



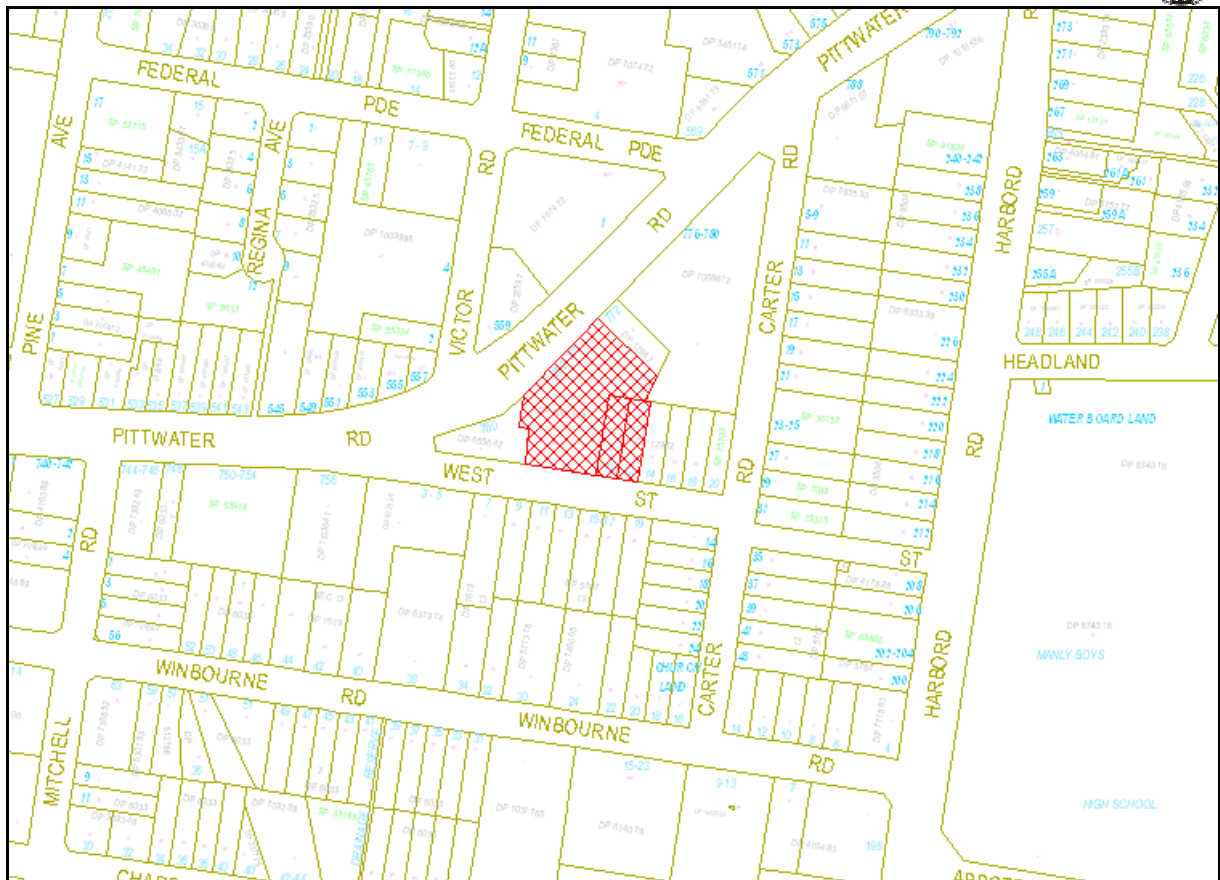
Warringah Council

SECTION 82A (EP&A ACT) REVIEW OF DETERMINATION ASSESSMENT REPORT

Assessment Officer:	Amy Sutherland
Address / Property Description:	Nos. 10 -12 West Street, Brookvale and Nos. 762-770 Pittwater Road, Brookvale
Proposal:	Demolition and construction of a building capable of being occupied by industrial, warehouse and vehicle repair station uses.
Section 82A Application No:	REV2008/0022
Development Application No:	DA2007/1206
Plans Reference:	DA1 – DA8 dated 1 May 2009 prepared by Humel Architects Pty Ltd
Applicant:	Wood Park Pty Ltd
Owner:	Wood Park Pty Ltd
Application Lodged:	28 August 2008
Amended Plans:	YES (16 April 2009, 1 May 2009)
Locality:	F2 Brookvale Service Centre & F3 Brookvale Industrial
Category:	<div>F2 Brookvale Service Centre locality<ul style="list-style-type: none">• Category 1 (industries, warehouses and motor showrooms)• Category 2 (vehicle repair stations)</div> <div>F3 Brookvale Industrial locality<ul style="list-style-type: none">• Category 1 (industries, warehouses)• Category 2 (motor showrooms, vehicle repair stations)</div>
Clause 20 Variations:	YES (Building height, Front building setback)
Land and Environment Court Action:	NO
Referred to IHAP:	NO
Referred to ADP:	NO
SUMMARY	
Submissions:	No submissions received.
Submission Issues:	N/A
Assessment Issues:	Building height, Front building setback
Recommendation:	Approval
Attachments:	Development Application No.2007/1206 Assessment Report

DA No.DA2007/1206 R

LOCALITY PLAN (not to scale)



Subject Site: Lot 10, DP 12962, No. 10 West Street Brookvale
 Lot 11, DP 12962, No. 12 West Street Brookvale
 Lot 101, DP 1007178, Nos. 762-770 Pittwater Road Brookvale

Notified Residences: The application was notified in accordance with the provisions of the Environmental Planning and Assessment Regulation 2000 and Warringah Development Control Plan. Notification letters dated 23 September 2008 were sent to 21 properties. No submissions were received.

SITE DESCRIPTION

The site comprises Lot 101, DP 1007178, Nos. 762-770 Pittwater Road, Brookvale and Lots 10 and 11, DP 12962, Nos. 10 - 12 West Street, Brookvale. The site has an area of 4,867 square metres.

The site is an irregular shaped allotment with a 60.65 metre frontage to Pittwater Road and a 64.87 metre frontage to West Street. A 1.83 metre wide easement for drainage extends a maximum of 19.5 metres from the boundary adjoining Pittwater Road. A sewer line extends across the northern corner of the site.

The existing site is largely paved with bitumen and is currently occupied by a motor vehicle showroom and display facility incorporating ancillary uses such as car servicing and detailing.

The site adjoins a triangular shaped allotment to the west, known as No. 760 Pittwater Road, Brookvale, which is located on the corner of Pittwater Road and West Street. Development application No.2006/1198 for the construction of a 4 storey building and 3 levels of basement carparking and the use of the building for a motor vehicle showroom, bulky goods shop and industry at No.760 Pittwater Road, Brookvale, was approved by the Land and Environment Court on 18 December 2007.

