

COMMERCIAL OCCUPATION / ADDITIONS / SIGNAGE / CHANGE OF USE

Section 96(1A) Application to Modify a Development Consent Assessment Report

Modification Application Number:	Mod2014/0138
Development Application Number:	DA2006/0339
Planner:	Mitchell Drake
Property Address:	Lot 1039 DP 752038 No related Land, Por 1039/ Oxford Falls Road OXFORD FALLS NSW 2100,
Proposal Description:	Modification of Development Consent DA2006/0339 granted for Erection of Childcare Centre Associated Outdoor Play Areas Carpark Staff Rooms and Gardeners Shed
Recommendation:	APPROVED
Clause 20 Variation:	No
Proposal in Detail:	The applicant seeks to modify the existing consent DA2006/0339, granted on 27/11/2009, by changing the carparking layout and allowing for vehicles to safely negotiate movements internally and to modify the existing location of the On – Site – Detention outlet.
History and Background:	DA2006/0339 - was considered by an independent public hearing on 10/11/2007 and approved by Council 27/11/2009 for construction of a childcare centre, associated outdoor play areas, car park and gardeners shed. During construction the applicant failed to comply with various conditions of consent and an Order dated 9/4/2009 was placed on the Applicant to rectify those issues identified by Council's Compliance Team in Council's Order. MOD2009/0177 - Modification Application No. MOD2009/0177 was lodged with Council. This modification sought 15 different amendments to the approved plans and was approved on 5 November 2009. MOD2011/0269 - Modification Application No. MOD2011/0269 for the relocation of four (4) parking spaces was lodged with Council and was approved on 12 April 2012 MOD2012/0023 - Modification Application No. MOD2011/0269 for the Deletion of wheel chair lift and deletion of internal ramp between play rooms 1 and 2 was lodged with Council and was refused on 23 July 2012 MOD2011/0269 - Modification Application No. MOD2011/0269 for Changes to the existing carparking configuration was lodged with Council and was subsequently withdrawn due to lack of information on 20 May 2014



Plans Reference

Drawing	Title	Rev	Dated	Drawn By
SK001	Stormwater Certification Plan	Rev. A	18/06/2014	Martens & Associates Pty Ltd
N/A	Proposed Carpark Layout	N/A	29/09/2014	Transport & Traffic Planning Assoc
N/A	Access Report – S96 App.	N/A	16/06/2014	Accessibility Solutions Oty Ltd

Report Section	Applicable – Yes or No
Section 1 – Code Assessment	Yes
Section 2 – Issues Assessment	Yes
Section 3 – Site Inspection	Yes

Notification Required:	Yes	14DAYS
Submissions Received:	Yes	Number of Submissions: 1
Cost of Works:	\$N/A	
Section 94A Applicable:	No	TOTAL: N/A

Section 96(1A) EPA ACT 1979	
Section 96(1A) (a) – Is the Modification to consent of Minimal Environmental impact?	Yes
Section 96(1A) (b) – Would the consent as proposed to be modified be substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was previously modified?	Yes
Section 96(1A) (c) & (d) – Has the application been on Public Exhibition? Have you considered any submissions?	Yes
Section 96 (3) – Have you considered such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application	Yes

SECTION 1 – CODE ASSESSMENT REPORT

ENVIRONMENTAL PLANNING INSTRUMENTS



Warringah Local Environmental Plan 2000

Locality:	B2 Oxford Falls Valley
Development Definition:	Childcare Centre – Ancillary Carparking
Category of Development:	Category 3

Desired Future Character Statement:

The present character of the Oxford Falls Valley locality will remain unchanged except in circumstances specifically addressed as follows.

Future development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses. There will be no new development on ridgetops or in places that will disrupt the skyline when viewed from Narrabeen Lagoon and the Wakehurst Parkway.

The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be located and grouped in areas that will minimise disturbance of vegetation and landforms whether as a result of the buildings themselves or the associated works including access roads and services. Buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.

