

# WILLOWTREE PLANNING



9 November 2021

Ref: WTJ21-565  
Contact: Charbel Ishac

The General Manager  
Northern Beaches Council  
PO Box 82  
Manly NSW 1655

via NSW Planning Portal

Attention: Phillip Lane

## **SECTION 4.55(1A) APPLICATION FOR MODIFICATION OF DA2021/1314**

### **RE: CONSTRUCTION OF BUSINESS IDENTIFICATION SIGNAGE**

**PROPERTY AT 33 OAKS AVENUE, DEE WHY (LOTS A & B DP 326907 AND LOT 1 DP588603)**

## **1. INTRODUCTION**

Dear Phillip,

Reference is made to development consent **DA2021/1314** granted on 20 October 2021 for the construction of business identification signage at 33 Oaks Avenue, Dee Why, more formally described as Lots A & B DP 326907 and Lot 1 DP588603 (the Site).

This statement has been prepared in support of a Section 4.55(1A) Modification Application (MA) submitted to Northern Beaches Council, seeking to modify to development consent **DA2021/1314 (Appendix 1)** which granted consent for:

*Construction of business identification signage*

The proposed modifications are minor in nature and relate specifically inverting the colour scheme of Sign 1 as well as amend the hours of illumination to correlate to the hours of operation of the existing medical centre.

This application is made pursuant to Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (the EP&A Act), on behalf of Tom Baxter. The following supporting documentation has been provided as part of this application:

- **Appendix 1** Development Consent (**DA2021/1314**)
- **Appendix 2** Stamped Plans
- **Appendix 2** Updated Architectural Plans

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## Section 4.55(1A) Application