The site adjoins a motor vehicle showroom to the north and industrial development to the east. Industrial developments are located on the southern side of West Street.

RELEVANT BACKGROUND

A pre-lodgement meeting was held for the proposed development on 21 November 2006.

Development Application No.2007/1206 for the demolition and construction of a building capable of being occupied by multiple uses including bulky goods shop, factory, warehouse and motor vehicle workshop, restaurant and office uses at Nos.10 -12 West Street, Brookvale & Nos. 762-770 Pittwater Road Brookvale was lodged on 7 December 2007.

Following the lodgement of Development Application No.2007/1206, three letters requesting additional information were sent to the Applicant. The first letter was dated 24 January 2008 and advised of the concerns raised by Council's Traffic Engineer and the information required to address these concerns. The second letter dated 1 February 2008 outlined the concerns raised by Council's Development Engineers and the third letter dated 15 February 2008 raised concerns with several planning issues.

The Applicant responded to the issues raised by Council in letters dated 15 February 2008, 29 February 2008 and 3 March 2008. No amended plans were submitted.

As the Applicant failed to satisfactorily resolve the issues raised by Council the application was refused under the delegated authority of the Team Leader Development Assessments on 12 May 2008 for the following reasons:

- 1. Pursuant to Section 79C(1)(a) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Warringah Local Environmental Plan 2000 in that the development does not comply with the Desired Future Character Statement of the F3 Brookvale Industrial Locality.*

2. *Pursuant to Section 79C(1)(a) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Warringah Local Environmental Plan 2000 in that the proposed development does not comply with the Building Height or Front Building Setback Built Form Controls for the F3 Brookvale Industrial Locality or the Building Height control for the F2 Brookvale Service Centre locality.*
3. *Pursuant to Section 79C (1) (a) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the following provisions of Warringah Local Environmental Plan 2000;*
 - *Clause 48 Potentially contaminated land*
 - *Clause 49 Remediation of contaminated land*
 - *Clause 57 Development on sloping land*
 - *Clause 63 Landscaped open space*
 - *Clause 66 Building bulk*
 - *Clause 72 Traffic access & safety*
 - *Clause 73 On-site loading and unloading*
4. *Pursuant to Section 79C(1)(a) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Warringah Local Environmental Plan 2000 in that a Statement of Environmental Effects has not been submitted that addresses the requirements of Schedule 15 of Warringah Local Environmental Plan 2000 as required by Clause 15 of Warringah Local Environmental Plan 2000.*
5. *Pursuant to Section 79C(1)(a) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Warringah Local Environmental Plan 2000 as the application could not be advertised as required by Clause 23 of WLEP 2000 as the required advertising fee was not submitted to Council.*
6. *Pursuant to Section 79C(1)(a) of the Environmental Planning and Assessment Act 1979 insufficient information has been submitted to demonstrate that the land will be suitable in its contaminated state (or will be suitable after remediation) for the purpose for which the development is proposed to be carried out as required by State Environmental Planning Policy No.55 – Remediation of Land and Clauses 48 and 49 of Warringah Local Environmental Plan 2000.*
7. *Pursuant to Section 79C (1) (c) of the Environmental Planning and Assessment Act 1979 the site is not considered suitable for the proposed development as insufficient information has been submitted to demonstrate that the land will be suitable in its contaminated state (or will be suitable after remediation) for the purpose for which the development is proposed to be carried out.*
8. *Pursuant to Section 79C (1) (e) of the Environmental Planning and Assessment Act 1979 the proposal is not considered to be in the public interest.*

Prior to the lodgement of the Section 82A application, the Applicant consulted with Council to discuss the proposed amendments. The Section 82A application was lodged on 28 August 2008.



Following a preliminary review of the Section 82A application the Applicant was requested to provide clarification of the proposed uses on 3 November 2008, as the plans included references to 'Bulky Goods', which is a Category 3 use in the F3 Brookvale Industrial locality, yet the written documentation stated that only Category 1 and 2 uses are proposed.

On 14 November 2008, Council advised the Applicant that the stormwater management plans submitted were not satisfactory and required amendment. Amended stormwater plans were received by Council on 27 November 2008.

On 3 February 2009, Council Officers met with the Applicant to advise of concerns related to the number of driveway crossings proposed, particularly the two adjoining double width driveways in the south eastern corner of the site. The Applicant prepared a concept plan which was submitted to Council on 17 February 2009 for consideration. This scheme was not supported. Accordingly, a second proposal was submitted to Council on 3 March 2009. On 10 March 2009 Council advised that the amended proposal was supported in principle, subject to a number of amendments and further information being included on the plans. Amended plans were received on 16 April 2009. The amended plans submitted remove any references to 'Bulky Goods' in response to Council's correspondence dated 3 November 2008.

PROPOSAL IN DETAIL

Development Application No. 2007/1206 proposed the following;

- Demolition of the existing single storey factory and awning structures on the site of Nos. 10-12 West Street and an awning structure over the existing service reception building at Nos. 762-770 Pittwater Road.
- Construction of a three (3) level building with a gross floor area of 5,986m² which is capable of being occupied by multiple uses including bulky goods shop, factory, warehouse and motor vehicle workshop, restaurant and office uses.
- Construction of a vehicular access ramp to the forecourt to serve Level 1 and minor regrading of sections of the forecourt facing Pittwater Road.

The primary amendments to the development proposal, which have been submitted with the Section 82A review, are as follows:

- The 'bulky goods shop' and 'restaurant' uses are no longer proposed.
- The number of carparking spaces has been increased from 92 to 96.
- The second floor level has been setback 3.5 metres from the front of the building.
- The existing pedestrian ramp within the setback to West Street is proposed to be removed and replaced with landscaping.
- The driveway previously proposed along the eastern boundary of the site has been deleted and as a result the ramp to the upper levels has been relocated to the rear of the proposed building at 10 -12 West Street. The amended ramp is accessed by the



existing driveway to West Street which provides access through to the motor vehicle showroom on the northern portion of the site.

- The internal layout of the building has been amended as a result of the changes to the vehicular access to and within the building.

STATUTORY CONTROLS

- a) Environmental Planning and Assessment Act 1979
- b) Environmental Planning and Assessment Regulation 2000
- c) State Environmental Planning Policy No. 55 – Remediation of Land
- d) Warringah Local Environmental Plan 2000
- e) Warringah Development Control Plan
- f) Section 94A Development Contributions Plan

REFERRALS

Roads and Traffic Authority

Development application No.2007/1206 was referred to the Roads and Traffic Authority (RTA) in accordance with Schedule 10 of *Warringah Local Environmental Plan 2000* (WLEP 2000) on 20 December 2008. No response was received prior to the determination of the development application.

