

28 October 2015

Luke Perry  
Development Assessment Officer  
Warringah Council  
725 Warringah Road  
DEE WHY NSW 2099

Dear Luke,

## DA2008/1742 – Warringah Mall, Section 96 (2) Application

### 1 Introduction

This letter has been prepared to accompany a Section 96 (2) application lodged on behalf of Scentre Group to modify consent DA2008/1742 relating to Warringah Mall, 145 Old Pittwater Road, Brookvale.

It provides a description of the proposed modification and addresses the relevant matters of consideration under Section 96 (2) and Section 79C of the *Environmental Planning and Assessment Act 1979* (the Act).

This application seeks the removal of forty one (41) trees within the site along the Condamine Street/Pittwater Road frontage that were shown to be retained as part of DA2008/1742.

This Section 96 (2) modification application should be read in conjunction with the following supporting information:

- Proposed Modification to Condition Wording for DA2008/1742 (**Appendix A**);
- Landscape Statement and Amended Landscape Drawings, prepared by The Dem Group (**Appendix B**);
- Arboricultural Assessment Report, prepared by Jacksons Nature Works dated 30 September 2015 (**Appendix C**); and
- Sydney Water Plan Package, dated 31 July 2015 (**Appendix D**).

The proposal has been assessed against the relevant provisions of the Act and will have no significant environmental impact. The modification will not have any long term impacts on the bulk, scale or appearance of the approved development and is substantially the same development as that approved under DA2008/1742.

## 2 The Approved Development

In May 2012, Warringah Council issued development consent 2008/1742 for the construction of stormwater upgrade works for Warringah Mall and watercourse bank stabilisation works. This augmented stormwater system was designed to reduce the extent of overland flow through the shopping centre site during major storm events as well as reduce the flood impacts for adjacent public and private land.

The conditions of consent for DA2008/1742 included the retention of the trees on the subject site along the Condamine Street/Pittwater Road frontage as per the following landscape drawings:

- LA SW 0502 rev. no. a04 'Landscape Stormwater Plan sheet 2 of 3'; and
- LA SW 0503 rev. no. a04 'Landscape Stormwater Plan sheet 3 of 3'

These trees are identified in the Arboricultural Assessment Report at **Appendix B** as the following:

- *Casuarina cunninghamiana* – **Trees 15, 18, 19 & 20;**
- *Eucalyptus robusta* – **Trees 21, 24, 30, 39, 42, 46, 47, 48, 49;**
- *Melaleuca quinquenervia* – **Trees 22, 23, 25, 26, 27, 28, 29, 31, 32, 33, 34, 35, 36, 37, 38, 40, 41, 45, 53, 54, 55, 56, 57 & 58;**
- *Corymbia maculata* – **Trees 43 & 44;** and
- *Melaleuca armillaris* – **Trees 51 & 52**

**Note:** Tree no. 50, which was also identified for retention as part of DA 2008/1742 has been listed as 'gone' within the latest Arboricultural Assessment Report provided at **Appendix C**.

A subsequent modification application MOD 2014/0285 proposed an alternative design to modify the culvert design underneath Condamine Street where it connects into the existing drainage infrastructure.

The proposed modifications, approved in May 2015, enabled the stormwater augmentation works to continue while avoiding anticipated major traffic disruptions to Condamine Street and impacts on the operation of the golf course for a significant period of time.

The approved stormwater augmentation works (as modified) necessitate the diversion of existing sewer infrastructure on the subject site as required by Sydney Water. Refer to the Sydney Water Plan Package at **Appendix D** for further details.

### 3 Proposed Modification

This application seeks to remove the forty one (41) trees listed above which were conditioned to be retained as per DA2008/1742.

The location of these trees are shown in detail within the Landscape Plan at **Appendix B** and Arborist Report at **Appendix C**.

The removal of these trees will enable the installation of a diverted sewer as required by Sydney Water in relation to the stormwater augmentation works under DA2008/1742 (as modified).

After the site works are completed, it is proposed to plant ten (10) medium to large native trees, thirteen (13) shrub species up to 2 metres high, and eighteen (18) ground cover/climbers and shade tolerant plants in this location as replacement for the trees to be removed as part of this modification application. Refer to the amended Landscape Statement and Plans attached in **Appendix B** for further details.