Proposed Modification to DA2021/1314

33 Oaks Avenue, Dee Why (Lots A & B DP 326907 and Lot 1 DP588603)



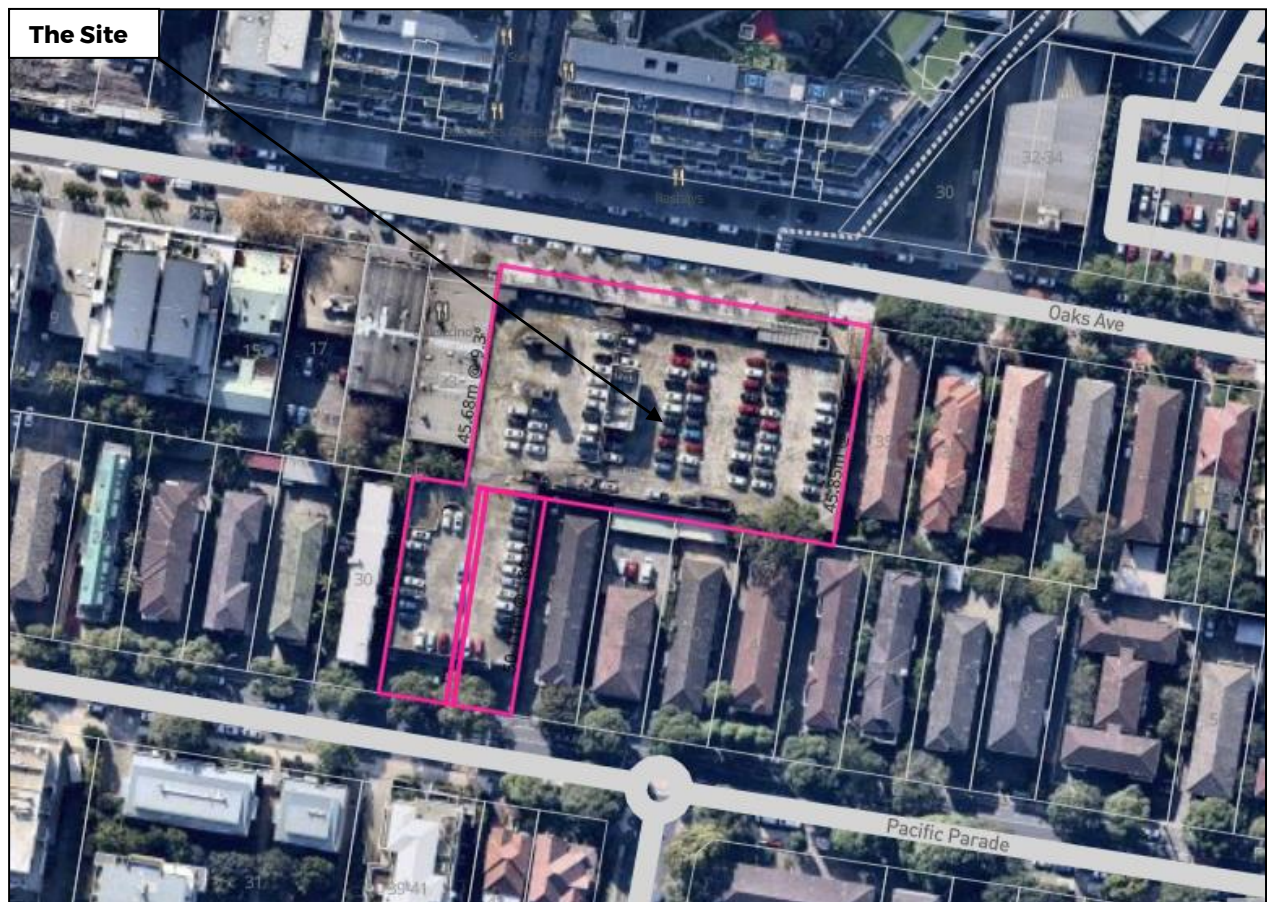
## 2. SITE LOCATION AND CHARACTERISTICS

The Subject Site is identified as 33 Oaks Avenue, Dee Why, being legally described as Lots A & B DP 326907 and Lot 1 DP588603.

The Site is irregular in shape and exhibits an area of approximately **5,854m<sup>2</sup>**. The Site is zoned B4 Mixed Use and is subject to the applicable provisions of the *Warringah Local Environmental Plan 2011* (WLEP2011). This MA relates to Tenancy 9C which forms part of the larger Dee Why Market Shopping Centre.

In its existing state, the Site comprises a single level neighbourhood shopping centre with dual street frontage of approximately 79m to Oaks Avenue and 31m to Pacific Parade, to the north and south respectively.

The existing Site characteristics are depicted in **Figures 1 - 3** below.



**Figure 1. Aerial Map of Site (Source: Nearmap, 2021)**



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Figure 2. Cadastral Map of Site (Source: Nearmap, 2021)



Figure 3. View of Site from Oaks Avenue (Source: Google Street View, 2020)





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### 3. PROPOSED MODIFICATIONS

The modifications sought to Development Consent **DA2021/1314**, and approved stamped plans (**Appendix 2**), relates to the approved signage.

The purpose of this modification is to amend the following:

- Invert the colour scheme of Sign 1, delete the blue background, and maintain the colour of the building façade proper; and
- Amend the hours of illumination to correlate to the approved hours of operation of the existing medical centre.

The signage as previously approved and proposed are depicted in **Figures 4-5** below



