

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2021/0139
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<b>Responsible Officer:</b>	Alex Keller
<b>Land to be developed (Address):</b>	Lot 100 DP 817162, 2 Cross Street BROOKVALE NSW 2100
<b>Proposed Development:</b>	Demolition works and construction of a mixed use building accommodating 17 self storage units and 23 industrial units including carparking and landscape works
<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>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Cross Street Holdings Pty Ltd
<b>Applicant:</b>	Leda Holdings Pty Ltd

<b>Application Lodged:</b>	10/03/2021
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Industrial
<b>Notified:</b>	18/03/2021 to 01/04/2021
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 28.18%
<b>Recommendation:</b>	Refusal

<b>Estimated Cost of Works:</b>	\$ 9,283,744.00
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### EXECUTIVE SUMMARY

The proposed industrial storage / warehouse seeks a height variation of up to 28.18%, with a maximum breach of 3.1m above the 11m height limit that applies to the site. As the development application proposes a variation to the height standard of more than 10% it is referred to the Northern Beaches Local Planning Panel for determination. The height variation is not supported pursuant to related objectives for the zone, LEP and DCP requirements. The height variation creates an unfavourable precedent by projecting the non-complying element with a concurrent breach into the 4.5m front building setback area.

No objections by way of public submissions were received for the proposal, however a number of

Internal Referrals do not support the development application for development engineering, landscaping and flood planning. In addition, Council's *Design and Sustainability Advisory Panel* (DSAP) do not support the proposal due to inconsistencies with setback controls in association with the design response provided. DSAP review comments were provided in May 2021 and they recommended a range of changes to the proposal. Amended documents were prepared in June and a review of the amended plans reveals that they do not satisfy the concerns raised and did not achieve an acceptable design response for the fundamental issues raised.

Issues that remain would require substantial redesign to elements of the building and therefore cannot be conditioned for approval. In summary, the height variation is not supported and reasons for refusal relate to excessive building height, bulk, insufficient flood planning details, impact on streetscape character, and inconsistency with achieving the design excellence outcomes within reasonable built form compliance consistent with adjacent industrial buildings.

## **PROPOSED DEVELOPMENT IN DETAIL**

The application consists of the erection of a building for the purposes of a storage / warehouse premises, specifically self-storage units.

In detail, physical works will consist of:

- a four-storey building (2 x main levels and 2 x mezzanine levels) of panel style construction, with a total of 3,907 sqm in gross floor area (excluding loading areas, parking stairways and utilities. Within the GFA 634sqm (16.2%) is for ancillary office space.
- carparking for 56 cars evenly distributed between the two main floor (including disabled access parking spaces);
- vehicular access from Cross Street, with an internal ramp system for the two main levels.
- fascia signage to identify the building (3 x business identification signs, standard under awning signs and a pylon sign at the driveway entry);
- narrow landscaped strip along the Cross Street frontage with no / limited landscape setback for the Green Street frontage.

Operational aspects of the proposal include:

- Maximum of (2) staff; and
- Electronic security controlled entry for self storage 24 hours per day , 7 days per week.

The applicant has amended the plans since lodgement, in response to correspondence from DSAP and Council's internal referral responses provided to the applicant in May 2021. The original proposal was not supported, based on non-compliance with the Height of Buildings development standard, non-compliance with objectives of the front boundary setback control, inadequate landscape setbacks and insufficient information in regard to potential impact on Council's stormwater flood planning. The proposal was amended with revised plans and further information provided in July 2021. However, having reviewed these amended plans in overlay with the original plans the applicant has not provided an appropriate design response to resolve the principle or fundamental design concerns regarding front boundary setbacks, building bulk, building height variation and flood impacts.

## **ASSESSMENT INTRODUCTION**

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

## SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings

Assessment - Concurrence – NSW Roads and Maritime Services - SEPP Infrastructure (cl 104 Traffic-generating development)

Warringah Local Environmental Plan 2011 - Zone IN1 General Industrial

Warringah Local Environmental Plan 2011 - 5.21 Flood planning

Warringah Development Control Plan - A.5 Objectives

Warringah Development Control Plan - B7 Front Boundary Setbacks

Warringah Development Control Plan - C2 Traffic, Access and Safety

Warringah Development Control Plan - C4 Stormwater

Warringah Development Control Plan - C6 Building over or adjacent to Constructed Council Drainage Easements

Warringah Development Control Plan - D9 Building Bulk

Warringah Development Control Plan - E11 Flood Prone Land

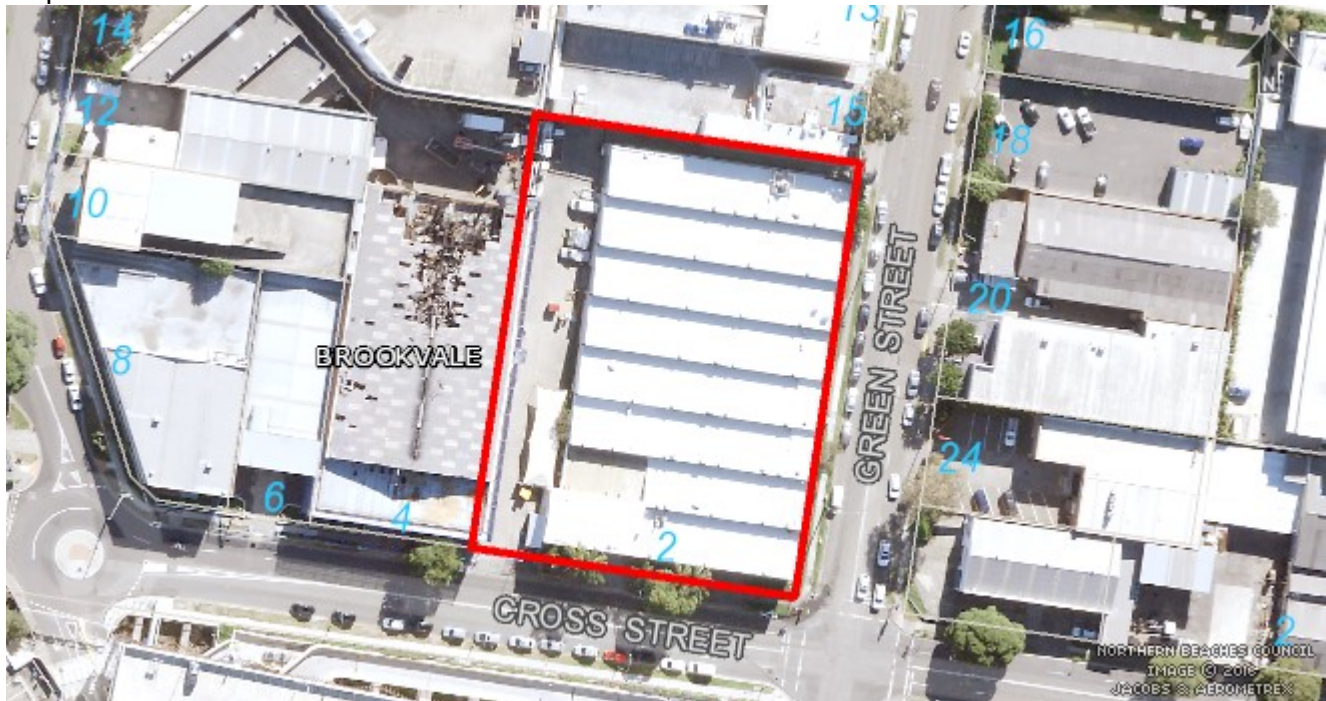
## SITE DESCRIPTION

<b>Property Description:</b>	Lot 100 DP 817162 , 2 Cross Street BROOKVALE NSW 2100
<b>Detailed Site Description:</b>	<p>The site is a regular shape corner lot on the northwestern side of the intersection of Green Street and Cross Street, Brookvale. The site has a frontage of 80.4m to Green Street with a 60.43m frontage to Cross Street. The total site area is 4,862sqm.</p> <p>The site is currently developed an industrial premises with a single storey building (pre-dating 1970's) and the main driveway / parking area on the western side of the site and a minor driveway along the northern setback. The land is has a gradual cross-fall of 0.5m toward the south-east (street frontage).</p> <p>The site is generally flat, being in a low-lying area potentially</p>

affected by flooding within the Brookvale / Warringah Mall catchment and has a main stormwater line within the site near the western boundary and local sewer lines across the middle of the site. An electrical substation easement is located in the northeastern corner of the site. There are no significant trees or heritage listed items on the subject land.