Following the determination of the development application, a letter dated 22 May 2008 from the RTA was received by Council which included the following comments of the Sydney Regional Development Advisory Committee;

- *'Off street parking associated with the proposed development, including driveways, aisle widths, grades, parking bay dimensions, sight distance requirements, and turn paths are to be in accordance with AS2890.1-2004 and AS2890.2-2002.*
- *Council is to ensure that the turning circle of long vehicle movements into/out of West Street and entry and exit from the proposed development are adequate as per the submitted design. It must be ensured that the development is suitable to accommodate these vehicles particularly in the delivery area.*
- *Pedestrians need to be catered for onsite through the provision of a walkway in the central parking module as well as general enhancement through signage and line marking.*
- *Provision is to be made on site for bicycle parking.*
- *All vehicles are to enter and exit the site in a forward direction.*
- *Vehicles must be wholly contained onsite before being required to stop.*
- *All works associated with the proposal will be at no cost to the RTA.'*

Conditions have been included in the draft consent to ensure that; the proposed development is consistent with AS2890.1-2004 and AS2890.2-2002, all works associated with the proposal will be at no cost to the RTA, provision is made on site for bicycle parking and adequate access and signage is provided within the development for pedestrians.

Ministry of Transport



Warringah Council

Development Application No. 2007/1206 was referred to the Ministry of Transport in accordance with the requirements of *Draft State Environmental Planning Policy No.66 – Integration of Transport and Land Use* (Draft SEPP 66).

As discussed under the '*Draft State Environmental Planning Policy No.66 – Integration of Land Use and Transport*' section of this report, draft SEPP 66 no longer applies and is not a relevant consideration in accordance with Section 79C of the EP&A Act.

Notwithstanding the fact that draft SEPP 66 no longer applies, the amended proposal submitted with the Section 82A application does not alter the assessment of the proposal against the issues raised by the Ministry of Transport which was undertaken for the development application. A condition has been included in the draft consent as recommended by the Ministry of Transport and the Roads and Traffic Authority which requires the provision of amenities and bicycle parking for cyclists.

Development Engineers

Council's Development Engineers have reviewed the proposed development and advised that the On-Site Detention (OSD) plans are satisfactory and that the ground clearance of 4.5 metres over Council's easement and pipeline is considered acceptable.

Council's Development Engineers did however advise that the issues raised by Council's Traffic Engineer relating to the proposed access driveways should be addressed.

Amended plans were submitted by the Applicant to address the issues raised by Council's Development Engineers and Council's Traffic Engineers on 16 April 2009.

Council's Development Engineers have reviewed the amended plans submitted on 16 April 2009 and raised no objections subject to a number of conditions being included in the consent if the application is approved. All recommended conditions have been included in the draft consent.

Traffic Engineer

Council's Traffic Engineer reviewed the amended proposal and advised that the following matters are to be addressed;

- 1. The applicant is to address the delivery vehicle requirements for the show room. That is, what size trucks are required for deliveries and how will deliveries be made. Deliveries must occur onsite and trucks are to enter/exit in a forward direction.*
- 2. The service vehicle requirements for the bulky goods/warehouse/factory component are also to be addressed. The proposal should make provision for a large rigid truck, which are likely to service the development.*
- 3. The number of access driveways to the site should be rationalised (reduced). Also, the location of the two driveways along the eastern side of the site on West Street is not considered satisfactory in relation to conflicting entry/exit manoeuvres. These driveways should be separated and appropriately signposted with directional signs.*

In response to the first issue raised by Council's Traffic Engineer the report for the original development application stated that that the expanded showroom is not a proposed use of the new building and therefore should not be taken into consideration. The amended



application does not propose the use of the building for an expanded showroom and therefore the loading/unloading arrangements for such a use are not a relevant consideration.

The second issue raised by Council's Traffic Engineer has been addressed under '*Clause 72 On site loading and unloading*' in the '*Assessment of Amended Proposal*' section of this report.

In response to the third issue raised by Council's Traffic Engineer amended plans were submitted which deleted the driveway which was previously proposed along the eastern boundary of the site and relocated the ramp to the upper levels to the rear of the proposed building at Nos. 10-12 West Street. Council's Engineers have reviewed the amended plans and have advised that the deletion of the driveway in the south east corner of the site has satisfactorily addressed concerns raised relating to the number of driveways proposed.

Environmental Health & Protection Officer

Council's Environmental Health Officer has reviewed the documentation submitted in support of the proposed development including the '*Report on Targeted Phase 2 Contamination Assessment*' dated June 2008 prepared by *Douglas Partners Pty Ltd*.

Council's Environmental Health Officer indicated that the assessment identified 'random pockets of asbestos contamination' in the fill material on site and that no other contamination concerns were raised. As the report concludes that the site could be rendered suitable for the proposed use provided that remediation is undertaken, no objections were raised to the proposal subject to the several conditions being included in the consent. All recommended conditions have been included in the draft consent where relevant.

Landscape Officer

Council's Landscape Officer has reviewed the documentation submitted and raised no objections to the proposal, subject to several conditions being included in the consent if the application is approved. All recommended conditions have been included in the draft consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The application was notified in accordance with the provisions of the Warringah Development Control Plan. Notification letters dated 25 September 2008 were sent to 23 properties. No submissions were received.

Amended plans were submitted following the conclusion of the notification period. The amended application was not renotified in accordance with Clause 2.12 of Warringah Development Control Plan as the amended application does not result in a greater environmental impact.

Section 82A

Under Section 82A of the EP&A Act, an applicant may request Council to review a determination of a development application, other than for a complying development, integrated development, designated development or a determination made by Council in respect to an application by the Crown. The development application does not fall into any of these categories, therefore the Applicant may request a review.



In accordance with Section 82A of the EP&A Act, the request for the review must be made within 12 months after the date of determination. The application was determined on 12 May 2008. The review was lodged on 28 August 2008. The review will be determined prior to 12 May 2009, which is within 12 months of the date of determination.

Section 82A(4)(c) provides that the Council may review a determination if in the event that the applicant has made amendments to the development described in the original application, the consent authority is satisfied that the development, as amended, is substantially the same as the development described in the original application.

The amendments to the proposal are outlined in the 'Proposed Development' section of this report.

In relation to the issue of substantially the same, in *Michael Standley and Associates Pty Ltd v North Sydney Council* [1997] NSW LEC 190 (5 December 1997) Justice Stein noted;

'There are, of course, differences between the building as sought to be modified and the approved development. The question is, however, whether these differences result in a building which could no longer be described as "substantially the same development". The mere fact that there are differences does not mean that the proposal is necessarily one which is not substantially the same as the approved development.'