The trees are to be removed by a licensed contractor approved, and the tree removal works will be carried out by an experienced tree surgeon in accordance with NSW WorkCover Code of Practice for Amenity Tree Industry (1998), with an AQF Level 5 Project Arborist to be engaged to supervise the building works and certify compliance with all Tree Protection Measures.

It is proposed to amend the wording of the following conditions of DA2008/1742 to reflect the proposed modification:

- **Condition 3:** *Approved Plans and Supporting Documentation;*
- **Condition 48:** *Tree Condition;*
- **Condition 55:** *Required Planting*

The specific word changes sought for each condition is provided in **Appendix A**.

## 4 Section 96 (2) Assessment

The proposed modification is sought under Section 96 (2) of the Act. Council as the consent authority may approve an application to modify a development consent where it is satisfied that the proposed modification will satisfy the provisions of Section 96 (2). The proposed modification is assessed against these provisions below.

### 4.1 SUBSTANTIALLY THE SAME DEVELOPMENT

- In accordance with Section 96 (2) (a) of the Act, the proposed modification will result in substantially the same development as that approved under DA2008/1742 because the forty one (41) existing trees to be removed as part of this application will be substituted by replacement landscaping after the proposed works are completed. The proposed replacement landscaping will comprise ten (10) medium to large native trees, thirteen (13) shrub species up to 2 metres high, and eighteen (18) ground cover/climbers and shade tolerant plants.

The coordinated landscape design will minimise any long term visual impacts from the scale and appearance of the shopping centre development when viewed from the public domain along Condamine Street/Pittwater Road.

The proposed landscaping will respond to the context of the site, providing clear sightlines to improve safety and way finding legibility, while softening the appearance of the shopping centre when viewed from the public domain along Condamine Street/Pittwater Road, and provide visual interest and amenity along this street frontage.

In addition:

- The proposed modification does not increase the Gross Lettable Floor Area (GLFA) of the shopping centre or result in any amendments to stormwater augmentation or car parking spaces;
- The proposed modification will not alter the approved pedestrian and vehicle access arrangements to the site; and
- The proposed modification will result in the overall scale of the Stage 1 development remaining unchanged.

### 4.2 NOTIFICATION PROCESS

Under Part A.7 of the *Warringah Development Control Plan 2011*, Council have discretion to determine whether notification of applications made under Section 96(2) is required.

### 4.3 CONSIDERATION OF SUBMISSIONS

In accordance with Section 96 (2) (d) of the Act, the applicant will consider and respond to any relevant submissions made concerning the proposed modification within the period prescribed by the *Warringah Development Control Plan 2011*.

## 5 Section 79C Assessment

### 5.1 ENVIRONMENTAL PLANNING INSTRUMENT AND DEVELOPMENT CONTROL PLAN

#### **Warringah Local Environmental Plan 2011**

The proposal is consistent with the provisions of the *Warringah Local Environmental Plan 2011*.

Under the WLEP 2011, the location of the existing trees on the subject site is zoned B3 Commercial Core. The objectives of this zone include:

- *To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.*
- *To encourage appropriate employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To recognise and support the role of Warringah Mall as a retail centre of sub-regional significance.*

The proposed tree removal is necessitated by sewer diversion associated with the stormwater works approved as part of DA2008/1742 (as modified by MOD 2013/0825 and MOD2013/0823). These works are being undertaken to resolve previous flooding issues both within the shopping centre and surrounding car parking areas, and will ensure the continued functioning of Warringah Mall as a retail centre of sub-regional significance providing a wide range of retail and entertainment uses that serve the needs of the local and wider community.

The proposed modification to remove forty one (41) trees is permissible with consent within land zoned B3 Commercial Core.

'Clause 5.9 Preservation of trees or vegetation' of Warringah LEP 2011 provides that:

*"(2) this clause applies to species or kinds of trees or other vegetation that are prescribed for the purposes of this clause by a development control plan made by the Council.*

**Note.** *A development control plan may prescribe the trees or other vegetation to which this clause applies by reference to species, size, location or other manner.*

*(3) A person must not ringbark, cut down, top, lop, remove, injure or wilfully destroy any tree or other vegetation to which any such development control plan applies without the authority conferred by:*

- (a) Development consent, or*
- (b) A permit granted by Council"*

Accordingly, this modification application seeks consent from Council for the removal of forty one (41) existing trees along Condamine Street/Pittwater Road as described in the 'Arboricultural Assessment Report' provided in **Appendix C**.

