

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2020/0296
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Responsible Officer:	Alex Keller
Land to be developed (Address):	Lot 1 SP 23069, 1 / 1 Moore Road FRESHWATER NSW 2096
Proposed Development:	Modification of Development Consent DA2019/0278 granted for use of premises as an indoor recreation facility
Zoning:	Warringah LEP2011 - Land zoned B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Harrington Freshwater Pty Ltd
Applicant:	Skywood Climbing Pty Ltd

Application Lodged:	09/07/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	21/07/2020 to 04/08/2020
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The proposal involves a modification of consent (as detailed in the SEE and with the submitted plans), summarised as follows:

The provision of a single coffee machine and provision of coffee for patrons of the Climbing Centre is a minor ancillary and incidental use within the premises. It is not intended to set up a food and drink premises like a café or restaurant to serve food and drink in a sit-down service or similar. It is to provide coffee to patrons in a similar manner that cool drinks are available. A cup of coffee will be able to be purchased from the main reception area, similar to that available at other indoor recreation centres like a gym, squash centre or the like. It is to serve patrons of the Centre only, providing a level of social support and interaction within the centre. Cold drinks will be available from a refrigerator or vending machine.

The inclusion of a desktop coffee / drinks counter service for clients and staff within the climbing gym.

This comprises a small counter top coffee machine and ancillary fittings and fixtures.



No other changes are proposed to the physical / structural elements of the use or hours of operation / staff.

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

Property Description:	Lot 1 SP 23069 , 1 / 1 Moore Road FRESHWATER NSW 2096
Detailed Site Description:	<p>The subject site consists of one (1) strata allotment located on the southern side of Moore Road, the eastern side of Albert Street and northern side of Moore Lane in Freshwater.</p> <p>The site is generally regular in shape with a frontage of 31.5 metres (m) along Moore Road and a depth of 52m. The site has a surveyed area of 1,897.6 square metres (sqm). The subject tenancy is Lot 1 within the strata plan and is located on the northern side of the building fronting Moore Road. The tenancy has a total floor area of 805.4 sqm.</p> <p>The site is located within the B2 Local Centre zone and accommodates three-storey commercial building with basement and rooftop car parking.</p> <p>The site falls approx. 4m from the southern boundary towards the north. The site is generally free of natural vegetation (except for street trees / planter box style landscaping)</p> <p>The use of the premises for "bouldering" centre / climbing gym is now operating.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by commercial developments, mixed-use developments, shops, cafe's, restaurants and low and medium density residential developments.</p>

Map:



SITE HISTORY

The land has been used for commercial purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

Development Application No.DA2016/0809 for Alterations and Additions to the existing building and use of part of the the premises (Unit 1) as a shop and cafe was approved on 27/10/2016 by Council staff under delegated authority.

Development Application No.DA2019/0278 for change of use of premises as an indoor recreation facility was approved by Council on 12.9.2019. The approved use is now operating as a climbing gym ("bouldering").



1/1 More Road - "Skywood Climbing" Indoor recreation facility.

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 DA2019/0728, 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
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	Yes

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 for the following reasons:
(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 DA2019/0728 for the following reasons:</p> <ul style="list-style-type: none"> • The use of the facility remains unchanged for an indoor recreation facility • The inclusion of limited hot or cold refreshment drinks is appropriate for the use and available for staff also. • No change is proposed to the floor plan, hours of operation or ancillary operations. • No change to carparking or signage is required. • Considerations of the reasons for approval of the original development consent have been made including conditions. • The coffee machine is a single serve benchtop machine and the service counter includes sink, washing and hygiene capability. <p>The reasons provided by the applicant that the options to serve customers / staff coffee or a refreshment drink is appropriate for the use and other indoor recreation facilities. The use of disposable or washable cutlery, cups and the like is managed by trained staff.</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 control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and</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.
(d) it has considered any submissions	

