

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2024/0253
Responsible Officer:	Thomas Burns
Land to be developed (Address):	Lot 1 DP 1104786, 4 - 6 Niangala Close BELROSE NSW 2085
Proposed Development:	Modification of Development Consent DA2001/1615 granted for Erection of a Multi-Tenancy Bulky Goods Centre With Ancillary Access Roads, signage & Landscaping "Bulky Goods Shops" Restaurants and Shops
Zoning:	Warringah LEP2011 - Land zoned E3 Productivity Support Warringah LEP2011 - Land zoned C2 Environmental Conservation WLEP Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011
Development Permissible:	No
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Applicant:	Homeco Pty Ltd

Application Lodged:	22/05/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	30/05/2024 to 13/06/2024
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Refusal

PROPOSED DEVELOPMENT IN DETAIL

Development Consent was granted on 19 March 2004 under Development Application 2001/1615DA for the Construction of a bulky goods retail outlet, shops, restaurants, conservation of bushland and associated parking. This development is known as HomeCo Belrose (HCB).

The above-mentioned Development Consent has been modified on four occasions (refer to Mod2001/1615/1 dated 16 February 2006, Mod2001/1615/2 dated 29 September 2006, Mod2009/0030 dated 18 February 2009 and Mod2010/0178 dated 4 November 2010) pursuant to the

former Section 96 (currently referred to as Section 4.55) of the Environmental Planning and Assessment Act 1979 (EP&A Act).

This application has been made pursuant to Section 4.55(2) of the EP&A Act seeking to delete Conditions 39A and 41 from the above-mentioned Development Consent, as modified. These conditions read as follows:

39A. Notwithstanding Condition 41 the following restrictions also apply to the gross floor area of shops:

a) 1000 square metres of shops may be used for general retailing.

b) 1500 square metres of shops is subject to the following restrictions:

i. This consent does not authorise the use of the additional 1500 square metres for shops whose primary purpose is for the retailing of clothing or apparel.

ii. This consent does not authorise any individual shop to exceed 400 square metres of gross floor space.

41. This consent does not authorise the use of any shop for the purpose of a supermarket or other similar food sales outlet.

It is noted that Condition 39A was introduced under Modification Application Mod2010/0178, while Condition 41 was imposed under the original Development Consent.

APPLICANT'S JUSTIFICATION FOR THE MODIFICATION APPLICATION

The applicant seeks to delete Conditions 39A and 41 of the Development Consent to facilitate a supermarket within the HCB. However, it is noted that no physical works pertaining to the establishment and use of a supermarket are proposed under this modification application and that the modification application merely seeks to delete Conditions 39A and 41 of the Development Consent, which would eventually make way for a neighbourhood supermarket land use within the HCB, noting that these conditions preclude a supermarket type land use within the HCB.

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 Local Environmental Plan 2011 - 2.5 Additional permitted uses for particular land
Warringah Local Environmental Plan 2011 - Zone E3 Productivity Support
Warringah Development Control Plan - A.5 Objectives

SITE DESCRIPTION

Property Description:	Lot 1 DP 1104786 , 4 - 6 Niangala Close BELROSE NSW 2085
Detailed Site Description:	The subject site consists of a single allotment bounded by Niangala Close to the west, Mona Vale Road to the north, Forest Way to the east and Garigal Road to the south. The site has a surveyed area of 4.023 hectares (ha). The site is predominantly located within the E3 Productivity Support zone pursuant to the Warringah Local Environmental Plan (WLEP) and accommodates a bulk good premises known as the HCB. The site is also partially located within the C2 Environmental Conservation zone, with this zoning applying to the portions of land around the perimeter of the site along the street frontages to Forest Way and Mona Vale Road. However, the HCB building is located entirely within the E3 Productivity Support zone. The northern half and eastern edges of the site accommodate dense vegetation, with these areas of the site being mapped on the NSW Government's Biodiversity Values Map (BVM) as being land with high biodiversity value, as defined by the Biodiversity Conservation Regulation 2017. The site is located on the north-eastern corner of the Belrose Business Park and surrounding development within the business park comprises of offices, warehouses and light industrial land uses.

Map:



SITE HISTORY

The site has been occupied by the HCB for an extended period of time. A search of Council's records has revealed the following relevant history:

Development Application 2001/1615DA

The HCB was approved under Development Application DA2001/1615DA on 11 May 2004 for the construction of a bulky goods retail outlet, shops, restaurants, conservation of bushland and associated parking.

Modification Application Mod2001/1615/1

On 16 February 2006, Council approved modification application Mod2001/1615/1, which modified Development Application DA2001/1615DA by providing an additional 124 car parking spaces on the rooftop, ramping, lighting and an increase to the parapet.

Modification Application Mod2001/1615/2

On 29 September 2006, Council approved modification application Mod2001/1615/2, which modified Development Application DA2001/1615DA by providing a stairway linking the lower and upper level rooftop carparking areas.

Modification Application Mod2009/0030

On 18 February 2009, Council approved modification application Mod2009/0030, which modified Condition 39 of Development Application DA2001/1615DA to increase the gross floor area of the shops component of the Development from 1,000sqm to 2,500sqm.