**Figure 4. Approved Sign 1 as per Development Consent DA2021/1314 (Source: Y Squared, 2021)**



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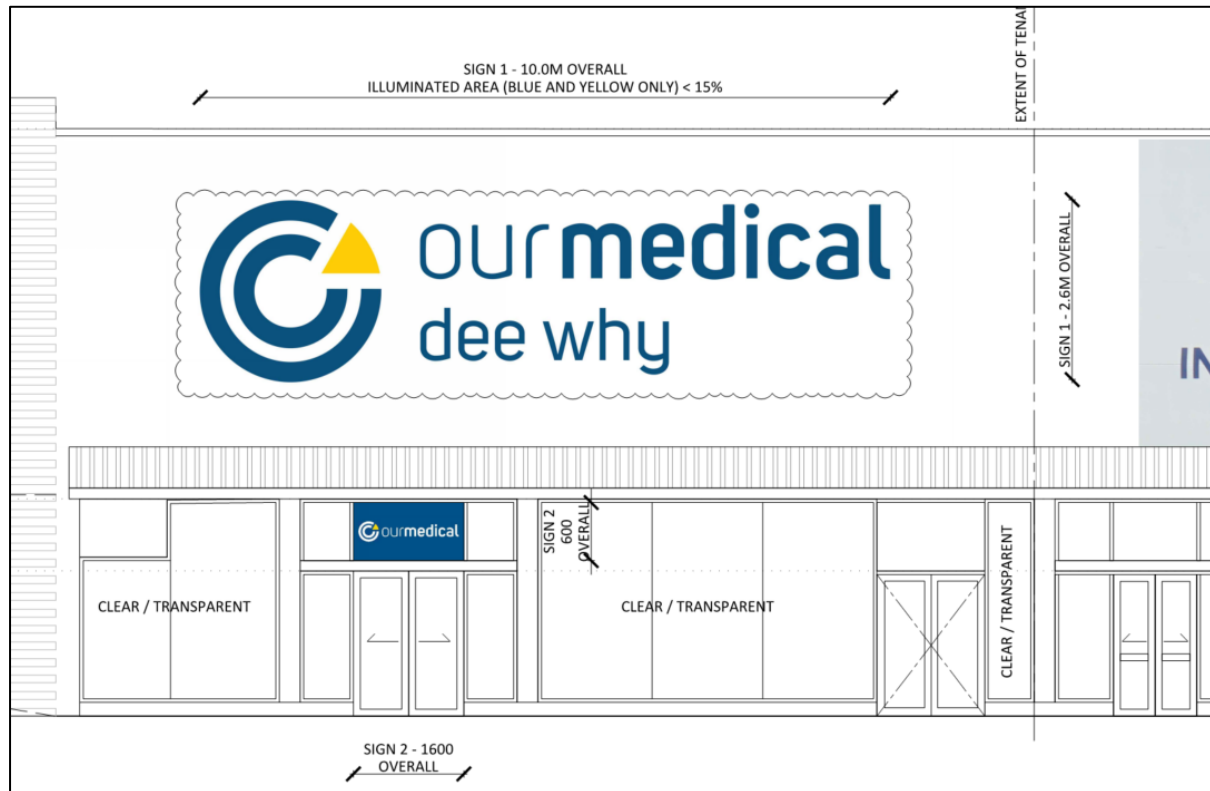


Figure 5. Proposed Sign 1 (Source: Y Squared, 2021)

#### 4. AMENDED DEVELOPMENT CONSENT

The desired development outcome as outlined above requires the following modifications to development consent **DA2021/1314**.

The proposed amendments are demonstrated in **red**, with deletions as a **strikethrough** and additions as **underlined**.

##### 4.1 Proposed Conditions

##### Condition No. 1

#### Approved Plans and Supporting Documentation

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

##### a) Approved Plans

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
External Signage Location Plan (Revision 1)	28 May 2021	Y Squared Architects
External Elevation Sheet 1 (Revision <del>3</del> 5)	<del>5 October 2021</del> 5 November 2021	Y Squared Architects

**Reason:** Modification of Condition 1(a) of **DA2021/1314** is required in order to reflect the proposed modifications as depicted in the Architectural Plans provided in **Appendix 3**. The proposed

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modifications does not amend the size and dimmable illumination as approved under **DA2021/1314**. The proposed modification seeks to delete the approved blue background behind the sign and maintain the existing façade colour of the building proper.

#### Condition No. 8

##### **Hours of Illumination**

*Illumination of signage at the subject premises shall cease ~~between 10:00pm and 7:00am Monday to Saturday and 8:00pm and 7:00am on a Sunday or a public holiday~~ outside the approved hours of operation.*

*Signs must not flash, move or be constructed of neon materials.*

Reason: Modification of Condition 8 of **DA2021/1314** is required in order to correlate the illumination of the approved signage with the approved hours of operation of the existing medical centre. Further, the proposed modification provides the flexibility that should the hours of the medical centre be modified under a separate development consent, the hours of illumination will correlate with the approved existing and future hours of operation.

