

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2016/0023
Assessment by:	Natalie Nolan, Nolan Planning Consultants (External Consultant)
Land to be developed (Address):	Part Lot 100 DP 1041823 , 725 Pittwater Road DEE WHY NSW 2099 Lot 1 DP 1193308 , 40 Kingsway DEE WHY NSW 2099
Proposed Development:	Modification of Development Consent DA2014/0344 granted for Demolition of existing car parking and construction of a Multi-Purpose Community facility (Police and Citizens Youth Club) including car parking, landscaping and signage
Zoning:	LEP - Land zoned B4 Mixed Use LEP - Land zoned RE1 Public Recreation
Development Permissible:	Yes - Zone B4 Mixed Use Yes - Zone RE1 Public Recreation
Existing Use Rights:	No
Consent Authority:	Warringah Council
Land and Environment Court Action:	No
Owner:	Warringah Council
Applicant:	Warringah Council
Application lodged:	4/02/2016
Application Type:	Local
State Reporting Category:	Other
Notified:	22/02/2016 to 24/03//2016
Advertised:	Not Advertised in accordance with A.7 of WDCP
Submissions:	One
Recommendation:	Approval with conditions

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 (up to 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 Local Environmental Plan 2011 – 5.9 Tree Removal

Warringah Development Control Plan - E1 Private Property Tree Management

Warringah Development Control Plan – D9 Building Bulk

SITE DESCRIPTION

Property Description:	Part Lot 100 DP 1041823 , 725 Pittwater Road DEE WHY NSW 2099 Lot 1 DP 1193308 , 40 Kingsway DEE WHY NSW 2099
Detailed Site Description:	SITE DESCRIPTION The site comprises two lots bounded by Fisher Road to the west, the Kingsway to the north, Civic Drive to the east and a residential flat building and Council owned land (including the Council Chambers and Library) to the south. The site is approximately 5,100m ² in area and is generally rectangular. It falls from the south-eastern corner to the north-western corner with a level change of approximately 5.17 metres. It has a frontage to the Kingsway of approximately 100 metres and to Fisher Street of approximately 50 metres. Currently under construction on the site is multi-purpose community facility (Police and Citizens Youth Club) as well as a public car park, landscaping and signage as approved by Development Consent

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent to modify Development Consent No.DA2014/0344 as described in detail in the correspondence prepared by FJMT dated 2 February 2016 and summarised below:

- Change east façade from raked glazing to plumb glazing to reduce building mass.
- Increase in height and width of feature roof to RL 45.6 (increase of 100mm).
- Change to internal floor plan to provide open plan 'Drop-In' room.
- Remove tree adjacent to southern boundary.
- Amend external finishes to southern façade to provide louvered grills in response to Condition 3 of the Consent.
- Amend external finishes as noted on plans.
- Delete batten screen to the terrace above the block work.
- Provide for 11 skylights in lieu of the approved 10.
- Reduce roof top ventilators from 4 to 2.

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 A.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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	Yes The development as proposed is substantially the same as that already approved under DA2014/0344.	
(c) it has notified the application in accordance with:	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Warringah Local Environmental Plan 2011 and	
(i) the regulations, if the		

Section 96(1A) - Other Modifications		Comments
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	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 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)(iiia) – Provisions of any planning agreement	None applicable.

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><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.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 enables the consent authority to seek additional information. No Additional information was requested.</p> <p><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.</p> <p><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.</p>
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	<p>(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Local Environmental Plan 2011 and Warringah Development Control Plan sections in this report.</p> <p>(ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
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 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 one submission from the owner of 17 Arthur Street. The objector raises concern over increased traffic and on street parking on local streets throughout the construction of the development given the loss of the Council staff carpark previously on the site.