Modification Application Mod2010/0178

On 4 November 2010, Council approved modification application Mod2010/0178, which modified

Condition 39 of Development Application DA2001/1615DA to become Condition 39A and to delete Conditions 41A and 41B.

Development Application DA2014/1369

On 1 July 2015, Development Application DA2014/1369 for alterations and additions including addition of a store room at Level 1, 2290sqm of retail floor space, corridor, plant room and goods lift at Level 2 was approved by Council.

Development Application DA2018/1254

On 26 July 2018, Development DA2018/1254 for alterations and additions to the existing Level 2 of the bulky goods retail centre was approved by Council.

Development Application DA2022/1869

Development Application DA2022/1869 for alterations and additions to the existing bulky goods retail centre was withdrawn by the applicant.

APPLICATION HISTORY

Following the preliminary assessment of the application, Council wrote to the applicant raising the following concerns with the modification application:

- The modification application was not consistent with the objectives of the E3 Productivity Support zone.
- The modification application represented a major departure from the intended vision and role of the business park.
- The modification application did not adequately assess the economic impacts of the proposal on nearby commercial centres and the future composition of land uses within the development site.

The applicant subsequently submitted the following additional information pursuant to Section 113 of the Environmental Planning and Assessment Regulation 2021:

- An Economic Analysis (EA) (prepared by Deep End Services, dated 28 August 2024) which assessed the economic impacts of the proposed modification.
- A Survey Report (prepared by Willowtree Communications Pty Ltd, dated 4 September 2024) which assessed the local demand for the establishment of a supermarket.
- A Request for Additional Information Response Letter (prepared by Willowtree Planning, dated 5 September 2024) to respond to Council's Request for Further Information Letter dated 2 July 2024.

The additional information did not alter the environmental impacts of the modified development as it was originally lodged. Therefore, the application was not required to be re-notified, in accordance with

the Northern Beaches Community Participation Plan.

Following an initial review of the additional information, an independent urban planning and urban economics consulting firm (Hill PDA) was engaged to provide a peer review and written assessment of the applicant's EA and a review of the modification application at large.

Hill PDA's written assessment is provided as **Attachment 1** to this assessment report. In summary, Hill PDA's assessment found various deficiencies within the applicant's EA, estimated a 10% to 20% loss of trade at nearby centres and concluded that the provision of a supermarket would be contrary to the objectives of the E3 zone and inconsistent with the intent of the original development consent.

Council concurs with Hill PDA's assessment and finds that economic impacts of the modification application are unacceptable, particularly given a supermarket-type land use was never anticipated for the HCB under the original development application, nor is this type of land use anticipated for the E3 zone.

On 29 November 2024, Council wrote to the applicant advising that the modification application could not be supported for the reasons set out above. Council advised that no additional information would be accepted in accordance with the correspondence detailed on Council's Request for Further Information Letter dated 2 July 2024, which stipulated that Council would only provide an applicant with one opportunity to submit additional information. The applicant has not requested to withdraw the modification application. Hence, the application is recommended for refusal.

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 Development Application 2001/1615DA, 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
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 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 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 Development Application 2001/1615DA for the following reasons: • The modification application will not alter the footprint or height of the HCB. • The modification application will not have any significantly different environmental impacts in terms of noise emissions, visual impacts or biodiversity impacts when compared to the approved development.
(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 2001/1615DA 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	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.

Section 4.55 (2) - Other Modifications	Comments
of a development consent, and	
(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.	No submissions were received in relation to this modification application.

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 (2) 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 2011 applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<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. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to an economic analysis to assess the potential impacts of a supermarket on surrounding centres. The applicant subsequently submitted this information. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of

Section 4.15 'Matters for Consideration'	Comments
	Australia (BCA). This matter could be addressed via a condition of consent.
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	(i) Environmental Impact The environmental impacts of the modified development on the natural and built environment are addressed under the Environmental Planning Instruments, Warringah Development Control Plan 2011 and Biodiversity Conservation Act 2016 sections of this report. (ii) Social Impact The modified development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The economic impacts of the modified are assessed in detail below this table. In summary, Council's assessment of economic impacts, which has been informed by written advice provided by Hill PDA who has been procured by Council to review the applicant's economic analysis (EA), has concluded that the applicant's EA has deficiencies within their methodology and that the modification application would have adverse trading impacts on surrounding local centres. As such, the economic impacts are not acceptable. This matter forms a recommended reason for refusal.
Section 4.15 (1) (c) – the suitability of the site for the development	The site does not contain any environmental constraints that would prevent a supermarket type of land use on the premises. The economic impacts and inconsistency with the zone objectives are not matters that render the site unsuitable for the modified development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	No submissions were received in relation to this modification application.
Section 4.15 (1) (e) – the public interest	The assessment has found the modified development to be contrary to the objectives of the E3 Productivity Support zone and approving the modification application will create an undesirable precedent, such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the modified development is not considered to be in the public interest.

