. This will enable the Child Care centre provide a childcare service to local parents who are employed to work on Saturday's.

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 DA2007/0705, 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	<p>Yes</p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the purposes of a S96(1A) assessment. However, the applicant has not provided definitive information with regard to expected occupancy, use impacts, noise and traffic/parking demand. In this regard, an initial enrolment limit of 45 children (50% capacity) is recommended for the first 12 months since the site sits between two (2) three-storey residential buildings and residents are likely to be more sensitive to Saturday use in comparison to normal working weekdays.</p>
(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	<p>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 DA2007/0705 as there is no physical building changes required. The change to expand operating hours to Saturday use is subject to assessment to address amenity issues, including potential noise and traffic/parking management.</p>
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(ii) a development control plan, if the consent authority is a council that has made a development</p>	<p>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.</p>

Section 96(1A) - Other Modifications	Comments
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. Submissions received with respect to the original 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:

Section 79C 'Matters for Consideration'	Comments
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)(iiia) – 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)	<p><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.</p> <p><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.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The</p>

Section 79C 'Matters for Consideration'	Comments
	<p>Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&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>
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> <p>(iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 79C (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development, subject to conditions.
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><u>Building Assessment Comments:</u> <i>No objections to subject proposal.</i></p> <p><u>Planning Officer Comment:</u> No comment or conditions required.</p>
Environmental Health and Protection (Industrial)	<p><u>Environmental Health and Protection Comments:</u> <i>Referral assessed by Environmental Investigations. No objections subject to the modification.</i></p> <p><u>Planning Officer Comment:</u> Discussion was held with the Environmental Health Assessing Officer regarding the consultants noise report assessment. It is concurred that a 50% enrolment for Saturday use is suitable initial increase, to enable the applicant to thoroughly demonstrate minimal noise impacts to surrounding land prior to full occupation. This is addressed by a modification to the existing planning conditions of consent.</p>
Natural Environment (Flood)	<p><u>Flood Assessment Comments:</u> <i>The proposed modification is not considered to increase flood risk. No flood related development controls applied.</i></p> <p><u>Planning Officer Comment:</u> No comments or conditions are required.</p>
Traffic Engineer	<p><u>Traffic Engineering Comments:</u> <i>The proposal is for an existing childcare centre to be operated on Saturday's. In accordance with the traffic report provide by the applicant, the childcare centre is being operated with the maximum of 90 children. The centre has 23 designated parking spaces within the RSL Club car park which complies with the Warringah DCP parking requirements (1 parking space per 4 children).</i></p> <p><i>Therefore, no objection is raised on traffic grounds subject to the Assessment Development Officer approval.</i></p> <p><u>Planning Officer Comment:</u> The proposal will maintain access to sufficient car parking for Saturday use.</p>

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.

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 childcare and commercial purposes for a significant period of time with prior residential land uses. In this regard it is considered that the site poses no risk of contamination as these matters were previously addressed under DA2007/0705 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 childcare and 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.

Other Service Infrastructure Authorities

The application was not referred to the RMS as the site has no access to a main road and the existing access off Clarence Street will remain unchanged. No other issues have arisen that required referral to other service infrastructure authorities.

Warringah Local Environment 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

Principal Development Standards

The proposal relates to a change to extend the hours of operation to include Saturday's and does not relate to any new building work. Therefore, the Principal Development Standards are not relevant to this assessment.

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

The proposal relates to a change to extend the hours of operation to Saturdays and does not relate to any new building work. Therefore, the Built Form Controls are not relevant to this assessment.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B2 Number of Storeys	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
Land with frontage to the northern side of Dee Why Parade, Dee Why	Yes	Yes
Front Boundary Exceptions - R3	Yes	Yes
Land with a frontage to the northern side of Dee Why Parade	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
Non-Residential Development	Yes	Yes
Mixed Use Premises (Residential/Non-Residential)	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D18 Accessibility	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

C3 Parking Facilities

Detailed Merit consideration

The development is considered against the underlying Objectives of the Control as follows:

- *To provide adequate off street carparking.*

Comment:

The development provides the following on-site car parking:

Use	Appendix 1 Calculation	Required	Provided	Difference (+/-)
Childcare Centre	1 space per 4 children	$90 / 4 = 23$	29 spaces allocated to the building within the RSL carpark. (Note: 10 are dedicated for pick up-set down, for childcare parents, as per conditions)	6
Total				

The applicant has provided a traffic and parking assessment by "Transport and Traffic Planning Consultants" dated 26 August 2014. The report states that ample parking is available but *"carparking on Saturdays be monitored and that the parking provision by the Club be 'tailored' to reflect the demand outcome"*. No traffic or parking survey information has been provided to substantiate the specific parking demand expected and any concurrent influence the use of the main RSL Club operation's will have on the shared parking for Saturday's. Generally, the use of the RSL carpark from Monday to Friday, 7am to 5pm, is less than the Saturday use by patrons to the club for the same daytime period. In addition to this, the Club has also increased development of the Club since 2008. In the absence of supporting data to demonstrate the Childcare centre or the Club will not displace available parking it is recommended that the Saturday use be restricted to 50% occupancy for the first 12 months to enable the 'tailoring' of demand stated in the Traffic Report to be identified in detail.

- *To site and design parking facilities (including garages) to have minimal visual impact on the street frontage or other public place.*

Comment:

The proposal requires no change to the carparking structures for the proposal and is therefore consistent with this objective.

