

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2019/0404
<b>Responsible Officer:</b>	Nick Keeler
<b>Land to be developed (Address):</b>	Lot 2 DP 1241568, 888 Pittwater Road DEE WHY NSW 2099
<b>Proposed Development:</b>	Two Kiosk structures and associated outdoor seating
<b>Zoning:</b>	Warringah LEP2011 - Land zoned B4 Mixed Use
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Karimbla Properties (No41) Pty Ltd
<b>Applicant:</b>	Karimbla Properties (No41) Pty Ltd
<b>Application lodged:</b>	18/04/2019
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Commercial/Retail/Office
<b>Notified:</b>	09/05/2019 to 23/05/2019
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	1
<b>Recommendation:</b>	Refusal
<b>Estimated Cost of Works:</b>	\$ 159,960.00

### 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

Warringah Local Environmental Plan 2011 - 7.3 Objectives for development within Dee Why Town Centre

Warringah Local Environmental Plan 2011 - 7.4 Development must be consistent with objectives for development and design excellence

Warringah Local Environmental Plan 2011 - 7.5 Design excellence within Dee Why Town Centre

Warringah Local Environmental Plan 2011 - 7.11 Town Square and pedestrian connections

Warringah Development Control Plan - A.5 Objectives

Warringah Development Control Plan - D9 Building Bulk

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 2 DP 1241568 , 888 Pittwater Road DEE WHY NSW 2099
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the eastern side of Pittwater Road, the southern side of Howard Avenue and the northern side of Oaks Avenue in the Dee Why Town Centre. The proposed works are concentrated to the Town Square easement at the northern side of the site.</p> <p>The Town Square easement is irregular in shape with a frontage of approx. 6m along Pittwater Road, a frontage of approx. 84.2m along Howard Avenue and a maximum depth of 95m. The site has a surveyed area of 2,259m<sup>2</sup>. The overall site has a surveyed area of approx. 1.3ha.</p> <p>The site is located within the B4 Mixed Use zone and accommodates the Meriton Lighthouse residential and commercial mixed use development.</p> <p>While the natural land form of the site has been significantly modified, the site falls approx. 3m from the western boundary towards the east.</p> <p>The site contains landscaped areas along the northern boundary capable of containing large canopy trees.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by various types of mixed use residential and commercial development, such as shop-top housing. These developments are generally medium-to-high density.</p>

Map:



## SITE HISTORY

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

Application **DA2007/1249** for Stage One Development Application seeking approval for a mixed use development comprising residential, retail and commercial uses, including 3 to 8 storey street front buildings, two tower buildings, one of 20/18 storeys and one of 17/15 storeys, approx 300 residential units, a public "Town Square", a North-South Pedestrian Connection, approx 33,400m<sup>2</sup> of retail floorspace, approx 4,200m<sup>2</sup> of commercial floorspace, 5 levels of carparking and vehicular access was approved on 26/02/2009 by the former Warringah Development Assessment Panel.

Application **DA2016/0705** for Construction of a Mixed Use Development comprising retail, commercial and residential uses and a child care centre was approved on 10/05/2017 by the Sydney North Planning Panel.

## PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for the construction of two (2) retail kiosks and associated outdoor seating in the town square area of the Dee Why Town Centre.

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under 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 Matters for Consideration'	Comments
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 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&amp;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&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development,	<p>(i) <b>Environmental Impact</b></p> <p>The environmental impacts of the proposed development on the</p>

Section 4.15 Matters for Consideration'	Comments
including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will 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 unsuitable 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	This assessment has found the proposal to be contrary to the relevant requirement(s) of WLEP 2011 and WDCC and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be 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 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 Matthew Geoffrey Howe	41 Chard Road BROOKVALE NSW 2100

The following issues were raised in the submissions and each have been addressed below:

- Amenities



- Economic

The matters raised within the submissions are addressed as follows:

- **Amenity**

Concern is raised that the provision of additional retail outlets in the town square will negatively impact upon the visual and pedestrian amenity of the site.

Comment:

It is considered the proposal negatively impacts the visual and pedestrian amenity of the site. The proposed kiosks are inconsistent to the Dee Why Town Centre objectives of Part 7 of WLEP 2011. The development is not considered acceptable as proposed.

- **Economic**

Concern is raised that the provision of additional retail outlets in the town square will impact upon the financial stability of existing retail outlets at the site.

