

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2023/0271
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 DA2022/1822 granted for Minor alterations and additions to Westfield Warringah Mall Shopping Centre ('Warringah Mall')
Zoning:	Warringah LEP2011 - Land zoned E2 Commercial Centre Warringah LEP2011 - Land zoned E4 General Industrial OLDWarringah LEP2011 - Land zoned B3 Commercial Core OLDWarringah LEP2011 - Land zoned IN1 General Industrial
Development Permissible:	Yes - Zone E2 Commercial Centre Yes - Zone E4 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:	Scentre Management Ltd

Application Lodged:	29/05/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	28/06/2023 to 12/07/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

This modification application lodged pursuant to Section 4.55(1A) of the *Environmental Planning and Assessment Act* 1979 seeks to modify the built form approved under Development Consent DA2022/1822.

The modifications proposed include:

- Adding a new canopy structure to cover the new bridge link from the southern carpark.
- Increasing the roof height by 0.5 metres and parapet by 0.15 metres.

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 - G4 Warringah Mall

SITE DESCRIPTION

Property Description:	Lot 103 DP 1247294 , 145 Old Pittwater Road BROOKVALE NSW 2100
Detailed Site Description:	<p>The subject site is occupied by Westfield Warringah Mall Shopping Centre and is located on the western side of Old Pittwater Road.</p> <p>The site is irregular in shape with a total surveyed area of 170,600m².</p> <p>The site is located within the B3 Commercial Core zone, pursuant to the Warringah Local Environmental Plan 2011 and accommodates a major retail centre with a number of adjoining parking facilities.</p> <p>The site does not slope significantly and contains limited vegetation. There are no details of any threatened species</p>

within the site.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by a mix of commercial, industrial and residential development.

Map:



SITE HISTORY

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

DA2022/1822 - Minor alterations and additions to Westfield Warringah Mall Shopping Centre ('Warringah Mall') - Approved 4 April 2023.

The consent approve the following:

- Change of use of existing retain tenancy (David Jones (level 2)) to a **recreation facility (indoor)** (Gymnasium) and **office premise** (co-working space).
- New tenancy at ground floor level.
- Alterations and additions to existing building; including
 - New glazed windows and door to level 2.
 - New common walkway.
 - New pedestrian bridge from level 2 to existing car park.
 - New internal stair access
 - Roof sheeting with skylights.
- Operational:
 - Hours of Operation: Gymnasium and office premise: 24 Hours Monday - Sunday (including public holidays)

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 DA2022/1822, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	<p>Yes</p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <ul style="list-style-type: none"> • The application proposes minor internal and external alterations. The bulk and scale of the development remains largely the same as the original approval.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2022/1822 for the following reasons:</p> <ul style="list-style-type: none"> • The approved use remains unchanged. • The proposed remains for alterations and additions to a existing development.

Section 4.55(1A) - Other Modifications	Comments
(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 2021, 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 4.55 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 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.

Section 4.15 'Matters for Consideration'	Comments
<p>Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)</p>	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 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 29</u> of the EP&A Regulation 2021 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 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. A No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via existing conditions of consent.</p> <p><u>Clauses 62</u> and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via existing conditions of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 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 69</u> of the EP&A Regulation 2021 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>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>	<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 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>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered suitable for the proposed development.</p>
<p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>See discussion on "Notification & Submissions Received" in this report.</p>

Section 4.15 'Matters for Consideration'	Comments
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 28/06/2023 to 12/07/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	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. 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.
NECC (Development Engineering)	No objections to approval.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	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 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 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.

Roads and Maritime Service (RMS)

RMS conditions from parent consent apply

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
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Principal Development Standards

The LEP development standards under part 4 does not apply to the subject site as Part G4 of the WDCP 2011 contains the site specific development controls for Warringah Mall. An assessment of the application against the requirement Part G4 is provided within the report.

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
6.11 Affordable housing	Yes

Warringah Development Control Plan

Built Form Controls

The built form control does not apply to the subject site as Part G4 of the WDCP 2011 contains the site specific development controls for Warringah Mall. An assessment of the application against the requirement Part G4 is provided within the report.

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
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D18 Accessibility and Adaptability	Yes	Yes
D20 Safety and Security	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E8 Waterways and Riparian Lands	Yes	Yes
E10 Landslip Risk	Yes	Yes
E11 Flood Prone Land	Yes	Yes
Part G Special Area Controls	Yes	Yes
G4 Warringah Mall	Yes	Yes

Detailed Assessment

G4 Warringah Mall

Description of non-compliance and/or inconsistency

Part G4 of the WDCP 2011 applies to Lot 100, DP 1015283, 145 Old Pittwater Road, Brookvale which is commonly referred to as 'Warringah Mall Shopping Centre'.

