

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2016/0135
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Responsible Officer:	Lashta Haidari
Land to be developed (Address):	Lot 3 DP 307937, 896 Pittwater Road DEE WHY NSW 2099 Lot 1 DP 307937, 896 Pittwater Road DEE WHY NSW 2099 Lot A DP 416469, 894 Pittwater Road DEE WHY NSW 2099 Lot 1 DP 504212, 892 Pittwater Road DEE WHY NSW 2099 Lot 10 DP 231418, 890 Pittwater Road DEE WHY NSW 2099 Lot 11 DP 231418, 888 Pittwater Road DEE WHY NSW 2099 Lot A DP 339410, 884 Pittwater Road DEE WHY NSW 2099 Lot 7 DP 8172, 9 Howard Avenue DEE WHY NSW 2099 Lot 1 DP 209503, 11 Howard Avenue DEE WHY NSW 2099 Lot 1 DP 212382, 15 Howard Avenue DEE WHY NSW 2099 Lot 2 DP 212382, 17 Howard Avenue DEE WHY NSW 2099 Lot 3 DP 212382, 28 Oaks Avenue DEE WHY NSW 2099 Lot A DP 371110, 14 Oaks Avenue DEE WHY NSW 2099 Lot B DP 371110, 16 Oaks Avenue DEE WHY NSW 2099
Proposed Development:	Modification of Consent No. DA2015/0612 granted for Drainage and Stormwater Management works, Installation of Shoring Walls and Bulk Excavation
Zoning:	LEP - Land zoned B4 Mixed Use LEP - Land zoned B4 Mixed Use LEP - Land zoned B4 Mixed Use LEP - Land zoned B4 Mixed Use LEP - Land zoned B4 Mixed Use LEP - Land zoned B4 Mixed Use LEP - Land zoned B4 Mixed Use LEP - Land zoned B4 Mixed Use LEP - Land zoned B4 Mixed Use LEP - Land zoned B4 Mixed Use LEP - Land zoned B4 Mixed Use LEP - Land zoned B4 Mixed Use LEP - Land zoned B4 Mixed Use LEP - Land zoned B4 Mixed Use LEP - Land zoned B4 Mixed Use
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Warringah Council
Land and Environment Court Action:	No
Owner:	Karimbla Properties (No41) Pty Ltd
Applicant:	Karimbla Constructions Services (Nsw) Pty Ltd

Application lodged:	01/06/2016

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Application Type:	Local
State Reporting Category:	Other
Notified:	17/06/2016 to 02/07/2016
Advertised:	Not Advertised, in accordance with A.7 of WDCP
Submissions:	2
Recommendation:	Approval

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 all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (upto the time of determination) by the applicant, persons who have made submissions regarding the application and any advice provided by relevant Council / Government / Authority Officers on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Development Control Plan - D3 Noise

SITE DESCRIPTION

Property Description:	Lot 3 DP 307937 , 896 Pittwater Road DEE WHY NSW 2099 Lot 1 DP 307937 , 896 Pittwater Road DEE WHY NSW 2099 Lot A DP 416469 , 894 Pittwater Road DEE WHY NSW 2099 Lot 1 DP 504212 , 892 Pittwater Road DEE WHY NSW 2099 Lot 10 DP 231418 , 890 Pittwater Road DEE WHY NSW 2099 Lot 11 DP 231418 , 888 Pittwater Road DEE WHY NSW 2099 Lot A DP 339410 , 884 Pittwater Road DEE WHY NSW 2099 Lot 7 DP 8172 , 9 Howard Avenue DEE WHY NSW 2099 Lot 1 DP 209503 , 11 Howard Avenue DEE WHY NSW 2099 Lot 1 DP 212382 , 15 Howard Avenue DEE WHY NSW 2099 Lot 2 DP 212382 , 17 Howard Avenue DEE WHY NSW 2099
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	Lot 3 DP 212382 , 28 Oaks Avenue DEE WHY NSW 2099 Lot A DP 371110 , 14 Oaks Avenue DEE WHY NSW 2099 Lot B DP 371110 , 16 Oaks Avenue DEE WHY NSW 2099
Detailed Site Description:	The subject site comprises the following 12 individual lots in Oaks Avenue, Howard Avenue and Pittwater Road, Dee Why: • Lot 7, DP 8172, 9 Howard Avenue • Lot 1, DP 209503, 11 Howard Avenue • Lot 1, DP 212382, 15 Howard Avenue • Lot 2, DP 212382, 17 Howard Avenue • Lot 3, DP 212382, 28 Oaks Avenue • Lot A, DP 339410, 884 Pittwater Road • Lot 11, DP 231418, 888 Pittwater Road • Lot 10, DP 231418, 890 Pittwater Road • Lot 1, DP 504212, 892 Pittwater Road • Lot A, DP 416469, 894 Pittwater Road • Lot 1, DP 307937, 896 Pittwater Road • Lot 3, DP 307937, 896 Pittwater Road The subject site is located on the eastern side of Pittwater Road, generally between Howard Avenue in the north and Oaks Avenue in the south. The sites are currently under a period of demolition as per Development Consent No. DA2014/0805. The land surrounding the subject site generally comprises 2 to 5 storey mixed use developments. Adjoining the site to the north on the opposite side of Howard Avenue, to the west on the opposite side of Pittwater Road and the south on the opposite side of Oaks Avenue is a mixture of older retail and commercial office buildings and newer shop top housing developments.

