

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2022/0303
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<b>Responsible Officer:</b>	Olivia Ramage
<b>Land to be developed (Address):</b>	Lot 2 SP 19670, 2 / 98 Old Pittwater Road BROOKVALE NSW 2100 Lot 3 SP 19670, 3 / 98 Old Pittwater Road BROOKVALE NSW 2100 Lot 4 SP 19670, 4 / 98 Old Pittwater Road BROOKVALE NSW 2100 Lot 5 SP 19670, 5 / 98 Old Pittwater Road BROOKVALE NSW 2100 Lot CP SP 19670, 98 Old Pittwater Road BROOKVALE NSW 2100
<b>Proposed Development:</b>	Earthworks and structural works to existing buildings
<b>Zoning:</b>	Warringah LEP2011 - Land zoned IN1 General Industrial
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	The Owners Of Strata Plan 19670
<b>Applicant:</b>	Outlook Planning & Development

<b>Application Lodged:</b>	08/06/2022
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Commercial/Retail/Office
<b>Notified:</b>	20/06/2022 to 04/07/2022
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Refusal

<b>Estimated Cost of Works:</b>	\$ 226,010.00
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### PROPOSED DEVELOPMENT IN DETAIL

The proposed development involves structural foundation repair work to an existing industrial warehouse building. It involves repairing existing slabs and footings to the industrial units.

### 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 Development Control Plan - B6 Merit Assessment of Side Boundary Setbacks

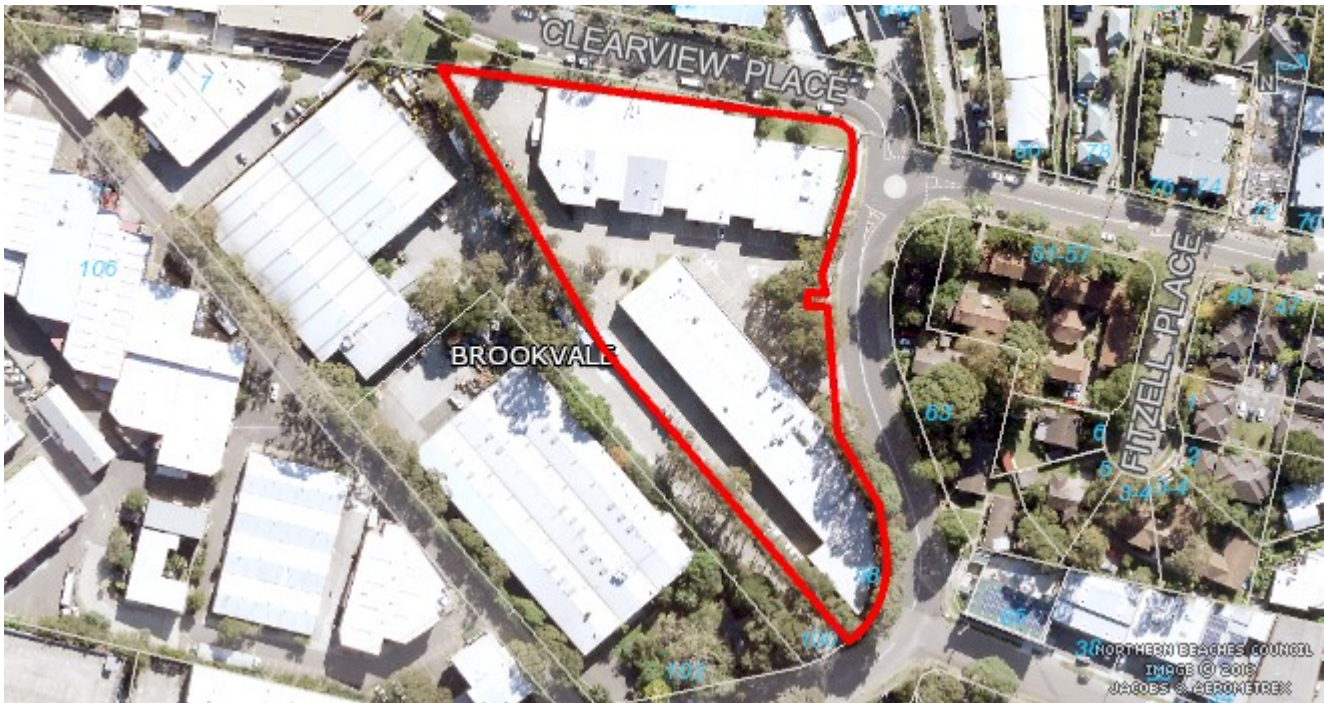
Warringah Development Control Plan - B7 Front Boundary Setbacks

Warringah Development Control Plan - B10 Merit assessment of rear boundary setbacks