A dense bushland buffer will be retained or established along Forest Way and Wakehurst Parkway. Fencing is not to detract from the landscaped vista of the streetscape.

Development in the locality will not create siltation or pollution of Narrabeen Lagoon and its catchment and will ensure that ecological values of natural watercourses are maintained.

Is the development consistent with the Locality's Desired Future Character Statement?
Yes

Category 3 Assessment against the Desired Future Character Statement

Pursuant to Clause 12(3)(b) of WLEP 2000, Council in granting Development Consent DA2006/0339, was satisfied that the development was consistent with the Locality's DFC statement for the B2 Oxford Falls Valley locality. The proposed modification, involving the re-designing of carparking and provision for modified OSD outlet piping (which partly encroaches on the 20 metre front setback to Oxford falls road) is relatively minor in nature having regard to the size and scale of the development. The changes do not alter the original finding that the development is of "low intensity, low impact". Therefore, the proposal does not change the developments overall consistency with the DFC.

BUILT FORM CONTROLS - No Changes to the Built Form Controls are proposed.

GENERAL PRINCIPLES OF DEVELOPMENT CONTROL

General Principles	Applies	Comments	Complies
CL71 Parking facilities (visual)	Yes	The changes to the carparking are internal and will not be visible from the street frontage. The proposal will remain	Yes



General Principles	Applies	Comments	Complies
impact)		consistent with the relevant controls and objectives.	
CL72 Traffic access & safety	Yes	There are no changes to the functionality of the gutter crossing and the nexus between the public roadway and the internal carpark. Vehicles will be able to enter and exit the site in a forward direction. The internal manoeuvring from spaces 8 and 9 as identified on the plans accompanying the application is not satisfactory. Vehicles are required to reverse into the adjacent accessway past spaces 10 and 11 in order to exit these spaces. As such a condition of consent is to be imposed deleting spaces 8 and 9 from the approved plans. This condition adequately addresses the concerns raised with regards to internal manoeuvring.	Yes – Subject to Condition.
CL74 Provision of Carparking	Yes	The subject site provides in excess of the required parking spaces on site. The deletion of two (2) spaces (spaces 8 & 9) does not result in a deficiency in parking availability on-site. (Refer also to Schedule 17 Carparking Provisions assessment within this report). The site will remain compliant with carparking requirements as a result of the modification and the imposed conditions of consent.	Yes – Subject to Condition
CL75 Design of Carparking Areas	Yes	As stated within Clause 72 Traffic Access & Safety, the internal manoeuvring from spaces 8 and 9 is unsatisfactory. A condition of consent is to be imposed deleting spaces 8 and 9 from the approved plans. This condition adequately addresses the concerns raised with regards to internal manoeuvring.	Yes – Subject to Condition.
CL76 Management of Stormwater	Yes	The proposed modification to the On-Site – Detention specifications were forwarded to Councils Development Engineers who stated the proposal was satisfactory subject to conditions.	Yes – Subject to Condition



General Principles	Applies	Comments	Complies
		Refer to Development Engineers comments within the referrals section of this report.	

SCHEDULES

Schedule	Applicable	Compliant
Schedule 8 Site analysis	Yes	Yes
Schedule 15 Statement of environmental effects	Yes	Yes
Schedule 17 Carparking provision	Yes	Yes

STATE ENVIRONMENTAL PLANNING POLICIES, REGIONAL ENVIRONMENTAL PLANS

POLICY	ASSESSMENT	YES /NO /N/A	COMPLIES
SEPP – 55	Based on the previous land uses if the site likely to be contaminated? Is the site suitable for the proposed land use?	Yes	Yes
SEPP INFRASTRUCTURE	Is the proposal for a swimming pool, or Within 30m of an overhead line support structure? Within 5m of an overhead power line?	Yes	Yes

