

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2013/0038
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Responsible Officer	David Auster
Land to be developed (Address):	Lot 1 DP 1141128 , 9999 Pittwater Road BROOKVALE NSW 2100 Lot 2 DP 1141128 , 9999 Pittwater Road BROOKVALE NSW 2100
Proposed Development:	Modification of Development Consent DA2011/0247 granted for Construction of a Child Care Centre and signage.
Zoning:	LEP - Land zoned RE1 Public Recreation LEP - Land zoned RE1 Public Recreation
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Warringah Council
Land and Environment Court Action:	No
Owner:	Warringah Council
Applicant:	Warringah Council

Application lodged:	01/03/2013
Application Type	Local
State Reporting Category	Commercial/Retail/Office
Notified:	11/03/2013 to 26/03/2013
Advertised	Not Advertised in accordance with A.7 of WDCP
Submissions	0

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

Environmental Planning and Assessment Act 1979 - Section 96(1A) -
Warringah Development Control Plan - D13 Front Fences and Front Walls

RECOMMENDATION

Approval

SITE DESCRIPTION

Property Description:	<p>Lot 1 DP 1141128 , 9999 Pittwater Road BROOKVALE NSW 2100 Lot 2 DP 1141128 , 9999 Pittwater Road BROOKVALE NSW 2100</p>
Detailed Site Description:	<p>The subject site is legally described as Lots 1 and 2 within DP 1141128 known as 9999 Pittwater Road, Brookvale. The subject site is located on the south-west corner of the intersection of Federal Parade and Pine Ave. Access to the site is via an established and sealed driveway over Lot 1 in DP 651395, No. 9998 Pittwater Road, Brookvale.</p> <p>The consolidated Lots will have a combined site area of 831.3m² and will have frontage of 335.53m to Federal Parade and 21.3m to Pine Ave. The subject site (i.e. both Lots 1 and 2) are currently occupied by a single storey building which was formerly used as Brookvale Park Caretaker's cottage. Off - street parking is located for the subject site within the road reserve adjacent to the eastern boundary of the site.</p> <p>The subject site is located in an area incorporating a mix of residential, community and commercial development. Brookvale Park contains both a neighbourhood park and Brookvale Sportsground.</p> <p>The subject site is zoned RE1 Public Recreation and the Brookvale Park Plan of Management was adopted to reflect the manner in which the subject site can be developed.</p>

Map:



SITE HISTORY

DA2011/0247 was approved by Council on 15 June 2011 and gave consent for 'Construction of a Child Care Centre and Signage'.

The centre includes a 66.48m² play room, cot room, entry foyer, lounge, children's bathroom, standard bathroom, co-ordinator's office and meeting room and three (3) store rooms, stair and ramp access to the entry foyer and a covered deck and outdoor area on northern side of the building.

The development also includes the provision of eight (8) car parking spaces on neighbouring Lot 1 in DP 651395, No. 9998 Pittwater Road situated immediately to the south.

The centre is to be used on an occasional basis and will accommodate 20 children and five (5) staff. The centre is approved to generally operate between 7.30am to 7.30pm Monday to Saturday inclusive.

PROPOSED DEVELOPMENT IN DETAIL

The proposal involves the following modifications:

- Inclusion of a mechanically operable pergola. This is to replace part of the metal roof of the covered deck with a mechanically operable pergola to enable northern sun to shine into the childrens playroom.
- Internal layout change. This is to meet with the current needs of the Childcare Centre by introducing new internal partition walls and operable walls to the cot room, playroom & office, and making corresponding adjustment of wall alignments.

- Extension of brickwork retaining wall to correct a discrepancy in level changes. This is to extend the eastern brickwork retaining wall of the outdoor playground to include the north-east corner.

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 DA2011/0247 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:

Section 96(1A)	Comments
Section 96(1A) (a) – Is the Modification to Consent of Minimal Environmental Impact?	Yes The modification, as proposed in this application, is considered to be of minimal environmental impact.
Section 96(1A) (b) – Would the consent as proposed to be modified be substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was previously modified?	Yes The modification, as proposed in this application, would result in a development which is substantially the same as that approved in the original Notice of Determination.
Section 96(1A) (c) & (d) – Public Exhibition of subject application / submission	The application was notified under the provisions Clause 90(1) of the EP&A Regulations 2000.
Section 96 (3) - Consideration such of the matters referred to in section 79C(1) as are of relevance to the development the subject of the application	See discussion on “Matters for Consideration under Section 79C” 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:

Section 79C 'Matters for Consideration'	Comments
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 of any draft environmental planning instrument	None applicable.
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&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This Clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, 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&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of 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 matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This Clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of</p>

Section 79C 'Matters for Consideration'	Comments
	consent. Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This Clause is not relevant to this application.
Section 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 (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 of the application Council received no submissions.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
Natural Environment (Drainage Assets)	No comments or conditions for the proposed modification.
Parks, reserves, beaches, foreshore	Parks Reserves and Foreshores raises no objection to the proposal.
Traffic Engineer	This modification does not alter the parking, access or numbers for the childcare centre.