## 5. STATUTORY PLANNING FRAMEWORK

### 5.1 Environmental Planning and Assessment Act 1979

The EP&A Act is the principle planning and development legislation in New South Wales. Pursuant to Part 4, the proposal is local development. The modifications sought to the development consent **DA2021/1314** warrants consideration of the provisions of Section 4.55(1A) of the EP&A Act. The provisions of Clause 4.55 of the EP&A Act provided in **Table 1** below require consideration in this instance.

TABLE 1. SECTION 4.55(1A) ASSESSMENT	
Clause	Response
<b>(1A) Modifications involving minimal environmental impact</b> 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—	
<i>(a) it is satisfied that the proposed modification is of minimal environmental impact, and</i>	Given the nature of the changes proposed, the modification will have no undue environmental impact. Overall, there is no intensification resulting from the proposed modifications rather, the proposed modification seeks to invert the colour scheme of Sign 1, delete the blue background, and maintain the colour of the building façade proper as well as amend the hours of illumination to correlate to the hours of operation of the existing medical centre.
<i>(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and</i>	The proposed modification will result in substantially the same development outcome to that previously approved as there are no significant changes proposed to the structures and function of the medical centre nor the size and intensity of illumination of the signage as approved. The proposed modifications seeks to invert the colour scheme of Sign 1, delete the blue background, and maintain the colour of the building façade proper as well as amend the hours of illumination to correlate to the hours of operation of the existing



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	medical centre and therefore will not give rise to any measurable amenity of environmental impacts.
(c) 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 that requires the notification or advertising of applications for modification of a development consent, and	Given the nature of the proposed modification, notification of this application should not be required as the outcomes of the proposed development will remain as previously approved.
(d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.	No submissions are apparent at the time of writing in accordance with the EP&A Act. The modification does not give cause to any substantial changes which warrant notification.
(3) In determining an application for modification of a consent under this section, 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 consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.	<p>The proposed modifications continue to satisfy the matters for consideration referred to in section 4.15(1) of the EP&amp;A Act and has considered the reasons given by the consent authority for original granting of consent.</p> <p>The reasons for consent and Council's desired outcomes have been considered and are still achieved through the proposed modification.</p>

#### 5.1.1 Section 4.55(1A) - Substantially the same

The scope of a maximum modification of a consent without constituting assessment as a standalone application can be analysed through the ambit of *Michael Standley & Associates Pty Ltd v North Sydney Council* [2005] NSWLEC 358, whereupon Commissioner Mason P. found in relation to modification of development consents that the word “modify” was given the ordinary meaning of “to alter without radical transformation”. Therefore, the extent to which a consent may be modified is that to which the consent, as modified, is as approved without radical transformation or alteration.

The development, as modified, is substantially the same development and will not result in a radical transformation of **DA2021/1314** for the following reasons:

- The modification relates to the previously approved signage, which retains the approved size, content, original intent and objective of the development, and proposes no substantial change to this fundamental element of the approval;
- The modification would not give rise to any further unreasonable environmental or amenity impacts;
- The function, form and importantly, public perception of the signage remains largely unchanged with the signage retaining the original intent of the development as approved.

In light of the above, the proposal as amended, is not considered to result in a “radical transformation” of the consent, as currently approved, satisfying the radical transformation test pursuant to *Michael Standley & Associates Pty Ltd v North Sydney Council* [2005] NSWLEC 358.

Whilst the proposal seeks to invert the colour scheme of Sign 1, delete the blue background, and maintain the colour of the building façade proper as well as amend the hours of illumination to correlate to the hours of operation of the existing medical centre, this are not considered to be material or essential elements of the approved development which would constitute a radical change to the ultimate development outcome of the Site. This is further analysed in *Moto Projects (No 2) Pty Ltd v*



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*North Sydney Council [1999] NSWLEC 280* which applies a quantitative and qualitative test to determine what qualifies a development as being “substantially the same”.