Section 4.15 (1)(b) - Assessment of Economic Impacts

Section 4.15 (1) (b) of the EP&A Act requires the consent authority to consider the economic impact of the proposed development in the locality. The economic impact of the development was a primary assessment consideration as part of the original development application and subsequent modification applications at the HCB.

Following Council's preliminary assessment of the modification application, Council wrote to the applicant advising that the modification application did not adequately assess the economic impacts of

the proposal on nearby commercial centres and the future composition of land uses within the development site.

In response to these concerns raised by Council, the applicant submitted an EA, which assessed the need for a supermarket within the BSC and the economic impacts that a supermarket within the BSC would have on surrounding commercial centres. The EA defined the HCB catchment area as follows:

- A primary sector which surrounds the HCB within approximately 7 kilometres (km) to the south and west and 10km to the east to encompass Ingleside.
- A secondary north-east sector extending from Narrabeen Lagoon north to Palm Beach.
- A secondary south sector from Narrabeen along the coast to Wingala (i.e small elevated area between Dee Why and Curl Curl) and inland to Killarney Heights.
- A secondary west sector which extends as far as Gordon and Turramurra on the Pacific Highway.

Figure 1 below depicts this catchment area and identifies the locations of existing supermarkets within the catchment area.

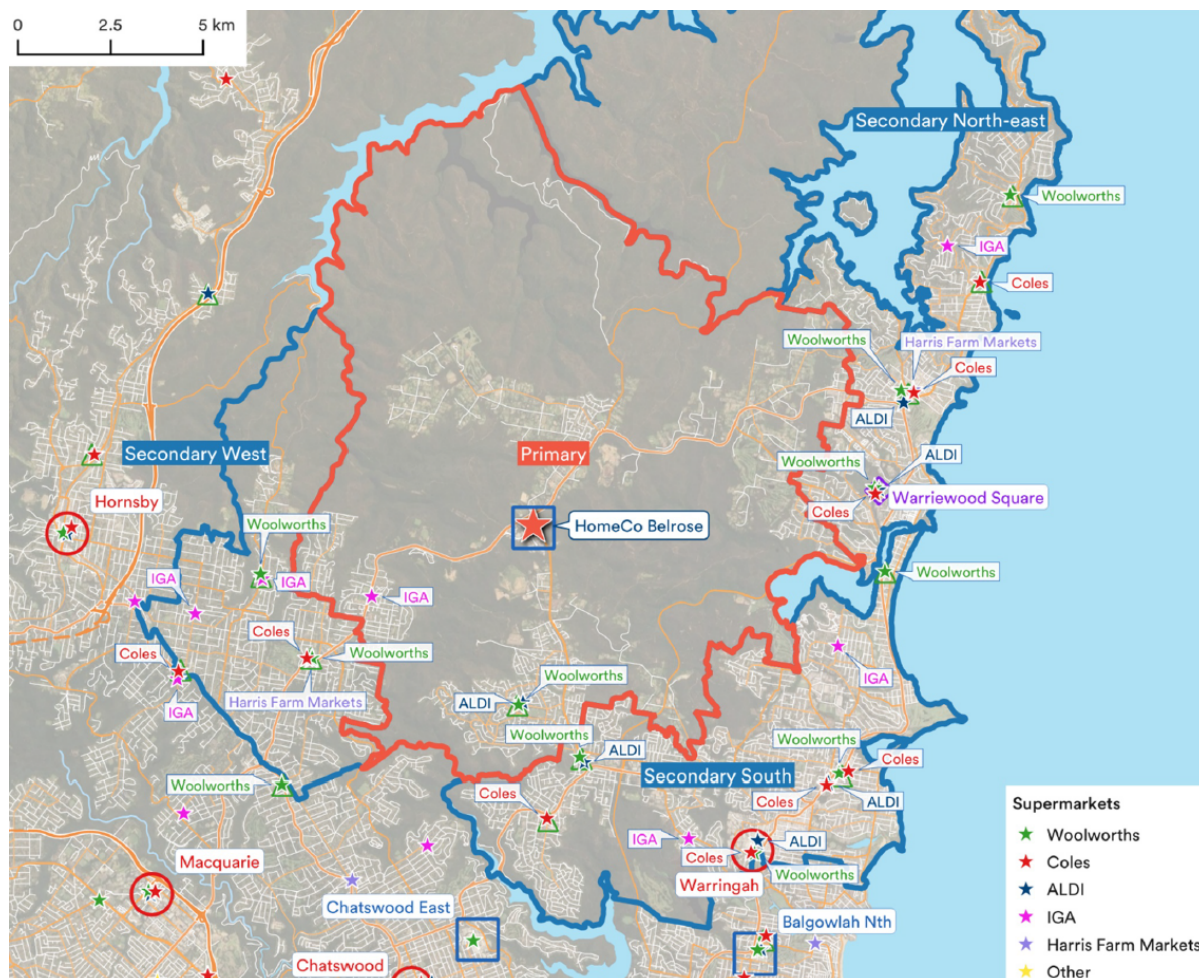


Figure 1 - HCB Catchment Area which identifies Supermarkets within the Catchment (source: applicant's EA)

The EA identifies that the catchment area has an estimated population of 248,430 which is projected to increase to 267,440 by 2041 and indicates that the catchment population's total available retail spending is projected to increase by 2041.