Comment:

The concern of existing retail tenants regarding potential financial implications as a result of the proposal is acknowledged. Whilst the costs or benefit of the proposal upon individual retailers is not a matter that would be determinative of the application, the adverse impact on the public interest outweighs and any positive economic outcome for the site and locality. The development is not considered acceptable as proposed.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<b>No objections and no special conditions required.</b>
Environmental Health (Food Premises, Skin Pen.)	<p><b>General Comments</b> Kiosks can be made to comply with Health requirements without nuisance</p> <p><b>Recommendation</b></p> <p>APPROVAL - subject to conditions</p>
Landscape Officer	<p>The plans indicate that one of the proposed Kiosks (northern end of site) is to be located within a portion of garden bed.</p> <p>The loss of soft landscape in this area is not supported given the predominance of hard surface and built elements on the site.</p> <p>The proposal is not supported with regard to landscape issues.</p>

Internal Referral Body	Comments
NECC (Development Engineering)	<p><u>Note to Planner:</u></p> <p>It appears that the northern kiosk encroaches into the road reserve. Written concurrence shall be obtained from Council's Road Assets sections, including any leasing requirements.</p> <p>No objections are raised to the proposed development, subject to the above information. No Development Engineering conditions to be applied.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>Peripheral parts of the site are flood affected, but the topography has changed since the Dee Why South Creek Flood Study (2014) was undertaken.</p>
Strategic and Place Planning (Urban Design)	<p><b>The proposed development in its current form cannot be supported for the following reasons;</b></p> <p><b>WLEP 2011</b></p> <p><b>7.3 Objectives for development within Dee Why Town Centre</b>  <i>The objectives of this Part are as follows:</i></p> <p>...</p> <p><i>(h) to ensure that development responds to the surrounding natural environment and protects the scenic qualities of Dee Why and its views and vistas,</i></p> <p><i>(i) to establish ground floor levels that are occupied by retail uses that:</i>  <i>(i) are highly active, accessible to the street and create a lively ambience, and</i>  <i>(ii) provide a mix of retail shops, cafes and restaurants at the edges of street, pedestrian areas and open spaces, and</i>  <i>(iii) are at the same level as the footpaths and provide opportunities for a generous promenade and distinctive street tree planting for shade and shelter,</i></p> <p>...</p> <p><i>(m) to ensure that development within the Dee Why Town Centre positively contributes to the visual quality and pedestrian comfort of the public domain and provides a seamless integration between public and private spaces.</i></p> <p><b>RESPONSE</b></p> <p>The Town Square open space created by the public amphitheatre and associated landscape and urban design response defines the civic public nature of the Dee Why Town Square.</p> <p>Views and vistas across and outward from the centre of the public open space would be adversely impacted and pedestrian desire lines through the site interrupted by the hard line box structures of the proposed kiosks, thus not contributing positively to public amenity of the civic nature of the space. There is no integration with the public and private spaces offered by the kiosks, nor is there any indication on the plans of possible loose furniture that would be associated with the kiosk structures. As such the design in its current form cannot be supported.</p>

Internal Referral Body	Comments
	<p><b>7.5 Design excellence within Dee Why Town Centre</b>  <i>In determining whether development exhibits design excellence, the consent authority must have regard to the following matters:</i>  (a) <i>whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,</i>  (b) <i>whether the form and external appearance of the proposed development will improve the quality and amenity of the public domain,</i>  (c) <i>whether the building meets sustainable design principles in terms of sunlight, natural ventilation, wind, reflectivity, visual and acoustic privacy, safety and security and resources, energy and water efficiency,</i>  (d) <i>whether satisfactory arrangements have been made to ensure that the proposed design is carried through to the completion of the development concerned,</i>  (e) <i>whether the configuration and design of communal access and communal recreational areas within the residential elements of development incorporate exemplary and innovative treatments and will promote a socially effective urban village atmosphere.</i></p> <p><b>RESPONSE</b>  In terms of built form and design excellence, the design of the kiosks in their current form are not considered to embody the qualities of design excellence.</p> <p>The location of the kiosks seem quite arbitrary and sit in stark contrast to the surrounding built form and scale of the public space. Integration of design elements that link the kiosks to the development proper to integrate with the public realm is an opportunity that has been missed. Whilst it may be seen as providing amenity and communal facility it will ultimately be a private commercial interest. A more fine grain response to the siting and design that is in keeping with the design principles of the public civic amphitheatre and the civic square would be expected with a proposal to insert built form elements into the public civic space.</p> <p>The location of the kiosks limit the flexibility of the town square in terms of a flexible multi use space moving into the future. The permanence of the built structures represented in the proposed kiosks impede the objective of a strong north south physical and visual connection between Howard Avenue and Oaks Avenue.</p> <p>The current commercial tenancies of the ground floor activation at the podium level provides sufficient commercial interest and diversity on offer to the public. The primacy and importance of the site and free use and movement through the civic space cannot be underestimated and should remain as a cohesive public gathering space for the people to utilise, free of limitations and the constraints of any additional built form in the amphitheatre.</p> <p><b>Community Facilities &amp; Open Space</b></p>



