

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	MOD2021/0761
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Responsible Officer:	Danielle Deegan (independent planning consultant)
Land to be developed (Address):	Lot 1 DP 784268, Lot 1 DP 114027, Lot B DP966128, Lot 6 DP 785409, Pittwater Road, Brookvale
Proposed Development:	Construction of a new grandstand and centre of excellence
Zoning:	Warringah LEP2011 – Land zoned RE1 Public Recreation
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Northern Beaches Council
Applicant:	Manly Warringah Sea Eagles Ltd

Application Lodged:	27/10/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Community facility
Notified:	27/10/2021 to 17/11/2021
Advertised:	Not Advertised
Submissions Received:	None
Clause 4.6 Variation:	No
Recommendation:	Approval

EXECUTIVE SUMMARY

The application seeks to modify development consent DA2019/1190 for "Construction of a new grandstand and Centre of Excellence" via a Section 4.55(1A) application. The original development application was determined by the Sydney North Planning Panel (SNPP) on 29 July 2020. This modification application is submitted under Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 (the Act) and therefore is not required to be determined by the SNPP as per 123BA of the Environmental Planning and Assessment Regulations 2000 (the Regulations).

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) for determination as Northern Beaches Council is the Crown Land Manager of the land.

The modification to the development seeks to amend the architectural plans to reconfigure internal floor space on level 1. The overall building height, scale, footprint and use of the building remains unchanged.

The application was notified for a period of 14 days in accordance with the Northern Beaches Community Consultation Plan. No submissions were received during the notification period. The proposed development continues to be of good design and provides suitable amenities for the Manly Warringah Sea Eagles and the broader sporting community, it is therefore recommended that the application be approved.

PROPOSED DEVELOPMENT IN DETAIL

The application is to modify development consent DA2019/1190 which granted consent for "Construction of a new grandstand and Centre of Excellence".

Specifically, the modifications sought are:

1. Minor changes to the internal layout on level 1 as follows:
 - Replace an area of offices located in the south-western corner of level 1, with an active cardio gym area.
 - Replace the utility room, study and sleep room, located on level 1, with a tiered theatrette.

The proposed changes are within the approved building envelope and are consistent with the approved use. There are no external modifications to the building proposed.

2. Amend the wording of condition No 52 to enable separate occupation certificates (OCs) to be issued to allow for a staged delivery of the rehabilitation pool and completion of the remaining building.

The applicant has advised the pool is being procured from Italy, where the manufacturer is based. International procurement delays caused by the ongoing COVID pandemic is causing a delay in freight times, thus reducing the contractor's ability to ensure completion of this element of the proposed development in conjunction with the remaining structure.

The current wording of condition 52 states that the delivery of the pool is connected to the issuing of '*any interim / final Occupation Certificate*'. It is proposed to change the wording to enable a staged OC approach. The proposed wording is outlined below:

52. Public swimming pools and spa pools fit out

Prior to the issuing of any ~~interim / final~~ occupation certificate, certification is to be provided from a suitably qualified professional that the design, construction and fit out of the public swimming pools and spa pools are compliant with the relevant and current guidelines including:

- *Public Health Act 2010*
- *Public Health Regulation 2012*

Reason: To ensure compliance with legislation and to protect public health and safety

The amended wording will allow ongoing construction of the building.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;

- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 – Zone RE1 Public Recreation
Warringah Local Environmental Plan 2011 – 5.10 Heritage Conservation

SITE DESCRIPTION

The subject site is located on the northern side of Pittwater Road, Brookvale. It is legally identified as Lot 1 DP 784268, Lot 1 DP 114027, Lot B DP966128 and Lot 6 DP 785409. The site is bounded by Pittwater Road to the south, Federal Pde to the north, Alfred Road to the west and Pine Avenue to the east. The site slopes gently down from north to south, with a total fall of approximately 4.8 metres and an average gradient of approximately 1 in 60. The site area is approximately 4.6 hectares.

The site is occupied by a sportsground known as Brookvale Oval located on the southern portion of the site, a formal car parking area on the corner of Alfred Street and Pittwater Road, and open space on the remainder of the site. The sportsground has grandstands on its western and southern sides and a spectator hill on its eastern side. There are other related structures on the site such as ticket offices, canteens and amenities.

The building comprising of the new grandstand and Centre of Excellence, approved under DA2019/1190, is currently under construction on the northern side of the playing field. This area was formerly a grassed spectator hill.

Adjoining the site to the north is public open space that forms a “village green”, a children’s play area and a child care centre. To the east, north and west of the site is residential development comprising a mix of dwelling types including dwelling houses, multi-dwelling housing and residential flat buildings. Opposite the site to the east on Alfred Road is St Augustine’s College. To the south of the site extending to the east on Pittwater Road is commercial development that forms part of the Brookvale commercial area.



Figure 1 – Site Map

SITE HISTORY

On 29 July 2020, DA2019/1190 for “Construction of a new grandstand and Centre of Excellence” was approved by the Sydney North Planning Panel.

