

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2016/0041
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<b>Responsible Officer:</b>	Lashta Haidari
<b>Land to be developed (Address):</b>	Lot 3 DP 307937, 896 Pittwater Road DEE WHY NSW 2099 Lot 1 DP 307937, 896 Pittwater Road DEE WHY NSW 2099 Lot A DP 416469, 894 Pittwater Road DEE WHY NSW 2099 Lot 1 DP 504212, 892 Pittwater Road DEE WHY NSW 2099 Lot 10 DP 231418, 890 Pittwater Road DEE WHY NSW 2099 Lot 11 DP 231418, 888 Pittwater Road DEE WHY NSW 2099 Lot A DP 339410, 884 Pittwater Road DEE WHY NSW 2099 Lot 7 DP 8172, 9 Howard Avenue DEE WHY NSW 2099 Lot 1 DP 209503, 11 Howard Avenue DEE WHY NSW 2099 Lot 1 DP 212382, 15 Howard Avenue DEE WHY NSW 2099 Lot 2 DP 212382, 17 Howard Avenue DEE WHY NSW 2099 Lot 3 DP 212382, 28 Oaks Avenue DEE WHY NSW 2099
<b>Proposed Development:</b>	Modification of Development Consent DA2014/0805 granted for Demolition Works - Amend condition 3 to allow for amended construction noise levels
<b>Zoning:</b>	LEP - Land zoned B4 Mixed Use LEP - Land zoned B4 Mixed Use LEP - Land zoned B4 Mixed Use LEP - Land zoned B4 Mixed Use LEP - Land zoned B4 Mixed Use LEP - Land zoned B4 Mixed Use LEP - Land zoned B4 Mixed Use LEP - Land zoned B4 Mixed Use LEP - Land zoned B4 Mixed Use LEP - Land zoned B4 Mixed Use LEP - Land zoned B4 Mixed Use LEP - Land zoned B4 Mixed Use
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Warringah 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>	19/02/2016
<b>Application Type:</b>	Local
<b>State Reporting Category:</b>	Mixed
<b>Notified:</b>	10/03/2016 to 30/03/2016
<b>Advertised:</b>	Not Advertised, in accordance with A.7 of WDCP

<b>Submissions:</b>	1
<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

Warringah Development Control Plan - D3 Noise

## SITE DESCRIPTION

<b>Property Description:</b>	<p>Lot 3 DP 307937 , 896 Pittwater Road DEE WHY NSW 2099</p> <p>Lot 1 DP 307937 , 896 Pittwater Road DEE WHY NSW 2099</p> <p>Lot A DP 416469 , 894 Pittwater Road DEE WHY NSW 2099</p> <p>Lot 1 DP 504212 , 892 Pittwater Road DEE WHY NSW 2099</p> <p>Lot 10 DP 231418 , 890 Pittwater Road DEE WHY NSW 2099</p> <p>Lot 11 DP 231418 , 888 Pittwater Road DEE WHY NSW 2099</p> <p>Lot A DP 339410 , 884 Pittwater Road DEE WHY NSW 2099</p> <p>Lot 7 DP 8172 , 9 Howard Avenue DEE WHY NSW 2099</p> <p>Lot 1 DP 209503 , 11 Howard Avenue DEE WHY NSW 2099</p> <p>Lot 1 DP 212382 , 15 Howard Avenue DEE WHY NSW 2099</p> <p>Lot 2 DP 212382 , 17 Howard Avenue DEE WHY NSW 2099</p> <p>Lot 3 DP 212382 , 28 Oaks Avenue DEE WHY NSW 2099</p>
<b>Detailed Site Description:</b>	<p>The subject site comprises the following 12 individual lots in Oaks Avenue, Howard Avenue and Pittwater Road, Dee Why:</p>