Adjoining and surrounding development is characterised by a range of industrial and warehouse activities to the west, east and north of the site. To the south is a B3 Commercial Core zone dominated by Warringah Mall. Other uses adjacent include storage / warehouse units (recently constructed) along the western boundary, Warringah Mall carpark, 'Aldi' supermarket and various industrial / commercial operations along Green Street and Cross Street.

Map:



## SITE HISTORY

**Building Application No.C722/65** for factory alterations and additions ("Tilt-a-Door Pty Ltd") was approved by Council on 11 March 1965.

The existing industrial building on the site is to be completely demolished and foundations removed and therefore no further site history is relevant to the proposal.

## 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	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. (See details also under 'SEPP 55' heading within this report)
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)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 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 54 and 109</u> of the EP&amp;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. Additional information was requested and advised with the Internal Referrals - Flood Engineering and DSAP review advice. Amended plans and documents were received 24.6.2021. These amended / reviewed documents have been assessed in overlay as part of this assessment in context of the proposal as whole being part of the application response to DSAP review. The amended plans and documents maintain similar non-compliance to height and setbacks and do not resolve all referral / assessment issues. Changes that would be required to address assessment issues with the original plans and amended plans are not suitable to be conditioned.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter is able to be addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter is able to be addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter is able to be addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter is able to be addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the	(i) <b>Environmental Impact</b>

Section 4.15 Matters for Consideration'	Comments
likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly 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 unsuitable for the proposed development for reasons outlined in the detailed assessment issued raised under the internal referrals and LEP / DCP assessment. Particular issues of concern relate to the ground floor arrangements (truck loading access, building layout and height, including streetscape impacts along the 4.5m front boundary setback (across the vertical wall plane) with regard to landscape setting required.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	No public submissions were received.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant requirements of Warringah LEP and Warringah DCP controls and desired character and envisaged with the <i>Brookvale Draft Structure Plan</i> (in preparation for future commitments toward draft urban plan for Brookvale by Northern Beaches Council) and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in 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 18/03/2021 to 01/04/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition of the application Council received no submissions.

## REFERRALS

Internal Referral Body	Comments
Environmental Health (Contaminated Lands)	<p><b>Supported with conditions.</b></p> <p><u>General Comments</u></p> <p>A <i>Preliminary Environmental Site Assessment</i> has been prepared by <i>Environmental Investigation Services</i>. This report covered the site and the immediately adjoining properties at No.13 and No.15. The report identified that potential contamination would be anticipated to be associated with the following:</p> <ul style="list-style-type: none"> <li>▪ Potentially contaminated imported fill material;</li> <li>▪ Potential asbestos material associated with the demolition of existing structures;</li> <li>▪ Potentially two (2) underground storage tanks (USTs);</li> <li>▪ Historical use of the site for commercial/ industrial purposes; and</li> <li>▪ Historical activities such as the use of pesticides.</li> </ul> <p>This investigation found that no elevated concentrations or contaminants were found in the groundwater samples. However, the pH of the groundwater was found to be outside the acceptable range. No hydrocarbons below the GILs were detected that indicate a potential localised contamination. Asbestos was also detected in a fill sample that was collected from one of the boreholes on the site.</p> <p>Based on the findings of the investigations conducted as part of the Preliminary Environmental Site Assessment, it was concluded the contamination encountered may pose a risk to human health and the environment. Subsequently, it was recommended that a Stage 2 environmental site assessment be undertaken, noting a gap in the data in relation to potential contamination associated with the USTs.</p> <p>An <i>Additional Site Environmental Assessment</i> was prepared by <i>Environmental Investigation Services</i> in accordance with the conclusions of the Preliminary Environmental Site Assessment and the recommendations for application. A ground penetrating radar (GPR) scan and site inspections were undertaken to locate USTs. This scan identified that a UST was located in the north-west corner of the site under the driveway. Separate cuts in the concrete were located that suggest the UST was decommissioned and removed. The other UST was suspected to be the northern part of the site being 13-15 (Crescent) Brookvale. <i>Environmental Investigation Services</i> did not find any obvious indication of a UST. However, the potential for a UST to be located in this section of the site was still required to be investigated.</p> <p>Further asbestos was detected within the Fill samples analysed as part of the Additional Site Environmental Assessment. An elevated concentration of PAH Anthracene was also encountered in one of the groundwater samples. However, the potential for significant widespread groundwater contamination was not identified. Given the asbestos encountered it was concluded that it may pose a risk to human health and the environment.</p> <p><i>Environmental Investigation Services</i> concludes that the site can be made suitable for the proposed development provided that the following recommendations are implemented to minimise the risks:</p> <ul style="list-style-type: none"> <li>▪ The preparation of a friable Asbestos Management Plan;</li> <li>▪ The undertaking of a Hazardous Materials Assessment; and</li> <li>▪ The undertaking of inspections during demolition phase to assess any unexpected contamination.</li> </ul> <p>The preparation of this reports and the undertaking of inspections can be imposed as a condition of the development.</p> <p><u>Further Information and Detailed Assessment</u></p> <p><i>Environmental Investigation Services</i> in their 2nd report Feb 2013 (supplementary to the</p>

Internal Referral Body	Comments
	<p>assessment report November 2012) conclude that the following recommendations are minimise these risks:</p> <ul style="list-style-type: none"> <li>• An Acid Sulfate Soil Management Plan should be prepared for the proposed excavation intrusive works and soil testing may be required at deeper soil profiles to determine liming rates;</li> <li>• A friable Asbestos Management Plan should be prepared for the proposed development the removal of asbestos contaminated fill material and address Work Health and safety during site works;</li> <li>• A Remediation Action Plan (RAP) should be prepared for the removal of the UST</li> </ul> <p>The RAP should include a contingency plan that can be implemented if any additional U sub-surface structures are encountered;</p> <ul style="list-style-type: none"> <li>• A Hazardous Materials Assessment (Hazmat) should be undertaken for the existence the commencement of demolition works; and</li> <li>• Inspections during demolition and excavation works should be undertaken to assess conditions or subsurface facilities that may be discovered between investigation and should facilitate appropriate adjustment of the works program and schedule in response changed site conditions.</li> <li>• Inspections should be undertaken by experienced environmental personnel.</li> </ul> <p>Note EIS comment An inspection found evidence that the UST potentially located on the site removed. Therefore, the preparation of a RAP for the proposed development is considered although Council could impose a condition also requiring the preparation of such if a UST</p> <p>It is our opinion that issues raised can be dealt with by way of conditions to avoid pollution</p> <p><u>Planning comment:</u> Development application details and supplementary information is addressed with referral</p>
Environmental Health (Industrial)	<p><b>Supported without conditions.</b></p> <p><u>General Comments</u> The applicant advises: This SEE relates to the development proposal comprising:</p> <ul style="list-style-type: none"> <li>▪ Demolition of all existing structures on the site;</li> <li>▪ Minor earthworks and regrading;</li> <li>▪ Construction of a new two-storey industrial development comprising: <ul style="list-style-type: none"> <li>- Seventeen (17) self-storage units (of which five (5) have mezzanine levels);</li> <li>- Twenty-three (23) industrial units with ancillary office space at the mezzanine levels;</li> <li>- Amenities;</li> </ul> </li> <li>▪ Provision of fifty-six (56) car parking spaces across two levels;</li> <li>▪ Landscaping;</li> <li>▪ Stormwater drainage works; and</li> <li>▪ Strata subdivision.</li> </ul> <p>This referral only relates to use following construction. Demolition and construction noise is the 'Contamination referral'. Use is within community expectations of the commercial/industrial</p>