Internal Referral Body	Comments
	<p>The fundamental operation of the centre regarding traffic movements is the same as the initial Development.</p> <p>Traffic support the provision of the splay at the intersection of Federal Parade and Pine Avenue to improve sight distance at this intersection. This splay should not be altered or reduced as a result of this proposal.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

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

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for recreational purposes for a significant period of time with no prior land uses likely to cause contamination. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the proposed land use.

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

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

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Minimum subdivision lot size:	N/A	N/A	N/A	N/A	N/A
Height of Buildings:	8.5m	5.5m	5.5m	N/A	Yes
Rural Subdivision:	N/A	N/A	N/A	N/A	N/A
No Strata Plan or Community Title Subdivisions in certain rural and environmental zones:	N/A	N/A	N/A	N/A	N/A

Compliance Assessment

Clause	Compliance with Requirements
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
Wall height	7.2m	4.2m	No change	Yes
Minimum Floor to Ceiling Height	N/A	N/A	N/A	N/A
Number of storeys	N/A	N/A	N/A	N/A
Side Boundary Envelope	4m	Compliant	No change	Yes
Site Coverage	N/A	N/A	N/A	N/A
Side Boundary Setbacks	0.9m	1.5m - 2.07m (south)	No change No change	Yes

		2.7m (west)		
Front Boundary Setbacks	6.5m (primary) 3.5m (secondary)	6.3m (Federal Parade) 3.5m - 4.8m (Pine Avenue)	No change to either frontage. The inclusion of the retractable awning will increase the front setback of the roof to Federal Parade for the length of the awning when it is retracted. However when the awning is not retracted the setback of the roof will remain as approved.	Yes
Rear Boundary Setbacks	6m	N/A	N/A (corner allotment)	N/A
Foreshore Building Setback	N/A	N/A	N/A	Yes
National Parks Setback	N/A	N/A	N/A	Yes
Coastal Cliffs Setback	N/A	N/A	N/A	Yes
Main Roads Setback	N/A	N/A	N/A	Yes
Landscaped Open Space and Bushland Setting	40%	41%	No change	Yes

***Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example: $38/40 \times 100 = 95$ then $100 - 95 = 5\%$ variation)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
Non-Residential Development	Yes	Yes
D3 Noise	Yes	Yes
D5 Orientation and Energy Efficiency	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D13 Front Fences and Front Walls	No	Yes
D14 Site Facilities	Yes	Yes
D18 Accessibility	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
D23 Signs	N/A	N/A
E1 Private Property Tree Management	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

D13 Front Fences and Front Walls

The retaining wall in the north east corner of the site is to be extended and the 1.8m fence will be continued above to allow for a levelled play area for children. The overall height of the fence will be up to 2.8m at the highest point.

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To ensure that fencing, terracing and retaining walls are compatible with the existing streetscape character while creating visual interest in the public domain.*

Comment:

The modification to the approved 1.8m fence at the corner of the site will not significantly change the impact of the development on the streetscape. The fence and retaining wall are splayed to allow for sight lines for traffic and pedestrians at the intersection.

- *To encourage innovative design solutions to improve the urban environment.*

Comment:

The design is sufficiently innovative and will improve the urban environment.

- *To avoid a 'walled in' streetscape.*

Comment:

The fence and retaining wall are splayed and will not have the effect of 'walling in' the streetscape.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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.

Brookvale Park Plan of Management

The Plan of Management aims to provide a sound basis for the management of the Park, with Council working towards the fulfilment of the following vision:

“To develop and manage Brookvale Park in such a way that a harmonious balance is achieved in its use as both a regional sporting/event facility and neighbourhood park. This is to be attained through the ongoing involvement of the community and considering stakeholders needs.”

The following objectives aim to uphold, protect and enhance community values and address community needs, whilst integrating Council management processes in an ongoing planning framework. They adhere to the requirements of the Local Government Act and are consistent with Council’s objectives for the management of Community Land and other relevant planning policies.