The EA concluded that the inclusion of a supermarket at the HCB would generate a range of positive economic and community benefits, which would include:

- An employment uplift would be created due to the replacement of floorspace occupied by an large format retail (LFR) store typically generating employment at a rate of one job per 60-70sqm floorspace by a supermarket that generates employment at approximately one job per 20sqm-25sqm. This uplift would be equivalent to approximately 45 employment positions.
- Employment would be generated during the reconfiguration and fit-out of the store.
- The new supermarket would provide an improvement in the offer of day-to-day services for people who work within the centre and in the surrounding employment precinct.
- Day-to-day convenience shopping would also be available for shoppers already visiting the centre to undertake purchase of LFR goods.
- A widening of the daily convenience offer and inclusion of a new supermarket would help to sustain and improve the performance of the HCB.
- The inclusion of day-to-day shopping would improve the local amenity available within the employment precinct, and therefore help to attract new businesses and support the precinct's role as a key centre of economic activity.

To assist Council in assessing the applicant's EA and the broader economic impacts, an independent urban planning and urban economics consulting firm (Hill PDA) was engaged to provide a peer review and written assessment of the applicant's EA and a review of the modification application at large. Hill PDA have been previously engaged by Council to assess the economic impacts of associated with Modification Application Mod2010/0178 (i.e the fourth modification application to Development Application 2001/1615DA).

Hill PDA's written assessment, which can be read in **Attachment 1** of this report, concluded that:

- The applicant's EA included several deficiencies within the methodology used to assess the economic impacts of the modification application. In particular, the EA overestimated retail spend growth; underestimated the amount of visitors to the HCB to demonstrate a low level of competition with other supermarket / food and grocery-based centres within the catchment area; underestimated the amount of residents within the primary catchment area that would shop at a supermarket within the HCB; omitted various food and grocery-based centres within the primary catchment area; and did not measured the specific impact (i.e. loss of trade) on individual supermarkets and food and grocery-based centres.
- Notwithstanding the deficiencies, the modification would result in an expected loss of trade of approximately 10% to 20% at the two closest centres to the HCB, being Forestway Fresh and

Glenrose Village. Hill PDA consider this to be a moderately strong economic impact on these centres.

- The modification presents a significant departure from the intentions of the original development consent, which sought to provide large-format retail stores.
- The provision of a supermarket could potentially draw in specialty stores typically found in local or commercial centres such as a butcher, bakery, fruit and vegetable stores, deli, chemist, newsagency, liquor store and hair and beauty stores, which in turn could reduce the amount of LFR within the HCB.
- The modification application does not satisfy the objectives of the E3 Productivity Support zone, insofar as it would allow for the future introduction of a supermarket land use, which would compete with and reduce trade at surrounding local commercial centres.

Council concurs with Hill PDA's assessment and finds that economic impacts of the modification application are unacceptable, particularly given a supermarket-type land use was never anticipated for the HCB under the original development application, nor is this type of land use anticipated for the E3 zone.

Hence, the economic impacts of the modification application form a recommended reason for refusal.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection 2019 (PBP).

No physical works or specific land use is proposed under the modification application. Hence, there are no relevant provisions under the PBP to consider for the assessment of this modification application.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 30/05/2024 to 13/06/2024 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 Certificate approval of the development. Note: The proposed development may not comply with some requirements of the BCA. Is Certificate stage.
Strategic and Place Planning	ADDITIONAL INFO RECEIVED – 5/9/24 Strategic Planning note the additional information prepared by Willowtree Planning, dated 19 November 2024, which provides advice on the Applicant's analysis report by Deep End Services. Strategic Planning agree with the specialist economic analysis that: <i>The proposal is a significant departure from the intentions of the original conditions of the zone. Objective 2: to provide for land uses that are compatible with, but do not compete with the zone. Objective 3: to maintain the economic viability of local and commercial centres by limiting the scale of development. ...it clearly undermines the second and third zone objectives in the above list. It was</i> The additional documentation has been considered and Strategic Planning's comments are as follows: ORIGINAL COMMENTS Reason for referral This modification application has been referred because it proposes to remove conditions of use of the centre for the retailing of bulky goods and prevent the creation of mini major retail centres (Scheme (2000)). Comments The subject site at Nos. 4-6 Niangala Close, Belrose, is zoned part C2 Environmental Centre Zone (Scheme 2011). The site also benefits from Schedule 1 Additional Permitted Uses for specialised retail uses (exceeding 2,500m²), function centres, hotel or motel accommodation, pubs and shops (with a maximum of 1,500m²). The application proposes to delete Conditions 39A and 41 of DA2001/1615, which read: <i>Condition 39A</i> <i>39A Notwithstanding Condition 41 the following restrictions also apply to the gross floor area of the shops:</i> <i>a) 1000 square metres of shops may be utilised for general retailing.</i> <i>b) 1500 square metres of shops is subject to the following restrictions:</i>