Internal Referral Body	Comments
	<p>regard to noise and hours of use.</p> <p><u>Planning comment:</u> Development application details are sufficient without referral conditions.</p>
Landscape Officer	<p><b>Not supported.</b></p> <p>The comments from Council's Urban Design / DSAP section are concurred with regarding landscaped setbacks and tree planting, WDCP front setback requirements and the Broo Plan (2017) .</p> <p>The non-compliance with the setback requirements is not supported with regard to landscape issues.</p> <p>The proposal is therefore not supported with regard to landscape issues.</p> <p><u>Planning comment:</u> Supplementary information and amended plans has not resolved this issue and the design are not suitable to be addressed by conditions.</p>
NECC (Development Engineering)	<p><b>Not supported.</b></p> <p>The application has been assessed. However, Development Engineering team cannot support the application as below:</p> <p>1 ) The applicant proposed to discharge the whole site areas into the a Council existing The discharge is about 200l/s in 5% AEP. It may lead a significant surcharge from the pit shall provide a capacity check to the related pit and downstream pipe to ensure the court adequate capacity. Alternative, the applicant can discharge directly separate Council pit: surcharge in low storm events.</p> <p>2 ) Any proposed retaining wall and stair must be relocated within the private property. The Green Street and Cross street shall be removed.</p> <p>3 ) On the western side of the building, the applicant proposed the egresses on the ground. However, the existing ground level is about RL10.51 on the side pathway. In the landscape are proposed to access the ground floor from the side pathway. However, no structure shall 3 m wide " stormwater easement". At least 3 m wide drainage easement shall be created for development.</p> <p>4 ) The proposed private fire Hydrant on Green Street must be located within the private</p> <p>As the above, Development Engineering cannot support the application.</p> <p><u>Planning comment:</u> Supplementary information and amended plans has not resolved this issue and the design are not suitable to be addressed by conditions.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p><b>Not supported.</b></p> <p>The proposed building is larger than the existing building, and the width of open space at boundary has decreased significantly to only 3m. This would cause the depth of the flood therefore impact on the adjacent property.</p> <p>The <i>Flood Management Report</i> (Tonkin Consulting, 11.11.20) states that "Level adjustment</p>

Internal Referral Body	Comments
	<p>easement from north to south has been provided to replace the function of the existing flood wall. It is unclear what this actually means. The report needs to detail how this issue is to be addressed. Further details need to be shown on the plans. The <i>Flood Management Report</i> also needs to detail how the Flood Planning Level (FPPL) needs to be raised in accordance with the higher 1% AEP flood level.</p> <p><u>Planning comment:</u> Supplementary information and amended plans has not resolved this issue and the design is not suitable to be addressed by conditions.</p>
Strategic and Place Planning (Urban Design)	<p><b>Not supported.</b></p> <p><b>PANEL COMMENT AND RECOMMENDATIONS</b> Design + Sustainability Advisory Panel Meeting Report – 29 April 2021</p> <p><b>General</b></p> <ul style="list-style-type: none"> <li>• Demolition works and construction of an industrial warehouse with 17 self-storage industrial units, including parking for 56 cars.</li> </ul> <p><b>Strategic Context</b></p> <ul style="list-style-type: none"> <li>• The site is in a prominent location opposite Warringah Mall and within the area subject to the Brookvale Structure Plan. Principal concerns raised included building height non-compliance, building bulk and wall articulation, wall height, non-compliant road boundary setbacks, and stormwater / flood engineering.</li> <li>• The <i>Brookvale Draft Structure Plan</i> (August 2017) has identified Cross Street to be a focus for investigations to create landscaping initiatives for enhancement of the pedestrian environment while maintaining vehicle connectivity throughout the precinct. The objective will be to create streets that provide workable and attractive access for the east and west precincts, the Brookvale Centre and also link the green grid assets across Brookvale.</li> </ul> <p><b>Urban context: Surrounding Area Character</b></p> <ul style="list-style-type: none"> <li>• The site is located at the northwest corner Cross Street and Green Street, opposite the Brookvale Centre.</li> <li>• The site is rectangular in shape having two broad street frontages of 55.8 metres to Cross Street and 75.8m to Green Street.</li> <li>• The western side setback area contains a major stormwater line.</li> </ul> <p><b>Scale, Built form and Articulation, Façade treatment</b></p> <ul style="list-style-type: none"> <li>• Currently the proposal exhibits non-compliance with maximum building height up to 11m height controls for parapet and ceiling void spaces.</li> <li>• Non-compliance with the front boundary setback requirement of 4.5m for street frontage on Cross Street.</li> <li>• Currently the Green Street set back proposes public stairs which are located on the western side of the site therefore is not supported.</li> <li>• Well-designed facades should reflect the use, internal layout and structure of the proposed elevation treatment to create interest such as the big overhanging hood.</li> </ul>

Internal Referral Body	Comments
	<p>should be more meaningful applications e.g. to provide privacy or sun-shading p</p> <ul style="list-style-type: none"> <li>• The Panel discussed the possibility and advantages of a more articulated façade massing on the upper level that could project ‘in and out’ and could accommodate larger trees in the recessed sections.</li> <li>• The Panel would not support the upper level protruding out to the boundary line a length of the building.</li> </ul> <p><u>Recommendations:</u></p> <p><i>1. The ground level facade should be set back to the required 4.5 m. This will have an impact on the proposed building form</i></p> <p><i>2. Upper-level units at RL 16.88 could and should cantilever over the ground floor facade and colonnade around the street frontages and a more interesting built form which avoids the “big box”. This cantilevered form could be supported by a colonnade of columns or cantilevered facade line but in either case the cantilever should be high enough to accommodate some trees along both street frontages</i></p> <p><i>3. The applicant should consider a potential full height colonnade treatment at the ground level to meet the prescribed setbacks.</i></p> <p><i>4. The applicant should explore larger and more distinctive pedestrian entries including a compliant access and entry points from Cross and Green Street as not all users of the car will be in a private vehicle.</i></p> <p><b>Landscape Area and Car parking</b></p> <ul style="list-style-type: none"> <li>• The landscaped setbacks and tree planting are not consistent with WDCP front boundary requirements or the <i>Brookvale Draft Structure Plan</i> (2017).</li> <li>• From the current perspectives provided the Panel is not convinced of how the change in street level to the ground FFL and setback is designed to meet the flooding requirements.</li> </ul> <p><u>Recommendations:</u></p> <p><i>5. The 4.5m setback should accommodate a combination of walkway along the front of the building, landscaped terraces or planters. Terrace and planter walls should not exceed 900mm at the top.</i></p> <p><i>6. The 4.5m WDCP front building setback requirement should be complied with along both street tree canopies to overlap and to maintain adequate landscape buffer.</i></p> <p><i>7. Revise the Landscape plan to create an engaging and sustainable street, building an interface including suitable canopy and shade trees based on Councils suggested street layout for the evolving precinct.</i></p> <p><i>8. Detailed design and consideration of the type, material selection and detailing of the vertical (flood level) level change of level from street level to the ground FFL and setback is required.</i></p> <p><b>Amenity</b></p> <ul style="list-style-type: none"> <li>• Although the proposal is for industrial /commercial uses some consideration should be given to the amenity provided on site for workers.</li> </ul>

Internal Referral Body	Comments
	<p><u>Recommendations:</u></p> <p><i>9. The communal facilities for users of this building - commonly shared kitchens and rec. should be considered in addition to just an entrance and lift.</i></p> <p><i>10. Office mezzanines would benefit from re-location against external walls where natural illumination is available</i></p> <p><b>Sustainability</b></p> <ul style="list-style-type: none"> <li>• Industrial development like the proposal provide the opportunity for the installation of photovoltaic arrays (PV) on buildings that generally have a good maintenance and management regimes associated with them.</li> <li>• The Panel notes the location of the substation on the site.</li> </ul> <p><u>Recommendations:</u></p> <p><i>11. Include and optimise the amount of PV on the roof given the potential to clip peak load. The Panel strongly encourages the proponent to engage with the energy retailer and Ausgrid to optimise the system.</i></p> <p><i>12. The Panel encourages the applicant to include stormwater capture and reuse for the site.</i></p> <p><b>PANEL CONCLUSION</b></p> <ul style="list-style-type: none"> <li>• The Panel does not support the Proposal in its current form due to the range of issues, in particular non-compliance with the setback that should be landscaped area and trees in the public domain.</li> <li>• The recommended amendments to the design are important and should be incorporated into the revision to the design.</li> </ul> <p><u>Planning comment:</u></p> <p>Supplementary information and amended plans has not resolved these issues satisfactorily. An appropriate design response. The extent of design changes required are not suitable to the site conditions. The image montage below indicates the "before" and "after" design response and comments.</p>