## Warringah Development Control Plan 2011

The proposal is generally consistent with the provisions of the *Warringah Development Control Plan 2011*. **Table 1** below assesses the proposed modification against the relevant provisions of the Warringah DCP 2011.

TABLE 1 – WARRINGAH DCP 2011 ASSESSMENT

RELEVANT WARRINGAH DCP 2011 PROVISION	COMMENT
<p><b>Built Form - Building Setbacks and Street Frontages</b></p> <p><b>Corner of Condamine Street and Old Pittwater Road</b></p> <p>The existing mature trees along the eastern boundary of the site adjoining Condamine Street are to be retained.</p> <p><b>Pittwater Road</b></p> <p>“The built form is to be setback from the street to allow for the provision of a soft landscaped strip to soften and screen non-active building facades.”</p>	<ul style="list-style-type: none"> <li>▪ This modification application proposes to remove the mature trees along the eastern boundary of the site adjoining Condamine Street. This is necessitated by the Sydney Water sewer diversion works relating to the stormwater works approved under DA 2008/1742 as modified by MOD 2014 0285 and MOD 2014 0283. The proposed replacement landscaping and planting in this location after completion of works will adequately mitigate any long term public domain and visual impacts of the loss of the existing trees. Refer to the Landscape Statement at <b>Appendix B</b> for further details.</li> <li>▪ The proposed landscaping will feature planting of various heights including trees that will reach 6-20 metres at maturity, shrubs between 0.8 m to 2 m, and ground covers all below a metre. As described in the Landscape Statement, the proposed planting and landscaping will form the soft landscaped strip along Pittwater Road as required by this section.</li> </ul>
<p><b>Amenity - Landscaping</b></p> <p><b>Objectives</b></p> <ul style="list-style-type: none"> <li>▪ To allow for existing landscaping to be retained and enhanced.</li> <li>▪ To create landscaping zones along the eastern boundary of the site adjoining Pittwater Road and Condamine Street to soften views to the site.</li> <li>▪ To ensure landscaping is integrated into the design of development.</li> <li>▪ To ensure landscaping is in scale with and provides for the softening and screening of the building form.</li> <li>▪ To ensure landscaping provides a high quality aesthetic.</li> </ul>	<ul style="list-style-type: none"> <li>▪ It is proposed to remove some existing landscaping at the Warringah Mall site. However, the proposed landscaping and replanting will achieve the objectives of this section of the DCP, by creating a landscaped buffer between Condamine Street/Pittwater Road and the shopping centre development within the site.</li> </ul>

RELEVANT WARRINGAH DCP 2011 PROVISION	COMMENT
<p><b>Requirements</b></p> <p>20. Landscaping is to be retained and enhanced and provided generally in the zones shown in Figure 8.</p> <p>21. The existing mature landscaping at the junction of Pittwater Road/Condamine Street is to be retained where practical and functional for the future design of this precinct. An illustrative example of possible future development outcomes at this location is shown at Figure 9.</p> <p>22. New development along Condamine Street and Pittwater Road is to incorporate landscaping that screens or softens non-active facades or building elements.</p> <p>23. Recycled water or harvested rainwater is to be used, where possible, to irrigate new landscaped areas.</p> <p>24. Water efficient plants and/or, locally indigenous vegetation should be used to minimise water consumption.</p>	<ul style="list-style-type: none"> <li>▪ As discussed above, the proposed modification will remove the existing mature landscaping along portions of Condamine Street/Pittwater Road. But it is anticipated that the replacement planting and landscaping as described in the Landscape Plans and the Landscape Statement at <b>Appendix B</b> will adequately mitigate any long term impacts of the proposed modification.</li> <li>▪ See above</li> <li>▪ The propose replacement landscaping will feature planting of various heights that will soften the view of the shopping centre development when viewed from the public domain along Condamine Street and Pittwater Road.</li> <li>▪ The proposed planting will include indigenous species that will be low maintenance and low water demand.</li> </ul>
<p><b>Safety and Security</b></p> <p><b>Requirements</b></p> <p>33. Development is to be designed to incorporate and/or enhance opportunities for effective natural surveillance by providing clear sight lines between public and private places, installation of effective lighting particularly in public spaces and carparks, and the appropriate landscaping of public areas.</p> <p>35. New development is to be designed to remove any opportunities for the concealment of crime.</p> <p>36. The incorporation of crime prevention measures in the design of buildings and spaces is not to detract from the quality of the urban design of the development and the streetscape.</p>	<ul style="list-style-type: none"> <li>▪ As described in the Landscape Statement at <b>Appendix B</b>, the proposed planting will feature tall clean stemmed trees, along with banding of low shrubs and ground covers to maintain clear sight lines into the site to ensure effective natural surveillance to and from the site.</li> </ul>