As differences between the schemes and plans are inevitable, a consideration of whether the development is substantially the same should focus on whether there are sufficient similarities to reasonably conclude the development is substantially the same.

A review of the original and amended plans has found the following similarities between the two schemes;

- The intensity of the development is essentially unchanged, the number of carparking spaces required for the proposed development has been reduced by 2 (from 85 to 83) and the overall number of carparking spaces provided within the development has only increased by 4 (from 92 to 96).
- The previously proposed 'bulky goods shop' and 'restaurant' uses have been deleted from the proposal. All other uses remain unchanged.
- The front setback of the ground and first floors of the building is unchanged.
- The floor levels of the development are unchanged.
- The glass entry feature is unchanged.

It is considered that there are fundamental similarities which result in the essence of the amended scheme being substantially the same as the original scheme. Accordingly, it is considered that the proposal satisfies the requirement of Section 82A(4)(c) of the EP&A Act.

Assessment of Amended Proposal

The following assessment considers whether the amended proposal submitted with the Section 82A application has satisfactorily addressed the reasons for refusal of Development Application No. 2007/1206.



1. Pursuant to Section 79C(1)(a) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Warringah Local Environmental Plan 2000 in that the development does not comply with the Desired Future Character Statement of the F3 Brookvale Industrial Locality.

The subject site is partly located within the F2 Brookvale Service Centre locality and the F3 Brookvale Industrial locality.

The assessment of Development Application No. 2007/1206 found the proposed development was consistent with the desired future character (DFC) statement for the F2 locality but not the F3 locality.

The DFC statement for the F3 Brookvale Industrial locality states the following;

The Brookvale Industrial locality will remain an industrial and employment centre incorporating industries, warehouses and ancillary service uses.

New development or significant redevelopment will be designed to incorporate landscaping to soften the visual impact of industrial buildings and their associated parking and other paved areas as viewed from the street.

At the interface of the locality with adjoining and adjacent residential areas, buildings will be sited and designed and the use of land managed to minimise interference with the amenity of such residential areas.

Allotments are to be consolidated where necessary to ensure the development of one allotment will not render an adjoining allotment unsuitable for development.

The development proposed under Development Application No. 2007/1206 was found to be inconsistent with the first and second paragraphs of the DFC statement. The issues raised in the assessment of the development application related to the F3 locality DFC statement and the amended development's consistency with these components of the DFC statement is discussed below.

The Brookvale Industrial locality will remain an industrial and employment centre incorporating industries, warehouses and ancillary service uses.

The assessment of Development Application No.2007/1206 found that insufficient information had been submitted to demonstrate that the Category 3 use proposed (bulky goods shop) will be consistent with this component of the DFC statement. Accordingly, this issue was included as a reason for refusal.

The amended application seeks consent for the use of the building for industries, warehouses or vehicle repair stations. Within the F3 Brookvale Industrial locality industries and warehouses are Category 1 uses and motor showrooms and vehicle repair stations are Category 2 uses. The 'bulky goods shop' Category 3 use has been deleted from the application.

Industrial and warehouse uses are directly referred to in this component of the DFC statement and are clearly consistent with the uses which are to be provided in the locality.

The vehicle repair station use is compatible with industrial and warehouses uses and is ancillary to the existing motor vehicle showroom use which is located in the F2 locality.



Accordingly, the proposed development is considered to be consistent with this component of the desired future character statement.

New development or significant redevelopment will be designed to incorporate landscaping to soften the visual impact of industrial buildings and their associated parking and other paved areas as viewed from the street.

The assessment of the Development Application No. 2007/1206 found that the non-compliance with the front building setback control combined with the significant portion of the setback occupied by pathways or driveway crossings resulted in the inadequate provision of landscaping which is capable of softening the visual impact of the industrial building. Accordingly, the development was not found to be consistent with this component of the DFC statement and this issue was included as a reason for refusal.

The amended proposal includes the deletion of the driveway in the south east corner of the site. The driveway area is proposed to be replaced with landscaping. The amended proposal also includes the deletion of an existing pedestrian ramp which is located within the front setback.

The visual bulk of the building has been reduced through the provision of a 3.5 metre setback to the second level and the roof level from the southern edge of the building.

The increased area available in the front setback for landscaping, combined with the reduced visual bulk of the development, ensures that an adequate area is provided within the front building setback for the provision of landscaping which is capable of softening the visual impact of the industrial building. The amended proposal is consistent with this component of the DFC statement.

Summary

Based on the assessment of the original application and the amended plans submitted with the Section 82A application, the proposed development is considered to be consistent with each component of the DFC for the F3 Brookvale Industrial locality. The non-compliance with the desired future character statement has been adequately addressed and this issue no longer warrants the refusal of the application.

2. Pursuant to Section 79C(1)(a) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Warringah Local Environmental Plan 2000 in that the proposed development does not comply with the Building Height or Front Building Setback Built Form Controls for the F3 Brookvale Industrial Locality or the Building Height control for the F2 Brookvale Service Centre locality.

Building Height

In accordance with the Building Height control for the F2 Brookvale Service Centre locality and the F3 Brookvale Industrial locality buildings are not to exceed 11 metres in height. The height of the building is measured vertically between any point on the topmost ceiling of the building and natural ground level below.

The development proposed under DA2007/1206 exceeded the building height control by approximately 2 – 2.3 metres for the entire length of the southern side of the building.



Warringah Council

The following comments were made in the development application assessment report regarding the proposed non-compliance;

'The topmost ceiling level of the proposed development is higher than the ceiling level of the approved development on the western portion of No. 762 Pittwater Road. As the building height gradually steps down from the development to the west, a complying building height would be appropriate on the subject site.

The non-complying component is the most visible component of the building. The non-compliance has a direct impact on the streetscape of West Street.

It is acknowledged that the building floor levels are set to accommodate the flexible long term use of the building to allow expansion of the showroom or workshop activities or other uses occupying the building at some future date. This does not however prevent the building being stepped from the north down to the south to minimise the bulk and scale of the building as viewed from West Street.'

The proposed development on the subject site has a topmost ceiling level of RL30.30. The parapet level is RL32.35. The building has an overall height of approximately 18.2 metres to the top of the glass entry feature element. No changes are proposed in the amended scheme to the ceiling or parapet levels of the development or the overall height of the building.

The amended scheme submitted with the Section 82A application provides a setback of 3.5m from the southern edge of the building to both the second level and the roof level. This results in a setback of 6.75 metres from the front property boundary to the second floor and roof level.