- To develop and implement collaborative and effective decision making and management processes which involve relevant stakeholders and ensure that relevant interests and needs are taken into account.
- To develop Brookvale Park into an area which is open, accessible, attractive and inviting and which caters for both active and passive recreational pursuits.
- To develop the Brookvale Sportsground into a multi-purpose and high standard event facility which is strategically planned and managed and takes the needs of all the Park users and stakeholders into account?

- To formally acknowledge the history and culture of Brookvale Park and the important role it has played within our community since its establishment in 1911.
- To ensure an ongoing commitment to Warringah's environment through the development of effective and innovative practices to minimise the impact that Brookvale Park may have on the wider area.

The site of the approved childcare is referred to as 'the cottage' categorised as 'Park' under the POM and permits the use of the land for the purpose of a park or for a community facility. In accordance with the POM land categorised as 'Park' is land that is, or is proposed to be improved by landscaping, gardens or the provision of non-sporting equipment and facilities for use mainly for recreational, social, educational and cultural pursuits that do not unduly intrude on the peaceful enjoyment of the land by others.

The POM indicates that such uses could conceivably include a child care centre, environmental arts facility or museum. Section 6 'Authorised Development' of the POM details what development may take place on the site subject to a Development Consent. Table 5 in Section 6 of the POM lists all the existing building and facilities at Brookvale Park and notes the scale, intensity and purpose of any development which is expressly authorised for each building.

Table 5 of the POM indicates that the cottage building (which is approved to be demolished) was formerly known as a caretaker's residence and may be used to house a community focussed group. In relation to the cottage building, table 5 authorises an increase in the footprint of the building of up to 100% and the development of an upper level of the building (the building is not to be higher than 2 storeys). Table 5 authorises development of the cottage building for the purpose of improvements and developments for any future caretaker or a community focussed purposes such as childcare.

The proposed modifications do not change the proposed use as a child care centre. Nor do they change the footprint of the building or result in any significant changes which would cause the proposal to become inconsistent with the Plan of Management. The proposed modifications will therefore remain consistent with the POM.

Independent Review of Assessment Report

An independent review of the assessment report for the original application was undertaken by Sarah McNally from Watermark Planning as the site is owned and operated by Warringah Council. Due to the minor nature of the modifications proposed in this current application an independent review has not been considered necessary in this instance.

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.

The proposal has been assessed against the relevant matters for consideration under Section 79C of

the EP&A Act 1979. 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 specified in S.5(a)(i) and (ii) 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. Mod2013/0038 for Modification of Development Consent DA2011/0247 granted for Construction of a Child Care Centre and signage. on land at Lot 1 DP 1141128,9999 Pittwater Road, BROOKVALE, Lot 2 DP 1141128,9999 Pittwater Road, BROOKVALE, subject to the conditions printed below:

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

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Yellow highlighted modifications as shown on the following Modification Approved Plans:

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
M-001 Rev 3	28.08.12	JDH Architects
M-002 Rev 1	130201	JDH Architects
M-003 Rev 4	28.05.12	JDH Architects
M-004 Rev 2	Unreadable	JDH Architects
M-005 Rev 3	04.09.12	JDH Architects

b) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

c) 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. (DACPLB01)

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

David Auster, Development Assessment Officer

The application is determined under the delegated authority of:

Phil Lane, Acting Development Assessment Manager












ATTACHMENT A

Notification Plan	Title	Date
 2013/066148	Plans Notification	01/03/2013

ATTACHMENT B

Notification Document	Title	Date
 2013/073215	notification map	08/03/2013

ATTACHMENT C

Reference Number	Document	Date
 2013/065265	invoice for ram applications - Warringah Council	01/03/2013
 2013/065266	DA Acknowledgement Letter - Warringah Council	01/03/2013
 2013/066141	Applicant Details	01/03/2013
 2013/066144	Report Statement of Environmental Effects	01/03/2013
 2013/066148	Plans Notification	01/03/2013
 2013/066152	Plans Mod Master Set	01/03/2013
 2013/071676	File Cover	07/03/2013
 2013/071794	Referral to AUSGRID - SEPP - Infrastructure 2007	07/03/2013
 2013/073215	notification map	08/03/2013
 2013/079237	Traffic Engineer Referral Response	15/03/2013
 2013/086348	Parks, Reserves and Foreshores Referral Response	22/03/2013