Internal Referral Body	Comments
	<i>i. This consent does not authorise the use of the additional 1500 square metres for clothing or apparel.</i> <i>ii. This consent does not authorise any individual shop to exceed 400 square metres.</i> Condition 41 <i>This consent does not authorise the use of any shop for the purposes of a supermarket.</i> The application is supported by economic analysis and commentary prepared by Deep End on the State Government's employment zones reforms, evolving nature of large format retail and the proposed Modification prepared by Willottree Planning, dated 13 May 2024, also provides commentary. Strategic policy framework The development of the Austlink Business Park is guided by the Austlink Corporate Park Plan which identifies the concentration of bulky goods retail in the north east corner of the Austlink Business Park to function as a regional large format retail (bulky goods) hub. The Austlink Business Park has been operating successfully since its inception and has been a key part of the Scheme. The clustering of large format retail to allow for easy comparison-based shopping is a key feature of the Scheme. Council's Employment Study (2019) highlights the following action for the Austlink Business Park: <i>Continue to support the role of Austlink Business Park. The Austlink Business Park is a key part of the development. The park has a mix and clear separation of bulky good uses and commercial uses. The park is a key part of the development. As it reaches capacity, it is anticipated that the park will continue to support the development of the park in the medium – long term with the hospital's maturation and the establishment of the town centre and good business types.</i> Council's Employment Study does not recommend any changes to the planning controls that support increasing retail uses in the Austlink Business Park and the prior use of the park whilst retaining other retail uses within more traditional commercial/retail centres, which are a key amenity and trip generation. Strategic Planning acknowledge that Condition 39 will remain which specifies a maximum of 10 restaurants. The overall intent of the modification application is unclear. It is assumed that the removal of the existing tenancies, with the ability to attract clothing stores, food sales outlet and mini majors (up to 2,500sqm and being the only shop in the development) or neighbourhood shop (up to 1,000sqm).

Internal Referral Body	Comments
	Strategic Planning is concerned that deleting conditions 39A and 41 would infer that site is stores, which is inconsistent with the vision for the Austlink Business Park. Inclusion of a s nearby and the future retail offering to be provided for within the Frenchs Forest Town Ce whether this is the case. Greater certainty on the intended outcome is required. Further, an understanding of the e floor space usage would be beneficial to understand what impact the removal of condior consent issued under DA2001/1615 requires an annual audit of floor space usage. To dat implementation of Condition 40. Based on the level of information received, Strategic Planning cannot support the propos

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)

Nil

Warringah Local Environmental Plan 2011

Is the development permissible?	No
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	No

Principal Development Standards

There are no applicable principal development standards as the modification application does not include any physical building works.

Compliance Assessment

Clause	Compliance with Requirements
2.5 Additional permitted uses for particular land	No
6.4 Development on sloping land	Yes

Detailed Assessment

2.5 Additional permitted uses for particular land

The modification application seeks to introduce a future neighbourhood supermarket land use within the HCB, notwithstanding the fact that no physical works or land uses are proposed under this application. The WLEP defines a neighbourhood supermarket as follows:

- **neighbourhood supermarket** means premises the principal purpose of which is the sale of groceries and foodstuffs to provide for the needs of people who live or work in the local area.

Note—

See clause 5.4 for controls relating to the gross floor area of neighbourhood supermarkets.

Neighbourhood supermarkets are a type of shop—see the definition of that term in this Dictionary.

As noted above, a neighbourhood supermarket land use is a type of 'shop' under the WLEP, which is defined as follows:

- **shop** means premises that sell merchandise such as groceries, personal care products, clothing, music, homewares, stationery, electrical goods or the like or that hire any such merchandise, and includes a neighbourhood shop and neighbourhood supermarket, but does not include food and drink premises or restricted premises.

Note—

Shops are a type of retail premises—see the definition of that term in this Dictionary

While neighbourhood supermarkets are prohibited land uses within the E3 Productivity Support zone, Clause 3(2) within Schedule 1 of the WLEP permits development for the purposes of a shop on the site, as the site is located within 'Area 3' on the WLEP Additional Permitted Uses Map (see below):

3 Use of certain land at corner of Mona Vale Road and Forest Way, Belrose

(1) This clause applies to land at the corner of Mona Vale Road and Forest Way, Belrose, shown as "Area 3" on the [Additional Permitted Uses Map](#).

(2) Development for the purposes of specialised retail premises, business premises (with a gross floor area not exceeding 2,500m²), function centres, hotel or motel accommodation, pubs and shops (with a gross floor area not exceeding 2,500m²) is permitted with consent.

(3) Hotel or motel accommodation and pubs referred to in subclause (2) must include at least one room for the holding of conferences, functions and similar events.

However, the applicant has not provided any details regarding the total gross floor area that is dedicated to shops (which includes the applicant's future proposed supermarket land use) within the HCB. As such, the applicant has not provided sufficient information to demonstrate that the removal of Conditions 39A and 41, which provide restrictions on the quantum of gross floor area dedicated to shops within the HCB, would not result in a total quantum of gross floor area dedicated to shops that exceeds 2,500sqm. As such, Council cannot determine whether the modified development would comply with Clause 3(2) within Schedule 1 of the WLEP.