The amended scheme submitted with the Section 82A application has a height (as measured to the topmost ceiling) of approximately 12.5 metres above natural ground level on the eastern side of the building and 11.8 metres above natural ground level on the western side of the building. The increased setback of the second storey has reduced the extent of the non-compliance with the building height control from approximately 1.2 – 2.3 metres to 0.8 – 1.5 metres (with the exception of the glass entry feature element).

The non-compliance with the building height control is supported for the following reasons:

- Level 2 and the roof level have been setback 3.5 metres from the southern edge of the building so that the building is only two storeys in height (excluding the mezzanine levels) along the street edge. The two storeys provided along the street edge comply with the building height control. The ceiling level of Level 1 is 1 - 2 metres lower than the maximum building height.
- As the non-complying component of the building has been setback 3.5 metres from the southern edge of the building, the visual impact of the non-compliance on the streetscape has been minimised.
- The building floor levels of the building have been designed to be consistent with the floor levels within the existing building to the north to accommodate the flexible long term use of the buildings.

- The curved glass entry feature is an architectural feature which adds visual interest to the proposed development.

Front Building Setback

The site incorporates land within the F2 and F3 localities. Different front building setback controls apply to the two localities. Within the F2 Brookvale Service Centre locality, development is to maintain the minimum front building setback. Within the F3 Brookvale Industrial locality the minimum front building setback is 4.5m.

The setback of the proposed development must be designed to respond to the 2.5 metre setback of the building approved on the western portion of the site. The setback of the building must also respond to the nil setback approved for the development at No. 760 Pittwater Road and the required 4.5m setback for the site at No.14 West Street.

The proposed building is setback a minimum of 3.25 metres from the front property boundary. A 0.525m wide articulation zone has also been proposed. This setback is greater setback than required within the F2 Brookvale Service Centre locality and less than required within the F3 Brookvale Industrial locality. The setback increases to 7.5 metres on the ground floor on the northern side of the curved glass entry. On the first floor level the curved glass entry is only setback 5 metres from the front property boundary.

Given the approved and required setbacks of the adjoining properties and the fact that the building is partly located in two localities, the provision of a transitional setback for the proposed building would not result in an adverse impact on the streetscape and is therefore may be considered appropriate.

Whilst a reduced building front setback could be considered on merit given the context of the development, the assessment of Development Application No.2007/1206 concluded that the front building setback proposed was unacceptable for the following reasons;

'The size of the proposed front setback area combined with the fact that the majority of the setback is occupied by pathways and driveways, results in an inadequate area of landscaping. The area available is not of a sufficient size to allow for the provision of landscaping which is capable of softening the visual impact of the building as required by the desired future character statement. It is particularly important to provide a complying front setback and a reasonable sized area of landscaping as the application proposes a high parapet which doubles as a balustrade to the roof top car park, shade sail structures and an awning above the maximum height limit.'

The area of landscaping within the front building setback to West Street has been increased in the amended scheme submitted with the Section 82A application through the deletion of a pedestrian ramp and driveway. The apparent scale of the building has been reduced through the provision of an increased, and complying, setback to the front boundary on the second floor level and roof level. These changes have been described in detail elsewhere in this report.

It is considered that the proposed reduced front building setback will provide an appropriate transition between the development to the west (at 760 Pittwater Road) which incorporates a nil setback to West Street and future development to the east which



is required to provide a 4.5 metre setback to West Street. The amended scheme will also provide an adequate opportunity for the provision of landscaping which is capable of softening the visual impact of the proposed building. For these reasons, the variation to the front building setback control is supported and this issue no longer warrants the refusal of the application.

Clause 20 Variation

A Clause 20 variation is required for the variation proposed to the building height and front building setback built form controls. Clause 20 of WLEP 2000 states the following:

'Consent may be granted to proposed development even if the development does not comply with one or more development standards, providing the resulting development is consistent with the general principles of development control, the desired future character of the locality and any relevant State Environmental Planning Policy.'

In assessing these non-complying elements of the proposal, consideration must be given to its consistency with the following:

i) General Principles of Development Control

The proposal has been found to be consistent with all relevant General Principles of Development Control as discussed in the original assessment report (attached) and under reason for refusal no. 3 in this report.

ii) Desired Future Character of the Locality

For the reasons given above, the proposed development is consistent with the Desired Future Character (DFC) statement for the F3 Brookvale Industrial locality. As outlined in the assessment report for the development application, the development is consistent with the DFC statement for the F2 Brookvale Service Centre locality.

iii) Relevant State Environmental Planning Policies

The proposed development is consistent with the provisions of *State Environmental Planning Policy No.55 – Remediation of Land*.

Based on the above assessment, variations to building height and front building setback controls can be granted in accordance with Clause 20 of WLEP 2000.

3. Pursuant to Section 79C (1) (a) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the following provisions of Warringah Local Environmental Plan 2000;

Clause 48 Potentially contaminated land and Clause 49 Remediation of contaminated land

A 'Draft Phase 1 Contamination Investigation' (Ref 45113A) prepared by *Douglas Partners Pty Ltd* dated December 2007 was submitted with the application. The Report states that the site reconnaissance by Douglas Partners indicated the presence of an underground storage tank for trade waste storage on Lot 101, DP1007178. The report also identifies several contaminants of concern.

The Report concludes the following;

'Whilst the proposed development is generally compatible with the existing land use of the site area, Lots 10 and 11 of DP 12962 is considered to have a potential for contamination of soil and possibly the groundwater, based on the current housekeeping practices and historical use of the site as and, therefore, the above AEC's need to be investigated. The presence of fill should also be investigated and, if confirmed, the soil should be analysed to confirm the status of the soil.

It is recommended that the intrusive assessment should be undertaken after demolition of the existing structures, such that the assessment will no longer be restrained by the current site access constraints.'

The Applicant was requested to submit a Stage 2 - Detailed Investigation to demonstrate that the land is suitable in its current state, or will be suitable after remediation, for the purpose for which the development is proposed to be carried out, as required by SEPP 55 and Clause 48 and 49 of WLEP 2000.

The Applicant failed to provide the required information and as such this issue was included as a reason for refusal.

A 'Report on Targeted Phase 2 Contamination Assessment' dated June 2008 prepared by Douglas Partners was submitted with the Section 82A application. Council's Environmental Health Officer has reviewed the proposal and provided the following comments;

The assessment identified "random pockets of asbestos contamination" in the filling material. No other contamination concerns were raised. The report concludes that the site could be rendered suitable provided suitable remediation is undertaken.

All conditions recommended by Council's Environmental Health Officer in relation to the remediation of the site have been included on the draft consent.