*Moto Projects (No 2) Pty Ltd v North Sydney Council [1999] NSWLEC 280* provides that a comparison of the development as approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is “essentially or materially” the same as the approved development. The comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted).

Whilst it is acknowledged that the proposal does include some quantitative changes (including inverting the colour scheme of Sign 1, delete the blue background, and maintain the colour of the building façade proper as well as amend the hours of illumination to correlate to the hours of operation of the existing medical centre.) to the approved development, this is not considered to be substantial or comprise a critical element of the development as previously approved. Further, from a qualitative perspective, the development as approved retains its identity as signage.

In light of the above, the proposal, as amended, will be substantially the same development as approved, and satisfies the requirements for the application to be assessed and approved pursuant to Section 4.55(1A) of the EP&A Act.

## 5.2 Warringah Local Environmental Plan 2011

The WLEP2011 is the primary environmental planning instrument (EPI) that applies to the Site. The Site is zoned **B4 Mixed Use** pursuant to the WLEP2011 (**Figure 6**). **Table 2** below outlines the objectives and land uses applicable to the Site, as stated within the WLEP2011.

TABLE 2. WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011	
Requirement	Application to Proposed Development
Clause 2.3 – Zone objectives and Land Use Table	<i>(2) The consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone.</i>
<b>B4 Mixed Use</b>	
B4 Mixed Use zone – Objectives of the zone	<ul style="list-style-type: none"><li>▪ To provide a mixture of compatible land uses.</li><li>▪ To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.</li><li>▪ To reinforce the role of Dee Why as the major centre in the sub-region by the treatment of public spaces, the scale and intensity of development, the focus of civic activity and the arrangement of land uses.</li><li>▪ To promote building design that creates active building fronts, contributes to the life of streets and public spaces and creates environments that are appropriate to human scale as well as being comfortable, interesting and safe.</li><li>▪ To promote a land use pattern that is characterised by shops, restaurants and business premises on the ground floor and housing and offices on the upper floors of buildings.</li><li>▪ To encourage site amalgamations to facilitate new development and to facilitate the provision of car parking below ground.</li></ul>
Permitted without consent	<i>Home-based child care; Home occupations</i>





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Permitted with consent	<p><i>Boarding houses; Centre-based child care facilities; Commercial premises; Community facilities; Educational establishments; Entertainment facilities; Function centres; Hotel or motel accommodation; Information and education facilities; Medical centres; Oyster aquaculture; Passenger transport facilities; Recreation facilities (indoor); Registered clubs; Residential flat buildings; Respite day care centres; Restricted premises; Roads; Seniors housing; Shop top housing; Tank-based aquaculture; <b>Any other development not specified in item 2 or 4</b></i></p> <p>Business identification signs permitted with consent within the B4 Mixed Use zone as an innominate use.</p>
Prohibited	<p><i>Advertising structures; Agriculture; Air transport facilities; Animal boarding or training establishments; Boat building and repair facilities; Boat sheds; Camping grounds; Caravan parks; Cemeteries; Charter and tourism boating facilities; Correctional centres; Crematoria; Depots; Eco-tourist facilities; Environmental facilities; Exhibition villages; Extractive industries; Forestry; Freight transport facilities; Heavy industrial storage establishments; Highway service centres; Home occupations (sex services); Industrial retail outlets; Industrial training facilities; Industries; Marinas; Mooring pens; Moorings; Open cut mining; Pond-based aquaculture; Port facilities; Recreation facilities (major); Recreation facilities (outdoor); Research stations; Residential accommodation; Rural industries; Service stations; Sex services premises; Storage premises; Transport depots; Vehicle body repair workshops; Vehicle repair stations; Waste or resource management facilities; Water recreation structures; Wharf or boating facilities; Wholesale supplies</i></p>

Given the minor nature of the changes sought under this application, the proposed modification does not result in any of the objectives of the B4 zone being compromised. The development, as proposed to be modified, is capable of continuing to achieve these objectives to the same extent as the approved use under **DA2021/1314** as the development relates to the inverting the colours of Sign 1 as well as hours of illumination of the signage.

