

25 August 2015

Mr Luke Perry
Development Assessment Officer
Warringah Council
725 Warringah Road
DEE WHY NSW 2099

Dear Luke,

DA2014/1741 – Warringah Mall, Section 96 (1A) Application

1 Introduction

This letter has been prepared to accompany a Section 96 (1A) application lodged on behalf of Scentre Group to modify tree removal consent DA2014/1741 relating to Warringah Mall, 145 Old Pittwater Road, Brookvale.

It provides a description of the proposed modification and addresses the relevant matters of consideration under Section 96 (1A) and Section 79C of the *Environmental Planning and Assessment Act 1979* (the Act).

This application seeks the removal of six (6) street trees along Cross Street that were approved for retention under the conditions of consent for DA2008/1741.

This Section 96 (1A) modification application should be read in conjunction with the following supporting information:

- Proposed Modification to Condition Wording for DA2014/1741 (**Appendix A**);
- Amended Landscape Drawings, prepared by The Dem Group (**Appendix B**);
- Arboricultural Assessment Addendum Report, prepared by Jacksons Nature Works dated 19 August 2015 (**Appendix C**); and
- Notice of Determination for DA2014/1741 dated 18 September 2014 (**Appendix D**)

The proposal has been assessed against the relevant provisions of the Act and will have minimal environmental impact. The modification will not have any long term impacts on the bulk, scale or appearance of the approved development and is substantially the same development as that approved under DA2014/1741.

2 The Approved Development

The conditions of consent for DA2008/1741 included the retention of the street trees along Cross Street as per Landscape Drawing No. DA 016101 a09 (Stage 1 Landscape Plan).

These street trees are identified in the Arboricultural Assessment Addendum Report at **Appendix B** as the following:

- **Tree 33:** *Backhousia citriodora* (Sweet Verbena Tree)
- **Tree 37:** *Backhousia citriodora* (Sweet Verbena Tree)
- **Tree 38:** *Tristaniopsis laurina* (Water Gum)
- **Tree 42:** *Tristaniopsis confertus* (Brush Box)
- **Tree 44:** *Backhousia citriodora* (Sweet Verbena Tree)
- **Tree 47:** *Backhousia citriodora* (Sweet Verbena Tree)

It is also noted that a separate tree removal application (DA2014/0990) was lodged to Council for the removal and transplanting of trees at the Warringah Mall site to enable the stormwater augmentation works approved under DA2008/1742. Consent was granted on 18 September 2014 for the removal of 38 trees and transplanting of seven (7) trees.

3 Proposed Modification

This application seeks to remove trees 33, 37, 38, 42, 44, and 47 which were conditioned to be retained as per DA2008/1741. The removal of these trees will enable the installation of 'Class B Hoardings' along Cross Street to provide protection to pedestrians and separation from the site works approved in relation to the stormwater augmentation works under DA2008/1742. The trees will need to be removed to install the hoardings as all six (6) trees exceed the minimum height clearance to install the Class B hoardings. Refer to the 'Arboricultural Assessment Addendum Report' provided in **Appendix C** for further details.

It is proposed to plant six (6) trees in this location (after the site works are completed) as replacement for the trees to be removed as part of this modification application. Refer to the amended 'Landscape Plans' attached in **Appendix B** for further details.

These replacement trees are to be in a minimum bag size of 100 litres, with the species to be advised by Council. The trees are to be removed by a contractor approved by Council, and the tree removal works will be carried out by an experienced tree surgeon in accordance with NSW WorkCover Code of Practice for Amenity Tree Industry (1998).

It is proposed to amend the wording of the following conditions of DA2014/1741 to reflect the proposed modification:

- **Condition 2:** *Approved Plans and Supporting Documentation;*
- **Condition 30:** *Tree Protection;* and
- **New Condition to be added** – *to address the replacement trees proposed to be planted after the Class B Hoardings are removed.*

The specific word changes sought for each condition is provided in **Appendix A**.

4 Section 96 (1A) Assessment

The proposed modification is sought under Section 96(1A) of the Act. Council as the consent authority may approve an application to modify a development consent where it is satisfied that the proposed modification will satisfy the provisions of Section 96(1A). The proposed modification is assessed against these provisions below.

4.1 MINOR ENVIRONMENTAL IMPACT

In accordance with Section 96 (1A) (a), the proposed development is considered to be of minimal environmental impact because:

- The six (6) trees to be removed as part of this application will be replaced by six (6) replacement trees after the site works are completed, ensuring that any environmental amenity impacts of the loss of the trees is minor and temporary in nature.

4.2 SUBSTANTIALLY THE SAME DEVELOPMENT

In accordance with Section 96 (1A) (b) of the Act, the proposed modification will result in substantially the same development as that approved under DA2014/1741 because it will replace the six (6) trees to be removed, minimising any long term impact on the scale and appearance of the public domain along this section of Cross Street.

4.3 NOTIFICATION PROCESS

Under Part A.7 of the *Warringah Development Control Plan 2011*, Council have discretion to determine whether notification of applications made under Section 96(1A) is required. Given that the site is located within a predominantly industrial area, and the proposed modification is minor in nature with no impact on surrounding land owners, it is considered that notification is not necessary in this instance.

4.4 CONSIDERATION OF SUBMISSIONS

In accordance with Section 96(1A)(d) of the Act, the applicant will consider and respond to any relevant submissions made concerning the proposed modification within the period prescribed by the *Warringah Development Control Plan 2011*.