As the Applicant has demonstrated that the site will be suitable for the proposed uses following remediation, it is considered that this issue has been satisfactorily been addressed.

Clause 57 Development on sloping land

Clause 57 of WLEP 2000 states that the height and bulk of development, particularly on the downhill side, is to be minimised and the need for cut and fill reduced by designs which minimise the building footprint and allow the building mass to step down the slope.

The assessment of the development application found that the proposed building did not respond to the topography of the site and as a result the proposal did not comply with the building height control and the building bulk on the southern side of the building was excessive. The assessment recommended a stepped building form be provided. The inconsistency with the provisions of Clause 57 was included as a reason for refusal.

The second level and roof level of the proposed development has been amended to be setback 3.5m from the southern side of the building. The step in the building form ensures that the building responds more closely to the topography of the site. The

amendment also ensures that the southern edge of the building complies with the building height control and the non-compliance with the building height control is setback from the street. It is considered that the amended proposal is consistent with the requirements of Clause 57 and therefore this issue no longer warrants the refusal of the application.

Clause 63 Landscaped open space

The following amendments have been made to provide additional landscaping within the front building setback;

- The existing pedestrian ramp within the front building setback of 'Stage 2' of the building is proposed to be removed and replaced with landscaping.
- The driveway in the south eastern corner of the site is proposed to be deleted and replaced with landscaping.

The landscaped open space provided is considered to be appropriate as sufficient opportunity has been provided to enable the establishment of appropriate plantings to maintain and enhance the streetscape and to enable the establishment of appropriate plantings that are of a scale and density commensurate with the building height, bulk and scale. The area of landscaped open space provided is appropriate given the industrial nature of the locality. For these reasons, the amended development is considered to be consistent with the requirements of Clause 63 and this issue no longer warrants the refusal of the application.

Clause 66 Building bulk

Clause 66 states that buildings are to have a visual bulk and an architectural scale consistent with structures on adjoining and nearby land and are not to visually dominate the street or surrounding spaces.

In the '*Schedule 8 - Design Statement and Site Analysis*' prepared by Ben Humel from *Humel Architects Pty Ltd* which was submitted with the development application, the Architect stated;

'The building facade has been designed into articulated segments with expressed columns and the use of feature glass elements both to the Pittwater Road and West Street elevations to segment the facade and provide visual interest.'

The modulation and articulation of the facade described by the Architect was considered to be appropriate given the industrial nature of the locality and the uses proposed.

The assessment of the development application found that the scale of the development combined with the minimal setbacks proposed, resulted in a building which visually dominates the street.

The second level and the roof level have been setback 3.5 metres from the southern edge of the building in the amended proposal. This has the effect of reducing the apparent scale, and therefore the visual impact, of the development.



The increased setback of the second and roof levels has resulted in the southern side of the building complying with the building height control which applies to the site. This will ensure that the development will contribute to a consistent street wall height being provided along West Street. The proposed amendment therefore provides an improved streetscape outcome.

The step in the built form proposed in the amended plans combined with the variety of materials proposed and the dynamic glass entry element will minimise the visual bulk of the proposed development. Accordingly, the amended proposal is considered to be consistent with the requirements of Clause 66 and this issue no longer warrants the refusal of the application.

Clause 72 Traffic access & safety

Clause 72 of WLEP 2000 requires vehicle access points for parking, servicing or deliveries and pedestrian access to be located in such a way as to minimise traffic hazards.

Following a review of the development application, Council's Traffic Engineer advised that the location of the two driveways along the eastern side of the site is not considered satisfactory due to conflicting entry/exit manoeuvres. Council's Traffic Engineer and Council's Development Engineers recommended that the number of access driveways to the site should be rationalised (reduced).

In response to the issues raised by Council's Engineers the driveway previously proposed along the eastern boundary of the site has been deleted and the ramp to the upper levels has been relocated to the rear of the proposed building at 10 -12 West Street. The amended ramp is accessed by the existing driveway to West Street which provides access through to the motor vehicle showroom on the northern portion of the site.

Council's Engineers have reviewed the amended plans and indicated that the revised plans have addressed the issues raised regarding the number of proposed driveway crossings. Accordingly, it is considered that the amended proposal complies with the requirements of Clause 72.

Clause 73 On-site loading and unloading

Council's Traffic Engineer reviewed the original development application and advised that the Applicant is to address the delivery vehicle requirements for the motor vehicle showroom. Specifically, the Traffic Engineer required details on how deliveries are to be made and the type of trucks which will be making such deliveries.

The Applicant provided the following response:

'The proposed plan is for a multi-purpose business centre which incorporates various uses. One such use could be the expansion of the current 'Honda' showroom on the site. We note for the purposes of this development application showroom cars are not currently loaded or unloaded at the subject site and this is carried out in a holding yard in Old Pittwater Road, Brookvale.'

The expanded showroom is not a proposed use of the new building and the loading / unloading requirements of an expanded showroom is not a relevant consideration.



Council's Traffic Engineer also requested the Applicant provide details as to the service vehicle requirements for the bulky goods/warehouse/factory components of the development. Council's Traffic Engineer recommended that the proposal should make provision for large rigid trucks, which are likely to service the development.

'Bulky goods shop' has been removed from the list of the proposed uses. Warehouse, factory and vehicle repair station are the only proposed uses.

The amended proposal has been designed so that a large rigid vehicle is able to access the ground and first floors of the development. A goods hoist has also been provided.

The eastern driveway which will be used to access the first floor level has been widened at the kerb to achieve compliance with AS2890.2 to provide an adequate turning path for a large rigid vehicle.

In a letter to Council dated 1 May 2009 Lyle Marshall from *Lyle Marshall & Associates Pty Ltd* (the Applicant's Traffic Engineer) has provided the following certification;

'I certify that the large rigid truck show in Figure A – 7A in the 1984 RTA Guidelines for Traffic Generating Developments and in Table 6.5 in the 2002 RTA Guidelines for Traffic Generating Developments is able to drive forward along the existing north/south driveway, turn right into the workshop, an drive along he proposed driveway to West Street in a forward direction as marked up on DWG. DA 2 Rev. F.

I certify that the large rigid truck is able to drive forward along the existing north/south driveway and turn right into the proposed driveway at Mezzanine Level 2. This truck can then reverse into the existing bitumen forecourt to exit and then drive along the existing driveway in a forward direction to exist West Street as marked up on DWG DA3 Rev. D.'

It is considered that the amended plans submitted have satisfactorily resolved all issues associated with loading and unloading within the proposed development. Accordingly, this issue no longer warrants the refusal of the application.