The proposed modification will improve the function of the signage to support the operation of the building as a medical centre. The relevant Development Standards contained within WLEP2011 will not be contravened by the proposed modifications.



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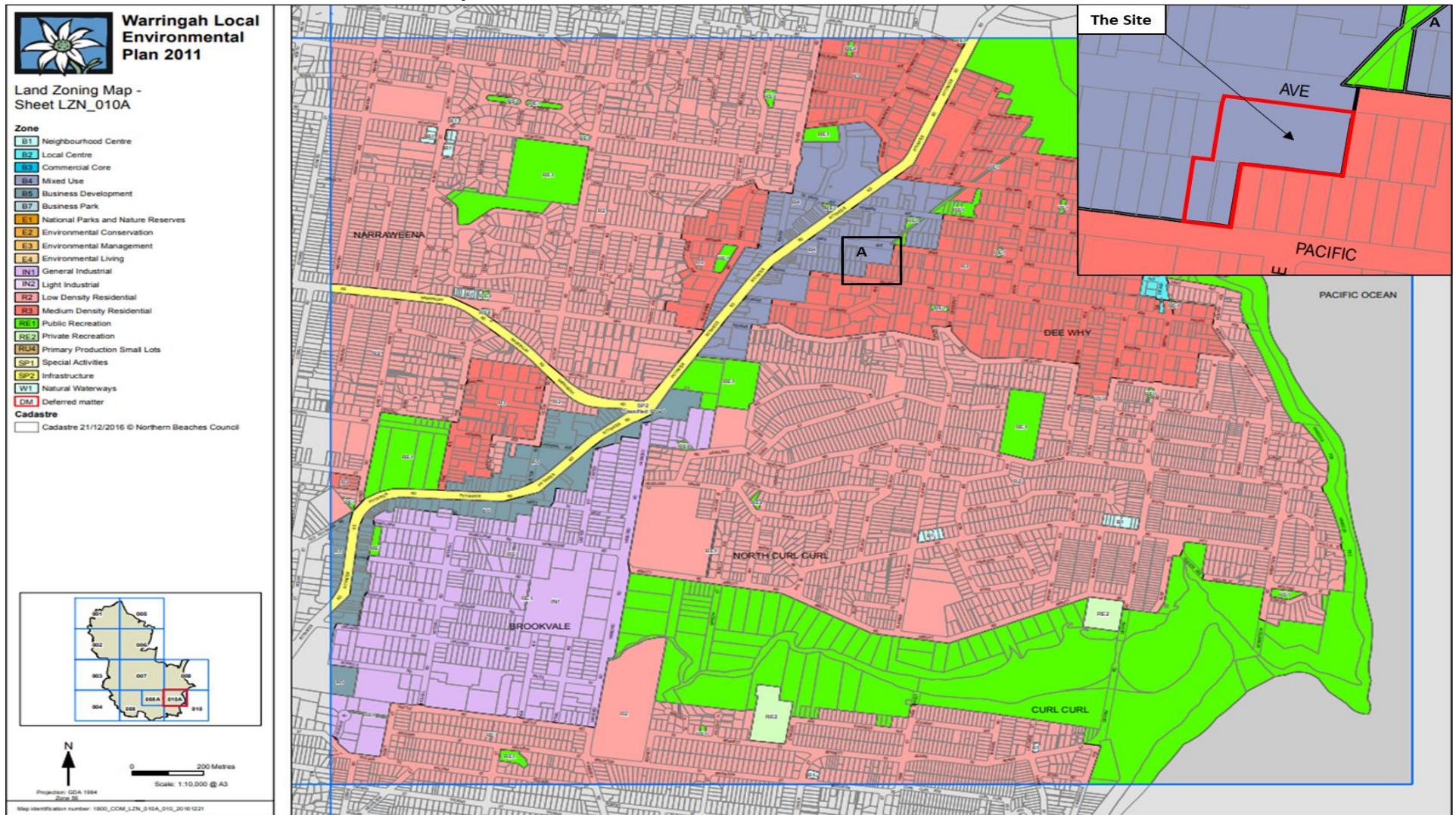


