

REPORT TO APPLICATION DETERMINATION PANEL

Meeting held on 21 March 2013

1304 Pittwater Road Narrabeen - Modification of Development Consent DA2011/0619 granted for Alterations and additions to existing commercial and retail building and construction of new restaurant and new three bedroom apartment

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2012/0230
Responsible Officer	Luke Perry
Land to be developed (Address):	Lot 12 DP 545666 , 1304 Pittwater Road NARRABEEN NSW 2101
Proposed Development:	Modification of Development Consent DA2011/0619 granted for Alterations and additions to existing commercial and retail building and construction of new restaurant and new three bedroom apartment
Zoning:	LEP - Land zoned B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Warringah Council Application Determination Panel
Land and Environment Court Action:	No
Owner:	Cranae Cb Pty Ltd
Applicant:	McDivitt Group Architects Pty Ltd
Application lodged:	06/11/2012
Application Type	Local
State Reporting Category	Residential - Other
Notified:	30/11/2012 to 17/12/2012
Advertised	Not Advertised in accordance with A.7 of WDCP
Submissions	21

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (upto the time of determination) by the applicant, persons who have made submissions regarding the application and any advice provided by relevant Council / Government / Authority Officers on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Environmental Planning and Assessment Act 1979 - Section 96(1A) -
Warringah Development Control Plan - D6 Access to Sunlight
Warringah Development Control Plan - D18 Accessibility

RECOMMENDATION

Approval

SITE DESCRIPTION

Property Description:	Lot 12 DP 545666 , 1304 Pittwater Road NARRABEEN NSW 2101
Detailed Site Description:	The site is located on the north-eastern corner of Pittwater Road and Albert Street and is legally known as Lot 12 in DP 545666, No. 1304 Pittwater Road, Narrabeen. The site is bounded by Pittwater Road, Albert Street and Lagoon Street. Topographically, the site slopes from the eastern boundary (Lagoon Street) to the western boundary (Pittwater Road) by approximately 3.74m through the centre and approximately 1.72m along Albert Street. The site is currently under the construction of DA2011/0619 granted consent for Alterations and Additions to an Existing Commercial Building, a Restaurant, a Three Bedroom Apartment and Car Parking.

Map:



SITE HISTORY

A search of Council's records reveal the following history of the site:

Development Consent No. 2011/0619

Approval was granted on 17 October 2012 for Alterations and Additions to an Existing Commercial Building including a new Restaurant, a Three Bedroom Apartment and Car Parking.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks to modify Development Consent No. 2011/0619 granted for Alterations and Additions to an Existing Commercial Building, a Restaurant, a Three Bedroom Apartment and Car Parking.

Specifically, the modifications include:

Ground Floor (RL 2.28 - RL 2.35):

- Internal changes to toilet facilities in line with upgrades and amendments to AS 1428 - Design for Access and Mobility and the Building Code of Australia (BCA).
- Internal wall changes to dry store and cool room.
- Revised disabled car space.
- Demolition of existing window openings and replacement with fixed ventilation louvres to provide natural ventilation to car parking area (southern elevation).

First Floor (RL 5.73):

- Fixed 'Vergola' over ground floor in lieu of retractable awning.
- Internal changes to toiletry facilities in line with upgrades and amendments to AS 1428 - Design for Access and Mobility and the Building Code of Australia (BCA).
- Demolition of existing window openings and replacement with fixed ventilation louvres to provide natural ventilation to car parking area (southern elevation).

Second Floor (RL 9.23):

- Internal changes to internal walls to bedroom 1, ensuite, bathroom and staircase.
- Addition of laundry.
- Addition of a spa unit to the terrace area addressing Pittwater Road in lieu of a ornamental pool.

Design:

- Changes to external finishes on eastern elevation to a masonry cement rendered wall with inscribed jointing to match existing ground floor external walls and finished in Dulux 'Pewter' matching existing walls in line with condition No. 8 of the consent.
- Amended roof design resulting in an increase in height of the building to a maximum RL 12.66 (10.38m). The amended roof design results in an increase in 186mm at the northern most edge of the building and a decrease of 196mm at the southern most edge of the building.