Consequently, it cannot be concluded that the modified development achieves the additional permitted use provisions under the WLEP. This matter forms a recommended reason for refusal.

Zone E3 Productivity Support

As detailed earlier within this report, Council is not satisfied that the modified development complies with the additional permitted use provisions for the site under Clause 3(2) within Schedule 1 of the WLEP.

Additionally, the modification application seeks to modify Development Application DA2001/1615DA by deleting Conditions 39A and 41, which relate to the allocation of shop gross floor area and the prohibition of land uses that relate to shops, supermarkets or similar food sales outlets. The provision of a supermarket type land use within the E3 Productivity Support zone would introduce a land use that would compete with other supermarket or food retail stores located within local or commercial centres within the Northern Beaches Local Government Area. Consequently, the modification application is not consistent with the following objectives of the E3 Productivity Support zone:

- To provide for land uses that are compatible with, but do not compete with, land uses in surrounding local and commercial centres; and
- To maintain the economic viability of local and commercial centres by limiting certain retail and commercial activity.

This matter forms a recommended reason for refusal.

Warringah Development Control Plan

Built Form Controls

There are no applicable built form controls as the modification application does not include any physical building works.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	No	No
D3 Noise	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D20 Safety and Security	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E3 Threatened species, populations, ecological communities listed under State or Commonwealth legislation, or High Conservation Habitat	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E5 Native Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

A.5 Objectives

The objectives of the Warringah Development Control Plan 2011 (WDCP) read as follows:

- *To ensure development responds to the characteristics of the site and the qualities of the surrounding neighbourhood*
- *To ensure new development is a good neighbour, creates a unified landscape, contributes to the street, reinforces the importance of pedestrian areas and creates an attractive design outcome*
- *To inspire design innovation for residential, commercial and industrial development*
- *To provide a high level of access to and within development.*
- *To protect environmentally sensitive areas from overdevelopment or visually intrusive development so that scenic qualities, as well as the biological and ecological values of those areas, are maintained*
- *To achieve environmentally, economically and socially sustainable development for the community of Warringah*

As demonstrated earlier within this report, the proposed modification does not achieve economically sustainable development for the community of Warringah, insofar as the proposed modification would have an adverse economic impact on existing local and commercial centres within the locality. In this regard, the modification does not satisfy objective 5 (i.e. the last objective) of the WDCP.

This matter forms a recommended reason for refusal.

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 2024

Section 7.12 contributions were levied on the Development Application.

BIODIVERSITY CONSERVATION ACT 2016

The Biodiversity Conservation Act 2016 (BC Act) applies to the land pursuant to Section 1.7 of the EP&A Act and aims to maintain a healthy, productive and resilient environment for the greatest wellbeing of the community, now and into the future, consistent with the principles of ecological sustainable development.

As noted earlier within this report, the northern half and the eastern edge of the site is mapped on the BVM as being land with high biodiversity value, as defined by the Biodiversity Conservation Regulation 2017.

Notwithstanding, it is noted that the BHC is located on the portions of the site that are not located on the BVM. Additionally, no physical works are proposed under this application.

As such, the application does not require the submission of a Biodiversity Development Assessment Report or require entry into the Biodiversity Offset Scheme.

Overall, the development is not likely to have adverse impacts on threatened ecological communities, species, or their habitats and is consistent with the provisions of the BC Act.

ATTACHMENT 1 - INDEPENDANT ASSESSMENT PROVIDED BY HILLPDA

As detailed earlier within this report, Hill PDA were engaged to provide a peer review of the applicant's EA and the modification application as a whole. Hill PDA's peer review is detailed below.

"After reviewing the DES report, we generally concur with the methodology of retail demand assessment although we believe that there are several errors which are detailed immediately below:

1. We are unsure how the workplace location data has been used to define the trade area and trade area capture. Generally only workers in close proximity to the centre is relevant for identifying a source of potential expenditure. These relate to workers that may undertake some FLG shopping close to work during lunchtime and before commuting to home from work. Its inconceivable for example that people visit HomeCo because they work in St Ives. More likely its because those workers live in the local area.

2. We in fact did check if this was the case and found some double counting with workers and residents. For example, 43% of workers in Austlink and Terry Hills live in the main trade area (ABS Table Builder at Travel Zone level).

3. Real growth in retail spend per capita is far too high at 3.9% per annum for all retail goods and 4.7% for food liquor and groceries (FLG). Historic average in NSW since 1983 has been 0.7% for all retail goods and 1.35% for FLG. Most of that growth occurred in the decade ending 2001 when average growth was around 1.2% for all retail goods and 2.8% for FLG. Since 2004 (over the past 20 years) the average rate has been 0.3% for all retail goods and 0.6% for FLG (ABS figures including Retail Trade 8501.0, Population 3101.0 and CPI 6401.0). Accordingly, the table on Page 10 cannot be relied on.