- *To ensure that parking facilities (including garages) are designed so as not to dominate the street frontage or other public spaces.*

Comment:

The proposal requires no change to the carparking structures for the proposal and is therefore consistent with this objective.

Having regard to the above assessment, it is concluded that the proposed development, subject to conditions (as per the modification) is consistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D3 Noise

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To encourage innovative design solutions to improve the urban environment.*

Comment:

The proposal is subject to operational conditions to ensure no unreasonable impacts from noise occur to adjacent residential development. These conditions will remain and may be extended to apply to Saturday operations. This is addressed by the recommended conditions of the modification.

- *To ensure that noise emission does not unreasonably diminish the amenity of the area or result in noise intrusion which would be unreasonable for occupants, users or visitors.*

Comment:

The proposal has been submitted with noise report prepared by Acoustic Logic, dated 28 August 2014. The conditions of consent include the following condition:

"The periodic use of the outside play areas shall be limited to between 9.00am to 11.00am and 3.00pm and 5.00pm Monday to Friday. The Noise Management Plan is to reflect this as a maximum restriction."

The noise report shows a spike in noise levels at the above periods during the week, often reaching nearly 75Laeq. However, on Saturday's at present, the Laeq is routinely below 60Laeq

throughout the day. It is acknowledged that the applicant has received no complaints for week day use. Generally, residential noise amenity on weekends is valued higher than during the normal weekday working hours. The applicant has not addressed the potential sensitivity of Saturday use in the Acoustic Report. In order to address this issue, it is recommended that the modification be restricted to 50% occupancy of the childcare centre for the first 12 months to enable any issues to be identified and managed if they arise, prior to full occupation being permitted.

Having regard to the above assessment, it is concluded that the proposed development, subject to conditions is consistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported , in this particular circumstance.

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. Mod2014/0253 for Modification of Development Consent DA2007/0705 granted for Demolition of Structures & the Construction of a Two Storey Building for a Childcare Centre and RSL Offices. on land at Lot 2 DP 1136948,2 Clarence Avenue, DEE WHY, subject to the conditions printed below:

A. Modify Condition No.25 "Car Parking Allocation" to read as follows:

Car Parking Allocation

Ten (10) car parking spaces at the southern end of the Ground Level car park shall be designated for parent/carer set-down and pick-up Monday to Saturday's. A total of 29 spaces are to be available for the proposed building, in unison with the Dee Why RSL operations, during business hours Monday to Friday. One (1) of these car parking spaces must be an AS1428.2 compliant space, convenient to the pedestrian ramp. Existing signage / line marking is to revised to reflect Saturday use.

Reason: Requirement for the provision and management of car parking.

B. Modify Condition No.66 "Child Care Numbers" to read as follows:

Child Care Numbers

The maximum number of children to be cared for at any one time on the premises shall not exceed 90 children Monday to Friday, and 45 children on Saturday's.

Note: Any application to increase to full occupancy on Saturday's should allow 12 months from the date of issue of this modification, in order to demonstrate that further operational use on Saturday's will continue to maintain minimal adverse

impacts on neighbours amenity and parking management for the site.

Reason: To maintain amenity

C. Modify Condition No.71 "Use of Outside Play Areas (Childcare Centres)" to read as follows:

Use of Outside Play Areas (Childcare Centres)

The periodic use of the outside play areas shall be limited to between 9.00am to 11.00am and 3.00pm and 5.00pm Monday to Saturday. The Noise Management Plan is to reflect this as a maximum restriction.

Reason: To prevent loss of amenity to the area.

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

Alex Keller, Senior Development Planner

The application is determined under the delegated authority of:

Phil Lane, Development Assessment Manager



















ATTACHMENT A

No notification plan recorded.

ATTACHMENT B

No notification map.

ATTACHMENT C

Reference Number	Document	Date
 MOD2014/0253	2 Clarence Avenue DEE WHY NSW 2099 - Section 96 Modifications - Section 96 (1a) Minor Environmental Impact	26/11/2014
 2014/363951	DA Acknowledgement Letter - Dee Why RSL Club Ltd	26/11/2014
 2014/366549	Modification Application Form	27/11/2014
 2014/366556	Applicant Details	27/11/2014
 2014/366560	Report Statement of Environmental Effects	27/11/2014
 2014/366568	Report - Environmental Noise Impact	27/11/2014
 2014/366574	Letter - Noise - Mobbs	27/11/2014
 2014/366582	Report - Traffic and Parking	27/11/2014
 2014/374166	Building Assessment Referral - Mod2014/0253 - 2 Clarence Avenue DEE WHY - SS	05/12/2014
 2014/374941	Environmental Health and Protection (Industrial) - Assessment Referral - Mod2014/0253 - 2 Clarence Avenue DEE WHY NSW 2099	05/12/2014
 2014/375915	Environmental Health and Protection Referral Response - industrial use	08/12/2014
 2014/377117	File Cover	09/12/2014
 2014/377133	Referral to AUSGRID - SEPP - Infrastructure 2007	09/12/2014
 2014/382440	Building Assessment Referral Response	15/12/2014
 2014/384017	Natural Environment Referral Response - Flood	16/12/2014
 2014/386716	Sea Map - notification	17/12/2014
 2014/386630	Notification Letters - 74	17/12/2014
 2015/004622	Traffic Engineer Referral Response	07/01/2015