

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2018/0283
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<b>Responsible Officer:</b>	Lashta Haidari
<b>Land to be developed (Address):</b>	Lot 2 DP 1241568, 888 Pittwater Road DEE WHY NSW 2099
<b>Proposed Development:</b>	Modification of Development Consent DA2016/0705 granted for Construction of a Mixed Use Development comprising retail commercial and residential uses and a child care centre
<b>Zoning:</b>	Warringah LEP2011 - Land zoned B4 Mixed Use
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Karimbla Properties (No41) Pty Ltd
<b>Applicant:</b>	Karimbla Properties (No41) Pty Ltd

<b>Application lodged:</b>	07/06/2018
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Mixed
<b>Notified:</b>	Not Notified
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</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 the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest

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

## SUMMARY OF ASSESSMENT ISSUES

There are no assessment issues.

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 2 DP 1241568 , 888 Pittwater Road DEE WHY NSW 2099
<b>Detailed Site Description:</b>	<p>The site is irregular in shape and is bound by Howard Avenue to the north, Oaks Avenue to the south and Pittwater Road to the west. The site is further bound by shared boundaries between itself and several other development sites both to the east and south-west. The site has a total area of 14.466m<sup>2</sup>.</p> <p>The site is centrally located within the Dee Why Town Centre as defined in the Dee Why Town Centre Master Plan 2013 (DYTC Masterplan).</p> <p>The existing topography of the site slopes from west to east, with a cross-fall of approximately 4m from the highest point on the south-western corner of the Pittwater Road frontage, to the lowest point at the north-eastern corner of the site on Howard Avenue.</p>

Map:



## SITE HISTORY

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

DA2016/0705 for the construction of a new mixed-use development including a town centre was approved on 10 May 2017. Construction has commenced and is at an advanced stage.

## PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks to Modify Development Consent No. 2016/0705 by seeks amendments to Conditions 22, 43, 47 and 72 which require works to be carried out in accordance with streetscape upgrade plans for the Dee Why Town Centre prepared by Tract (the landscape architects engaged by Council to prepare landscape plans for the public domain improvement works for the Dee Why Town Centre).

The applicant has indicated that the above conditions require works to be undertaken in accordance with streetscape upgrade plans for the Dee Why Town Centre prepared by Tract (the landscape architects engaged by Council to prepare the landscape plans for public domain improvement works within the Dee Why Town Centre). Specific reference numbers and/or dates confirming the version of the plans that are relevant for the purposes of satisfying the conditions have not been identified within the consent. Moreover, conditions 22 and 43 make reference to plans “approved with the development application,” but no such plans exist:

- The Tract streetscape plans did not form part of development application DA2016/0705 and the applicant has had no involvement in the preparation of these plans.
- The Tract streetscape plans have been prepared on behalf of Council by consultants engaged by Council.
- The Tract streetscape plans have not been subject to any formal approvals process.

Accordingly, the applicant is requesting the following modification to Conditions 22, 43, 47, and 72

(changes shown in ~~Strikethrough~~ and in red for amended wording):

## 22. Submission of Engineering Plans

Engineering plans are to be submitted to the Certifying Authority for approval. The submission is to include four copies of Civil Engineering plans for the design of road and footpath/streetscape construction works in Pittwater Road, Howard Avenue and Oaks Avenue which are to be generally in accordance with the ~~Tract Streetscape Upgrade works plans approved with the Development Application~~ and Council's specification for engineering works – AUS-SPEC #1 and or Council's Minor Works Policy.

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

## 43. Footpath / Streetscape Upgrade Works

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

- a) All footpath works are to be constructed in accordance with Council's minor works policy and the ~~Tract streetscape upgrade plans for the Dee Why Town Centre~~ **engineering plans approved by Council in respect of the Section 138 application for the project as detailed in Schedule 1.**

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

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

Details demonstrating compliance are to be submitted to the PCA.