Internal Referral Body	Comments
	<p>The proposed development suggests the addition of commercial tendered kiosks to the Dee Why Town Centre square.</p> <p>Consideration should be made to the finer grain and active/passive zones which promote community activity and places for rest and leisure.</p> <p>Tables and chairs, shade covers and the imposition of servicing to the kiosks by proxy privatises these public civic spaces, limiting future flexibility for public social gathering in an open amphitheatre type setting.</p> <p>The urban design approach is void of any contextual or site analysis to support the proposed locations.</p> <p><b>Public Amphitheatre and Green Space</b> The square itself provides for a significant green space in the centre of Dee Why for dedicated community use (refer Planner's notes regarding easement and VPA comments)</p> <p>Any circulation that will be required as a result of occupancy by a commercial tenant; coffee facility or the like will have a permanent detrimental effect on the grassed area resulting in the requirement for regular maintenance of the grass. This is of particular concern for the northern kiosk which shows the slab would be extended from the hard surface area into the turf zone, thus breaking the geometry and desire line created by the landscape response.</p> <p>Any future proposals should comprise a rigorous site analysis of the broader public realm and the site as a whole addressing the meaning and purpose of the civic public amphitheatre space, particularly if future proposals consist of permanent built form structures. Any future proposals should be integral to the experiential qualities of the intent of the Dee Why Town Centre and the public civic square.</p> <p>For the reasons outlined above the current proposal cannot be supported.</p>
Waste Officer	No response from Council's Waste Officer was received at the time of the finalisation of this assessment report. Notwithstanding, the proposed development is unacceptable for several other reasons as outlined in this report.
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 residential and commercial purposes for a significant period of time with no prior land uses. 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 commercial 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 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?	No

zone objectives of the LEP?	Yes
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#### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	No control	3.06m	N/A	Yes, consistent with objectives

#### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.4 Controls relating to miscellaneous permissible uses	Yes
6.2 Earthworks	Yes
6.3 Flood planning	Yes
6.4 Development on sloping land	Yes
7.3 Objectives for development within Dee Why Town Centre	No
7.4 Development must be consistent with objectives for development and design excellence	No
7.5 Design excellence within Dee Why Town Centre	No
7.6 Height of buildings	Yes
7.11 Town Square and pedestrian connections	No

#### Detailed Assessment

##### 7.3 Objectives for development within Dee Why Town Centre

The Town Square open space created by the public amphitheatre and associated landscape and urban design response defines the civic public nature of the Dee Why Town Square.

Views and vistas across and outward from the centre of the public open space would be adversely impacted and pedestrian desire lines through the site interrupted by the hard line box structures of the proposed kiosks, thus not contributing positively to public amenity of the civic nature of the space.

There is no integration with the public and private spaces offered by the kiosks, nor is there any indication on the plans of possible loose furniture that would be associated with the kiosk structures. As such the design in its current form cannot be supported.

##### 7.4 Development must be consistent with objectives for development and design excellence

The development as proposed does not demonstrate consistency with the objectives of this Part. The proposed northern kiosk encroaches into the landscaped area along the Howard Avenue frontage. The loss of soft landscape in this area is not supported given the predominance of hard surface and built elements on the site. The proposal is not considered to adequately exhibit design excellence.

##### 7.5 Design excellence within Dee Why Town Centre

In terms of built form and design excellence, the design of the kiosks in their current form are not

considered to embody the qualities of design excellence.

The location of the kiosks seem quite arbitrary and sit in stark contrast to the surrounding built form and scale of the public space. Integration of design elements that link the kiosks to the development proper to integrate with the public realm is an opportunity that has been missed. Whilst it may be seen as providing amenity and communal facility it will ultimately be a private commercial interest. A more meticulous response to the siting and design that is in keeping with the design principles of the public civic amphitheatre and the civic square would be expected with a proposal to insert built form elements into the public civic space.

The location of the kiosks limit the flexibility of the town square in terms of a flexible multi use space moving into the future. The permanence of the built structures represented in the proposed kiosks impede the objective of a strong north south physical and visual connection between Howard Avenue and Oaks Avenue.