Map:

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SITE HISTORY

DA2015/0612

This application for drainage and stormwater management works and installation of shoring walls and bulk excavation was granted approval on 22 December 2015.

PROPOSED DEVELOPMENT IN DETAIL

This application is to amend Condition 4 of the Consent of Development Application DA2015/0612 to allow an extended hour in the morning for the excavation works. The specific amendments to Condition 4 are as follows (deleted text shown in ~~strike through~~, new text shown in **bold**):

Excavation works are restricted to:

- ~~8.00am~~ **7.00am** to 5.00pm Monday to Friday
- ~~8.00am~~ **7.00am** to 2. 00pm inclusive on Saturday - subject to the works being undertaken to include machinery that only requires the excavation of material that does not include rock sawing, rock hammering and the like.

The applicant has advised that the extended work hours are required to finalise the excavation works within a limited timeframe.

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment C.

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

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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 DADA2015/0612, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 96(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 96(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	Yes The modification, as proposed in this application, is considered to be of minimal environmental impact.
(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	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 DA2015/0612.
(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, Warringah Local Environment Plan 2011 and Warringah Development Control 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 "Public Exhibition" in this report.

Section 79C Assessment

In accordance with Section 96(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

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matters referred to in section 79C(1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act, 1979, are:

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 79C (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 79C (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 79C (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<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 via a condition in the original consent. <u>Clauses 54 and 109</u> of the EP&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. <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. <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 clause is not relevant to this application. <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. <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.
Section 79C (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	(i) 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. (ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.

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Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” in this report.
Section 79C (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.

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 Warringah Development Control Plan.

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Mr Paul Apostolou	31 / 10 Oaks Avenue DEE WHY NSW 2099
Miss Kathryn Renee Young	8 / 10 Oaks Avenue DEE WHY NSW 2099

Construction Acoustic Impact

Two individual submissions have been received from the adjoining property at No. 10 Oaks Ave. Both Submissions have raised concerns that the impact associated with the construction noise on the adjoining properties and business, and that an early start (i.e 7am) will further compromise the amenity of these properties.

Comment: The applicant has indicated that the additional hours will cut the excavation period in half, as it will give the trucks enough time to travel to the authorized disposal site in Wollongong (EPA certified site) to dispose of the type of soil being excavated (acid sulphates) on 2 occasions.

In order to minimize the impact on the adjoining properties on the more sensitive weekend morning, it is recommended that the request relating to the extended Saturday morning hours should not be supported. Surrounding residents should be afforded with some relief on the weekends, when people are seeking some rest and sleep-ins after the working week. The extended hours on weekdays can be supported for a period of four (4) months only, on the basis that the additional hours will reduce the overall excavation period for the project, which will have a long term benefit for the adjoining residence and business. In addition to the above, the applicant has submitted a Noise and Vibration Management Plan (prepared by Acoustic Logic, dated 4/07/2016), the management plan provides measures on how to deal with complaints relating to noise and vibration issues during the construction. The recommendation of this Plan of Management is adopted as part of the recommendation of this report.

MEDIATION

No requests for mediation have been made in relation to this application.

REFERRALS

Internal Referral Body	Comments
Environmental Investigations (Industrial)	Modification reviewed by Environmental Investigations, no objection subject to the implementation of the recommendations outlined in the Vibration Impact Assessment dated 16 June 2016 report no. 20160147.3

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)

Nil

Warringah Local Environment 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
6.3 Flood planning	Yes
6.4 Development on sloping land	Yes
Part 7 Dee Why Town Centre	Yes
7.3 Objectives for development within Dee Why Town Centre	Yes
7.4 Development must be consistent with objectives for development and design excellence	Yes
7.5 Design excellence within Dee Why Town Centre	Yes
7.6 Height of buildings	Yes
7.7 Site A Oaks Avenue above podium elements	Yes
7.8 Site B Oaks Avenue above podium elements	Yes

Clause	Compliance with Requirements
7.9 Site A Proposed New Road above podium elements	Yes
7.10 Allowance for external ancillary plant and roof access	Yes
7.11 Town Square and pedestrian connections	Yes
7.12 Provisions promoting retail activity	Yes
7.13 Mobility, traffic management and parking	Yes

Warringah Development Control Plan

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
D3 Noise	Yes	Yes

Detailed Assessment

D3 Noise

In relation to the requirement of this Clause, the applicant has submitted a Noise Management Report, prepared by Acoustic Logic, dated 16/06/2016. The report provides recommendations on how noise is to be minimized and the mitigation of the impacts of the construction noise and vibration on the adjoining and nearby properties.