5 Section 79C Assessment

5.1 ENVIRONMENTAL PLANNING INSTRUMENT AND DEVELOPMENT CONTROL PLAN

The proposal is consistent with the provisions of the *Warringah Local Environmental Plan 2011* and *Warringah Development Control Plan 2011*

Under the WLEP 2011, the location of the existing trees along Cross Street is zoned IN1 General Industrial. The proposed modification to remove six (6) additional trees is permissible with consent within this zone.

'Clause 5.9 Preservation of trees or vegetation' of Warringah LEP 2011 provides that:

"(2) this clause applies to species or kinds of trees or other vegetation that are prescribed for the purposes of this clause by a development control plan made by the Council.

Note. A development control plan may prescribe the trees or other vegetation to which this clause applies by reference to species, size, location or other manner.

(3) A person must not ringbark, cut down, top, lop, remove, injure or wilfully destroy any tree or other vegetation to which any such development control plan applies without the authority conferred by:

- (a) Development consent, or
- (b) A permit granted by Council"

Accordingly, this modification application seeks consent from Council for the removal of six (6) existing trees along Cross Street as described in the 'Arboricultural Assessment Addendum Report' provided in **Appendix C**.

5.2 LIKELY IMPACTS

The proposed modification will enable the temporary installation of Class B Hoardings along Cross Street to allow previously approved stormwater augmentation works (DA2008/1742) to progress, while maintaining pedestrian safety and separation from the worksite.

While the proposed modification will result in the loss of six (6) trees along Cross Street, the amenity impact of this removal will be temporary in nature; it is anticipated that the planting of six (6) replacement trees in this location after the site works are completed will mitigate any amenity or environmental impacts associated with the proposed modification application.

Additionally, the site is surrounded by predominantly less sensitive industrial uses with no adjoining sites or residential uses that would be directly impacted by the proposed tree removal.

Accordingly, it is considered that the proposed modification will have minimal amenity and environmental impact on the surrounding land uses and the public domain.

5.3 SUITABILITY OF THE SITE

The proposed modification does not change the suitability of the site for the approved development.

5.4 PUBLIC INTEREST

The proposed modification is in the public interest as the removal of the six (6) additional trees will enable the installation of hoardings along Cross Street to provide protection to pedestrians and separate them from the site works approved in relation to the stormwater augmentation works under DA2008/1742.

The proposed replacement planting of six (6) trees in this location will ensure that the streetscape and pedestrian amenity along Cross Street is restored after the site works.

6 Conclusion

Having regard to each of the matters considered above, the proposed modification is considered to be reasonable and appropriate. The proposed modification is minor in nature and results in substantially the same development as that approved, satisfies the requirements of Section 96(1A) and Section 79C of the Act, and will not result in any unreasonable impacts.

Based on the above, we conclude that the proposed modification should be approved pursuant to the provisions of Section 96(1A) of the Act.

If you have any questions with regard to the application, please call the undersigned on (02) 8233 9900.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'T. Blythe', is positioned above the typed name.

Tim Blythe
Regional Director, Planning

Appendix A

- **Condition 2. Approved Plans and Supporting Documentation**

Condition 2 will need to be modified to include the amended landscape plans attached in **Appendix B** as follows:

<i>Drawing number</i>	<i>Dated</i>	<i>Prepared by</i>
DA016101 Revision A09-A15	15.03.10 21.08.15	DEM
DA016102 Revision A06-A16	03.02.10 21.08.15	DEM
DA016103 Revision A08-A16	15.03.10 21.08.15	DEM
DA016104 Revision A01	14.08.09	DEM

- **Condition 30. Tree Protection**

In order to protect and enhance onsite vegetation and trees the following applies to the development site:

(a) *Construction Certificate Plans*

The construction certificate plans must include reference to:

- i. Trees to be removed coloured or shaded in the colour red*
- ii. Trees to be retained coloured or shaded in the colour green*
- iii. Trees to be pruned coloured or shaded in the colour of shaded in the colour blue*
- iv. Trees to be transplanted coloured or shaded in the colour yellow.*

(b) *Existing trees which must be retained*

Approval is NOT granted for the removal of the following trees.

<i>Trees indicated as retained on landscape plan – endorsed with council's stamp</i>		
<i>Drawing Number</i>	<i>Dated</i>	<i>Prepared by</i>
a-09	15.03.10	DEM
DA 01 6101 Revision A15	21.08.15	DEM

Reason: *To ensure the protection of trees to be retained*

▪ **New condition to be added**

Replacement trees which must be planted

The following replacement tree species must be planted onsite to ensure the preservation of the landscape character of the locality.

<i>No of replacement trees required</i>	<i>Species</i>	<i>Location</i>
<i>In accordance with the approved Landscape Plan</i>	<i>In accordance with the approved Landscape Plan Sheet 1 of 2 Ground Level Palm Tree Car Park Dwg No. da016101 Rev No. A15</i>	<i>In accordance with the approved Landscape Plan Sheet 1 of 2 Ground Level Palm Tree Car Park Dwg No. da016101 Rev No. A15</i>

Replacement trees are to satisfy the following:

- a) All replacement trees must be a minimum pot size of 25L at planting;*
- b) All replacement trees must be of a species that will attain a minimum height of six (6) metres at maturity within six (6) years of planting;*
- c) All replacement trees must be maintained until they reach six (6) metres in height;*
- d) If any replacement tree dies prior to reaching six (6) metres in height that tree is to be replaced; and*
- e) The replacement trees shall be planted within three (3) months of the removal of the Class B Hoarding along Cross Street associated with the stormwater augmentation works under DA2008/1742.*

Reason: *To enhance the landscape character.*