- Lot 7, DP 8172, 9 Howard Avenue
- Lot 1, DP 209503, 11 Howard Avenue
- Lot 1, DP 212382, 15 Howard Avenue
- Lot 2, DP 212382, 17 Howard Avenue
- Lot 3, DP 212382, 28 Oaks Avenue
- Lot A, DP 339410, 884 Pittwater Road
- Lot 11, DP 231418, 888 Pittwater Road
- Lot 10, DP 231418, 890 Pittwater Road
- Lot 1, DP 504212, 892 Pittwater Road
- Lot A, DP 416469, 894 Pittwater Road
- Lot 1, DP 307937, 896 Pittwater Road
- Lot 3, DP 307937, 896 Pittwater Road

The subject site is located on the eastern side of Pittwater Road, generally between Howard Avenue in the north and Oaks Avenue in the south.

The sites are currently under a period of demolition as per Development Consent No. DA2014/0805.

The land surrounding the subject site generally comprises 2 to 5 storey mixed use developments. Adjoining the site to the north on the opposite side of Howard Avenue, to the west on the opposite side of Pittwater Road and the south on the opposite side of Oaks Avenue is a mixture of older retail and commercial office buildings and newer shop top housing developments.

Map:



## SITE HISTORY

The sites are currently undergoing an extensive period of demolition. This is as per multiple

development consents as follows:

DA2016/0042

This application is for the construction of a mixed use development comprising of retail, commercial, community and residential uses.

This application is current.

DA2015/0612

This application for drainage and stormwater management works and installation of shoring walls and bulk excavation was granted approval on 22 December 2015.

DA2014/0805

This application for demolition works of the subject site was granted approval on 9 September 2014.

**This modification is subsequent of this Development Consent.**

DA2013/1501

This application for demolition works at No. 14 and No. 16 Oaks Avenue, Dee Why was granted approval on 21 January 2014.

DA2007/1249

Stage One Development Application for a concept mixed use development comprising residential, retail and commercial uses, including 3 storey street front buildings to Oaks Avenue and part of Howard Avenue, an 8 storey commercial office building fronting Pittwater Road, 7 storey mid-rise residential buildings, two residential tower buildings (one of part 15/part 18 storeys and one of part 14/part 17 storeys), a publicly accessible "town square" and north-south pedestrian link, 5 levels of carparking (4 basement levels and 1 above ground level), a bus bay and vehicular access.

Approval was granted on 10 March 2009.

## **PROPOSED DEVELOPMENT IN DETAIL**

This application is seeking to amend the allowable noise levels in the development consent (DA2014/0805) granted for demolition. In this regard, it is proposed to alter Condition No. 3 (h) to increase the allowable noise level from 5dBA to 10dBA.

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 DA2014/0805, 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:

<b>Section 96(1A) - Other Modifications</b>	<b>Comments</b>
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 consent as originally granted was modified (if at all), and	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 DA2014/0805.
(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.	See discussion on "Public Exhibition" in this report.

### 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	None applicable.



Section 79C 'Matters for Consideration'	Comments
of any draft environmental planning instrument	
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&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 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 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 insurance requirements under the Home Building Act 1989. 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 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	(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 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 'Matters for Consideration'	Comments
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 process council is in receipt of 1 submission/s from:

Name:	Address:
Audio Clinic	NSW SIENA PERRY - TMTE NSW

The matters raised within the submissions are addressed as follows:

### Acoustic Impact

#### Comment:

The submission raised concern over the potential impacts of an increase in the allowable d(BA) during the demolition of the building and how this will impact on the Audio Clinic. Council's Environmental Investigations Officer has assessed the application and recommended that 5dB(A) should not be increased as this will be inconsistent with the requirements of the Industry Noise Policy. Accordingly, the concerns raised are concurred with and the noise levels will be maintained at 5dB(A).

### MEDIATION

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

### REFERRALS

Internal Referral Body	Comments
Environmental Investigations (Industrial)	Environmental Investigations has reviewed the modification and cannot support the increase of the noise levels from 5dB(A) to 10 dB(A), because that would be inconsistent with the Industrial Noise Policy, however Environmental Investigation would recommend that condition 3 be modified to reference the guidelines that cover noise created from construction noise and machinery.

### ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council

Policies have been considered in the merit assessment of this application.

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

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

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

Nil

### **Warringah Local 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

### **Warringah Development Control Plan**

#### Compliance Assessment

<b>Clause</b>	<b>Compliance with Requirements</b>	<b>Consistency Aims/Objectives</b>
A.5 Objectives	Yes	Yes
C8 Demolition and Construction	Yes	Yes
D3 Noise	Yes	Yes

#### Detailed Assessment

#### **D3 Noise**

Council's Environmental Investigations Officer has reviewed the proposal and has added conditions which can be found in the recommendations of this report.

#### **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. Mod2016/0041 for Modification of Development Consent DA2014/0805 granted for Demolition Works - Amend condition 3 to allow for amended construction noise levels on land at Lot 3 DP 307937,896 Pittwater Road, DEE WHY, Lot 1 DP 307937,896 Pittwater Road, DEE WHY, Lot A DP 416469,894 Pittwater Road, DEE WHY, Lot 1 DP 504212,892 Pittwater Road, DEE WHY, Lot 10 DP 231418,890 Pittwater Road, DEE WHY, Lot 11 DP 231418,888 Pittwater Road, DEE WHY, Lot A DP 339410,884 Pittwater Road, DEE WHY, Lot 7 DP 8172,9 Howard Avenue, DEE WHY, Lot 1 DP 209503,11 Howard Avenue, DEE WHY, Lot 1 DP 212382,15 Howard Avenue, DEE WHY, Lot 2 DP 212382,17 Howard Avenue, DEE WHY, Lot 3 DP 212382,28 Oaks Avenue, DEE WHY, subject to the conditions printed below:

### **Modify Condition 3. General Requirements (Demolition) to read as follows:**

(a) Unless authorised by Council:

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

(b) At all times after the submission a Notice of Commencement to Council, a copy of the Development Consent is to remain onsite at all times until completion of demolition works. The consent shall be available for perusal of any Authorised Officer.

(c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

(d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

(e) The applicant shall bear the cost of all works that occur on Council's property.

(f) No building, demolition, excavation or material of any nature shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(g) Demolition materials and builders' wastes are to be removed to approved waste/recycling

(h) Any noise from the premise shall not exceed more than 5dB(A) above the background level when measured from within any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy and any appropriate guidelines or legislation to prevent offensive noise.

(i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community. (DACPLB10)

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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**Lashta Haidari, Senior Development Planner**

The application is determined under the delegated authority of:

**Steven Findlay, Development Assessment Manager**













**ATTACHMENT A**

No notification plan recorded.

**ATTACHMENT B**

No notification map.

**ATTACHMENT C**

<b>Reference Number</b>	<b>Document</b>	<b>Date</b>
 2016/057764	Report - Construction Noise and Vibration Management Plan	18/02/2016
 2016/057755	Amendment of Condition 3 of DA2014/0805	18/02/2016
 MOD2016/0041	896 Pittwater Road DEE WHY NSW 2099 - Section 96 Modifications - Section 96 (1a) Minor Environmental Impact	19/02/2016
 2016/054683	DA Acknowledgement Letter - Karimbla Properties (No41) Pty Ltd	19/02/2016
 2016/057733	Modification Application Form	23/02/2016
 2016/057741	Applicant Details	23/02/2016
 2016/072902	Environmental Investigations (Industrial) - Assessment Referral - Mod2016/0041 - 9 Howard Avenue DEE WHY NSW 2099	07/03/2016
 2016/072107	File Cover	07/03/2016
 2016/075481	SEA Map Notification	09/03/2016
 2016/076157	Notification Letter - 2340 posted 11/03/2016	10/03/2016
 2016/098355	submission - Audio Clinic	29/03/2016
 2016/100894	Environmental Investigations Referral Response - industrial use	31/03/2016