4. DES report adopts a rate of almost \$22,500 in retail spend per capita in the PTA. This is around \$1,300 more than our estimate using our in-house expenditure model which sources the data from ABS Retail Sales and Household Expenditure Surveys. DES quotes the sources of data as Market Data Systems (MDS) adjusted with Deloitte Access Economics consumption forecasts. Please note that MDS data has not been updated since around Year 2018. While there may be some disagreement over the figure of spend per capita, it will not change the overall conclusions on needs assessment and economic impact.

5. For a supermarket up to 2,000sqm the estimated turnover at \$22m in its first full year of operation is considered reasonable.

6. However, sales by source (table on Page 12) does not seem reasonable. We would expect the largest component of sales to come from residents in the locality (dedicated visits). As mentioned above a large proportion of the workers (43%) live in the residential main trade area. The general principle is supermarket shopping is considered 'chore' shopping. Hence shoppers prefer to do this type of shopping close to home, or where its most convenient (eg left-in / left-out on the way home from work). Shopping in homemaker centres such as Belrose HomeCo is 'leisure' or 'comparative goods' shopping which is done less frequently and where shoppers can compare brands, quality and prices within a store and between competing stores. We suspect that DES has downplayed the proportion of dedicated visits to demonstrate a low level of competition with other supermarket / food and grocery-based centres in the locality.

7. The needs assessment suggests that 30% of the trade would be redirected from other centres beyond the wider trade area, which seems a little high given the principle that shoppers generally try to minimise long distance travel to supermarkets. Again, this is based on DES's premise that a large proportion of its trade will be derived from visitors of the large format / homemaker stores. Only 25% would be sourced from residents in the PTA, which seems very low. We believe that a more likely outcome would be more than 50% from the PTA (or even 60%), around 30% from the STA and around 10% from beyond.

8. There is a lack of transparency with the quantification of supermarket and other FGL retail space in the PTA. The map on Page 8 excludes several centres including Forestway Fresh 400m to the north of subject site on the NE corner of Forest Way and Mona Vale Road, which is likely to be its strongest competitor. Also not shown on the map is Hills Marketplace Terry Hills 1.8km northeast of the subject site on Mona Vale Road and Belrose Village shopping centre on Ralston Avenue, which is anchored by the IGA + Liquor store.

9. The second table on Page 13 shows 6,130sqm of supermarket space in the PTA. Glenrose Shopping Centre has around 3,900sqm and hence the balance presumably includes the other supermarkets and FGL stores mentioned above that are not shown on the Map on Page 8.

10. In terms of trading impact, the DES report does not measure specific impact (loss of trade) on individual supermarkets or centres. It provides an estimate of 6.6% average loss in trade on supermarkets in the PTA.

11. There is a considerable level of undersupply of supermarket space in the DES's defined trade area. However, there are several supermarket-based centres just outside the PTA in the STA. This includes Mona Vale, Warriewood Square, St Ives Shopping Village and Forestway Frenchs Forest. So, while we believe that a higher proportion of trade will be derived from the PTA a considerable level of PTA expenditure is captured from these large supermarket-based centres in the STA just outside the PTA.

12. We concur that the impact on those centres in the STA will be insignificant – well below 5% loss in trade on each of the centres. However, the impacts on the PTA supermarkets are likely to be a little stronger than 6.6%. Given the proximity of Forestway Fresh and Belrose Village the impact on these centres is likely to be in the 10% to 20% range which is considered to be a moderately strong impact.

13. Notwithstanding the loss in trade in these centres, the probability of closure is low. The supply of competitive space in the locality is quite low, and we expect these centres to continue trading. Just 1.4km south of Belrose Village is Glenrose Village and this centre has a reported turnover of more than \$14,000/sqm – around 30% above the national average (Shopping Centre News 'Little Guns' 2024). St Ives and Warriewood centres just outside the PTA are also trading very strong at more than 75% above the national median.

14. Impacts on the HomeCo centre is positive as it will draw more customers into the centre. While the DES report quantifies the impact of the large format retailing on the proposed supermarket its quite possible that supermarket shoppers will visit the existing large format retail stores.

15. There is some risk with the addition of a 2,000sqm supermarket in HomeCo in that it begins to change the role of the centre. In centres such as Forestway, Glenrose and Belrose Villages, the supermarkets are the anchor tenants. This is understandable given that households typically spend around 30% of their total retail expenditure in supermarkets.

16. In neighbourhood centres (as defined by the Property Council of Australia) supermarkets typically occupy around 50% to 75% of the total floor area with the balance of GLA being a range of specialty stores. In NSW there are 141 single supermarket based neighbourhood centres listed in the Property Council of Australia Shopping Centres Directory. The average supermarket size is 3,149sqm and the average number of specialties is 17 occupying an average of 2,174sqm leasable space. Specialty stores develop a nexus relationship with supermarkets as shoppers will visit multiple stores in one shopping trip. Hence the supermarket may attract specialty stores typically found in neighbourhood centres such as a butcher, bakery, fruit and veg, deli, chemist, newsagency, liquor store, hair and beauty, massage, etc. There would be the temptation to replace existing large format stores with further neighbourhood shops as these stores are likely to pay higher rents – two to three times the level that large format stores pay on a \$/sqm rate.