## SITE DESCRIPTION

<b>Property Description:</b>	<p>Lot 2 SP 19670 , 2 / 98 Old Pittwater Road BROOKVALE NSW 2100</p> <p>Lot 3 SP 19670 , 3 / 98 Old Pittwater Road BROOKVALE NSW 2100</p> <p>Lot 4 SP 19670 , 4 / 98 Old Pittwater Road BROOKVALE NSW 2100</p> <p>Lot 5 SP 19670 , 5 / 98 Old Pittwater Road BROOKVALE NSW 2100</p> <p>Lot CP SP 19670 , 98 Old Pittwater Road BROOKVALE NSW 2100</p>
<b>Detailed Site Description:</b>	<p>The subject site consists of five (5) allotments located on the western side of Old Pittwater Road. The site has a total area of 11,563m<sup>2</sup>.</p> <p>The site is currently occupied by an industrial development consisting of two storey building blocks.</p> <p>The surrounding development comprises of other industrial buildings.</p>

Map:



## SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site.

The land has been used for industrial purposes for an extended period of time.

### Application History

A request for information letter was sent to the applicant on 20 September 2022 in relation to Road Reserve issues. The proposal included the construction of piles and a footing along the northern boundary within Council's road reserve which cannot be supported. Amended plans were requested indicating that all works are contained within the property boundary. The information was due on 4 October 2022. No response was received from the applicant and follow up correspondence was sent to the applicant on 10 October 2022 and the applicant provided a response stating that the request had been received.

Additional information was received through the Planning Portal on 18 October 2022. This included an Amended Engineering Plan. Council's Development Engineer and Road Reserve Officer provided updated comments stating that the proposal is still unsupported due to insufficient information which demonstrated that no structural works were proposed within the road reserve. The detail on R02 of the Amended Engineering Plans was to be removed and an Amended Master Set of Plans indicating all works are within the property boundaries was requested. This information was requested from the applicant on 24 October 2022. The applicant responded on 26 October 2022 advising that page R02 was a superseded plan and that page is to be deleted, but failed to confirm that the works were wholly within the site and not the road reserve. Council responded on 26 October 2022 instructing that the engineering plans should be uploaded to the Planning Portal along with an amended master set of plans, which clearly showed the works within the site. The applicant responded 26 October 2022 advising that the updated engineering plans had been uploaded to the Planning Portal and the amended master set would also be uploaded shortly after.

Information was received through the Planning Portal on 27 October 2022 which included an amended engineering plan with R02 deleted. The amended master set was not received. Council contacted the applicant on 14 November 2022 following up on when the master set of plans will be provided. The

applicant responded on the 14 November 2022 advising that the plans were uploaded to the Planning Portal already. It was confirmed that the master set was not received through the Planning Portal. Council contacted the applicant again on 14 November 2022 advising that only the amended engineering plans had been received not the amended master set. Council explained that the master set of plans are to include a site plan, sections and elevations demonstrating that all works are within the property boundaries. The email also included a screenshot of the original master set that is to be amended. The applicant responded on 17 November 2022 advising that they have followed up with their client and await their response.

Information was received through the Planning Portal on 22 November 2022 which was the same as the previously submitted amended engineering plan. This was not the amended master set of plans that was requested.

It is considered that sufficient time and opportunities have been provided for the requested information. Therefore, the proposal proceeds in its current form with a recommendation of refusal.

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under 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 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)	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to engineering and road reserve.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&amp;A Regulation 2021 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.</p>

Section 4.15 Matters for Consideration	Comments
	<p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 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.</p>
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	<p>(i) <b>Environmental Impact</b> 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.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> 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 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	The inadequate and conflicting information associated with the application is such that the development is contrary to the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 20/06/2022 to 04/07/2022 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	<p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
NECC (Development Engineering)	<p>The proposal includes the construction of piles and a footing within Council's road reserve which cannot be supported. This proposal must be referred to Council's Road Assets Team for their concurrence and comment.</p> <p>Development Engineering cannot support the proposal due to permanent structural works proposed within Council's road reserve.</p> <p><b>Additional information submitted 18/10/2022</b></p> <p>The amended structural plan appears to show that the extent of works is limited to within the existing industrial building and precludes any work to the boundary wall along Clearview Place, however on page two of the set, the detail still appears to show the proposed footing within the road reserve. It is considered that this and the other detail should be removed.</p> <p>As the extent of works has been amended, it is considered that the master set be amended to suit.</p> <p>Development Engineering cannot support the proposal due to insufficient information ensuring no permanent structural works proposed within Council's road reserve.</p> <p><b>Additional information submitted 27/10/2022</b></p> <p>The amended structural plans appear to show the extent of works limited to the internal structure however the master set of plans has not been amended to suit. The extent of works is inconsistent between the plans submitted and as such the proposal cannot be supported as there appears to be works within Council's road reserve.</p> <p>Development Engineering cannot support the proposal due to insufficient information to assess the application.</p>
NECC (Riparian Lands and Creeks)	<p>The proposal has been assessed by ECC Riparian. The proposed works are being undertaken under the roofed area of the building and</p>