Rectification of Encroachment:

The proposal includes rectifying an existing encroachment that was not identified on the development application plans (refer to 'Amendment C', Plan No.S9601) approved under Development Consent No.2011/0619. The plans submitted with the original development application showed the building and proposed works wholly contained within the site boundaries.

The current modification proposal states: *The original DA submission failed to pick up that the south-east corner of the existing walls of the building at ground and first floor level extends over the property boundary 562mm to the east. The existing fascia extends approximately 600mm beyond that. This fascia will be demolished and the proposed second floor roof of the building will not project over the boundary as existing. At the lower levels, however, it is intended to retain and follow the the line of the existing walls as shown on the plan.*

This amendment results in a minor change to the entry stair to the residential unit on the second floor. The net area of this is to provide slightly more area to the first floor carpark in the south-east corner.

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 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 DA2011/0619, in full, with amendments detailed and assessed as follows: The relevant matters for consideration under Section 96(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 96(1A)	Comments
Section 96(1A) (a) – Is the Modification to Consent of Minimal Environmental Impact?	Yes The modification, as proposed in this application, is considered to be of minimal environmental impact.
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 The modification, as proposed in this application, would result in a development which is substantially the same as that approved in the original Notice of Determination.
Section 96(1A) (c) & (d) – Public Exhibition of subject application / submission	The application was notified under the provisions Clause 90(1) of the EP&A Regulations 2000.
Section 96 (3) - Consideration such of the matters referred to in section 79C(1) as are of relevance to the development the subject of the application	See discussion on “Matters for Consideration under Section 79C” 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	None applicable.

Section 79C 'Matters for Consideration'	Comments
instrument	
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 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition of consent. <u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This Clause is not relevant to this application. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this Clause within the Regulations. No Additional information was requested. <u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This Clause is not relevant to this application. <u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent/This Clause is not relevant to this application. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This Clause is not relevant to this application. <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 of consent. <u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This Clause is not relevant to this application.
Section 79C (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built	(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. (ii) The proposed development will not have a detrimental social

Section 79C 'Matters for Consideration'	Comments
environment and social and economic impacts in the locality	impact in the locality considering the character of the proposal. (iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 79C (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development. However, it is noted that the proposed modification of the encroachment is not being dealt with as part of this application.
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. However, the public interest is best served by the encroachment being dealt with as a compliance issue with the original development application, rather than through this application.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and Warringah Development Control Plan.

As a result of the public exhibition process council is in receipt of 21 submission/s from:

Name:	Address:
Bruce Martin Dando Ms Lisa Dando	1 / 2 Lagoon Street NARRABEEN NSW 2101
Julia Lorraine Harbor	4 / 26 Kooloora Avenue FRESHWATER NSW 2096
Rebecca Shelley	31 - 33 Sturdee Parade DEE WHY NSW 2099
Mia Steengaard	5 - 7 Gulliver Street BROOKVALE NSW 2100
Alastair John Chapman	29 Park Street NARRABEEN NSW 2101
Maggie Mccann	48 Collingwood Street MANLY NSW NSW 2095
Mrs Nicole Amy Williams	9 / 104 Ocean Street NARRABEEN NSW 2101
Mr Nicholas Charles Williams	9 / 104 Ocean Street NARRABEEN NSW 2101
Alessandro Ciappi	63 Collins Street NORTH NARRABEEN NSW 2101
Hayley Newport	150a Powderworks Road ELANORA HEIGHTS NSW NSW 2101
Martin Dando	34 Benaroon Avenue ST IVES NSW NSW 2075
Tim Giovanelli	14-16 Victoria Parade MANLY NSW NSW 2095
Leon Astle	9 / 2 Lagoon Street NARRABEEN NSW 2101
Katrina Louise Pywell	19 Hoddle Crescent DAVIDSON NSW 2085
Roslyn Kaye Moore	5 / 16 Clarke Street NARRABEEN NSW 2101