## 5.2 LIKELY IMPACTS

The removal of these trees will enable the installation of a diverted sewer as required by Sydney Water in relation to the stormwater augmentation works approved under DA2008/1742 (as modified). Refer to the Sydney Water Plan Package at **Appendix D** for further details.

The Arboricultural Assessment report at **Appendix C** has assessed the trees proposed to be removed against the Useful Life Expectancy (ULE) rating and found that only a small proportion of trees to be removed have at least a medium ULE and are in good health:

- Six (6) trees (trees no. 18, 34, 42, 51, 52, and 54) have been identified as category '4' – Trees that should be removed within the next 5 years;
- Nine (9) trees (trees no. 15, 20, 23, 24, 25, 29, 30, 31, and 40) have been identified under category '3' as trees with a short ULE of 5-15 years;
- Nineteen (19) trees (trees no. 21, 22, 26, 27, 32, 33, 35, 36, 37, 38, 39, 41, 43, 45, 53, 55, 56, 57, and 58) have been identified as '2D' – Medium ULE trees that require remedial tree care to make suitable for retention;
- One (1) tree (tree no. 49) has been identified as '2C' – trees that could live for more than 40 years but may be removed to provide space for new planting;
- Six (6) trees (trees no. 19, 28, 44, 46, 47, and 48) have been identified as trees that have a medium ULE and are in good health.

Notably, none of the trees have been identified as having a ULE rating of '1' signifying 'trees that appear to be retainable at the time of assessment for more than 40 years with an acceptable level of risk.

In addition, while the proposed modification will result in the loss of forty one (41) trees along Condamine Street/Pittwater Road, the amenity impact of this removal will be temporary in nature. It is anticipated that the planting of ten (10) medium to large native trees, thirteen (13) shrubs, and eighteen (18) ground cover/climbers in this location after the site works are completed will mitigate any amenity or environmental impacts associated with the proposed modification application.

As addressed in Section 5, the proposed replacement landscaping will be generally consistent with "*Part G4 Warringah Mall*" of the Warringah DCP.

Accordingly, it is considered that the proposed modification will have minimal amenity and environmental impact on the surrounding land uses and the public domain.

## 5.3 SUITABILITY OF THE SITE

The proposed modification does not change the suitability of the site for the approved development.

## 5.4 PUBLIC INTEREST

DA2008/1742 approved stormwater works to resolve previous flooding issues within the shopping centre and surrounding car parking areas, as well as adjacent public and private land. This consent was modified by MOD 2014/0285 to alter the design of the proposed stormwater culverts to avoid previously anticipated major traffic disruptions to Condamine Street and impacts on the operation of the golf course to the south east of the site for a significant period of time.



The proposed tree removal the subject of this modification application is necessitated by sewer diversion associated with the stormwater works approved as part of DA2008/1742 as modified by MOD 2014/0285.

The proposed tree removal is ultimately in the public interest as it will allow the required stormwater augmentation works and associated sewer diversion works to go ahead.

While the proposed modification application will result in the loss of the existing tree planting that was previously conditioned to be retained, it will replace these trees with formalised landscaping featuring trees, shrubs and ground covers ranging in height from 0.3 m to 20 m. The proposed landscaping is in keeping with the design intent and provisions of the *Part G4 Warringah Mall* of the Warringah DCP 2011, including requirements for soft landscaping within the setback zone along Condamine Street/Pittwater Road, safety and security, and landscaping provisions.