Internal Referral Body	Comments
	<p>confined within the building footprint.</p> <p>ECC Riparian has no objection to the proposed works.</p> <p>Supported without conditions</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>The proposed development includes repairs to the existing slab. it is not considered that flood risk is increased.</p> <p>There are no flood related objections.</p>
Road Reserve	<p>The proposal includes the construction of piles and a footing along the northern boundary within Council's road reserve which cannot be supported.</p> <p>Permanent structural works of a private nature cannot be accommodated within the public road reserve. All works must be contained within the property boundaries.</p> <p><b><u>Comments on amended plans 18/10/2022</u></b></p> <p>Amended plans are inconsistent. Drawing R02 shows external detail for pier and cap within road reserve the subject of the original referral comments. R03 RevA tends to show crew piles on northern boundary within property but no specific section detail.</p> <p>To clarify, suggest amend drawing R02 remove Pier and Cap Detail (External) and include section detail for external boundary wall on R03.</p> <p><b><u>Comments on amended plans received 26/10/2022</u></b></p> <p>The deletion of drawing R02 is noted. The proposal now obfuscates the intention of the works as there is now no detail for underpinning of external wall and therefore it is not possible to assess the full scope of work.</p> <p>There has been no update to 'Plans - Master Set' which still show underpinning located within the public road reserve and therefore inconsistent with the "Plans - Engineering - Amended".</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>

## 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)

### SEPP (Resilience and Hazards) 2021

#### Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for industrial 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 sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the industrial land use.

### Warringah Local Environmental 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

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	11m	No Change	N/A	Yes

#### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.3 Development near zone boundaries	Yes
5.21 Flood planning	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes



## Warringah Development Control Plan

### Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B5 Side Boundary Setbacks	Merit	No Change	N/A	Yes
	Merit	No Change	N/A	Yes
B7 Front Boundary Setbacks	4.5m	No Change	N/A	<b>No</b>
B9 Rear Boundary Setbacks	Merit	No Change	N/A	Yes

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B6 Merit Assessment of Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	No
B10 Merit assessment of rear boundary setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	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
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D18 Accessibility and Adaptability	Yes	Yes
D20 Safety and Security	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E10 Landslip Risk	Yes	Yes
E11 Flood Prone Land	Yes	Yes

### Detailed Assessment

#### **B6 Merit Assessment of Side Boundary Setbacks**

The proposed development involves structural repair work to an existing building. No changes are proposed to the existing side boundary setbacks.

## **B7 Front Boundary Setbacks**

The proposed development involves structural repair work to an existing building. No changes are proposed to the existing front boundary setback of the building.

The Plans - Master Set indicates that underpinning is located within the public road reserve which is not supported by Council's Development Engineer and Road Reserve Officer.

The amended structural plans appear to show the extent of works limited to the internal structure however the master set of plans has not been amended to suit. The extent of works is inconsistent between the plans submitted and as such the proposal cannot be supported as there appears to be works within Council's road reserve.

## **B10 Merit assessment of rear boundary setbacks**

The proposed development involves structural repair work to an existing building. No changes are proposed to the existing rear boundary setbacks.

## **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 2022**

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$2,260 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$226,010.

## **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:

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

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

## **RECOMMENDATION**

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2022/0303 for the Earthworks and structural works to existing buildings on land at Lot 2 SP 19670,2 / 98 Old Pittwater Road, BROOKVALE, Lot 3 SP 19670,3 / 98 Old Pittwater Road, BROOKVALE, Lot 4 SP 19670,4 / 98 Old Pittwater Road, BROOKVALE, Lot 5 SP 19670,5 / 98 Old Pittwater Road, BROOKVALE, Lot CP SP 19670,98 Old Pittwater Road, BROOKVALE, for the reasons outlined as follows:

### **1. Public Interest**

Due to conflicting information, it is unknown what approval is sort and therefore, approval of the application is not in the public's interest.

#### Particulars:

a) The application relies upon conflicting plans and as such it is not known what works approval is sort. Accordingly approval to development that is uncertain is not within the Public's Interest, contrary to Section 4.15(1)(e) of the Environmental Planning and Assessment Act, 1979.

### **2. Inadequate information**

The development application contains conflicting and incomplete information.

#### Particulars:

a) The amended architectural plans to which the application relies indicates that underpinning is located within the public road reserve. Such works are not supported by Council's Development Engineer and Road Reserve Officer, nor has the application been supported by land owners consent for such works on land under its control.

b) The amended structural engineering plans to which the application relies detail that the extent of works proposed under the application is limited to the internal structure and that no works are proposed within the road reserve, however this conflicts with the architectural plans. The extent of works is inconsistent between the plans submitted and is not known what works are actually proposed under the application.

- c) Given the conflicting information to which the application relies and that works may or may not be proposed in Council's road reserve, the site is not considered suitable for the proposed development, contrary to Section 4.15(1)(c) of the Environmental Planning and Assessment Act, 1979.

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

**Signed**



**Olivia Ramage, Planner**

The application is determined on 24/11/2022, under the delegated authority of:



**Adam Richardson, Manager Development Assessments**