Name:	Address:
Andres Brian Jonmundsson	5 / 2 Lagoon Street NARRABEEN NSW 2101
Rod Soper	133 Sydney Street WILLOUGHBY NSW NSW 2068
Tamara Buttrose	29 St Andrews Gate Street ELANORA HIEGHTS NSW NSW 2101
Jordan Keller	38 Heath Street MONA VALE NSW NSW 2103
Dean Allan Storey	7 / 2 Lagoon Street NARRABEEN NSW 2101
McPhee Kelshaw	DX 26729 SPRINGWOOD NSW

The following issues were raised in the submissions and each have been addressed below:

- **Inconsistency with WLEP 2000 - B4 Narrabeen Village Locality Statement, Clause 39 'Local Retail Centres', Clause 62 'Access to Sunlight' and Clause 65 'Privacy'**
- **Breach of development consent**
- **De-valuation of adjoining properties**
- **Loss of light and natural ventilation**
- **Setbacks to northern boundary**
- **Height of building**
- **Encroachment of building on public land**

The matters raised within the submissions are addressed as follows:

- **Inconsistency with WLEP 2000:** Concern is raised in relation to the approved development's inconsistency with WLEP 2000 in particular - B4 Narrabeen Village Locality Statement, Clause 39 'Local Retail Centres', Clause 62 'Access to Sunlight' and Clause 65 'Privacy'.

Comment: The matters raised relate to the original application (DA2011/0619). The proposed modifications are assessed within this report under the sections dealing with the Warringah Local Environmental Plan 2011 (gazetted 9 December 2011) and Warringah Development Control Plan. In summary, the works proposed do not significantly alter the existing approval and do not result in any unreasonable impacts on adjoining properties.

Accordingly, the concerns raised are not considered to have determining weight nor warrant refusal of the application.

- **Breach of development consent:** Concern is raised in relation to construction works not being carried out in accordance with the development consent.

Comment: This matter does not specifically relate to this application. The concerns raised have been referred to Council's Development Compliance Team for investigation.

Accordingly, the concern raised is not considered to have determining weight nor warrant refusal of the application.

- **Loss of value of adjoining properties:** Concern is raised in relation to the potential loss of value of adjoining properties as a result of the approved development.

Comment: The valuation/devaluation of property is not a valid planning consideration under Section 79C of the Environmental Planning and Assessment Act, 1979

Accordingly, the concern raised is not considered to have determining weight nor warrant refusal of the application.

- **Loss of light and natural ventilation:** Concern is raised in relation to the loss of sunlight and natural ventilation to Unit No.s 1 and 5 at No. 2 Lagoon Street, Narrabeen.

Comment: This matter is addressed in detail under the D6 - 'Access to Sunlight' control of this report.

In summary, the concerns raised from the owner's of Unit 1/2 Lagoon Street, Narrabeen, are not relevant to this application as the existing approved development extends above the balcony opening of Unit 1. The proposed modifications do not change the design of the building when viewed from Unit 1/2 Lagoon Street.

The proposed increase in height is considered to be minor and does not result in any unreasonable overshadowing or loss of ventilation given the location and height of the existing approved building and the nil setback of the building at No. 2 Lagoon Street to the dividing boundary.

Accordingly, the concern raised is not considered to have determining weight nor warrant refusal of the application.

- **Setbacks to northern boundary:** Concern is raised in relation to the proximity of the northern wall to the boundary and adjoining properties to the north.

Comment: This matter relates to the original approval. The proposed works do not seek to alter the setbacks to the northern boundary and as such, are not relevant to the current application.

Accordingly, the concern raised is not considered to have determining weight nor warrant refusal of the application.

- **Height of building:** Concern is raised in relation to the proposed height of the building.

Comment: The proposal includes an increase in the overall height of the building by 186mm. The overall height of the proposed building is 10.386m, which is compliant with Clause 4.3 Height of Buildings of the WLEP 2011. The proposed increase is considered to be minor and results in a proposal that complies with the maximum allowable height of 11.0m under the control.