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 and RL25.3 for the area proposed for the level two aspect of the development. The proposed development proposes a maximum height of RL28 for the proposed canopy and RL27.038 for the proposed skylight.

Car parking

No change to density proposed under the proposed modifications to warrant change to the approved parking.

Landscaping

No landscaping is required for this part of the site.

Hours of Operation

No change to the approved hours proposed.

Merit consideration

With regard to the consideration for a variation to the building height control, the development is considered against the underlying Objectives of the Control as follows:

- To provide street edge definition along the main eastern frontage of the site.

Comment:

The proposed increased height will not be readily visible from the eastern frontage.

- To provide street edges which reinforce, improve or support the hierarchy and character of streets.

Comment:

The minor increase to the skylight and parapet height will not have a significant overbearing effect on street which adjoin the mall.

- To achieve comfortable street environments for pedestrians in terms of daylight, human scale, sense of enclosure and wind mitigation as well as a healthy and sustainable environment for street trees.

Comment:

The area of the Warringah Mall site where the additional height is proposed accounts for a relatively small aspect of the entire development. The proposed development will not unreasonably impact street environments for pedestrians in terms of daylight, human scale, sense of enclosure and wind mitigation as well as a healthy and sustainable environment for street trees.

- To ensure solar access to residential properties and public spaces is protected.

Comment:

The additional height can be accommodated in this portion of the site without there being any significant overshadowing of the private open space areas on the adjoining residential properties. In this regard, the adjoining properties will continue to receive at least 3 hours of sunlight to 50% of their private open space areas.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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 2021;
- 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. Mod2023/0271 for Modification of Development Consent DA2022/1822 granted for Minor alterations and additions to Westfield Warringah Mall Shopping Centre ('Warringah Mall') on land at Lot 103 DP 1247294, 145 Old Pittwater Road, BROOKVALE, subject to the conditions printed below:

Modification Summary

The development consent is modified as follows:

MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
PAN-332701 MOD2023/0271	The date of this notice of determination	Modification of Development Consent DA2022/1822 granted for Minor alterations and additions to Westfield Warringah Mall Shopping Centre ('Warringah Mall') Amend Condition 1

Modified conditions

A. Condition 1 is amended to the extent as follows:

The development must be carried out in compliance with the endorsed stamped plans and documentation listed below, except as amended by any other condition of consent:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
SDC-01.0012/ Revision A	16 December 2022	Scentre Group
SDC-01.0014/ Revision A	16 December 2022	Scentre Group
SDC-01.0015/ Revision B	28 April 2023	Scentre Group
SDC-01.0413/ Revision B	28 April 2023	Scentre Group
SDC-01.0511/ Revision A	16 December 2022	Scentre Group
SDC-01.0513/ Revision B	28 April 2023	Scentre Group
SDC-01.0514/ Revision A	16 December 2022	Scentre Group
SDC-01.0811/ Revision A	16 December 2022	Scentre Group
SDC-01.0812/ Revision A	16 December 2022	Scentre Group
SDC-01.0813/ Revision B	28 April 2023	Scentre Group
SDC-01.0814/ Revision B	28 April 2023	Scentre Group
SDC-01.2010/ Revision B	28 April 2023	Scentre Group
SDC-01.2011/ Revision B	28 April 2023	Scentre Group
SDC-01.2012/ Revision B	28 April 2023	Scentre Group
SDC-01.2013/ Revision A	16 December 2022	Scentre Group
SDC-01.2510/ Revision B	28 April 2023	Scentre Group

SDC-01.2511/ Revision B	28 April 2023	Scentre Group
SDC-01.2550/ Revision B	28 April 2023	Scentre Group
SDC-01.3010/ Revision B	28 April 2023	Scentre Group

Engineering Plans		
Drawing No.	Dated	Prepared By
HYD-10.0001/ Revision A	31 October 2022	Scentre Group
HYG-10.0002/ Revision A	31 October 2022	Scentre Group
HYG-10.0003/ Revision A	31 October 2022	Scentre Group
HYD-00.0000/ Revision A	31 October 2022	Scentre Group

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Acoustic Noise Assessment	10 February 2023	PWNA
BCA Assessment	8 March 2022	Steve Watson and Partners
Fire Engineering Statement	9 May 2023	Fire Engineering Professionals

- 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:

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	8 November 2022	Tim Parker

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

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

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

Signed



Maxwell Duncan, Planner

The application is determined on 08/08/2023, under the delegated authority of:



Rodney Piggott, Manager Development Assessments