Internal Referral Body	Comments
	<div data-bbox="327 351 1469 1032" data-label="Image"> </div> <div data-bbox="327 1037 898 1070" data-label="Caption"> <p>Image: Original DA design facade proposed</p> </div> <div data-bbox="327 1104 1469 1641" data-label="Image"> </div> <div data-bbox="327 1646 879 1680" data-label="Caption"> <p>Image: Amended design facade proposed.</p> </div>
Traffic Engineer	<p><b>Not supported.</b></p> <p>The proposal is to demolish the existing building and construct a new building comprising Units (total 2,736 sqm), 23 associated Mezzanine Offices (total 634 sqm), and Self-Storage. The proposal includes the provision of a total of 56 parking spaces, including 2 accessible spaces.</p> <p>It is proposed to retain the existing combined ingress/egress driveway on the Cross Street.</p> <p><u>Traffic:</u></p> <p>The traffic generation of the proposed development is projected to be a total of 18 vtpch at peak time. Taking into account the existing floor area, the proposal is not expected to generate additional traffic.</p>

Internal Referral Body	Comments
	<p>traffic generation. Therefore, the proposal is not considered to have significant impact or</p> <p><u>Parking:</u> The proposed parking provision complies with the DCP parking requirements which require 49 parking spaces for the warehouse units. Also the provision of 5 spaces for the trucks is considered acceptable.</p> <p>Adequate bicycle parking spaces in compliance with Warringah DCP are to be provided.</p> <p><u>Vehicular access and car park design:</u> A swept path analysis is required to demonstrate that two small trucks (SRVs) can ingress and egress at the same time while using one trafficable lane. Also, a swept path analysis is to be provided to demonstrate that Rigid Trucks (HRVs) can ingress and egress the site in forward direction to ensure that the design is accommodative of occasional access of larger trucks.</p> <p>The gradient of the first 6m of the driveway commencing from the property boundary is to be less than 1:10.</p> <p>Given the proposal being located within less than 100m from a signalised intersection, the TfNSW concurrence is required. Subject to the TfNSW requirements, the vehicular access may need to be restricted to left in left out only.</p> <p><u>Conclusion:</u> Given the above, the proposal is unsupported..</p> <p><u>Planning comment:</u> Supplementary information and amended plans has not resolved this issue and the design is not suitable to be addressed by conditions.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p><b>Supported with conditions.</b></p> <p>The proposal was referred to Ausgrid who provided a response on 18.3.2021 stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards / clearances and SafeWork NSW Codes of Practice. These recommendations are able to be included as a condition of consent.</p>

## 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 industrial purposes for a significant period of time. A site investigation has been carried out as detailed under Environmental Health (Contaminated Lands) Referral.

Therefore, as the Investigation indicates that there is a potential for contaminants to exist on the site, Clauses 7(1)(b) and 7(1)(c) of the SEPP must be considered.

Clause 7(1)(b) stipulates that "if the land is contaminated, it [Council] is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out".

Given the claimed potential of contamination on the site as noted in the Phase 1 Investigation, a Phase 2 Environmental Site Assessment should be provided to confirm whether contamination is actually present, at what levels and at what locations. A further Environmental Site Assessment has been provided which confirms the location and type of contaminants on the site and provides recommendations for the remediation of the site to enable the development to be safely carried out. See Environmental Health Officer expert assessment which has evaluated the preliminary and detailed secondary assessment within this report under the heading "Internal Referrals". In summary,

The additional Site Environmental Assessment was prepared by *Environmental Investigation Services* in accordance with the conclusions of the Preliminary Environmental Site Assessment and accompanies this application. A ground penetrating radar (GPR) scan and site inspections were undertaken to identify the USTs. This scan identified that a UST was located in the north-west corner of the site underneath the driveway. Separate cuts in the concrete were located that suggest the UST was decommissioned and removed. The other UST was suspected to be the northern part of the site being 13-15 Green Street, Brookvale. *Environmental Investigation Services* did not find any obvious indication of a UST in this location. However, the potential for a UST to be located in this section of the site was still required to be considered.

Further asbestos was detected within the Fill samples analysed as part of the *Additional Site Investigation Assessment*. An elevated concentration of PAH Anthracene was also encountered in one of the borehole samples. However, the potential for significant widespread groundwater contamination was found to be low. Given the asbestos encountered it was concluded that it may pose a risk to human health if disturbed at the time and may be contained by appropriate methods during site works.

*Environmental Investigation Services* concludes that the site can be made suitable for the proposed development provided that the following recommendations are implemented to minimise these potential risks:

- The preparation of a friable Asbestos Management Plan;
- The undertaking of a Hazardous Materials Assessment; and
- The undertaking of inspections during demolition phase to assess any unexpected conditions or facilities.

The preparation of this reports and the undertaking of inspections can be imposed as a condition of consent and Council's Environmental Health Officer concurs with this approach and the details provided to warrant conditions.

Clause 7(1)(c) stipulates that "if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose". The proposal is consistent with this clause being able to be practically achieved and satisfied.

The land is considered to be suitable for the industrial land use, as all structures on site are to be demolished, the land cleared and re-graded with height adjustment for flood protection and use as a storage warehouse. Should any lead based paint or asbestos material or other contamination concerns be identified during works appropriate conditions and *WorkCover* requirements, will apply to ensure the safe handling and appropriate disposal of any hazardous material.

Council is satisfied that the land can be made suitable for the purpose for which the development is proposed to be carried out and the recommendations included in the investigation may be addressed with appropriate conditions.

## **SEPP 64 - Advertising and Signage**

Clauses 8 and 13 of SEPP 64 require Council to determine consistency with the objectives stipulated under Clause 3(1)(a) of the aforementioned SEPP and to assess the proposal against the assessment criteria of Schedule 1.

The objectives of the policy aim to ensure that the proposed signage is compatible with the desired amenity and visual character of the locality, provides effective communication and is of high quality having regards to both design and finishes.

In accordance with the provisions stipulated under Schedule 1 of SEPP 64, the following assessment of the signage proposed is:

- One (1) x building identification sign in the form of a pylon sign is proposed within the Cross Street setback area. The sign is located immediately adjacent the proposed development's vehicular access off Cross Street. It will be 4.54 metres in height by 2.12 metres in width and will have an area of 9.62sqm on each side. The street address, developer's name and the name of individual tenancies will be displayed on this pylon sign.
- Three (3) x business identification signs are also proposed in association with the self-storage units. These signs identify the name of the business 'The Lock Up' and will be displayed on the south, east and west elevations in proximity to the vehicular access of Cross Street and the pedestrian entry point off Green Street. The signs will be mounted flush to the wall on each of the elevations and vary in size from 2sqm to 23sqm.
- A signage zone 2.88m in height and 2.11m in width is located above each units pedestrian entry. Located within the signage zone will be the name of the future business that occupies the correlating warehouse.
- Under awning signage is proposed for individual tenancies at the ground floor fronting Cross and Green Streets.