OTHER MATTERS FOR FURTHER CONSIDERATION

Section 2B Schedule 17 Carparking Provision

Total number of car spaces required : 15 Total number of car spaces provided : 24 – Subject to condition deleting spaces 8 and 9.	Address via condition? Yes
Clause 74 Provision of carparking Adequate off-street carparking is to be provided within the subject property boundaries having regard to: • the land use, and	Yes
• the hours of operation, and	Yes



• the availability of public transport, and	N/A
• the availability of alternative carparking, and	N/A
• the need for parking facilities for courier vehicles, delivery/service vehicles and bicycles.	Yes

EPA REGULATION CONSIDERATIONS:

Regulation Clause	Applicable	Conditioned
Clause 54 & 109 (Stop the Clock)	N/A	N/A
Clause 94 (Upgrade of Building for Disability Access)	Yes	Yes
Clause 98 (BCA)	Yes	Yes

REFERRALS

Referral Body Internal	Comments	Consent Recommended
Development Engineers	The proposed modification was referred to Councils Development Engineers who made the following comments: <i>No objection to approval and subject to conditions as recommended.</i> <i>1. Condition 47a of the Development Consent is to be deleted.</i> <i>2. Inclusion of the following condition:</i> On-site Stormwater Detention Certification <i>Drainage plans detailing the provision of On-site Stormwater Detention in accordance with Warringah Council's "On-site Stormwater Detention Technical Specification", the generally in accordance with concept drawing by Martens & Associates Pty Ltd, drawing number P0902393 JD02V02, Revision A dated 18 June 2014.</i> <i>Drainage plans must be amended to comply with the following:</i> a) <i>Permissible Site Discharge for the 1 in 5yr ARI : 117 l/s</i> b) <i>Permissible Site Discharge for the 1 in 20yr ARI : 237 l/s</i> c) <i>Permissible Site Discharge for the 1 in</i>	Yes – Subject to Condition



Referral Body Internal	Comments	Consent Recommended
	100yr ARI : 411 l/s d) Minimum OSD storage required: 132 cubic metres Detailed drainage plans, including engineering certification confirming the above requirements have been satisfied and complying with Council's current On-site Stormwater Detention Technical Specification, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.	
	Reason: To ensure appropriate provision for the disposal of stormwater and stormwater management arising from the development. It is considered that Councils Development Engineers have no objections to the modification subject to the amending of Condition 47a.	
Landscape Officer	The proposed modification was referred to Councils Landscape Officers who had no objection to approval, subject to the imposition of conditions of consent.	Yes – Subject to Conditions
Natural Environment Unit (Drainage Assets)	The proposed modification was referred to Councils Natural Environment Unit who had no objection to approval and imposed no conditions of consent.	Yes
Traffic Engineers	The proposed modification was referred to Councils Traffic Engineers who made the following comments: <i>The proposed modification is for changes to the car parking area with regard to the location of the disabled parking and modifications to other parking on the site.</i> <i>The disabled parking spaces are considered acceptable, provided that the spaces and the shared area are marked in accordance with AS2890.6.</i> <i>The car parking spaces 8 & 9 are not acceptable due to not providing a reversing area such that they can turn into and out of the spaces without having to reverse into the main traffic aisle. These spaces are to be removed subject to maintaining the required number of parking spaces in accordance to Warringah</i>	Yes – Subject to Conditions



Referral Body Internal	Comments	Consent Recommended
	DCP. A clear pedestrian path should be provided from the parent set down/pick up parking spaces to the front door of the centre, to minimize potential conflict with vehicles entering the car parking area. In regards to the above comments, a condition of consent is to be imposed deleting spaces 8 & 9 as stated previously. A further condition is to be imposed requiring that a clear pedestrian path should be provided from the parent set down/pick up parking spaces to the front door of the centre. It is considered that Councils Development Engineers are satisfied with the proposal subject to conditions.	