Figure 6. WLEP2011 Land Zoning Map - LZN\_010A (Source: Legislation NSW, 2021)

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**Table 3** below outlines the proposed developments consistency and compliance with the relevant Development Standards and controls under WLEP2011.

TABLE 3. WLEP2011 DEVELOPMENT STANDARDS	
Clause	Comment
<b>PRINCIPAL DEVELOPMENT STANDARDS</b>	
Clause 4.1 – Minimum Lot Size	The Site is not subject to a minimum lot size pursuant to the WLEP2011. Furthermore, the proposed modification does not seek consent for any subdivision. Therefore, no further consideration is warranted.
Clause 4.3 – Height of Buildings	The Site is subject to a maximum building height of <b>16m</b> and <b>24m</b> pursuant to the WLEP2011. The proposed modification does not seek consent to alter the location or the height of the signage as approved under development consent <b>DA2021/1314</b> . Therefore, no further consideration is required.
Clause 4.4 – Floor Space Ratio	The Site is subject to a maximum FSR of <b>1.8:1</b> and <b>3.4:1</b> pursuant to the WLEP2011. The proposed modification does not seek consent to alter the existing FSR. Therefore, no further consideration is warranted.
<b>MISCELLANEOUS PROVISIONS</b>	
Clause 5.10 – Heritage conservation	<p>The Site is not identified as a Heritage Item or located within a Heritage Conservation Area (HCA) pursuant to the WLEP2011. However, the Site is located within the vicinity of two (2) Heritage Items of local significance being 145 (St Kevin's Catholic Church) and 147(House).</p> <p>The proposed modification does not seek consent to amend the size, level of illumination and content of the signage as approved under <b>DA2021/1314</b>. Therefore, the proposed modification continues to be acceptable on heritage grounds.</p>

## 6. NON-STATUTORY PLANNING FRAMEWORK

### 6.1 Warringah Development Control Plan 2011

The *Warringah Development Control Plan 2011* (WDCP2011) supplements WLEP2011 and provides more detailed provisions to guide development. Given the minor nature of the changes sought under this application, the proposed modification does not result in any of the controls of the WDCP2011 being compromised. The development will continue to be capable of achieving these controls to the same capacity as the approved development under **DA2021/1314**.

## 7. LIKELY IMPACTS OF DEVELOPMENT

The proposed modification is considered minor in nature and does not result in any measurable changes to the overall outcome of the proposed development. Given the nature and scale of the modification proposed, the likely impact will remain consistent with those previously assessed and determined under **DA2021/1314**.



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### 8. SUITABILITY OF THE SITE FOR DEVELOPMENT

The proposed modification will result in a development outcome almost identical to that previously approved under **DA2021/1314** and remains compliant with the relevant standards and controls of WLEP2011 and WDCP2011. Accordingly, the proposed development will remain consistent to those originally approved and is therefore considered to remain suitable for the Site.

### 9. CONCLUSION

The proposal has been prepared after taking into consideration the following key issues:

- The development history of the Site;
- Previously approved development;
- The context of the Site and locality;
- The relevant heads of consideration under Section 4.55(1A) of the EP&A Act; and
- The aims, objectives and provisions of the relevant statutory and non-statutory planning instruments.

In light of the above, the modifications proposed to development consent **DA2021/1314** are considered worthy of support by Northern Beaches Council.

Should you require additional information, please do not hesitate to contact the undersigned.

Yours faithfully,

Andrew Cowan  
Director  
Willowtree Planning Pty Ltd