<b>Matters for Consideration</b>	<b>Comment</b>	<b>Complies</b>
<b>1. Character of the area</b> Is the proposal compatible with the existing or desired future character of the area or locality in which it is	The character of the surrounding area is industrial land uses to the north, east and west and high-intensity retail and commercial land uses to the south. In this context, the proposed signage is	YES



proposed to be located?	appropriate.	
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	Signage in the immediate vicinity is typified by business identification signage for surrounding industrial and commercial activities, some of it large-scale. The proposed signage is of a scale and style that is consistent with proportionality of the building and external materials.	YES
<b>2. Special areas</b> Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	No such areas exist within close or visual proximity to the site.	YES
<b>3. Views and vistas</b> Does the proposal obscure or compromise important views?	No views will be affected by the proposed signage.	YES
Does the proposal dominate the skyline and reduce the quality of vistas?	The proposed signage will not dominate the surrounding landscape as it is below parapet height.	YES
Does the proposal respect the viewing rights of other advertisers?	No adjoining existing signage will be compromised by the proposed signage.	YES
<b>4. Streetscape, setting or landscape</b> Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	The proposed signage presents a scale, proportion and form consistent with the surrounding built environment.	YES
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	The proposed signage will represent as a contemporary visual form that is acceptable to the existing built environment on Green Street and Cross Street which has a mix of newer building, less than 20 years old, and older industrial or commercial buildings.	YES
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	As the site is to be fully redeveloped this is not applicable to the proposed signage.	N/A
Does the proposal screen unsightliness?	Not applicable.	N/A
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	The proposed wall signs will not protrude above adjoining buildings adjacent and conditions are to be applied to ensure the signs are consistent with the maximum building height. Hence, the proposed signage is consistent with this requirement. It is uncertain how many under awning signs might be required, therefore this is limited to 1 only per external pedestrian doors for the ground level.	YES
<b>5. Site and building</b> Is the proposal compatible with the scale, proportion and other	The proposed signage represents an appropriate proportion and style to the proposed building.	YES

characteristics of the site or building, or both, on which the proposed signage is to be located?		
Does the proposal respect important features of the site or building, or both?	Not applicable, as the site is to be fully redeveloped	N/A
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	The proposed signage is consistent with the architectural style of the proposed building to be of a business style appearance for self storage and industrial storage facility to service commercial and industrial uses nearby.	YES
<b>6. Associated devices and logos with advertisements and advertising structures</b> Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	Not applicable.	N/A
<b>7. Illumination</b> Would illumination result in unacceptable glare, affect safety for pedestrians, vehicles or aircraft, detract from the amenity of any residence or other form of accommodation?	The illuminated pole sign will not be readily visible from the distant adjoining residential areas. The illuminated wall sign is located on the south and east elevations is visible to the adjacent street. No impacts to pedestrians or vehicles is likely given the relatively location and styling of the signs in relation to the other existing signs in the area.	YES
Can the intensity of the illumination be adjusted, if necessary?	Under the context, no adjustment to the signage is necessary.	YES
Is the illumination subject to a curfew?	Given the industrial / commercial nature of the surrounding area and the sites significant distance from residential areas, no curfew is considered necessary.	YES
<b>8. Safety</b> Would the proposal reduce the safety for any public road, pedestrians or bicyclists?	No adverse road safety impact is likely from the proposed signage.	YES
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	No adverse pedestrian safety impact is likely from the proposed signage.	YES

Accordingly, the proposed signage is considered to be of a scale and design suitable for the locality. The proposal is therefore deemed to be consistent with the provisions of the SEPP and its underlying objectives, subject to conditions.

## **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*. A referral response was received on 18 March 2021 raising no objection to the proposal, subject to the design submission must comply with relevant Ausgrid Network Standards and Safe Work NSW Codes of Practice for construction works near existing electrical assets.

Other Service Infrastructure Authorities

Due to local traffic conditions such as proximity to signalised intersections, significant traffic around Warringah Mall and road links to Pittwater Road / Old Pittwater Road referral advice is sought from *Transport for NSW* (TfNSW). No comment has been received from TfNSW within the referral period.

Any changes to *Sydney Water* assets are managed by *Sydney Water* under their separate processes.

No other service infrastructure referral issues are raised pursuant to the SEPP.

**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?	No
zone objectives of the LEP?	No

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	11m	14.1m	38.18%	No

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	No
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	Yes
5.21 Flood planning	No
6.1 Acid sulfate soils	Yes

Clause	Compliance with Requirements
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

### Detailed Assessment

#### **Zone IN1 General Industrial**

A merit assessment of the proposal against the objectives of the IN1 General Industrial zone is addressed as follows:

#### Objectives

- *To provide a wide range of industrial and warehouse land uses.*

#### Comment:

The proposed storage / warehouse premises are a permissible use in the zone and will be able to service the surrounding area.

- *To encourage employment opportunities.*

#### Comment:

Two (2) staff will be employed on the premises with staff carparking. The use of the site will continue to make a contribution to the employment generating potential of the Brookvale industrial area.

- *To minimise any adverse effect of industry on other land uses.*

#### Comment:

The proposed storage premises increase the range of options and choice for storage / warehouse facilities. This particular facility is designed to include vehicle access to storage / warehouse rooms including office style space for administration of distribution style uses. The proposal includes the supply of changing style of distribution style warehouse / self storage facilities and is compatible with surrounding area, including service opportunities to Warringah Mall.

- *To support and protect industrial land for industrial uses.*

#### Comment:

The proposal will result in no loss of existing industrial land, as the storage / warehouse premises is a complimentary land use to industry.

- *To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.*

#### Comment:

This objectives is not relevant to the application. Any change to internal occupancy such as mechanical or manufacturing style use would be subject to a separate development application as applicable.

- *To enable a range of compatible community and leisure uses.*

Comment:

This objectives is not relevant to the application.

- *To maintain the industrial character of the land in landscaped settings.*

Comment:

The proposed building represents a modern industrial style warehouse character. Placement of the building footprint and upper bulk deliberately within the front setbacks compounds the appearance of building streetscape presence in a dominating effect toward the public street domain and diminishes opportunities to establish a landscape setting commensurate with the scale of the building. Therefore the development has an adverse effect on the streetscape and future character, including that envisaged by the draft *Brookvale Structure Plan*. The proposal effectively establishes defacto build-to lines above the 11m height plane and along extensive wall plane sections within the 4.5m front boundary setback. This is not supported and is contradictory to this objective for the zone.

#### 4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	11m
Proposed:	14.1m
Percentage variation to requirement:	38.18%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 – Height of Buildings development standard, has taken into consideration the judgements contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

Clause 4.6 Exceptions to development standards:

(1) *The objectives of this clause are as follows:*

- to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Comment:

Clause 4.3 – Height of Buildings development standard is not expressly excluded from the operation of this clause.

*(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

*(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

*(b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

*(4) Development consent must not be granted for development that contravenes a development standard unless:*

*(a) the consent authority is satisfied that:*

*(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

*(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

*(b) the concurrence of the Secretary has been obtained.*

#### **Clause 4.6 (4)(a)(i) (Justification) assessment:**

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

*(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

#### **Comment:**

The Applicant's written request (attached to this report as an Appendix) has not demonstrated that the objectives of the development standard are achieved, considering the non-compliance with the development standard.

In doing so, the Applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

*(b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

#### **Comment:**

In the matter of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

*'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v*

*Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.’*

s 1.3 of the EPA Act reads as follows:

*1.3 Objects of Act(cf previous s 5)*

*The objects of this Act are as follows:*

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State’s natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The applicants written request argues, in part (as summarised):

- *The proposed development has been designed to be consistent with the approved development on the neighbouring property and its height variation, with the roof feature over the pedestrian entry off Cross Street having a maximum height of 14.1 metres and the building (at the parapet) having a maximum height of 13.4 metres;*
- *The proposed development provides a land use and built form outcome that provides an appropriate transition between the two land use zones, while also ensuring it is compatible with the land's flood hazard;*
- *The proposed development is located on a relatively flat site within an established industrial area where there are no existing significant views.*
- *The non-compliant element of the proposal of the proposal at its greatest extent relates to the blade walls and hood surrounding the staircase entry.*
- *The proposed development has been designed to minimise any potential adverse impacts in terms of visual impacts, views, privacy and solar access.*
- *Along the proposed development's southern and eastern elevations fronting Cross and Green Streets, any potential privacy impacts have been minimised through the consolidation of windows that are limited to the mezzanine office spaces at the first floor as shown in the figures below, noting the corner location of the site is such that it is setback from the surrounding development by roads*
- *Its location within an established industrial area on a relatively flat parcel of land is such that the proposed variation to the 11-metre height of buildings development standard and the proposed development as a whole will not result in any potential adverse impacts on the scenic quality of Warringah's coastal and bush environments.*

These reasons are considered to be limited in justifying that strict compliance with the Height of Buildings development standard is unreasonable or unnecessary and ignore objects of the act to "*promote good design and amenity*" and do not respond to the '*orderly development of land*' in so far as minimising variations to the associated development controls in order to reduce unfavourable precedents. As such the variation sought has not been isolated to ensure the non-compliance only relates to building height within the primary core of the building where reasonably necessary, thereby minimising the extent of the variation. Comparison to DA2020/0433 reveals that this adjacent building complied with the front boundary setback which is inconsistent with the subject site and the particulars of the merit variation proposed there were restricted only to the primary core. In the case of DA2020/0433 the variation was isolated to the lift core in the central area of the building and only the height needed to meet the FPL. The front the building fully complies with the 11m height control up to 10m back from the 4.5m front setback line to ensure a responsive setback and height line is maintained.