APPLICABLE LEGISLATION/ EPI'S /POLICIES:	
EPA Act 1979	Yes
EPA Regulations 2000	Yes
SEPP No. 55 – Remediation of Land	Yes
SEPP Infrastructure	Yes
WLEP 2000	Yes
Section 79C “Matters for Consideration”	
Section 79C (1) (a)(i) – Have you considered all relevant provisions of any relevant environmental planning instrument?	Yes
Section 79C (1) (a)(ii) – Have you considered all relevant provisions of any provisions of any draft environmental planning instrument	Yes
Section 79C (1) (a)(iii) – Have you considered all relevant provisions of any provisions of any development control plan	Yes
Section 79C (1) (a)(iiia) - Have you considered all relevant provisions of any Planning Agreement or Draft Planning Agreement	Yes
Section 79C (1) (a)(iv) - Have you considered all relevant provisions of any Regulations?	Yes
Section 79C (1) (b) – Are the likely impacts of the development,	Yes



APPLICABLE LEGISLATION/ EPI'S /POLICIES:	
including environmental impacts on the natural and built environment and social and economic impacts in the locality acceptable?	
Section 79C (1) (c) – Is the site suitable for the development?	Yes
Section 79C (1) (d) – Have you considered any submissions made in accordance with the EPA Act or EPA Regs?	Yes
Section 79C (1) (e) – Is the proposal in the public interest?	Yes

DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS:

Draft Warringah Local Environmental Plan 2009 (Draft WLEP 2009)

Not applicable, the land is identified as being located within the deferred area and thus is not subject to the WLEP2011 or DWLEP2009 controls.

SECTION 2 – ISSUES

PUBLIC EXHIBITION

The subject application was publicly exhibited in accordance with the EPA Regulation 2000 and the applicable Development Control Plan.

As a result of the public exhibition of the application Council received one (1) submission from the following.

Name	Address
Glynnis Condon	1 Spicer North Road Oxford Falls

Issue: The submission raises concerns with the concentration of buildings and hard surfaces on the narrowest and most confined area of the property and its impact upon the dispersal of the septic system effluent.

Comment:

The are no changes proposed to the effluent treatment system on-site. In terms of surface areas available for effluent absorption, the deletion of carspaces 8 and 9 as a condition of consent decrease hard surface areas by 25sqm. It is considered that whilst the effluent system is not subject to this modification, the increased surface area will assist in effluent absorption and that the concerns raised are addressed by the conditions of consent.

Issue: The submission raises concerns with regards to the spaces 24,25, 26 being allocated to the west of the buildings, as they encroach further into the eastern section of the land.

Comment:



These elements of the existing works are not subject to the proposed modification, therefore the issues raised carry no determining weight. It is noted that these matters raised are the subject of ongoing compliance action by Council.

Issue: The submission raises concerns with regards to the originally approved building being amended without prior approval, to the stage where:

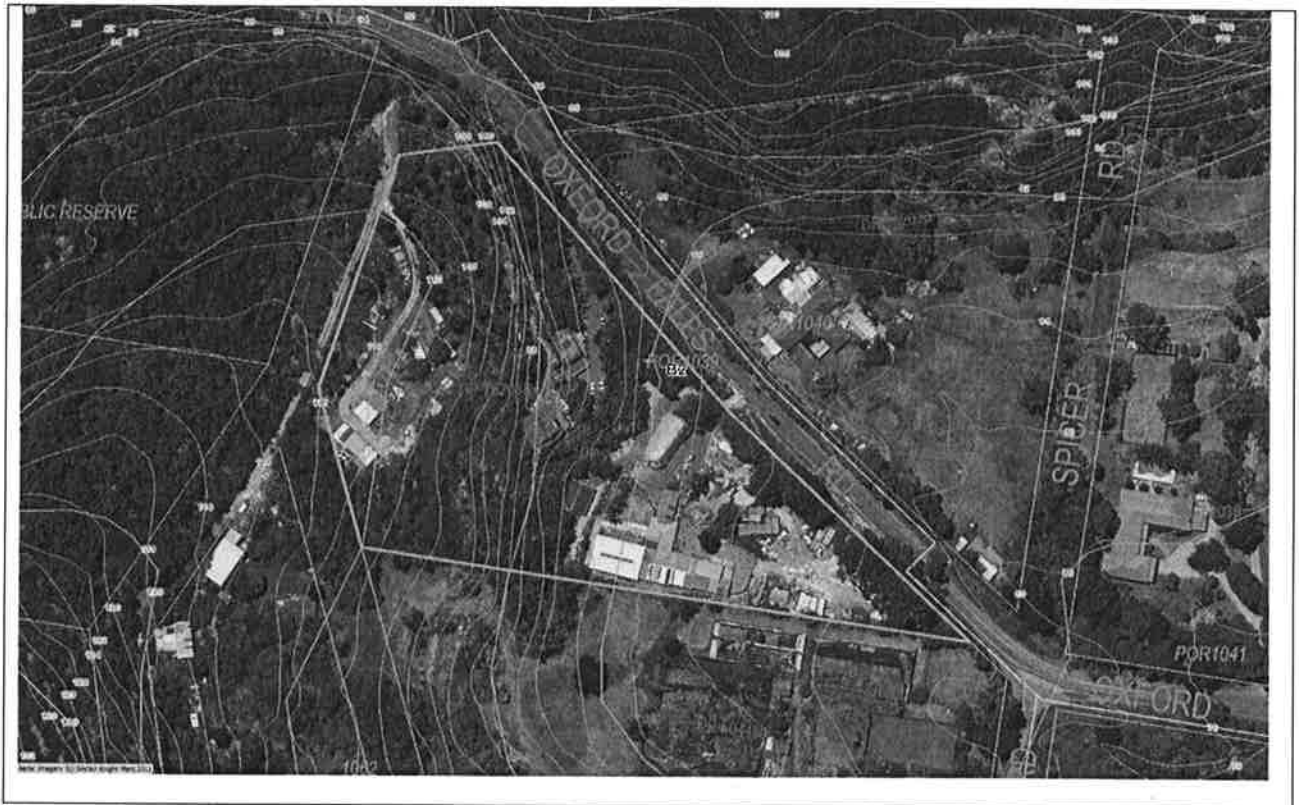
- 1. There are doors and viewing windows on the southern boundary side which adversely affects amenity,***
- 2. The building has been extended on the eastern end with a setback of only 4.3m,***
- 3. Additional sheds and walkway covers have been built,***
- 4. A proposed septic system required no specification before the DA was issued.***

Comment:

These elements of the existing works are not subject to the proposed modification, therefore the issues raised carry no determining weight. It is noted that these matters raised are the subject of ongoing compliance action by Council.

BUILT FORM CONTROLS – No Changes Proposed

SECTION 3 – SITE INSPECTION ANALYSIS



SITE AREA: 20992.6sqm

Detail existing onsite structures:

No changes from previous descriptions which are relevant to this application.

**Site Features:**

No changes from previous descriptions which are relevant to this application.

Site constraints and other considerations

Bushfire Prone?	Yes
Flood Prone?	No
Affected by Acid Sulphate Soils	No
Located within 40m of any natural watercourse?	Yes
Located within 1km landward of the open coast watermark or within 1km of any bay estuaries, coastal lake, lagoon, island, tidal waterway within the area mapped within the NSW Coastal Policy?	No
Located within 100m of the mean high watermark?	No
Located within an area identified as a Wave Impact Zone?	No
Any items of heritage significance located upon it?	No
Located within the vicinity of any items of heritage significance?	No
Located within an area identified as potential land slip?	No
Is the development Integrated?	Yes
Does the development require concurrence?	No
Is the site owned or is the DA made by the "Crown"?	No
Have you reviewed the DP and s88B instrument?	No
Does the proposal impact upon any easements / Rights of Way?	No

SITE INSPECTION / DESKTOP ASSESSMENT UNDERTAKEN BY:

Does the site inspection confirm the assessment undertaken against the relevant EPI's ?	Yes
Are there any additional matters that have arisen from your site inspection that would require any additional assessment to be undertaken?	No
Are there any existing unauthorised works on site?	No



Signed

Date

1/10/14

Mitchell Drake, Planner

SECTION 4 – APPLICATION DETERMINATION

Conclusion:

The proposal has been assessed against the relevant matters for consideration under Section 79C and 96(1A) of the EP&A Act 1979. 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.