Accordingly, the concern raised is not considered to have determining weight nor warrant refusal of the application.

- **Encroachment of building on public land:** Concern is raised in relation to the building's encroachment on public land.

Comment: The proposal seeks to rectify an existing encroachment that was not clearly shown on the original development application plans. The original application plans showed the development to be wholly contained within the site boundaries. Through the construction of the approved development, the encroachment has remained and is now sought to be regularised. However, this matter will be dealt with by Council's Development Compliance team.

Accordingly, the concern raised is not considered to have determining weight nor warrant refusal of the application.

It is noted Thirteen (13) of the submissions received provided the following statement:

"We OBJECT to the building project DA2011/0619 and MOD2012/0230 being built directly next to apartment blocks. We object to the height of the building and the light taken away to nearby residents (WLEP2000 Part 4 Division 4 Section 62). We object to how close the setback to the side boundaries are."

Comment: The proposed modifications do not alter the existing setbacks as approved under DA2011/0619. The proposed works do not result in any unreasonable overshadowing of adjoining lands and the proposed increase in overall height of the building is compliant with Clause 4.3 Height of Buildings Development Standard of the WLEP 2011.

Accordingly, the concerns raised are not considered to have determining weight nor warrant refusal of the application.

MEDIATION

As a result of the public exhibition period, Council received one (1) request for mediation. A review of the application revealed that mediation would be beneficial to the processing of the application if all parties agreed. Invitations to attend the pre-mediation meeting and mediation (detailed below) were extended to all persons who made a submission.

On 31 January 2013, a pre-mediation meeting was conducted and Council records indicate that 5 persons were present for the meeting.

In summary, the following issues were raised at the pre-mediation meeting:

- Lack of light and ventilation to Unit 1 and Unit 5/2 Lagoon Street as a result of the proximity of the development to balcony openings of these units.

A summary of the mediation issues were tabled to the applicant for a response on 11 February 2013.

Upon review of the summary of issues raised, the applicant responded on 13 February 2013, indicating that they did not wish to proceed with mediation.

The list of attendee's were notified of the applicant's decision on 13 February 2013.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	No objections, subject to conditions.
Buildings, Property, Spatial Information	No objections. Any building encroachments onto the road should be referred to Council's Road Assets Manager for comments/conditions.
Road Reserve	The encroachment of the building on the south east corner into Council's road reserve is unacceptable. The Roads Act 1993 does not accommodate a process that allows the lease or the erection of a permanent structure in the road reserve. Given the encroachment has existed for 40+ years as evidenced by DP0545666 dated 1970, some latitude is considered reasonable. As such, whilst not strictly part of the modification, the property owner must be required to submit an application to Council seeking the closure, sale and transfer of the section of road reserve that the building encroaches upon. The encroachment to be referred to Regulatory Compliance to progress in accordance with advice from Council's Legal Services Section. The owner must meet all costs associated with the transfer. For the encroachment of the building upon Council road reserve, the owner must: 1. Submit an Application for Road Reserve Closure to Council seeking the closure, sale and transfer of the section of road reserve that the building encroaches upon. (Refer to Council's Policy on Surplus Road Reserve Disposal (GOV-PL 820)) 2. Meet all costs associated with the transfer. 3. Ensure the portion of closed road is consolidated with the adjoining property. 4. Submit to Council details certifying that the portion of closed road has been consolidated with the adjoining property. <u>Comment:</u> The above comments are noted however the matter was considered at the Development Unit (DU), where it was decided the encroachment should be dealt with separately to this application and by Council's Development Compliance team.
Traffic Engineer	This is a minor adjustment to the existing conditions. The number of parking spaces provided is consistent with the original Development Application. Changing the position of the disabled space is not an issue. The minor non compliance (regarding bollard height) has been addressed in the access report.