The report has been reviewed by Council's Environmental Investigation Team, who have raised no objection to the proposed modification,

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.

POLICY CONTROLS

Warringah Section 94A Development Contribution Plan

Section 94 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 Modification Application No. Mod2016/0135 for Modification of Consent No. DA2015/0612 granted for Drainage and Stormwater Management works, Installation of Shoring Walls and Bulk Excavation on land at Lot 3 DP 307937,896 Pittwater Road, DEE WHY, Lot 1 DP 307937,896 Pittwater Road, DEE WHY, Lot A DP 416469,894 Pittwater Road, DEE WHY, Lot 1 DP 504212,892 Pittwater Road, DEE WHY, Lot 10 DP 231418,890 Pittwater Road, DEE WHY, Lot 11 DP 231418,888 Pittwater Road, DEE WHY, Lot A DP 339410,884 Pittwater Road, DEE WHY, Lot 7 DP 8172,9 Howard Avenue, DEE WHY, Lot 1 DP 209503,11 Howard Avenue, DEE WHY, Lot 1 DP 212382,15 Howard Avenue, DEE WHY, Lot 2 DP 212382,17 Howard Avenue, DEE WHY, Lot 3 DP 212382,28 Oaks Avenue, DEE WHY, Lot A DP 371110,14 Oaks Avenue, DEE WHY, Lot B DP 371110,16 Oaks Avenue, DEE WHY, subject to the conditions printed below:

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) Approved Plans

04/07/2016

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Noise and Vibration Impact Assessment	16/06/2016	Acoustic Logic
Noise and Vibration Management Plan (Ref: 20160147.3/0407A/R1/GW)	04/07/2016	Acoustic Logic

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. (DACPLB01)

Modify Condition 4. General Requirements to read as follows:

(a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 4.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

Excavation works are restricted to:

- 7.00 am to 5.00 pm Monday to Friday - the extended hours is for weekdays only and is granted for period of four (4) months from the date of the approval of MOD2016/0135.
- 8.00 am to 2.00 pm inclusive on Saturday - subject to the works being undertaken to include machinery that only requires the excavation of material that does not include rock sawing, rock hammering and the like.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

(b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

(c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

(d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

(e) Prior to the release of the Construction Certificate payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

(f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

(g) No building, demolition, excavation or material of any nature shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(i) All sound producing plant, equipment, machinery or fittings and the use will not exceed more than 5dB (A) above the background level when measured from any property boundary and/or habitable room (s) consistent with the Environment Protection Authority's NSW Industrial Noise Policy and/or Protection of the Environment Operations Act 1997.

(j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

(k) Prior to the commencement of any development onsite for:

- i) Building/s that are to be erected
- ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to pe
- iii) Building/s that are to be demolished
- iv) For any work/s that is to be carried out
- v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community. (DACPLB10)

I am aware of Warringah's Code of Conduct and, in signing this report, declare that I do not have a Conflict of Interest.

Signed

Lashta Haidari, Senior Development Planner

The application is determined under the delegated authority of:

Steven Findlay, Development Assessment Manager

ATTACHMENT A

No notification plan recorded.

ATTACHMENT B

	Notification Document	Title	Date
	2016/187313	Notification Map	16/06/2016

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ATTACHMENT C

Reference Number	Document	Date
 2016/177502	Letter - S96 Condition 4	31/05/2016
 MOD2016/0135	896 Pittwater Road DEE WHY NSW 2099 - Section 96 Modifications - Section 96 (1a) Minor Environmental Impact	01/06/2016
 2016/171460	DA Acknowledgement Letter - Karimbla Constructions Services (Nsw) Pty Ltd	01/06/2016
 2016/177483	Application to Modify a Consent	07/06/2016
 2016/177489	Applicant Details	07/06/2016
 2016/178149	invoice for ram applications - Karimbla Constructions Services (Nsw) Pty Ltd	08/06/2016
 2016/187313	Notification Map	16/06/2016
 2016/187599	Notification Letter - 679 posted 17/06/2016	16/06/2016
 2016/195746	Environmental Investigations (Industrial) - Assessment Referral - Mod2016/0135 - 9 Howard Avenue DEE WHY NSW 2099	17/06/2016
 2016/197299	Online Submission - Apostolou	22/06/2016
 2016/198019	Online Submission - Young	22/06/2016
 2016/218589	Environmental Investigations Referral Response - industrial use	05/07/2016