The consent approved demolition works and the construction of a building containing a Centre of Excellence for the Manly Warringah Sea Eagles rugby league football club, the formalisation of seating for approximately 3,000 spectators and public amenities at the northern end of the existing Brookvale Oval with associated landscape and stormwater management works.

The Centre of Excellence building, as approved, contains two levels. The lower level provides public toilets, an entry foyer, team change rooms and toilets, gymnasium, rehabilitation pool areas, a flexible education space, plant and storerooms. The upper level contains, offices, board room, meeting rooms, study, theatre, breakout area, premium seating area, toilets, plant and storerooms. External tiered seating for 3,000 spectators adjoins the building on its southern side. The approval includes a canopy over the seating area, extending out from the top of the Centre of Excellence building.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 27/10/2021 to 17/11/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Building Assessment	<p><u>Supported with conditions</u></p> <p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Amended Construction Certificate Stage.</p>
Strategic and Place Planning (Urban Design)	<p><u>Supported</u></p> <p>The proposed amendments are located within the approved building envelope, and do not propose an intensification of use. There is no modification to the external appearance of the building. As such, there is no objection to the proposed amendments.</p>
Environmental Health (Industrial)	<p><u>Supported</u></p> <p>Internal changes to the concourse level are unlikely to impact any of the amenity criteria as the use remains "substantially the same". No objections to the proposal.</p>
Traffic Engineer	<p><u>Supported</u></p> <p>The proposed modifications are acceptable and are not considered to result in any appreciable traffic or parking impacts. The Transport Network team raises no objection to the changes and no new conditions are proposed</p>

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EP&A Act)

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 findings of the Sydney North Local Planning Panel detailed in the Determination and Statement of Reasons for DA2019/1190, in full, with amendments detailed and assessed as follows:

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

Section 4.55(1A) – Other Modifications	Comments
<p>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:</p>	
<p>(a) it is satisfied that the proposed modification is of minimal environmental impact, and</p>	<p>Yes The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <ul style="list-style-type: none"> • The footprint of the building remains unchanged. • The height and overall scale, form and appearance remains unchanged, • The primary use of the building remains unchanged, • The proposal does not further impact any aspect of the natural environment.
<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>	<p>Yes 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 DA2019/1190 for the following reasons:</p> <ul style="list-style-type: none"> • The footprint of the building remains unchanged. • The height and overall scale, form and appearance remains substantially unchanged, apart from the minor amendments proposed under this application. • The use of the building remains unchanged
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require, or</p> <p>(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and</p>	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation Plan</p>
<p>(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be</p>	<p>No submissions were received in relation to this application.</p>

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining a modification application made under Section 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	<p>Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018.</p> <p>The site has been used for public recreation purposes since the early 20th century and has not been used for a purpose referred to in Table 1 of the contaminated land planning guidelines. Therefore, it is unlikely that the Site is contaminated.</p>
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable
Section 4.15 (1) (a)(iv) – Provisions of the regulations	<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>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&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&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 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&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 4.15 'Matters for Consideration'	Comments
	<u>Clause 143A</u> of the EP&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.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact 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) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact 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 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

CROWN LAND MANAGEMENT ACT 2016 and LOCAL GOVERNMENT ACT 1993

The site is classified as “community land” under the Local Government Act 1993 (“LG Act”).

Section 36(1) of the LG Act requires the preparation of a Plan of Management for all community land. The Brookvale Park Plan of Management (“PoM”) applies to the land.

Section 36(3)(a) of the LG Act provides that the PoM must categorise the land. The area covered by the PoM has been categorised as containing land within the sportsground, park and general community use categories. The proposed development is on land categorised as sportsground.

The SNPP came to following conclusion in its decision to approve the original development:

“the Panel is satisfied that the proposal has been assessed against the PoM and is consistent with the requirements of the PoM. Notably, the PoM envisages the development of a northern stand, does not specifically require the retention of the heritage trees, requires a major event traffic and parking strategic plan but only for developments proposed to significantly increase the number of visitors. The Panel also notes there has been extensive community consultation on various proposals for Brookvale Oval since the PoM was adopted in 2002.”

The modified proposal remains consistent with the provisions of the PoM.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies were considered in the merit assessment of the development 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)

There are no SEPPs or SREPs relevant to the assessment of this modification application.

WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011 (WLEP 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

Detailed Assessment

Zone RE1 Public Recreation

The application was approved based on the development comprising a recreation facility (indoor), being the Centre of Excellence, and a recreation area (major) being the grandstand, both of which are permissible uses within the RE1 Public Recreation zone. The relevant definitions in WLEP 2011 are:

recreation facility (indoor) means a building or place used predominantly for indoor recreation, whether or not operated for the purposes of gain, including a squash court, indoor swimming pool, gymnasium, table tennis centre, health studio, bowling alley, ice rink or any other building or place of a like character used for indoor recreation, but does not include an entertainment facility, a recreation facility (major) or a registered club.

recreation facility (major) means a building or place used for large-scale sporting or recreation activities that are attended by large numbers of people whether regularly or periodically, and includes theme parks, sports stadiums, showgrounds, racecourses and motor racing tracks.