The overall built form of the surrounding area is typified by functional buildings designed to accommodate industrial and warehouse uses. In comparing examples of non-compliance with similar building height these height variations are located behind the front boundary setback zone, so that they do not compromise other built form controls for setbacks and landscaping. A direct comparison to single frontage sites is incompatible with the circumstances of the site having 2 frontages. While the added height to set the building ground floor at RL11.38 to comply with the FPL is supported, the actual height non-compliance at its greatest involves blade walls and 'feature work' that protrude unnecessarily into the front setback. This is inconsistent with adjacent sites, in that on the subject site, a deliberate forward encroachment as well as a height non-compliance creates more visible non-compliance rather than a more responsive approach would. Effectively going higher and further forward creates the opposite effect to minimise any height variation and should also be stepping back forward protruding elements.

The upper level, blade wall protrusions along the mid to upper floor levels have not been setback or reduced to minimise the non-compliant elements along the streetscape. Instead they exacerbate and extend the appearance of height and bulk along the frontages. Therefore, the non-compliant setback pushes the building height and bulk forward into the 4.5m front setback zones along both street frontages all the way along the 11m height plane. This in effect presents a more prominent, rather than recessive bulk and is contrary to the objectives of the associated controls under the DCP for building bulk and front setbacks requirements for wall planes. This demonstrates an unresponsive approach and inappropriate consideration of the 11m height line which has been used for both the original and amended plans.

Focusing on this upper level height variation, the design is not responsive to ameliorating the building bulk above the height plane by increased setbacks and recessing the upper elements further back. The forward setting of the building over the 4.5m front boundary setbacks for Green Street and Cross Street eliminates opportunities to screen the additional scale with medium to large trees by a suitable width landscape setback. Therefore, the proposal sets an unfavourable precedent for future redevelopment of other corner sites to replicate combined height and setback non-compliances without sufficient regard to the desired future character. The building height plane has adequate height to accommodate the FPL / stormwater issues in responsive manner to the streetscape for any permissible redevelopment of the site without the extent of non-compliance proposed in this case with appropriately responsive design.

The elevation images below illustrate the proposed building in context with the part of the building scale and bulk across the width of the 11m height plane and elements of the building proportions that exceed the control along both the street frontages.





Image: Red shaded area depicting the extent of non-compliance above the 11m height control.

In this regard, the applicant's written request has not demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a 'good design' in accommodating site constraints in combination with minimising the visual appearance of non-compliance to the planning controls that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

As such, the applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b), and Council cannot be not satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

#### Clause 4.6 (4)(a)(ii) (Public Interest) assessment:

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

*(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out*

#### Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the IN1 General Industrial zone. An assessment against these objectives is provided below.

## Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – ‘Height of buildings’ of the WLEP 2011 are:

(1) The objectives of this clause are as follows:

*a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*

Comment: The proposal has been designed to represent largely as a compliant wall plane setback to the principal frontage on Cross Street. The blade walls and over-extended hoods reach well into the front setback that accentuate height and scale by comparison to surrounding development where facade used recessed elements to break up scale. Along Green Street frontage the non-compliant upper level is more extensive and incompatible the pattern and repetition of narrower site frontages extending northward that include wider setbacks and which lessens the visual height and scale close to the street. Given the overall sheer size and scale of the building, generous site area it is not in the public interest to have such extensive massing protruding well forward into the narrow 4.5m setback and above the 11m height plane along the public streetscape.

*b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*

Comment: In the context of the adjacent industrial buildings, separation from other commercial offices and there being no residential dwellings in close proximity to the site, there is not loss of coastal views, residential privacy or solar access.

*c) to minimise adverse impact of development on the scenic quality of Warringah’s coastal and bush environments,*

Comment: There are no significant coastal or bush environments in close proximity to the site. Allenby Park bushland area is approximately 570m to the west and the coastal area more than 2.5km to the east. The extent of the proposed variation, when viewed from these areas, is likely to have negligible impact given the extensively developed land between these bushland or coastal areas and the subject site.

*d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities,*

Comment: As detailed previously, the overall design of the proposal has not achieved an acceptable visual impact when viewed from the adjoining public domain along the roads of Cross Street and Green Street.

## Zone objectives

The underlying objectives of the IN1 General Industrial zone are:

- *To provide a wide range of industrial and warehouse land uses.*

Comment: The proposed storage / warehouse premises are a permissible use in the zone and will be able to service the surrounding area.

- *To encourage employment opportunities.*

Comment: A maximum of two (2) staff will be employed on the premises. This continues the previous industrial style use of the site and will make a contribution to the employment generating potential of the Brookvale industrial area.

- *To minimise any adverse effect of industry on other land uses.*

Comment: The proposed storage premises will have a minimal impact on the operations of other land uses (commercial / residential / recreational / special uses) in the surrounding area, including service opportunities to Warringah Mall.

- *To support and protect industrial land for industrial uses.*

Comment: The proposal will result in no loss of existing industrial land, as the storage premises is a complimentary land use to industry. However, use of industrial land requires responsive design to achieve associate land use planning requirements for drainage, public amenity, streetscape character and the like. In this regard efficient design should accommodate area for infrastructure, stormwater and landscaping and not off-set one of these as a site constraint for other land use gains.

- *To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.*

Comment: Not relevant to the application.

- *To enable a range of compatible community and leisure uses.*

Comment: Not relevant to the application.

- *To maintain the industrial character of the land in landscaped settings.*

Comment: The proposed building represents a sufficient industrial character however the height and bulk has been over-accentuated above the height control. The character of the area includes an 11m height limit and while there is no storey limit there is a mix of lower single storey and two storey buildings present also. The proposal has not sought to minimise the elements of non-compliance in terms of building elements that extend above the height line and are unnecessary over-extensions of blade walls and parapet elements above the height plane. Placement of the building footprint and upper bulk deliberately within the front setbacks compounds the appearance of building height much closer to the public domain and diminishes opportunities to establish a landscape setting commensurate with the scale of the building to ensure the development does not have an adverse effect on the streetscape and future character. The proposal effectively established defacto build-to lines above the 11m height plane that are also within the front boundary setback area depicted in the image below. This is not supported and diminishes the ability to maintain the industrial character of the land in landscape settings.

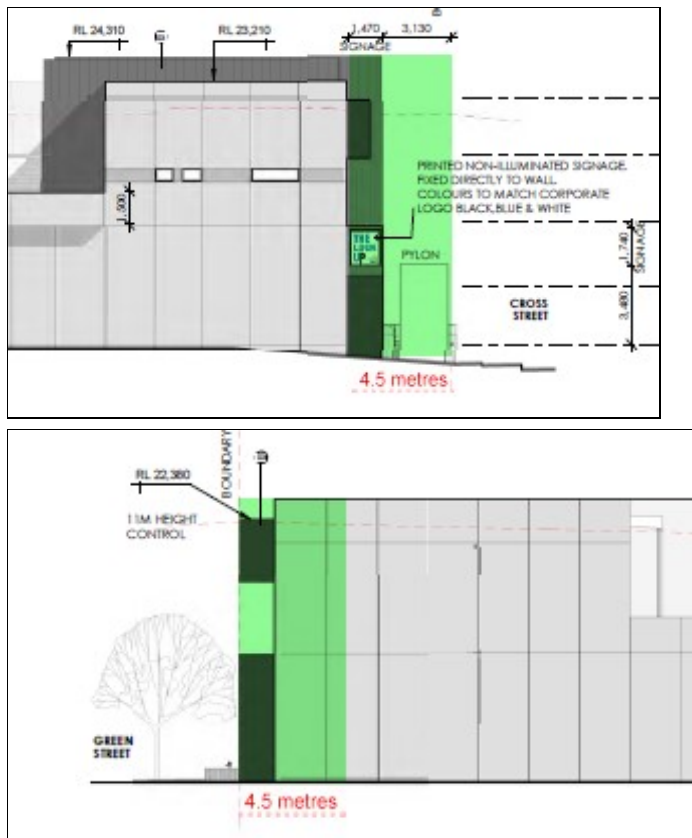


Image: Height of building visible along the streetscape frontages and impact on diminishing the landscape setting objective possible for street amenity.