RECOMMENDATION - APPROVAL

That Council as the consent authority:

APPROVE THE MODIFICATION TO THE DEVELOPMENT CONSENT subject to:

The following amended and additional conditions detailed within the associated notice of determination;

Insert Condition 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

Drawing	Title	Rev	Dated	Drawn By
SK001	Stormwater Certification Plan	Rev. A	18/06/2014	Martens & Associates Pty Ltd
N/A	Proposed Carpark Layout	N/A	29/09/2014	Transport & Traffic Planning Assoc
N/A	Access Report – S96 Application.	N/A	16/06/2014	Accessibility Solutions (NSW) Pty Ltd

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

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

Insert Condition 72a “Trees and Landscaping” to read as follows:

72a. Trees and Landscaping



Tree protection in relation to the installation of a discharge pipe from the on-site detention tank is to be carried out in accordance with the Arboricultural Assessment Report, dated 18 March 2014, prepared by Rain Tree Consulting.

Reason: To ensure compliance with the requirement to retain and protect significant planting on the site.

Insert Condition 72b “Tree Protection During Works” to read as follows:

72b. Tree Protection During Works

During the construction period, the applicant is responsible for ensuring all protected trees are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to. In this regard, all protected plants on this site shall not exhibit:

- a) A general decline in health and vigour.
- b) Damaged, crushed or dying roots due to poor pruning techniques.
- c) More than 10% loss or dieback of roots, branches and foliage.
- d) Mechanical damage or bruising of bark and timber of roots, trunk and branches.
- e) Yellowing of foliage or a thinning of the canopy untypical of its species.
- f) An increase in the amount of deadwood not associated with normal growth.
- g) An increase in kino or gum exudation.
- h) Inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition.
- i) Branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist are to be implemented.

The owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of Trees

Insert Condition 22a “Deletion of Carparking Spaces” as follows:

22a. Deletion of Carparking Spaces

The carparking spaces identified on the approved plans as “8” and “9” are to be deleted. Details of the revised parking layout are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To ensure safe manouvering on-site for all vehicles and pedestrians.

Modify Condition 47a “On-site Stormwater Detention Certification” to read as follows:

47a. On-site Stormwater Detention Certification

Drainage plans detailing the provision of On-site Stormwater Detention in accordance with Warringah Council’s “On-site Stormwater Detention Technical Specification” and generally in accordance with concept drawing by Martens & Associates Pty Ltd, drawing number P0902393 JD02V02, Revision A dated 18 June 2014 are to be amended as follows:

- a) Permissible Site Discharge for the 1 in 5yr ARI : 117 l/s
- b) Permissible Site Discharge for the 1 in 20yr ARI : 237 l/s
- c) Permissible Site Discharge for the 1 in 100yr ARI : 411 l/s

W

d) Minimum OSD storage required: 132 cubic metres

Detailed drainage plans, including engineering certification confirming the above requirements have been satisfied and complying with Council's current On-site Stormwater Detention Technical Specification, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for the disposal of stormwater and stormwater management arising from the development.

Insert Condition 134a "Pedestrian Paths", as follows:

134a. Pedestrian Paths

A clear pedestrian path is to be available from the parent set down/pick up parking spaces to the front door of the centre at all times.

Reason: To ensure safe manouvering on-site for all vehicles and pedetrians.

"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


Mitchell Drake, Planner

Date

1/10/14

The application is determined under the delegated authority of:

Signed


Steven Findlay, Planning Assessment Manager

Date

1.10.2014