Concern was raised in the assessment of the original application that the upper floor of the Centre of Excellence building, described in the Statement of Environmental Effects as “administration office space”, comprised “office premises” as defined in WLEP 2011 and was a prohibited use. The definition of “office premises” in WLEP 2011 is:

office premises means a building or place used for the purpose of administrative, clerical, technical, professional or similar activities that do not include dealing with members of the public at the building or place on a direct and regular basis, except where such dealing is a minor activity (by appointment) that is ancillary to the main purpose for which the building or place is used.

The applicant’s response was to characterise the office use of the development as an ancillary component of the Centre of Excellence facility as the approved gross floor area used for administration offices was 13.6% of the total gross floor area of the total area of the facility. The

relatively minor size of the administration office area indicates that the offices are ancillary to the other uses within the development.

The SNPP accepted that the scale, design and nature of the area used for administration offices is such that it is an ancillary use to the other uses within the Centre of Excellence facility and the use of the development as a recreation area (major) and was, therefore, permissible with development consent.

The proposed modifications further reduce the overall area used for office use and therefore remains an ancillary use to the recreational facility (major).

The proposed staging of the occupation certificates will allow the completion and occupation of the of the building prior to the installation of the indoor swimming pool. Given that the swimming pool is located in the separated 'rehab area' and is not publicly accessible, there are no concerns with this staged approach. It is noted that Council's Building Assessment Team have raised no objections to the staging of the occupation certificates.

The modified proposal remains a permissible use in the zone and is consistent with the zone objectives.

Clause 5.10 – Heritage conservation

Clause 5.10(4) of WLEP 2011 requires that the consent authority must, before granting consent to development in respect of a heritage item, consider the effect of the proposed development on the heritage significance of the item concerned.

The 'Brush Box and Camphor Laurel trees surrounding Brookvale Park Pine Avenue, Alfred Street, unmade section of Federal Parade and Pittwater Road (near Pine Street intersection)' are listed as a heritage item in Schedule 5 of WLEP 2011 and shown as a landscape item on the WLEP 2011 Heritage Map (I132).

Development consent DA2019/1190 includes approval for the removal of 11 of the heritage-listed Brush Box trees. The 11 trees have been removed and replaced with 11 x *Lophostemon confertus*, to north of the Centre of Excellence, as required by condition No 31 of the consent.

The proposed modifications have no impact on the remaining heritage-listed trees.

WARRINGAH DEVELOPMENT CONTROL PLAN (WDCP)

As the proposed changes are internal only and do not affect the approved use of the site, the modified proposal remains consistent with the applicable provisions of the WDCP

7.12 CONTRIBUTIONS

Section 7.12 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 and Statement of Modification. The modified proposal 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
- Consistent with the Brookvale Park Plan of Management

The proposed modifications are minor and result in a development that is substantially the same, with regards to visual built form outcome, impact upon the natural environment and impact on the amenity of surrounding residents.

The proposed changes are all internal. The proposed conversion of office floor space to gym and theatre uses is consistent with the objectives of the zone.

The proposed development continues to be of good design and provides suitable amenities for the Manly Warringah Sea Eagles and the broader sporting community, it is therefore recommended that the application be approved by the LPP.

The proposed development satisfies the appropriate controls and all processes and assessments have been satisfactorily addressed

RECOMMENDATION

THAT Northern Beaches Local Planning Panel as the consent authority grant **approval** to Modification Application No. Mod2021/0761 for Modification of Development Consent DA2019/1190 granted for the construction of a new grandstand and centre of excellence on land at Lot 7069 DP 1058602 and Lot 1 DP 114027 and Lot 1 DP 651395 and Part Lot 1 DP 784268 and Lot 6 DP 785409 and Lot B DP 966128 9999 Pittwater Road BROOKVALE, 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
A_1002 (Revision P)	13.08.2021	Hassell Pty Ltd

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

B. Modify condition No 52 to read as follows:

52. Public swimming pools and spa pools fit out

Prior to the issuing of the relevant interim/final occupation certificate, certification is to be provided from a suitably qualified professional that the design, construction and fit out of the public swimming pools and spa pools are compliant with the relevant and current guidelines including:

- Public Health Act 2010
- Public Health Regulation 2012

Reason: To ensure compliance with legislation and to protect public health and safety

C. The addition of the following conditions:

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

31A. Access and Egress

The change to use areas proposed within the building will require the number of and width of exits to be reviewed for compliance with Part D of the Building Code of Australia, as part of the assessment of the Amended Construction Certificate. Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of the Amended Construction Certificate.

Reason: To ensure adequate provision is made for access and egress, for occupant health and safety.

31B. Sanitary Facilities

Sanitary facilities are to be provided for the building in accordance with Part F2 of the Building Code of Australia. Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of the Amended Construction Certificate.

Reason: To ensure adequate provisions are made for health and amenity within the building.