Section 4.55(1A) - Other Modifications	Comments
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 an 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	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. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the commercial use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 applies to this proposal.
Section 4.15 (1) (a)(iia) – 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&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 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 the modification application.</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>Clause 98 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>Clause 98 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 (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 modified development on the natural and built environment are addressed under the Warringah Development Control Plan 2011 section in this report.</p> <p>(ii) Social Impact The proposed modification of the development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed modification of 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 modification of consent in that it is consistent with the use (indoor recreation facility) to have limited refreshments such as hot or cold drinks available for customers. The inclusion of the ability to serve small refreshments are incidental and ancillary to the principal use as an indoor recreation facility.
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. Previous submissions and the original development consent assessment have been reviewed as part of the consideration of the modification of consent.
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.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 21/07/2020 to 04/08/2020 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 of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Food Premises, Skin Pen.)	<p>General Comments</p> <p>The applicant advises that: The provision of a single coffee machine and provision of coffee for patrons of the Climbing Centre is a minor ancillary and incidental use within the premises. It is not intended to set up a food and drink premises like a café or restaurant to serve food and drink in a sit-down service or similar. It is to provide coffee to patrons in a similar manner that cool drinks are available.</p> <p>A cup of coffee will be able to be purchased from the main reception area, similar to that available at other indoor recreation centres like a gym, squash centre or the like. It is to serve patrons of the Centre only, providing a level of social support and interaction within the centre. Cold drinks will be available from a refrigerator or vending machine.</p> <p>Our only concern is if the cup can be refilled (unwashed by the customer) and touch the dispenser/nozzle this would be unsatisfactory. (Covid-19 and food safety issue) We require clarification by the applicant and also brief details on cleaning and servicing of the machine especially the milk supply, and issue of stirring spoons/sugar and the like .</p> <p>Amended comments 03/11/2020</p> <p>Condition provided for permissible food and beverages to be sold at the premise and minimum fit out requirements. Discussion and site inspection resolved / clarified matters above.</p> <p>Recommendation</p> <p>Approval - Subject to condition</p> <p><u>Planning Comment:</u> Recommend condition included with appropriate wording to ensure compliance with current operations.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment,

many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

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

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

SEPP 55 - Remediation of Land

The requirement of the SEPP were considered and addressed with the original development application. The modification proposed does not affect the considerations made under SEPP 55 or the Draft SEPP 55. Therefore, the modification is satisfactory with regard to the aims and objectives of the SEPP.

SEPP (Infrastructure) 2007

The requirement of SEPP (Infrastructure) 2007 were considered and addressed with the original development application. The modification proposed does not affect the considerations made under SEPP (Infrastructure) 2007. Therefore, the modification is satisfactory with regard to the aims and objectives of the SEPP and relevant Service Infrastructure Authorities.

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

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	11.0m	Internal works only. No change to existing building height	No change	N/A	Not applicable

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	N/A
5.3 Development near zone boundaries	Yes

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
G5-2 Number of storeys	3	Internal works only No change to existing built form	No change	N/A
G5-10 Front Boundary Setbacks	6.5m	Internal works only No change to existing built form	No change	N/A
G5-11 Rear Boundary Setbacks	6.0m	Internal works only No change to existing built form	No change	N/A

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B7 Front Boundary Setbacks	N/A	N/A
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C9 Waste Management	Yes	Yes
D3 Noise	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D18 Accessibility and Adaptability	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
E10 Landslip Risk	Yes	Yes
F1 Local and Neighbourhood Centres	Yes	Yes
G5 Freshwater Village	Yes	Yes
1. Built form in Freshwater	Yes	Yes
2. Number of storeys	Yes	Yes
3. Street activation	Yes	Yes
4. Street facades and shopfront design	Yes	Yes
5. Access and loading	Yes	Yes
6. Lighting	Yes	Yes
7. Safety and security	Yes	Yes
8. Signage	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
9. Awnings	Yes	Yes
10. Front setback	Yes	Yes
11. Side and rear setbacks	Yes	Yes
13. Roofs and building form	Yes	Yes
14. Building massing	Yes	Yes
15. Building sustainability	Yes	Yes
16. Materials and colours	Yes	Yes
17. Active travel links	Yes	Yes

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect 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 Section 7.12 Contributions Plan 2019

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. Mod2020/0296 for Modification of Development Consent DA2019/0278 granted for use of premises as an indoor recreation facility on land at Lot 1 SP 23069, 1 / 1 Moore Road, FRESHWATER, subject to the conditions printed below:

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

"1A. Modification of Consent - Approved Plans and supporting Documentation

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
Dwg 7 Proposed Ground Floor Plan	May 2020	Skywood Climbing

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

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

B. Add Condition No.10A Food & Drink Handling / Hygiene, to read as follows:

"10A. Food and Drink Handling / Hygiene

The approved use is permitted for a limited food and drink service for staff and customers within the only.

i) Only pre-packaged (non-potentially hazardous) food (snacks) and hot or cold beverages is permitted to be served to customers.

ii) A dedicated hand wash basin, that is separate from the wash up sink, is to be installed within 5 metres of the food and beverage preparation area with warm running water, available soap and single use paper hand towel.

iii) The premises is to be registered as a fixed food business site with Northern Beaches Council.

Reason: To ensure that the food premise complies with the design construction, registration and fit-out requirements."

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

Signed



Alex Keller, Principal Planner

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



Anna Williams, Manager Development Assessments