- 4. Pursuant to Section 79C(1)(a) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Warringah Local Environmental Plan 2000 in that a Statement of Environmental Effects has not been submitted that addresses the requirements of Schedule 15 of Warringah Local Environmental Plan 2000 as required by Clause 15 of Warringah Local Environmental Plan 2000.**

The development application included 'bulky goods shop' as a proposed use within the F3 Brookvale Industrial locality. 'Bulky goods shops' are identified as Category 3 development in the F3 Brookvale Industrial locality. In accordance with Clause 15 of WLEP 2000 consent may only be granted to development classified as Category 3 only if the consent authority has considered a statement of environmental effects that includes the items listed in Schedule 15. A Schedule 15 assessment was not submitted with the development application and therefore this issue was included as a reason for refusal.

The documentation submitted with the Section 82A application did not clearly indicate whether a 'bulky goods shop' was still a proposed use. The applicant was advised to



provide clarification as to the uses proposed in the Section 82A application. On 10 November 2008 the applicant advised in writing that 'bulky goods shops' are no longer a proposed use. Accordingly, a statement of environmental effects which addresses the items in Schedule 15 of WLEP 2000 is not required to be submitted. This issue has therefore been satisfied and no longer warrants the refusal of the application.

5. ***Pursuant to Section 79C(1)(a) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Warringah Local Environmental Plan 2000 as the application could not be advertised as required by Clause 23 of WLEP 2000 as the required advertising fee was not submitted to Council.***

The development application included 'bulky goods shop' as a proposed use within the F3 Brookvale Industrial locality. 'Bulky goods shops' are identified as Category 3 development in the F3 Brookvale Industrial locality'. In accordance with Clause 23 of WLEP 2000, Category 3 development is 'advertised development'. The application could not be advertised as the required advertising fee was not submitted to Council and therefore this issue was included as a reason for refusal.

The documentation submitted with the Section 82A application did not clearly indicate whether 'bulky goods shop' was still a proposed use. The Applicant was advised to provide clarification as to the uses proposed in the Section 82A application. On 10 November 2008 the Applicant advised in writing that 'bulky goods shops' are no longer a proposed use. Accordingly, the application does not require advertising and this issue has been satisfactorily resolved.

6. ***Pursuant to Section 79C(1)(a) of the Environmental Planning and Assessment Act 1979 insufficient information has been submitted to demonstrate that the land will be suitable in its contaminated state (or will be suitable after remediation) for the purpose for which the development is proposed to be carried out as required by State Environmental Planning Policy No.55 – Remediation of Land and Clauses 48 and 49 of Warringah Local Environmental Plan 2000.***

This issue has been discussed in detail under reason of refusal no. 3 in this report. In summary, sufficient information has been submitted to demonstrate that following remediation the site will be suitable for the proposed uses. Accordingly, this issue has been resolved and no longer warrants the refusal of the application.

7. ***Pursuant to Section 79C (1) (c) of the Environmental Planning and Assessment Act 1979 the site is not considered suitable for the proposed development as insufficient information has been submitted to demonstrate that the land will be suitable in its contaminated state (or will be suitable after remediation) for the purpose for which the development is proposed to be carried out.***

As discussed above, a 'Report on Targeted Phase 2 Contamination Assessment' dated June 2008 prepared by Douglas Partners Pty Ltd was submitted with the Section 82A application. The Report demonstrated that the site will be suitable for the proposed uses following remediation. It is therefore considered that this issue has been satisfactorily addressed.

8. ***Pursuant to Section 79C (1) (e) of the Environmental Planning and Assessment Act 1979 the proposal is not considered to be in the public interest.***



The assessment of the development application found that the proposal was not considered to be in the public interest for the following reasons:

- The proposal did not comply with the building height or front building setback controls and this resulted in an excessively bulky building. The bulk and scale of the building proposed would have had an adverse impact on the streetscape of West Street.
- The proposed uses were not clearly identified or justified in the documentation submitted. As the application was not advertised due to the advertising fee not being submitted, the public was not been given sufficient opportunity to consider and comment on the proposed Category Three use.
- Insufficient information was submitted to demonstrate that the site will be satisfactorily remediated for the proposed use.

These issues are considered to be adequately resolved for the following reasons;

- The bulk and apparent scale of the development has been reduced through the provision of a 3.5 metre setback for the second level and roof levels from the southern building edge. The amended proposal complies with the building height control along the southern side of the building and therefore the impact on the streetscape of West Street has been minimised.
- The applicant has advised that a 'bulky goods shop' is no longer proposed. The public has therefore been adequately notified of the proposed development.
- Sufficient information has been submitted to demonstrate that following remediation, the site will be suitable for the proposed uses.

Accordingly, this issue no longer warrants the refusal of the application.

GENERAL PRINCIPLES OF DEVELOPMENT CONTROL

The amended plans submitted with the Section 82A Application alter the proposal's compliance with the following General Principles of Development Control as contained in Part 4 of Warringah Local Environmental Plan 2000;

CL69 Accessibility – Public and Semi-Public Buildings	YES	<p>A 'Report on provisions of disability access in regard to the proposed additions to a multi purpose business centre at 762-770 Pittwater Road' prepared by Disability Access Consultants dated 24 October 2007 was submitted with the application. The Report concludes that if the matters listed are provided, the works will be in accordance with the BCA. A revised Access Report was not submitted with the amended plans.</p> <p>If the application is approved a condition of consent should be included to require compliance with the AS1428.2 prior to the issue of the Construction Certificate.</p>	YES, subject to conditions
CL74 Provision of Carparking	YES	<p>The application seeks consent for the use of the building for warehouse, vehicle repair station or an industrial uses. The exact uses or combination of uses is not known at this point.</p> <p>Schedule 17 of WLEP 2000 requires 1.3 spaces to be provided per 100 square metres for industrial</p>	YES