### Conclusion:

For the reasons detailed above, the proposal is not considered to be consistent with the objectives of the IN1 General Industrial zone.

### **Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:**

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Planning Circular PS 20-002 dated 5 May 2020, as issued by the NSW Department of Planning & Infrastructure, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the inconsistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is not assumed by the Local Planning Panel.

## **5.21 Flood planning**

The objective of this clause seeks to minimise flooding risks, allow development that is compatible with floor function and behaviors on the land, avoid adverse and cumulative flood impacts and enable safety to during flood events.

As consent authority Council must be satisfied that the proposed development addresses these objective as well as also not result in detrimental increases in potential flood affectation of other

development and not adversely affect the natural environment by was if erosion and degrade riparian areas. Details provided with the development application do not satisfy this requirement regarding potential impact on adjacent land due to new raised building footprint and potential displacement of flood waters including the ability to dissipate water along the narrower 3.0m western setback that contains the main Council stormwater line for the catchment drainage northwest of the site. Insufficient information has been provided to address in full *Clause 5.21 Flood Planning* of the Warringah LEP 2011.

Therefore, the proposal is not supported pursuant to this clause.

## Warringah Development Control Plan

### Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B5 Side Boundary Setbacks	Merit assessment (West)	3.0m to 2.03m (stormwater line / flood easement)	32% Car park overhang	Yes (Merit*)
	Merit assessment (North)	0.0m Wall line	N/A	Yes (Merit*)
B7 Front Boundary Setbacks	4.5m Cross Street	4.9m to 3.0m Ground floor main level to Mezzanine level (1.3m to 3.0m to walkway, stair, structures and ramps)	33%	No*
		4.5m to 3.0m Main upper level wall to upper Mezzanine level	33%	No*
B7 Front Boundary Setbacks	4.5m Green Street	1.5m Ground floor main level to Mezzanine level (0.0m to walkway with stair, and structures within road reserve)	66%	No*
		1.5m to 0.5m Main upper level wall to upper Mezzanine level	66% to 88%	No*

\*Refer to detailed merit assessment within this report under the heading 'Built Form Controls' . Note the amended plans removed the steps from the road reserve. The subject zone does not have a numerical limit on landscape area under Part D1 Landscaped Open Space. This is addressed by Part B7 Front Boundary Setback.

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	No	No
B6 Merit Assessment of Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	No

Clause	Compliance with Requirements	Consistency Aims/Objectives
C2 Traffic, Access and Safety	No	No
C3 Parking Facilities	Yes	Yes
C4 Stormwater	No	No
C6 Building over or adjacent to Constructed Council Drainage Easements	No	No
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	No	No
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D18 Accessibility and Adaptability	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
D23 Signs	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes
E11 Flood Prone Land	No	No

### Detailed Assessment

#### **A.5 Objectives**

The overriding objectives of the DCP is to create and maintain a high level of environmental quality throughout Warringah. Development should result in an increased level of local amenity and environmental sustainability.

#### **Objectives**

- *To ensure development responds to the characteristics of the site and the qualities of the surrounding neighbourhood.*

#### Comment

The proposal has not responded appropriately to the characteristics of the site and has sought to push the building bulk over the 4.5m Green Street front building setback line which will reduce the qualities of Green Street and future ability to ensure landscape settings within the surrounding industrial

neighbourhood. The proposal does not satisfy this objective.

- *To ensure new development is a good neighbour, creates a unified landscape, contributes to the street, reinforces the importance of pedestrian areas and creates an attractive design outcome*

#### Comment

The proposal does not reinforce the importance of the landscape setback area for pedestrian amenity and potential future streetscape changes to achieve attractive design outcomes. The building accentuates the height and scale by the diminished landscape setbacks which diminishes the opportunities to create a unified landscape of industrial uses within landscape settings along the streetscape. The proposal does not satisfy this objective.

- *To inspire design innovation for residential, commercial and industrial development*

#### Comment

In achieving this objective innovative design will inspire future development to comply (rather demonstrate or portray non-compliance to replicate) and minimise building bulk and scale, including responsive compliance with the planning controls. Displacing numerical and non-numerical controls by non-compliance is not considered *design innovation*. The proposal does not satisfy this objective.

- *To provide a high level of access to and within development.*

#### Comment

The proposal is situated in a location with a high level of access. Through access to ground floor and upper storey is discussed with regard to traffic considerations and pedestrian safety under the Traffic Engineering comments within this report.

- *To protect environmentally sensitive areas from overdevelopment or visually intrusive development so that scenic qualities, as well as the biological and ecological values of those areas, are maintained.*

#### Comment:

The site currently developed for industrial use and does not contain any significant scenic, biological or ecological values.

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

#### Comment:

The location and size of the site will achieve this objective over the long term for the community of Warringah.

## **B7 Front Boundary Setbacks**

### Description of non-compliance

The subject building has two road frontages to which the proposal is required to maintain a minimum 4.5 metre landscape setback. The building includes minor elements encroaching with the Cross Street frontage and has more extensive non-compliance along Green Street.

### Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying

Objectives of the Control as follows:

- *To create a sense of openness.*

Comment:

In achieving this objective Part B7 Font Boundary Setbacks requires that *development is to maintain a minimum setback to road frontages*. The proposal has not done this despite the requirement of this clause reinforcing the importance of maintaining the minimum setback and the proposal has substantially extended wall lines, floor space, roof area and ancillary elements extensively into the front setback along Green Street and also that (shown to a lesser extent) along Cross Street.

To achieve a sense of openness the DCP requires that the front boundary setback area is to be landscaped and generally free of any structures, basements, carparking or site facilities other than driveways, letter boxes, garbage storage areas and fences. With a wide 4.5m landscaped setback the space required for any minor structures of pathways, retaining walls, steps, ramps and the like is easier to be accommodated while ensuring deep soil landscaping for substantial trees and other suitable planting within a spaced frontage. Cantilevering the building into this zone and reducing the front setback diminishes the sense of openness and reverses the sense of openness by overhanging building bulk, being projected forward into the landscape zone and compromises the canopy space of any medium / larger sized trees.

Additionally a number of ancillary elements have been identified to be inappropriately located around the periphery of the building including steps, hydrants and the like as detailed within Council's Development Engineering internal referral assessment.

- *To maintain the visual continuity and pattern of buildings and landscape elements.*

Comment:

The site is on a corner location within a busy sector of Brookvale and the extent of non-compliance into the front setback along such and extensive double street frontage creates an unfavourable precedent for other future development to replicate, breaking the ability of being able to maintain visual continuity and the same pattern of building elements behind a 4.5m width of landscape elements. The proposal goes against the existing examples of recent development that have complied with the 4.5m front setback and ensured a dominance of landscaped elements along the streetscape for their re-developed frontages. (examples include No.117 Old Pittwater Road, No.1 to 15 Green Street).



