

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2022/0320
Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 103 DP 1247294, 145 Old Pittwater Road BROOKVALE NSW 2100
Proposed Development:	Modification of Development Consent DA2021/2116 granted for Use of premises as a recreation facility (indoor), alterations and additions and signage
Zoning:	Warringah LEP2011 - Land zoned B3 Commercial Core Warringah LEP2011 - Land zoned IN1 General Industrial
Development Permissible:	Yes - Zone B3 Commercial Core Yes - Zone IN1 General Industrial
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Dexus Warringah Mall Pty Ltd Scentre Management Ltd
Applicant:	Sean William Davis

Application Lodged:	27/06/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	08/07/2022 to 22/07/2022
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

This modification application lodged pursuant to Section 4.55(2) of the Environmental Planning and Assessment Act 1979 seeks to modify the built form approved under Development Consent DA2021/2116.

The modifications proposed include:

- Pool alterations
- Revision to the layout of the approved reception area on the Ground Floor.
- Internal access alterations

- Window alterations
- Removal of the section of roof above the pool deck seats and storage area on the western side of the Ground Floor that are proposed to be removed.
- Revision to the layout of the hydro pool plant so that it is adjacent to the approved hydro pool on the eastern side of the approved building.
- Installation of new roofing above the revised layout of the hydro pool plant of a similar material to the existing approved roof.
- Raising of roof and parapet walls by 600mm on the south-western extent of the approved building.
- Raising of parapet wall by 200mm on the southern extent of the approved building.
- Revision to the direction and slope of part of the roof above the squad training pool.

The application also seeks to amend condition of consent No. 31 - -Allocated Parking Spaces (retail/commercial) - to read as follows:

*Parking allocated to this development must be clearly signposted and linemarked as being for the **exclusive** use of this development. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.*

Reason: To ensure parking availability.

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

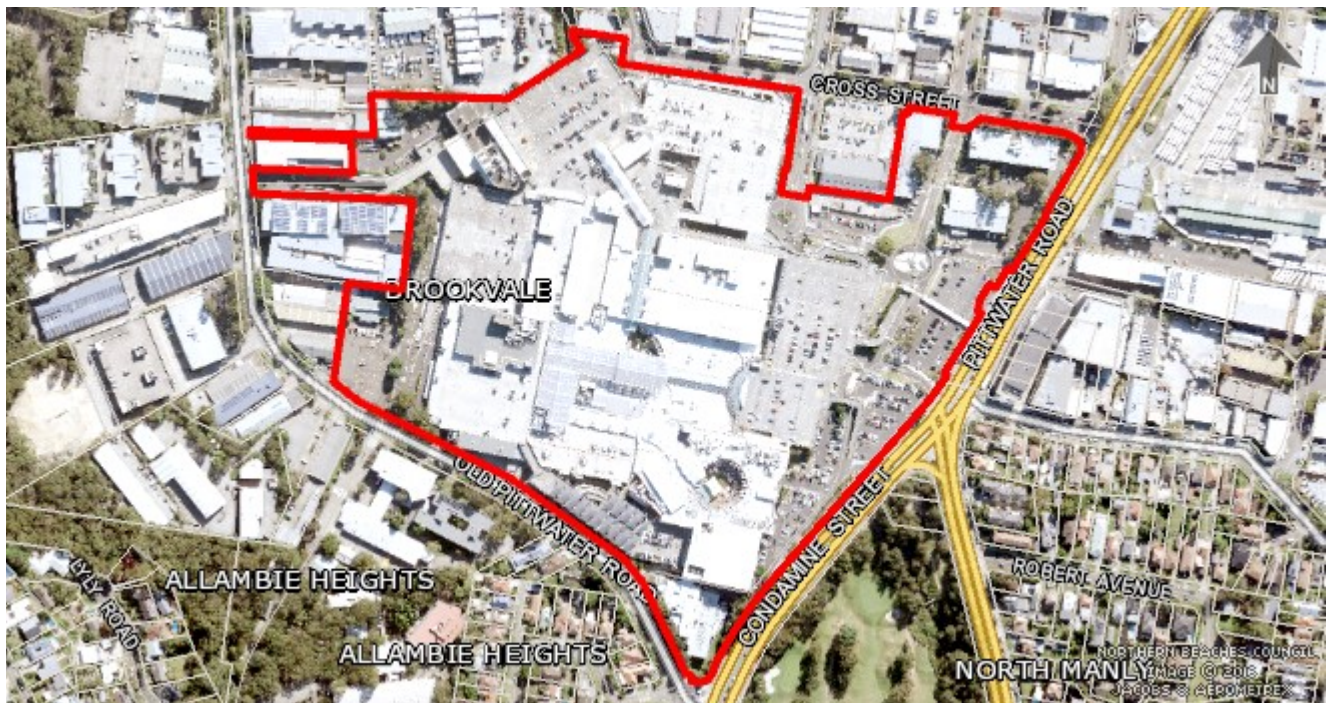
Warringah Development Control Plan - D23 Signs
Warringah Development Control Plan - G4 Warringah Mall