The current commercial tenancies of the ground floor activation at the podium level provides sufficient commercial interest and diversity on offer to the public. The primacy and importance of the site and free use and movement through the civic space cannot be underestimated and should remain as a cohesive public gathering space for the people to utilise, free of limitations and the constraints of any additional built form in the amphitheatre.

### **7.11 Town Square and pedestrian connections**

The proposed development is not considered to adequately satisfy the above requirements. The proposal significantly reduces the flexibility of the use of the town square for a range of community events. The proposal reduces the level of soft landscaping in the town square area. The location of the northern kiosk essentially disconnects the town square from Howard Avenue and disrupts the main north/south view corridor through the site between Howard Avenue and Oaks Avenue.

The proposed development does not satisfy the location of retail uses in respect of the town square. Retail uses are required to be located along the perimeter of the town square. A greater level of analysis should be made in terms of the active/passive zones that promote community activity and places for rest and leisure. Tables and chairs, shade covers and the imposition of servicing to the kiosks by proxy privatises these public civic spaces, limiting future flexibility for public social gathering in an open amphitheatre type setting.

The square itself provides for a significant green space in the centre of Dee Why for dedicated community use. Any circulation that will be required as a result of occupancy by a commercial tenant; coffee facility or the like will have a permanent detrimental effect on the grassed area resulting in the requirement for regular maintenance of the grass. This is of particular concern for the northern kiosk which shows the slab would be extended from the hard surface area into the turf zone, thus breaking the geometry and desire line created by the landscape response.

In addition to the above issues, the site is subject to a voluntary planning agreement that allows Council 30 days of free access to the town square each year for community events. The dates are not pre-determined, and that is no requirement around regularity or dates of blocks. Therefore, it is considered there is a risk that the proposed kiosks may impinge upon the flexible use and Council's ability to use the space to its full potential. They may also impinge upon community initiated events, or events coordinated by Meriton.

### Built Form Controls

The Warringah DCP built form controls do not apply to this site.

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	No	No
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
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	No	No
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	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
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E10 Landslip Risk	Yes	Yes
E11 Flood Prone Land	Yes	Yes

### Detailed Assessment

#### **A.5 Objectives**

The proposed development fails to achieve the overriding objective to create and maintain a high level of environmental quality throughout Warringah. The proposal will result in a reduced level of local amenity through its negative and imposing impact to the public open space and natural environment of the Dee Why Town Centre. The proposal design fails to create a unified landscape, contribute to the street, reinforce the importance of pedestrian areas and create an attractive design outcome.

#### **D9 Building Bulk**



### Merit consideration

The development is considered against the underlying Objectives of the Control as follows:

- *To encourage good design and innovative architecture to improve the urban environment.*

#### Comment:

The proposed kiosks, resembling the size and bulk of shipping containers, do not demonstrate innovation in terms of their architectural design and will have a negative impact upon the public open space of the site and surrounds.

- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

#### Comment:

While the visual impact of the proposed kiosks when considering the whole site is relatively insignificant, the visual impact on the town square itself and surrounding public space is not considered acceptable. The town square area is designed to be an open area and generally free of any built structures that do not contribute to the urban design of the space. The kiosks will be visually dominant to users of the town square and disrupt view corridors through the site.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not 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.

## **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, in this regard the application

is not considered to be acceptable and is recommended for refusal.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Inconsistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Inconsistent with the aims of the LEP
- Inconsistent with the objectives of the relevant EPIs
- Inconsistent with the objects of the Environmental Planning and Assessment Act 1979

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## **RECOMMENDATION**

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2019/0404 for the Two Kiosk structures and associated outdoor seating on land at Lot 2 DP 1241568,888 Pittwater Road, DEE WHY, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Warringah Local Environmental Plan 2011.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 7.3 Objectives for development within Dee Why Town Centre of the Warringah Local Environmental Plan 2011.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 7.4 Development must be consistent with objectives for development and design excellence of the Warringah Local Environmental Plan 2011.
4. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 7.5 Design excellence within Dee Why Town Centre of the Warringah Local Environmental Plan 2011.
5. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 7.11 Town Square and pedestrian connections of the Warringah Local Environmental Plan 2011.
6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause A.5 Objectives of the Warringah Development Control Plan.
7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D9 Building Bulk of the Warringah Development Control Plan.

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

**Signed**



**Nick Keeler, Planner**

The application is determined on 20/06/2019, under the delegated authority of:



**Anna Williams, Manager Development Assessments**