## 6 Conclusion

Having regard to each of the matters considered above, the proposed modification is considered to be reasonable and appropriate. The proposed modification results in substantially the same development as that approved under DA 2008/1742 (as previously modified), satisfies the requirements of Section 96 (2) and Section 79C of the Act, and will not result in any unreasonable impacts.

Based on the above, we conclude that the proposed modification should be approved pursuant to the provisions of Section 96 (2) of the Act.

If you have any questions with regard to the application, please call the undersigned on (02) 8233 9900.

Yours sincerely,



Tim Blythe  
Regional Director, Planning

## Appendix A

▪ **Condition 3. Approved Plans and Supporting Documentation**

**Condition 3** will need to be modified to include the amended landscape plans attached in **Appendix B** as follows:

<b>Drawing number</b>	<b>Dated</b>	<b>Prepared by</b>
La sw 0501 Revision a04	25.06.10	DEM
La sw 0502 Revision <del>a04</del> a05	<del>25.06.10</del> 01.10.15	DEM
La sw 0503 Revision <del>a04</del> a05	<del>25.06.10</del> 01.10.15	DEM
La sw 2401 Revision a04	25.06.10	DEM
La sw 2402 Revision a04	25.06.10	DEM
La sw 2403 Revision a01	25.06.10	DEM

▪ **Condition 48. Tree Condition**

Only those trees nominated for removal in the

- Tree Report – Warringah Mall Brookvale Development dated November 2008 prepared by Treescan, shown on the bank stabilisation works plans and described in the Environmental Management Plan, **and**
- **Arboricultural Assessment Report dated 30 September 2015 prepared by Jacksons Nature Works**

are to be removed.

During the construction period the applicant is responsible for ensuring all protected trees are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to. In this regard, all protected plants on this site shall not exhibit:

- A general decline in health and vigour;
- Damaged, crushed or dying roots due to poor pruning techniques;
- More than 10% loss or dieback of roots, branches and foliage;
- Mechanical damage or bruising of bark and timber of roots, trunk and branches;
- Yellowing of foliage or a thinning of the canopy untypical of its species;
- An increase in the amount of deadwood not associated with normal growth;
- An increase in kino or gum exudation;
- Inappropriate increases in epicormics growth that may indicate that the plants are in a stressed condition;

- (i) *Branch drop, torn branches and stripped bark not associated with natural climatic conditions.*

*Any mitigating measures and recommendations required by the Arborist are to be implemented.*

*Tree protection measures are to comply with those specified in the*

- *Tree Report – Warringah Mall Brookvale Development dated November 2008 prepared by Treescan, and*
- *Arboricultural Assessment Report dated 30 September 2015 prepared by Jacksons Nature Works*

*The owner of the adjoining allotment of land is not liable for the cost of work carried out for the purposes of this clause.*

*Details demonstrating compliance are to be submitted to the satisfaction of Principal Certifying Authority.*

**Reason:** *Protection of Trees (DACLAE03)*

▪ **Condition 55. Required Planting**

*Tree planting is to be implemented as indicated on the approved plans and in the Environmental Management Plan, as amended by following Landscape Plans detailed below:*

<i>No of replacement trees required</i>	<i>Species</i>	<i>Location</i>
<i>In accordance with the approved Landscape Plans:</i>	<i>In accordance with the approved Landscape Plans:</i>	<i>In accordance with the approved Landscape Plans:</i>
<i>La sw 0502 Revision rev. no. a05, dated 01.10.15, by DEM; and</i>	<i>La sw 0502 Revision rev. no. a05, dated 01.10.15, by DEM; and</i>	<i>La sw 0502 Revision rev. no. a05, dated 01.10.15, by DEM; and</i>
<i>La sw 0503 Revision rev. no. a05, 01.10.15, by DEM</i>	<i>La sw 0503 Revision rev. no. a05, 01.10.15, by DEM</i>	<i>La sw 0503 Revision rev. no. a05, 01.10.15, by DEM</i>

*Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim/final Occupation Certificate.*

**Reason:** *To maintain environmental amenity. (DACLAF01)*