17. In summary, the proposal would result in some adverse trading impacts on the two closest centres (Forestway Fresh and Belrose Village) with an expected loss in trade of around 10% to 20%. However, there are positive economic impacts in that the proposal will provide more jobs and improve the retail offer in the locality for both workers in the immediate locality and residents in the wider trade area. The proposal would bring more people into the HomeCo centre.

18. However, the proposal is a significant departure from the intentions of the original conditions of consent and it clearly does not meet the objectives of the zone namely:

- To provide a range of facilities and services, light industries, warehouses and offices.
- To provide for land uses that are compatible with, but do not compete with, land uses in surrounding local and commercial centres.
- To maintain the economic viability of local and commercial centres by limiting certain retail and commercial activity.
- To provide for land uses that meet the needs of the community, businesses and industries but that are not suited to locations in other employment zones.
- To provide opportunities for new and emerging light industries.

- *To enable other land uses that provide facilities and services to meet the day to day needs of workers, to sell goods of a large size, weight or quantity or to sell goods manufactured on-site.*
- *To create a pedestrian environment that is safe, active and interesting.*
- *To create employment environments of high visual quality that relate favourably in architectural and landscape treatment to neighbouring land uses and to the natural environment.*
- *To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of adjoining or nearby residential land uses.*

While the proposal is generally apathetic to most of the above objectives it clearly undermines the second and third zone objectives in the above list. It was never intended to have this type of retail on the subject site. If Council were to refuse the application, its strongest grounds for refusal would be that 'it undermines the zoning objectives' rather than 'it generates adverse economic impacts or social detriment in the locality'".

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, in this regard the application is not considered to be acceptable and is recommended for refusal.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Inconsistent with the objectives of the DCP
- Inconsistent with the zone objectives of the LEP
- Inconsistent with the aims of the LEP
- Inconsistent with the objectives of the relevant EPIs
- Inconsistent with the objects of the Environmental Planning and Assessment Act 1979

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council , as the consent authority REFUSE Modification Application No. Mod2024/0253 for Modification of Development Consent DA2001/1615 granted for Erection of a Multi-Tenancy Bulky Goods Centre With Ancillary Access Roads, signage & Landscaping "Bulky Goods Shops" Restaurants and Shops on land at Lot 1 DP 1104786,4 - 6 Niangala Close, BELROSE, subject to the

reasons outlined as follows:

1. **Permissibility and Inconsistency with Zone Objectives**

Pursuant to Section 4.55(3) and Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the modification application is not consistent with the additional permitted land use provisions under Clause 3.2(2) within Schedule 1 of the Warringah Local Environmental Plan 2011 and is not consistent with the objectives of the E3 Productivity Support zone.

Particulars

a) The applicant has not provided any details regarding the total gross floor area that is dedicated to shops (including supermarkets) within the development site. Therefore, Council cannot conclude that the modification application complies with the additional permitted land use provisions under Clause 3.2(2) within Schedule 1 of the Warringah Local Environmental Plan 2011. Consequently, the modification application is not permissible.

b) The provision of a supermarket type land use within the E3 Productivity Support zone would introduce a land use that would compete with other supermarket or food retail stores located within local or commercial centres within the Northern Beaches Local Government Area. Consequently, the modification application is not consistent with the following objectives of the E3 Productivity Support zone:

- To provide for land uses that are compatible with, but do not compete with, land uses in surrounding local and commercial centres; and
- To maintain the economic viability of local and commercial centres by limiting certain retail and commercial activity.

2. **Economic Impacts**

Pursuant to Section 4.55(3) and Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the modification application would have an adverse economic impact on the locality.

Particulars

a) The Economic Analysis submitted with this modification application includes several deficiencies within the methodology to assess the economic impacts of the modification application.

b) The modification application would result in a loss of trade at surrounding local and commercial centres, amounting to a moderately strong impact at these centres. The impact is unacceptable as the supermarket land use that the modification application seeks to introduce is not consistent with type of development anticipated for the E3 Productivity Support zone.

3. **Public Interest**

Pursuant to Section 4.55(3) and Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the modification application is not in the public interest.

Particulars

a) The modification application is contrary to the objectives of the E3 Productivity Support zone and will create an undesirable precedent, such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the modified development is not considered to be in the public interest.

4. Inconsistent with Objectives of the Warringah Development Control Plan 2011

Pursuant to Section 4.55(3) and Section 4.15(1)(iii) of the Environmental Planning and Assessment Act, the modification application does not satisfy the objectives of the Warringah Development Control Plan 2011.

Particulars

a) The modification application would result in a loss of trade at surrounding local and commercial centres, amounting to a moderately strong impact at these centres. Consequently, the modification application does not satisfy the following objective of the Warringah Development Control Plan 2011:

- To achieve environmentally, economically and socially sustainable development for the community of Warringah.

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

Signed



Thomas Burns, Principal Planner

The application is determined on 18/12/2024, under the delegated authority of:



Steven Findlay, Manager Development Assessments