SITE DESCRIPTION

Property Description:	Lot 103 DP 1247294 , 145 Old Pittwater Road BROOKVALE
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	NSW 2100
Detailed Site Description:	<p>The site is described as Lot 100, DP 1015283, No. 145 Old Pittwater Road, Brookvale. The site is occupied by the Westfield Warringah Mall Shopping Centre which is commonly known as 'Warringah Mall'.</p> <p>The site has an area of 170,600m². It is bounded to the north by Cross Street, to the south by Old Pittwater Road and to the East by Condamine Street / Pittwater Road. The principal street frontage is to Condamine/Pittwater Road and secondary street frontages are to Old Pittwater Road and Cross Street.</p> <p>Warringah Mall now has a total floor area of approximately 133,500m² with 4,652 car parking spaces and includes an entertainment precinct incorporating a Hoyts Cinema Complex as well as fitness facilities and some other non-retail facilities.</p> <p>The site is extensively built upon with bituminised and concrete hard surface areas located around the perimeter of the buildings to facilitate car parking and traffic flow.</p> <p>Topographically, the site has a gradual natural slope that falls from the north-west to the south-east of the site.</p> <p>Vehicular access to the site is currently available at various locations along Pittwater Road, Old Pittwater Road, Green Street, Dale Street and Cross Streets.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Surrounding land uses comprise a diverse mix of commercial, industrial, residential, recreational and education uses.</p>

Map:



SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site.

The land has been used for commercial purposes for an extended period of time.

The original application was approved as follows:

DA2021/2116 - Use of premises as a recreation facility (indoor), alterations and additions and signage.
(Approved 31 January 2022)

The proposed recreation facility will comprise the following:

- 1 x 25m swimming pool
- 1 x 15m swimming pool
- 1 x wellness centre
- Reception and admiration area
- Café
- Amenity including toilets and changerooms.

The proposed operational details are as follows:

Staff:

- 3 - 13

Hours of Operation:

- Monday to Friday: 5:00am - 12:00am
- Saturday: 5:00am - 10:00pm
- Sunday: 6:00am - 10:00pm

Parking:

- Existing 53 parking space to the front of the proposed building; including the provision of 2 accessible spaces.

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 DA2021/2116, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - Other Modifications	Comments
<p>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:</p> <p>(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>	<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 DA2021/2116 for the following reasons:</p> <ul style="list-style-type: none"> • The approved use remains unchanged. • The application proposes minor internal and external alterations. The bulk and scale of the development remains largely the same as the original approval.

Section 4.55 (2) - Other Modifications	Comments
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA2021/2116 did not require concurrence from the relevant Minister, public authority or approval body.
(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 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 Northern Beaches Community Participation Plan.
(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 4.55 (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 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 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 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah 21 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	<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

Section 4.15 'Matters for Consideration'	Comments
Regulation 2000)	<p>via a condition in the original 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 documentation was submitted with the original application/This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to XXX. / No additional information was requested in this case.</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 in the original consent/This clause is not relevant to this application.</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 in the original consent/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 insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent/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 in the original consent.</p> <p><u>Clause 143A</u> 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 matter has been addressed via a condition in the original consent/This clause is not relevant to this application.</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) Environmental Impact 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) Social Impact The proposed development will not have a detrimental social</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact 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 08/07/2022 to 22/07/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Mr Patrick Thomas Lillas	178 Old Pittwater Road BROOKVALE NSW 2100

The following issues were raised in the submissions:

- **Traffic and safety**
- **Landcaping**

The above issues are addressed as follows:

- **Traffic, hazards and safety**

Concern is raised in regards to traffic and potential dangers in regards to pedestrian safety as a result of the proposed use of the subject site.

Comment:

A traffic report was lodged as part of this application and reviewed by Council Traffic and Development Engineers. In summary, the proposed development is consistent with the underlying objectives of Part C2 Traffic, Access and Safety as well as numeric requirements of C3 Parking Facilities of the WDCP 2011. Conditions were imposed as part of the original consent to ensure suitable access to and from the site.

It is also noted that there is no increase of floor space or increase of intensification of people (Staff/customers) proposed as part of this application.