This application to amend the plans does not alter the approved parking arrangement. The approved plans provide for 348 parking spaces within the basement parking. In the Parking and Traffic Report prepared by Taylor Thomson Whitting Pty Ltd it is noted that the approved 348 spaces exceeds the total spaces required (311) based upon the existing site (130 spaces) plus the estimated off peak parking occupancy for the development (181 spaces). As such it is considered once works are complete on site and the basement parking is operational that there will be sufficient parking provided on site. This submission does not warrant any amendments to the plans or conditions of consent.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
Landscape Officer	No objections to the modification subject to a condition providing the removal of the tree adjacent to the southern boundary.
Parks, Reserves and Foreshore Officer	Recommended for approval. No conditions recommended.
Traffic Engineer Officer	The proposed modifications have no impact on parking and traffic grounds. Therefore, no objection is raised on the proposal with regards to traffic.
Development Engineering Referral Response	No objection to approval and no conditions are recommended.
Building Assessment Response	No objection to the subject proposal and no conditions are recommended.
Waste Officer	No objection to the subject proposal and no conditions are recommended.

External Referral Body	Comments
NSW Police Force	No response has been received from the NSW Police Force.

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)

State and Regional Development SEPP

Clause 21 of the State and Regional Development SEPP sets out the circumstances in which the consent authority functions of a council are to be exercised by a regional panel. This includes Council related development valued at over \$5 million.

However, in accordance with clause 21(2)(j) of the SEPP, the functions conferred by section 96 (1A) of the EP&A Act are not to be exercised by a regional planning panel. As this application is for a modification pursuant to section 96(1A) it therefore does not need to be referred to the Sydney Region East Joint Regional Planning Panel and can be approved under delegated authority.

There are no other SEPPs that apply to the subject modification application.

Warringah Local Environment Plan 2011

Is the development permissible?	Zone B4 : Yes Zone RE1: 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

Principal Development Standards

There are no maximum height or floorspace ratio controls applying to the site under the Warringah LEP 2011.

Compliance Assessment

Clause	Compliance with Requirements
5.3 Development near zone boundaries	Yes

Clause	Compliance with Requirements
5.9 Preservation of trees or vegetation	Yes (See discussion below)
5.9AA Trees or vegetation not prescribed by development control plan	N/A
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

Clause 5.9 Preservation of Trees

This clause requires Council's consent to the removal of trees. The objective of the clause is to preserve the amenity of the area, including biodiversity values, through the preservation of trees and other vegetation.

The proposed modification involves the removal of 1 tree, in addition to the 192 trees approved for removal in the original development consent and the 22 trees approved for removal in the previous modification (MOD 2015/0005). The tree to be removed is a *Eucalyptus microcorys* (Tallow wood) and located adjacent to the southern boundary towards the Fisher Road frontage.

Correspondence has been provided from Plateau Tree Service which notes that the tree has been suppressed by the taller neighbouring specimens and has developed a significant lean. The tree is now in contact with the adjacent temporary construction fence and overhangs the proposed building and as such will be in conflict with the construction. In summary, given the current condition of the tree, the excavation and its direct conflict with the building works removal of this tree is recommended by Plateau Tree Service.

While this S96(1A) Modification Application will result in a loss of one more tree on the site, the tree is in decline and is suppressed by the neighbouring trees.

As noted in the assessment report prepared for the original DA, the nature and scale of the proposal mean that retention of trees is difficult and significant tree removal is unavoidable. The Arborist Report prepared by Eco Logical (February 2014) submitted with the original DA concluded that, while many of the trees on the site are in reasonable health and capable of living for more than 40 years, the removal of all trees from the site was a more appropriate solution for the following reasons:

- There will be no interference from adjacent vegetation during erection of the scaffolding if all trees are removed, while retained trees will require pruning which may result in reduced stability and vigour;
- Retained trees may lose an unacceptable proportion of their root plates during excavation.
- Retained trees will be affected by loss of shelter from adjacent, removed trees and their root systems will be disrupted by the removal of adjacent trees;
- Soil moisture regimes may be altered by the adjacent earthworks; and

- Vortex effects from the completed building may cause branch or leader failure.

