

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2020/0575
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Responsible Officer:	Rebecca Englund
Land to be developed (Address):	Lot 3 DP 25050, 723 Warringah Road FORESTVILLE NSW 2087 Lot 2 DP 25050, 725 Warringah Road FORESTVILLE NSW 2087 Lot 1 DP 25050, 727 Warringah Road FORESTVILLE NSW 2087
Proposed Development:	Modification of Development Consent DA2018/0697 granted for demolition works and construction of a centre-based childcare facility for a maximum of 146 children
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Warringah Rd Developments Pty Ltd
Applicant:	Warringah Rd Developments Pty Ltd

Application Lodged:	09/11/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Other
Notified:	20/11/2020 to 04/12/2020
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The modification application seeks consent to modify the development consent to replace the requirement for a 1.5m wide footpath along the frontage of the site with a 3m wide shared path. The requirement for a 1.5m wide footpath is specified in Conditions 10(3) and 20, and is shown on the Approved Plans referenced in the development consent. As such, the modification application seeks to amend Conditions 10(3) and 20, and relies upon an amended 'proposed ground floor' plan.

The widened footpath is located partially within an area of land to be dedicated by Council, and is

subject to current VPA negotiations. Nothing in the subject modification alters the circumstances of the VPA.

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 3 DP 25050 , 723 Warringah Road FORESTVILLE NSW 2087 Lot 2 DP 25050 , 725 Warringah Road FORESTVILLE NSW 2087 Lot 1 DP 25050 , 727 Warringah Road FORESTVILLE NSW 2087
Detailed Site Description:	The site, in its consolidated form, has a combined frontage to Warringah Road of 40.675m with an eastern side boundary length of 94.38m, a western side boundary length of 99.675m, a rear boundary width of 40.385m and a total area of 3,933m ² . The site is located within the R2 Low Density Residential zone under the provisions of Warringah Local Environmental Plan 2011. Adjoining development in the locality consists of residential dwellings to the east, west and north and Forestville Public School adjacent the southern boundary of the site. Forestville Shopping Centre is located approximately 200m to the south-west of the site.

Map:



SITE HISTORY

Development Consent DA2018/0697 was issued by the NSW LEC on 3 May 2019, following the lodgement of a Class 1 Appeal against the deemed refusal of the application.

The subject Modification Application was lodged on 9 November 2020.

Consideration/assessment of the VPA for the dedication of land to Council is currently underway.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.56 Assessment

The relevant matters for consideration under Section 4.56 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.56- Other Modifications	Comments
(1) 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 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 DA2018/0697.</p> <p>The proposed modification, which is limited to the width of the footpath along the frontage of the property, does not alter the circumstances in</p>

Section 4.56- Other Modifications	Comments
	which the original application was approved, and will result in a development that is essentially and materially the same as that which was originally approved.
(b) 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, and the Community Participation Plan.
(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and	Written notices of this application have been sent to the last address known to Council of the objectors or other persons who made a submission in respect of DA2018/0697
(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 “Notification & Submissions Received” in this report.

Section 4.15 Assessment

In accordance with Section 4.56 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 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 79C '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	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.

Section 79C 'Matters for Consideration'	Comments
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>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 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) 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.</p> <p>(ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) The proposed 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 development.
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.
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 20/11/2020 to 04/12/2020 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 process council is in receipt of 1 submission/s from:

Name:	Address:
Mr Malcolm Andrew Cameron	733 B Warringah Road FORESTVILLE NSW 2087

A submission was received from an adjoining property owner regarding a canopy tree located along the common boundary. Whilst the submission raises concerns regarding the development's impact upon

the integrity of the tree, the submission seems to relate to the approved development and not the works subject of the current modification application. The tree in question, a Cheese Tree located between the site and 733B Warringah Road, is not in the vicinity of the footpath works and nothing in the subject application alters the recommendations of the arborist report relied upon in the development consent.

REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	<p>The application proposed to install 3 m wide shared footpath along Warringah Road. Development Engineering has no objection to the widening of the footpath. The condition 10 and 20 of original DA shall be amended as below.</p> <p>And the proposed driveway crossing and the split island on the crossing should be amended, which are not part of this modification application. The amendments can be done via the Section 138 application prior to issuing the CC.</p> <p>10. Submission Roads Act Application for Civil Works in the Public Road</p> <p>An Application for Infrastructure Works on Council Roadway, including engineering plans is to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993. The application is to include four (4) copies of Civil Engineering plans for the design of the Slip lane, footpath, kerb and gutter and driveway crossing which are to be generally in accordance with the Development Application and Council's specification for engineering works - AUS-SPEC #1 and/ or Council's Minor Works Policy. The plan shall be prepared by a qualified structural engineer. The design must include the following information:</p> <ol style="list-style-type: none"> 1. An appropriate plan of the proposed design with full details of slip lane, drainage system, kerb and gutter, footpath, proposed road dedication, existing and proposed utility services and driveway crossings shall be submitted with Scale 1:100, 1:200 or 1:500. 2. A written approval from Roads and Maritime Service for the slip lane and drainage works must be submitted. The design details of the slip lane must also be submitted. 3. A 3 m wide concrete footpath along the boundary frontage. 4. A new driveway crossing include layback and crossing slab shall be designed to serve the subjected site in accordance with Council's Normal crossing profile. 5. Any relocation and proposed Utility services if required. 6. A traffic management plan shall be submitted. It must be complied with Australian Standard 1742.3 and the requirements of RMS. A Road Occupancy licence shall be obtained and provided. 7. A plan of the amendments to the existing crossings serving the adjoining properties where required. 8. A remedial action plan on the affected road reserve must be submitted.

Internal Referral Body	Comments
	<p>The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges. An approval is to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate</p> <p>Reason: To provide public and private safety.</p> <p>20. Footpath Construction The applicant shall install a 3.0 m wide concrete footpath along the whole property frontage. The works shall be in accordance with the following:</p> <p>(a) All footpath works are to be constructed in accordance with Council's Specification (b) Council is to inspect the formwork prior to pouring of concrete to ensure the works are in accordance with Council's specification for footpath. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.</p> <p>Reason: To ensure compliance of footpath works with Council's specification for engineering works.</p>
Road Reserve	Proposal is consistent with Council's position. Development Engineers to ensure design and approval of works are conditioned.

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 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

Warringah Development Control Plan

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C2 Traffic, Access and Safety	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

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. Mod2020/0575 for Modification of Development Consent DA2018/0697 granted for demolition works and construction of a centre-based childcare facility for a maximum of 146 children on land at Lot 3 DP 25050,723 Warringah Road, FORESTVILLE, Lot 2 DP 25050,725 Warringah Road, FORESTVILLE, Lot 1 DP 25050,727 Warringah Road, FORESTVILLE, subject to the conditions printed below:

A. Add Condition No.1A - 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) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Proposed Ground Plan A2000	1 August 2019	Liquid Design

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.

B. Modify Condition 10 'Submission Roads Act Application for Civil Works in the Public Road' to read as follows:

An Application for Infrastructure Works on Council Roadway, including engineering plans is to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993. The application is to include four (4) copies of Civil Engineering plans for the design of the Slip lane, footpath, kerb and gutter and driveway crossing which are to be generally in accordance with the Development Application and Council's specification for engineering works - AUS-SPEC #1 and/ or Council's Minor Works Policy. The plan shall be prepared by a qualified structural engineer. The design must include the following information:

1. An appropriate plan of the proposed design with full details of slip lane, drainage system, kerb

and gutter, footpath, proposed road dedication, existing and proposed utility services and driveway crossings shall be submitted with Scale 1:100, 1:200 or 1:500.

2. A written approval from Roads and Maritime Service for the slip lane and drainage works must be submitted. The design details of the slip lane must also be submitted.
3. A **3.0m** wide concrete footpath along the boundary frontage.
4. A new driveway crossing include layback and crossing slab shall be designed to serve the subjected site in accordance with Council's Normal crossing profile.
5. Any relocation and proposed Utility services if required.
6. A traffic management plan shall be submitted. It must be complied with Australian Standard 1742.3 and the requirements of RMS. A Road Occupancy licence shall be obtained and provided.
7. A plan of the amendments to the existing crossings serving the adjoining properties where required.
8. A remedial action plan on the affected road reserve must be submitted.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges. An approval is to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To provide public and private safety.

C. Amend Condition 20 'Footpath Construction' to read as follows:


The applicant shall install a **3.0 m** wide concrete footpath along the whole property frontage. The works shall be in accordance with the following:

1. All footpath works are to be constructed in accordance with Council's Specification.
2. Council is to inspect the formwork prior to pouring of concrete to ensure the works are in accordance with Council's specification for footpath. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To ensure compliance of footpath works with Council's specification for engineering works.

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

Signed



Rebecca Englund, Principal Planner

The application is determined on 02/02/2021, under the delegated authority of:



Anna Williams, Manager Development Assessments