Internal Referral Body	Comments
	This space will still function effectively without any restriction to access. No objections to this development.
Waste Officer	No objections.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

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)

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for mixed-use purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the mixed-use land use.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.454142M_02 dated 1 November 2012).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	43
Thermal Comfort	Pass	Pass
Energy	40	45

A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

Warringah Local Environment Plan 2011

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Minimum subdivision lot size:	N/A	N/A	N/A	N/A	N/A
Height of Buildings:	11m	10.2m	10.368m	N/A	Yes
Rural Subdivision:	N/A	N/A	N/A	N/A	N/A
No Strata Plan or Community Title Subdivisions in certain rural and environmental zones:	N/A	N/A	N/A	N/A	N/A

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes

Warringah Development Control Plan

Built Form Controls

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Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	N/A	N/A	N/A	N/A
B2 Number of storeys	3	3	N/A	Yes
B3 Side Boundary Envelope	N/A	N/A	N/A	N/A
B4 Site Coverage	N/A	N/A	N/A	N/A
B5 Side Boundary Setbacks	Merit Assessment	Nil	N/A	N/A
B7 Front Boundary Setbacks	Ground, First and Second Floors - Aligned to street frontage.	Aligned to street frontage.	N/A	Yes
	Any storey above second floor: 5m	11m to 14.3m	N/A	Yes

***Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example: $38/40 \times 100 = 95$ then $100 - 95 = 5\%$ variation)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
B2 Number of Storeys	Yes	Yes
B6 Merit Assessment of Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
Other land in B2 zone	Yes	Yes
Front Boundary Exceptions - B2	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
Mixed Use Premises (Residential/Non-Residential)	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D5 Orientation and Energy Efficiency	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D18 Accessibility	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes

Detailed Assessment

D6 Access to Sunlight

The proposed modifications to the approved development, will not result in any unreasonable overshadowing of adjoining properties. The increase in overall height of the building of 186mm at the northern most edge of the building, will not cause any overshadowing. However, the proposed increase in height will cause a slight decrease in natural daylight available to Unit 5/2 Lagoon Street.

The first objective of the control states: *To ensure that reasonable access to sunlight is maintained.*

Concerns are raised by the adjoining land owners of Unit 1 and 5/2 Lagoon Street in relation to loss of light and natural ventilation. It should be noted that the building at No. 2 Lagoon Street is located with a nil setback to the dividing boundary between the subject site and No. 2 Lagoon Street. The only openings provided for Unit No.s 1 and 5 are in the form of a balcony located on the southern and eastern most projections of the building addressing Lagoon Street. The east - west orientation of the buildings and the south - east rientation of the effected balcony openings, means 'sunlight' to these dwellings is not effected but 'daylight' is effected.

The concerns raised in relation to loss of sunlight and natural ventilation by the owners of Unit 1/2 Lagoon Street, Narrabeen, are not relevant to this application as the existing approved development extends above the balcony opening of Unit 1. The proposed modifications do not change the design of the building when viewed from Unit 1/2 Lagoon Street. The areas of concern for the owner's of Unit 1 are not altered as a result of this application and as such the concerns raised do not have determining weight nor warrant re-design or refusal of the application on this basis.

The proposed increase in the overall height of the building at the northern most edge, represents an increase of 186mm to the overall height and northern wall to Unit 5/2 Lagoon Street, Narrabeen. The proposed increase in height is considered to be minor and does not result in any overshadowing, given the location and height of the existing approved building and the nil setback of the building at No. 2 Lagoon Street to the dividing boundary. Whilst the proposed increase in height of the building will cause a slight decrease in available 'daylight' to Unit 5/2 Lagoon Street, the control is silent on 'daylight' and only refers to 'sunlight'.

In this regard the development is considered to satisfactorily address the control.

D18 Accessibility

The proposed modifications to the disabled car space, toilet facilities and internal modifications are supported by a Accessibility Statement prepared by Accessibility Solutions and dated 20 October 2012. The report concludes the new works as satisfactory.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Warringah Section 94A Development Contribution Plan

Section 94 contributions were levied on the Development Application.