## 47. Footpath Paving works Pittwater Road Frontage

The pedestrian area beneath the colonnade fronting Pittwater Road is to be fully paved in accordance with the ~~Tract Streetscape upgrade plans~~ **engineering plans approved by Council in respect of the Section 138 application for the project (as required by Condition 72 below) as detailed in Schedule 1.** The works are to be designed and integrated with the specification and levels of the adjacent footpath area.

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

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

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

NSW.

The Engineering design plans are to include:

- i. Details of all public utility services which are to be located and detailed on the plan and cross sections. Utility services must be relocated at the applicant's expense if they are in conflict with the required engineering works.
  - ii. Removal of the indented car parking spaces in Oaks Avenue and reconstruction as road pavement.
  - iii. Full-width construction of Pedestrian Crossings along the Oaks Avenue and Howard Avenue frontages.
- b) Section 138 and 139 engineering plan approval fee is to be lodged with the assessment and approval of the plans in accordance with Council's Fees and Charges prior to the issue of the construction certificate.

Council Development Engineer has reviewed the request to modify the conditions and has raised no objections to amending the above conditions to reference the approved streetscape plans.

Accordingly, the above conditions can be modified to reference the approved streetscape plans.

### **ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)**

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

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

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2016/0705, in full, with amendments detailed and assessed as follows:

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

<b>Section 4.55(1A) - Other Modifications</b>	<b>Comments</b>
A consent authority may, on the application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed	<b>Yes</b>



Section 4.55(1A) - Other Modifications	Comments
modification is of minimal environmental impact, and	The modification, as proposed in this application, is considered to be of minimal environmental impact, as proposed amendments relate to the removal of condition relating to bond.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The proposed development is substantially the same as that approved pursuant to DA2016/0705 as the proposed modification would not alter the use, the bulk and scale of the building or its built form. Generally, the appearance of the approved development would remain unchanged.
(c) it has notified the application in accordance with:  (i) the regulations, if the regulations so require,  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 4.15 Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See the discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning	None applicable.

Section 4.15 'Matters for Consideration'	Comments
instrument	
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)(iiiia) – Provisions of any planning agreement	None applicable.
Section 4.15(1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;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&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation is not required for this application.</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>
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	(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. (ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) The proposed development will have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The proposed modification does not change the suitability of the site of the approved development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See the discussion on “Public Exhibition” 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.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application was not notified.

## MEDIATION

No requests for mediation have been made in relation to this application.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	No objections to the modification, providing that the public domain works required to be undertaken by the applicant are carried out by the applicant as envisaged by Council via the Tract Plans.
NECC (Development Engineering)	<p><b>Comments 1/11/2018</b></p> <p>Conditions 22 and 72 can be modified as follows :</p> <p>replace " and approved with the Development Application"</p> <p>with Plan numbers (Howard Avenue works) DRW 0214 -0356 - 22WD-LD 300 rev7, 301 rev7, 302 rev7 ,401,402,403  Plan numbers (Oaks Avenue) DRW 0214 -0356 - 21WD-LD 300 rev7, 301 rev7, 302 rev7 ,401,402,403</p> <p><b>Previous comments</b></p> <p>The proposed modifications of consent conditions 22,41,47,&amp;72 is not supported as the Section 138 Roads act approval for the Oaks and Howard avenue as purely for hard engineering works and not landscaping works, as such there needs to be details or a reference to a landscaping plan and set out details.</p>
Road Reserve	No objection to proposed modification subject to concurrence of Dee Why Town Centre Project Manager and Principal Engineer - Major Developments
Strategic and Place Planning (Urban Design)	The modification can be supported provided the public domain works required to be undertaken by the applicant are carried out by the applicant in accordance and coordinated with the Dee Why Town Centre Upgrading works documents by Tract Consultant. Any discrepancy should be resolved with the Project Manager in charge of Council's upgrading works.

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)\*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.