This issue does not warrant the refusal of the application.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to all previous conditions as listed in DA2021/2116.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>
Environmental Health (Industrial)	<p>General Comments</p> <p>Proposed modifications to the structure do not impact the conclusions or conditions made by Environmental Health during assessment of DA2021/2116. The changes are likely to have no material impact on health amenity criteria such as noise, thus we have no objections to the proposal.</p>
Environmental Health (Food Premises, Skin Pen.)	<p>General Comments</p> <p>Proposed modifications to the structure do not impact the conclusions or conditions made by Environmental Health during assessment of DA2021/2116. The changes are likely to have no material impact on the kitchen construction and compliance with the relevant standards, thus we have no objections to the proposal.</p>
NECC (Development Engineering)	<p>No comment from Development Engineering.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>The application is modifications of an approved consent on the subject site. The application was previously assessed by Natural Environment in regard to flood, where it was approved without conditions.</p> <p>The proposed modifications includes raising of walls and roof height. The proposed modifications do not have an adverse impact on flooding.</p>
Traffic Engineer	<p>Officer comments</p>

Internal Referral Body	Comments
	<p>Applicant is requesting to modify currently approved DA Consent Condition #31 by removing the word “exclusive”:</p> <p style="text-align: center;">31. Allocated Parking Spaces (retail/commercial)</p> <p><i>Parking allocated to this development must be clearly signposted and line-marked as being for the <u>exclusive</u> use of this development. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.</i></p> <p style="text-align: center;"><i>Reason: To ensure parking availability.</i></p> <p><u>Parking</u></p> <p>The applicant’s Traffic Planning report reasons that:</p> <p><i>“whilst the use of the 5400 parking spaces on the site is intended to be shared by all 372 tenants on the site, it is noted the parking near the swim school is somewhat remote from the shops, and therefore in practice is unlikely to be used by shoppers in any event.”</i></p> <p>Aerial imagery investigations have confirmed the above. The main entrances used for majority of Warringah Mall patrons are located on the northern, southern and eastern sides of the property. The proposed development is located at the north western corner of the property.</p> <p>There is therefore no traffic concerns with amending the wording of the condition as requested.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

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 (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 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 who raised no objections, subject to conditions which have been included in the recommendation of this report.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for 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 sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the commercial land use.

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

Compliance Assessment

Clause	Compliance with Requirements
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	Yes
5.21 Flood planning	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	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
C3 Parking Facilities	Yes	Yes
C4 Stormwater	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
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D23 Signs	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E10 Landslip Risk	Yes	Yes
E11 Flood Prone Land	Yes	Yes
G4 Warringah Mall	Yes	Yes

Detailed Assessment

D23 Signs

No change to signage proposed.

G4 Warringah Mall

Landscaping

The application was referred to Council's landscape officer. The application proposes changes to the approved planter boxes. Council's landscape officer raised no issue with the proposed changes.

Building Height

Part G4 Warringah Mall of Warringah DCP 2011 contains controls relating to building height. The controls stipulate maximum building heights across the site by way of a building envelope plan. The building envelope plan shows a maximum of RL25 for development in the north-western side of the site. The proposed development proposes a maximum height of RL21.600, compliant with the numeric requirement. The original application approved a building height of RL21.400.

Hours of Operation

No change proposed.

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

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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. Mod2022/0320 for Modification of Development Consent DA2021/2116 granted for Use of premises as a recreation facility (indoor), alterations and additions and signage on land at Lot 103 DP 1247294, 145 Old Pittwater Road, BROOKVALE, 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
S4.55-A-000	29 April 2022	Quattro Architecture
S4.55-A-100	29 April 2022	Quattro Architecture
S4.55-A-101	29 April 2022	Quattro Architecture
S4.55-A-102	29 April 2022	Quattro Architecture
S4.55-A-200	29 April 2022	Quattro Architecture
S4.55-A-250	29 April 2022	Quattro Architecture

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

c) The development is to be undertaken generally in accordance with the following:

Landscape Plans		
Drawing No.	Dated	Prepared By
L-01/ Revision D	18 May 2022	Space Landscape Designs

Reason: To ensure the work is carried out in accordance with the determination of Council and

approved plans.

B. Modify Condition No. 31 - Allocated Parking Spaces (retail/commercial) - to read as follows:

Parking allocated to this development must be clearly signposted and linemarked as being for the use of this development. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To ensure parking availability.

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

Signed



Maxwell Duncan, Planner

The application is determined on 24/08/2022, under the delegated authority of:



Rodney Piggott, Manager Development Assessments