ENCROACHMENT:

The proposed modifications do not include any works that specifically relate to the encroachment. As consent was granted to development that was contained wholly within the site boundaries this encroachment is considered to be beyond the scope of this modification and has been referred to Council's Development Compliance team for investigation.

A condition has been included in the recommendation of this report which indicates no approval is granted for any works located outside of the lot boundaries within the road reserve.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

The proposal has been assessed against the relevant matters for consideration under Section 79C 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.

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 specified in S.5(a)(i) and (ii) of the Environmental Planning and Assessment Act 1979

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant approval Modification Application No. Mod2012/0230 for Modification of Development Consent DA2011/0619 granted for Alterations and additions to existing commercial and retail building and construction of new restaurant and new three bedroom apartment on land at Lot 12 DP 545666, 1304 Pittwater Road, NARRABEEN, subject to the conditions printed below:

A. Add Condition No.1B - 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

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
S9601	October 2012	McDivitt Group Architects
S9602 A	13/02/2012	McDivitt Group Architects
S9603 A	13/02/2012	McDivitt Group Architects
S9604	October 2012	McDivitt Group Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BCA Section J Report	1 November 2012	Gradwell Consulting
Accessibility Statement #2	20 October 2012	Accessibility Solutions

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

Add Condition No. 2a. No Approval for works Beyond Lot Boundaries - to read as follows:

Nothing in this consent grants approval for works outside the boundaries of the subject lot.

Reason: To ensure works are contained wholly within the site boundaries and compliance with the terms of this consent.

Add Condition No. 20a. Fire Safety Matters to read as follows:

At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and the NSW Fire Brigade.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Interim / Final Occupation Certificate.

Each year the Owners must send to the Council and the NSW Fire Brigade an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement under Part 9 Division 4 & 5 of the Environmental Planning and Assessment Regulation 2000. (DACPLF07)

ATTACHMENT A

No notification plan recorded.

ATTACHMENT B

Notification Document	Title	Date
 2012/412661	Notification map	30/11/2012

ATTACHMENT C

Reference Number	Document	Date
 2012/395965	Report Access - CD	22/10/2012
 2012/395971	Report BCA Section J - CD	01/11/2012
 2012/396046	BASIX Certificate 454142M_02 - CD	01/11/2012
 2012/395975	Report Statement of Environmental Effects - CD	01/11/2012
 2012/383141	invoice for ram applications - McDivitt Group Architects Pty Ltd	06/11/2012
 2012/383143	DA Acknowledgement Letter - McDivitt Group Architects Pty Ltd	06/11/2012
 2012/396002	Plans Site and Elevations merged CD	13/11/2012
 2012/396009	Plans Floor and Sections merged - CD	13/11/2012
 2012/396013	Plans Master Set merged - CD	13/11/2012
 2012/396075	Plans Notifications	13/11/2012
 2012/396097	Plan Survey large	13/11/2012
 2012/396107	Applicant Details & Cost estimate	13/11/2012
 2012/396110	Development application form	13/11/2012
 2012/399228	Building Assessment - Fire and Disability upgrades - Assessment Referral - Mod2012/0230 - 1304 Pittwater Road NARRABEEN NSW 2101	15/11/2012
 2012/398584	File Cover	15/11/2012
 2012/398592	Referral Traffic Engineers	15/11/2012
 2012/398594	Referral to AUSGRID - SEPP - Infrastructure 2007	15/11/2012
 2012/402268	Building Assessment Referral Response	20/11/2012
 2012/403339	Waste Referral Response	21/11/2012
 2012/406203	change of mailing address - Section 96 Mod2012/0230 - 1304 Pittwater Road Narrabeen	23/11/2012
 2012/411676	Traffic Engineer Referral Response	29/11/2012
 2012/412654	Notification Letters - 95	30/11/2012
 2012/412661	Notification map	30/11/2012
 2012/417583	general query - legality of building works - mod2012/0230	04/12/2012
 2012/425943	Online Submission - Dando	14/12/2012
 2012/427732	submission - dando	14/12/2012
 2012/426150	Online Submission - Harbor	15/12/2012
 2012/426155	Online Submission - Shelley	15/12/2012
 2012/426162	Online Submission - Steengaard	15/12/2012
 2012/426169	Online Submission - Chapman	15/12/2012
 2012/426201	Online Submission - McCann	15/12/2012