A significant redesign of the building would be required to retain the tree in question. The value of doing so is highly questionable given the total number of trees being removed from the site in any case and the added cost involved. Further, it is considered that there is negligible impact on the streetscape as a result of the removal of this tree and any impact will be mitigated by the planting of new trees required by the original consent and through the high quality architectural design, articulation and finishes of the new building which will enhance the urban environment and streetscape.

The removal of a further tree from the site is therefore considered warranted given the building and site constraints, the lean of the tree and the very significant community benefits arising from the project.

Warringah Development Control Plan

Built Form Controls

None of the Built Form controls in Part B of the WDCP are applicable to the development.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
E1 Private Property Tree Management	No	Yes
E2 Prescribed Vegetation	N/A	N/A
E6 Retaining unique environmental features	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E10 Landslip Risk	Yes	Yes
G1 Dee Why Mixed Use Area	Yes	Yes
Area 10 Civic Centre	Yes	Yes

Detailed Assessment

D6 Access to Sunlight

The WDCP requires that at least 50% of the required area of private open space of adjoining dwellings is to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21.

It also requires that development not result in unreasonable overshadowing of public open space. The Plan of Management (PoM) requires that at least 70% of apartments receive a minimum of two hours direct sunlight to at least 50% of principal living room windows between 9am to 3pm in mid-winter.

The proposed amendments to the height of the building continue to ensure ten (10) apartments of the adjoining development at No. 25 Fisher Road are completely unaffected by the increase in shadow. This equates to 71.5% of apartments which exceeds the requirements stipulated in the Plan of Management.

D9 Building Bulk

The proposed modifications result in minor alteration to the external fabric. The amendments include a minor increase in the overall height of the approved structure to RL45.600, equating to an increase of only 100mm. The amendments also provide some change to the external finishes which are minor and will not result in any additional bulk or scale.

E6 Retaining Unique Environmental Features

The objective of E6 is to conserve those parts of land which distinguish it from its surroundings, including remnant bushland and trees.

Comment

As noted elsewhere in the report, the proposed modification involves the removal of 1 tree from the site, in addition to the 192 trees approved for removal in the original DA. An assessment of the impact of the additional tree removal has been provided in the discussion relating to clause 5.9 of the Warringah LEP. The assessment concludes that the removal of a further tree from the site is warranted given the building and site constraints and the very significant community benefits arising from the project.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CONCLUSION

The site has been inspected and the S96(1A) Modification 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 and 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 modification to the development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority approve Modification Application No. Mod2016/0023 for Modification of Development Consent DA2014/0344 granted for Demolition of existing car parking and construction of a Multi-Purpose Community facility (Police and Citizens Youth Club) including car parking, landscaping and signage on land at Part Lot 100 DP 1041823,725 Pittwater Road, DEE WHY, Lot 1 DP 1193308, 40 Kingsway, DEE WHY, subject to the conditions printed below:

A. 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:

Architectural Plans – Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA S96-21	02/02/2016	Francis-Jones Morehen Thorp

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Arborist Report	2 December 2015	Owen Tebbutt – Plateau Tree Service
Building Code of Australia Capability Statement	29 January 2016	Group DLA

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans (DACPLB01)

B. Add Condition No.28A – Trees and/or Landscaping

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

(a) Trees approved for removal

This consent includes approval to remove the following trees:

Species	Location
1x Eucalyptus microcorys	Southern boundary, as identified in the report of Plateau Tree Services dated 2 December 2015

Reason: To ensure compliance with the requirement to retain and protect significant planting on the site (DACLAC01)

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

The Application and Assessment Report has been reviewed by:




Lashta Haidari, Senior Planner



Steven Findlay, Development Assessment Manager

The application is determined under the delegated authority of:



Peter Robinson 30-5-16.

Group Manager - Development & Compliance Services