		<p>development and warehouses (including up to 20% of floor area as office space component. Any office space component above 20% is to be determined at the office rate of carparking). Schedule 17 of WLEP 2000 also requires 1.3 spaces to be provided per 100 square metres for and vehicle repair stations / vehicle body repair workshops.</p> <p>The Traffic Report submitted with the Development Application indicates that the vehicle repair station will generate a carparking demand in the order of 2.3 spaces per workshop bay which is higher than the minimum required by WLEP 2000 for vehicle repair stations. This car parking rate is based on surveys of the existing workshop bays at No.762 Pittwater Road. The rate is almost identical to the rate of 2.32 spaces per workshop bay derived from the surveys of Col Crawford workshops in Roger Street.</p> <p>Visitor parking for the existing showroom will be provided in the existing ground floor parking areas.</p> <p>The number of car parking spaces required for each potential use of the building is as follows;</p> <ul style="list-style-type: none"> Vehicle Repair Station - 83 spaces (based on a rate of 2.3 spaces per workbay) or 29 spaces (based on the minimum carparking requirement of Schedule 17 of WLEP 2000) Warehouse and Industry - 29 spaces <p>Based on these rates, if the building is only occupied by a vehicle repair station, 83 carparking spaces would be required. The total parking provision of 96 spaces exceeds minimum number of spaces required. The proposal therefore complies with the requirements of Clause 74 Provision of car parking and Schedule 17.</p>	
CL75 Design of Carparking Areas	YES	<p>Clause 75 outlines Council's requirements for carparking areas for developments other than individual dwellings. The requirements include; the adequate provision for manoeuvring and convenient access to individual spaces and provision for vehicles to enter and leave the site in a forward direction.</p> <p>The proposed development complies with the provisions of Clause 75. Specifically, the Traffic Report submitted with the original development application notes that the car parking bays, aisle widths, ramp grade and ramp width comply with AS/NZS 2890.1. The RTA has recommended a condition be included in the consent to require the development to comply with AS2890.1. The recommended condition has been included in the draft consent.</p> <p>It is evident from the plans submitted that all vehicles will be able to enter and leave the site in a forward direction.</p> <p>For these reasons it is considered that the proposed development is consistent with the requirements of Clause 75.</p>	YES, subject to conditions
CL76 Management of Stormwater	YES	<p>Council's Development Engineers have reviewed the plans submitted with the Section 82A review application and raised no objections/issues, subject to the inclusion of a number of conditions in the consent. All recommended</p>	YES, subject to conditions

	conditions have been included in the draft consent.	
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SCHEDULES

The following schedule is applicable to the Section 82A application;

Schedule 17 – Carparking Provision

For further details refer to 'Clause 74 Provision of car parking' in the General Principles of Development Control table in this report. In summary, a satisfactory number of carparking spaces have been provided.

DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS

Draft State Environmental Planning Policy No.66 – Integration of Land Use and Transport

Draft State Environmental Planning Policy No.66 – Integration of Land Use and Transport (Draft SEPP 66) applied at the time Development Application No. 2007/1206 was lodged and determined. On 13 November 2008 the Director General of the Department of Planning issued Planning Circular No. PS08-013 '*Consideration of draft EPs under Section 79C of the EP&A Act*'. The circular advised that draft EPs that were exhibited prior to March 2006 which have not been gazetted should no longer be considered under Section 79C(a)(ii) of the EP&A Act. The direction made in the circular was effective from 1 March 2009.

Draft SEPP 66 was exhibited prior to March 2006 and was not gazetted by 1 March 2009. Accordingly, the draft SEPP no longer needs to be considered in the assessment of DA2007/1206. Notwithstanding that the draft SEPP no longer applies, the proposed amendments do not alter the development's compliance with the provisions of the draft SEPP.

POLICY CONTROLS

Warringah Section 94A Development Contributions Plan

The proposed development is subject to the provisions of Section 94A of the EP&A Act and the provisions of the Warringah Section 94A Development Contribution Plan. The applicable contributions are outlined within the table below.

<i>Warringah Section 94A Development Contributions Plan</i>			
Contribution based on total development cost of		\$	3,390,250.00
Contribution - all parts Warringah	Levy Rate	Contribution Payable	Council Code
Total S94A Levy	0.95%	\$32,207	6923
S94A Planning and Administration	0.05%	\$1,695	6924
Total	1.0%	\$33,903	

A condition has been included in the draft consent which requires the required contribution to be paid prior to the issue of the Construction Certificate.

MEDIATION

No submissions have been received and as such no requests for mediation have been received.

CONCLUSION

The site has been inspected and the application assessed having regard to the provisions of Sections 82A and 79C of the *Environmental Planning and Assessment Act 1979*, *State Environmental Planning Policy No. 55 – Remediation of Land*, *Warringah Local Environmental Plan 2000*, *Warringah Development Control Plan* and the relevant codes and policies of Council.

Firstly, the amended plans submitted with the Section 82A application provide an increased setback to the second level and roof level. The additional setback proposed reduces the extent of the building's non-compliance with the building height control and ensures the southern portion of the building which adjoins West Street will comply with the building height control. The 'stepped' building form which is proposed achieves consistency with the requirements of Clauses 57 – Development on Sloping Land and 66 – Building Bulk of WLEP 2000.

Secondly, the removal of an existing pedestrian ramp within the front building setback and the deletion of the driveway in the south east corner of the site, combined with the reduction in the scale of the building, has resulted in an improved streetscape outcome through the provision of an increased amount of landscaping adjoining West Street and has addressed concerns raised in regard to compliance with the DFC statement for the F3 Brookvale Industrial locality and the non-compliance with the Clause 63 – Landscaped open space of WLEP 2000.

Thirdly, the deletion of the driveway in the south east corner of the site removes any potential vehicular conflicts and improves pedestrian safety. Accordingly, the non-compliances with Clause 72 – Traffic access and safety and Clause 73 – On-site loading and unloading of WLEP 2000 have been satisfactorily addressed.

The application has been amended such that there are no Category 3 uses proposed and all notification and assessment requirements under the EP&A Regulation and Warringah Development Control Plan for Category 1 and 2 developments have been satisfied.

Finally, a Stage 2 – Detailed Investigation has been submitted which demonstrates that the site can be remediated to be suitable for the proposed use. As such, the requirements of Clauses 48 and 49 and SEPP 55 have been satisfactorily addressed.

Based on the above assessment it is considered that the amended proposal satisfies the appropriate planning controls and all processes and assessments have been satisfactorily addressed.

This assessment has found that the amended plans submitted with the Section 82A application are substantially the same development as originally applied for and address all the reasons of refusal for Development Application No.2007/1206. Accordingly, the S82A application is supported and approval to DA2007/1206 should be granted.

RECOMMENDATION (APPROVAL)



- A. That the Section 82A Review No. REV2008/0022 be supported and Development Application No. DA2007/1206 for the demolition of an industrial building and construction of a multi-purpose building for industrial, warehouse and vehicle repair station uses at Lots 10 and 11, DP 12962, Nos. 10-12 West Street Brookvale and Lot 101, DP 1007178, Nos. 762-770 Pittwater Road, Brookvale be approved subject to the attached conditions.
- B. That pursuant to Section 95(2) of the Environmental Planning and Assessment Act 1979, the Council vary the provisions of Section 95 (1) so this consent will lapse three (3) years from the date in which it operates, and the applicant be advised accordingly.

Amy Sutherland

Signed

Date

Senior Development Assessment Officer

Steven Findlay

Signed

Date

Team Leader Development Assessments

Peter Robinson

Signed

Date

Manager Development Assessments