	2012/426205	Online Submission - McCann	15/12/2012
	2012/426228	Online Submission - Williams	15/12/2012
	2012/426231	Online Submission - Williams	15/12/2012
	2012/426237	Online Submission - Ciappi	15/12/2012
	2012/426244	Online Submission - Newport	15/12/2012
	2012/426255	Online Submission - Dando	16/12/2012
	2012/426257	Online Submission - Giovanelli	16/12/2012
	2012/426262	Online Submission - Astle	16/12/2012
	2012/426267	Online Submission - Pywell	16/12/2012
	2012/426273	Online Submission - Moore	16/12/2012
	2012/426274	Online Submission - Jonmundsson	17/12/2012
	2012/427403	Online Submission - Buttrose	17/12/2012
	2012/427408	Online Submission - Keller	17/12/2012
	2012/427414	Online Submission - Storey	17/12/2012
	2012/428821	request extension - make submission - 1304 Pittwater Road Narrabeen - mod2012/0230	17/12/2012
	2012/427420	Online Submission - Dando	17/12/2012
	2012/428684	Submission Acknowledgement Letter - Lisa Dando & Bruce Martin Dando - SA2012/427732	19/12/2012
	2012/429051	Mediation Request WorkSheet - McDivitt Group Architects Pty Ltd	19/12/2012
	2012/429052	Summary of Mediation Issues - McDivitt Group Architects Pty Ltd	19/12/2012
	2012/429057	Mediation Acknowledgement Letter -	19/12/2012
	2012/429083	Mediation Request for Applicant - McDivitt Group Architects Pty Ltd	19/12/2012
	2012/430945	request extension - make submission - 1304 Pittwater Road Narrabeen - mod2012/0230	20/12/2012
	2012/433518	Submission - McPhee Kelshaw on behalf of Dando	28/12/2012
	2013/004558	urgent attention GM - request mediation over development progress - 1304 pittwater road narrabeen	07/01/2013
	2013/004887	Submission Acknowledgement Letter - McPhee Kelshaw - SA2012/433518	08/01/2013
	2013/006339	MOD 2012/0230 - DA2011/0619 - 1304 Pittwater Road Narrabeen - Alterations and Additions to an Existing Commercial Building and Construction of a New 3 Bedroom Apartment - McPhee Kelshaw	09/01/2013
	2013/011937	Request for Response to Correspondence	15/01/2013
	2013/018926	Mediation Phone Notes - McDivitt Group Architects Pty Ltd	17/01/2013
	2013/018932	Pre-mediation Objectors Initiated - McDivitt Group Architects Pty Ltd	17/01/2013

	2013/019010	letter to objector invite to Premediation	17/01/2013
	2013/037880	Mediation - Attendance Sheet - McDivitt Group Architects Pty Ltd	06/02/2013
	2013/037882	Pre Mediation Issues - Pre Mediation meeting 20130131	06/02/2013
	2013/038094	Mediation Issues from 31 January for MOD2012/0230 - 1304 Pittwater Road Narrabeen	06/02/2013
	2013/046395	concerning development - 1304 Pittwater Road Narrabeen - mcphree kelshaw	13/02/2013
	2013/046828	Mediation - Applicant rejects Mediation - McDivitt Group Architects Pty Ltd	13/02/2013
	2013/048204	mod2012/0230 - modification of development consent da2011/0619 - 1304 pittwater road narrabeen - amended drawings s9602/a and s9603/a	14/02/2013
	2013/066634	Roads and Assets Referral Response	04/03/2013
	2013/071737	Response - DA2011/0619 - 1304 Pittwater Road - time lapsed	07/03/2013

PANEL PLANS

No plans titled 'ADP Panel Plans' found in TRIM.