**State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)**

**SEPP (Infrastructure) 2007**

**Warringah Local Environmental Plan 2011**

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
Land Use Table	Yes
6.2 Earthworks	Yes
6.3 Flood planning	Yes
6.4 Development on sloping land	Yes
Part 7 Dee Why Town Centre	Yes
7.3 Objectives for development within Dee Why Town Centre	Yes

**Warringah Development Control Plan**

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
Part A Introduction	Yes	Yes
A.5 Objectives	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
D3 Noise	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D18 Accessibility	Yes	Yes
D20 Safety and Security	Yes	Yes
E10 Landslip Risk	Yes	Yes
E11 Flood Prone Land	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**

#### **Northern Beaches Council Contributions Plan 2018**

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, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs

- Consistent with the objects of the Environmental Planning and Assessment Act 1979

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## **RECOMMENDATION**

THAT Council as the consent authority grant approval to Modification Application No. Mod2018/0283 for Modification of Development Consent DA2016/0705 granted for Construction of a Mixed Use Development comprising retail commercial and residential uses and a child care centre on land at Lot 2 DP 1241568,888 Pittwater Road, DEE WHY, subject to the conditions printed below:

### **A. Modify (Condition No. 22. Submission of Engineering Plans) to read as follows:**

Engineering plans are to be submitted to the Certifying Authority for approval. The submission is to include four copies of Civil Engineering plans for the design of road and footpath/streetscape construction works in Pittwater Road, Howard Avenue and Oaks Avenue, which are to be generally in accordance with drawings numbered DRW 0214 -0356 - 22WD-LD 300 rev7, 301 rev7, 302 rev7 ,401,402,403 (Howard Ave Works) and DRW 0214 -0356 - 21WD-LD 300 rev7, 301 rev7, 302 rev7 ,401,402,403 (Oaks Ave) and Council's specification for engineering works – AUS-SPEC #1 and or Council's Minor Works Policy.

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

### **B. Modify (Condition No. 43. Footpath / Streetscape Upgrade Works) to read as follows:**

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

a) All footpath works are to be constructed in accordance with Council's minor works policy and the engineering plans approved by Council in respect of the Section 138 application for the project.

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

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

Details demonstrating compliance are to be submitted to the PCA.

### **C. Modify (Condition No. 47. Footpath Paving works Pittwater Road Frontage) to read as follows:**

The pedestrian area beneath the colonnade fronting Pittwater Road is to be fully paved in accordance with the engineering plans approved by Council in respect of the Section 138 application for the project (as required by Condition 72 below). The works are to be designed and integrated with the specification and levels of the adjacent footpath area.

**D. Modify (Condition No. 72. Section 138 Roads Act Approval – Road and Streetscape Works) to read as follows"**

a) Engineering plans are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993. The submission is to include four copies of Civil Engineering plans for the design and construction of half road reconstruction works, kerb & gutter, footpath paving, street tree planting and garden beds, construction of bus shelters, street lights, street signage, pedestrian ramps and crossings, kerb blisters and associated drainage works (Pittwater Road, Oaks Avenue and Howard Avenue frontages) which are to be in accordance with the DRW 0214 -0356 - 22WD-LD 300 rev7, 301 rev7, 302 rev7 ,401,402,403 (Howard Ave Works) and DRW 0214 -0356 - 21WD-LD 300 rev7, 301 rev7, 302 rev7 ,401,402,403 (Oaks Ave), and Warringah Public Spaces Design Guidelines and Council's specification for engineering works – AUS-SPEC #1 and or Council's Minor Works Policy.

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

The Engineering design plans are to include:

- i. Details of all public utility services which are to be located and detailed on the plan and cross sections. Utility services must be relocated at the applicant's expense if they are in conflict with the required engineering works.
- ii. Removal of the indented car parking spaces in Oaks Avenue and reconstruction as road pavement.
- iii. Full-width construction of Pedestrian Crossings along the Oaks Avenue and Howard Avenue frontages.

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

In signing this report, I declare that I do not have a Conflict of Interest.

**Signed**



**Lashta Haidari, Principal Planner**

The application is determined on //, under the delegated authority of:



**Steven Findlay, Manager Development Assessments**