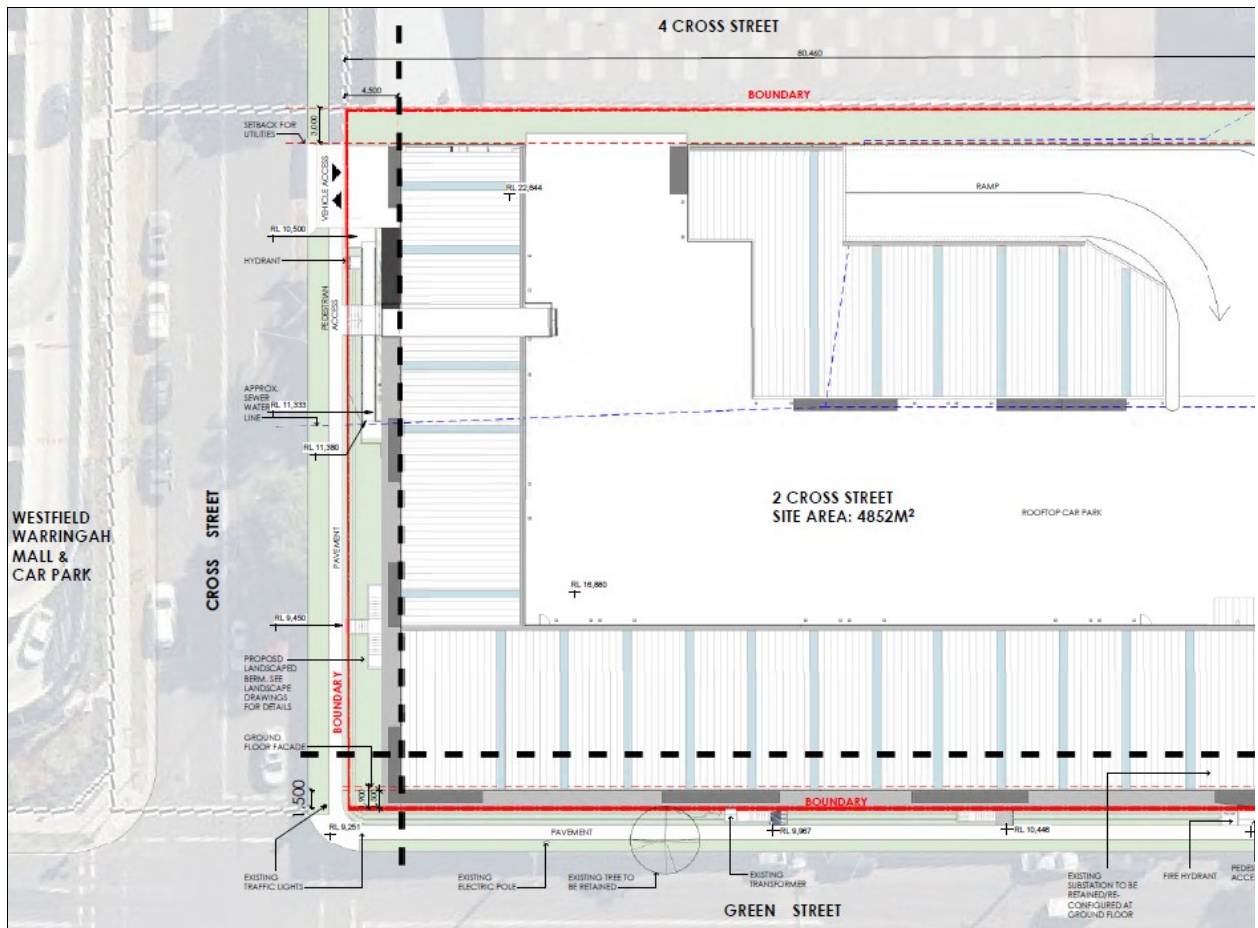


Image: Extent of non-compliance along the 4.5m (black dotted) line shown with limited or no area retained for landscape zone in front of the building.

- *To protect and enhance the visual quality of streetscapes and public spaces.*

#### Comment:

The Brookvale Draft Structure Plan (August 2017) (BDSP) has identified Cross Street to undergo future investigations to create landscaping initiatives for enhancement of the pedestrian environment whilst maintaining vehicle connectivity throughout the precinct. The objective will be to create tree lined streets that provide workable and attractive access for the east and west precincts of the Strategic Centre and also link the 'green grid' assets across Brookvale. While the BDSP is not yet adopted it outlines the future direction being considered and its aims and objectives are consistent with the objectives of Part B7. That means a landscaped setback interface between buildings and the public domain of the footpath area will be required along Cross Street including Green Street to account for future footpath widening and pedestrian links. As such the 4.5m DCP front building setback requirement should be complied with along both streets to allow street tree canopies to overlap and to maintain adequate landscape buffer. The proposed non-compliance with the front setback is counteractive to that future intent being considered by the BDSP before it is even adopted / implemented.

In order to 'protect and enhance' the streetscape the 4.5m setback needs to be retained along the frontages and Green Street and Cross Street for the site. The visual impact on the streetscape by the proposed non-compliance within the front boundary setback is compounded by the building

height of up to 14.1m ie.3.1m over the 11m control will set a negative building height precedent for the surrounding future developments and therefore cannot be supported.

The design of facades contributes greatly to the visual interest of the building and the character of the local area. Facades that face the streets have an impact on the public domain. High quality facades are a balanced composition of building elements, textures, materials and colour selections. Well designed facades also reflect the use, internal layout and structure of the building. The proposed elevation treatment to create interest such as the big overhanging hoods framing windows should provide meaningful applications such as to provide sun-shading purposes without accentuating bulk and increasing non-complying elements.

- *To achieve reasonable view sharing.*

Comment:

This objective is not raised in association with the proposal for the site location or any surrounding land.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

## **C2 Traffic, Access and Safety**

### Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To minimise traffic hazards.*

Comment:

A swept path analysis is required to demonstrate that two small trucks (SRVs) can ingress and egress at the same time while using one trafficable lane. Also, a swept path analysis is to be provided showing Heavy Rigid Trucks(HRVs) can ingress and egress the site in forward direction to ensure that the site is accommodative of occasional access of larger trucks. The gradient of the first 6m of the driveway commencing from the property boundary is to be 5% or less. The swept paths shown do not show trucks being able to pass on the curb of the ramp or an overlay for sight lines at the footpath crossover for the safety of pedestrians. Therefore, the proposal has not been provided with sufficient information to satisfy this objective for Traffic Engineering safety purposes.

- *To minimise vehicles queuing on public roads.*

Comment:

In order to address this objective further requirements / design details may be required to ensure a left in / left out arrangement (and median if necessary) at the vehicle entry to Cross Street. Assessment details to the satisfaction of Council's Traffic Engineer have not been provided to satisfy this objective.

- *To minimise the number of vehicle crossings in a street.*

Comment:

Previous redundant crossings / layback kerbs are to be re-instated with the establishment of the the new access arrangements. A single vehicle (dual lane) entry is proposed

- *To minimise traffic, pedestrian and cyclist conflict.*

Comment:

The building does not have a dedicated through access from the ground level parking area to Cross Street frontage (being the main entry) which is unsafe as pedestrians would therefore be inclined to walk down the man vehicle entry ramp to reach the public footpath in Cross street. Therefore, the proposal does not provide sufficient design detail to satisfy this objective.

- *To minimise interference with public transport facilities.*

Comment:

See comments from Transport NSW (TfNSW) where provided pursuant to any referral response by TfNSW.

- *To minimise the loss of "on street" kerbside parking.*

Comment:

Minimal change is required for on-street parking for the redevelopment of the site.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

#### **C4 Stormwater**

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To ensure the appropriate management of stormwater.*

Comment:

The proposal does not meet this objective in addressing stormwater management issues raised by Council's Development Engineering assessment. This includes ensuring connection to appropriate Council pits and site levels within the area around the main line along the western side of the property that will require a 3m wide easement. Details are provided within the Development Engineering assessment under the heading 'Internal referrals' in this report.

- *To minimise the quantity of stormwater run-off.*

Comment:

The proposal does not meet this objective in addressing stormwater management issues raised by Council Development Engineering assessment under the heading 'Internal referrals in this report.

- *To incorporate Water Sensitive Urban Design techniques and On-Site Stormwater Detention (OSD) Technical Specification into all new developments.*

Comment:

The proposal does not comply with Council's *On-Site Stormwater Detention (OSD) Technical Specification* as detailed within the Development Engineering assessment under the heading 'Internal referrals' in this report.

- *To ensure the peak discharge rate of stormwater flow from new development is no greater than the Permitted Site Discharge (PSD).*

Comment:

The proposal does not meet this objective in addressing the limits on discharge rates for the stormwater runoff as detailed by Council's Development Engineering assessment. Amended plans have not been provided that adequately address this issue and therefore the proposal requires redesign of elements of the stormwater management system.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

## **C6 Building over or adjacent to Constructed Council Drainage Easements**

### Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To ensure efficient construction, replacement, maintenance or access for emergency purposes to constructed public drainage systems located within private property.*

Comment:

The site contains a Council's stormwater line that services a wide catchment area upstream though an inter-allotment system. In order to ensure the long term management of the system including any replacement and effective drainage during potential flooding Council's engineers will require a future 3m wide easement to be created on property title as part of the redevelopment of the site. Prior to this occurring, finished levels and stormwater / flood management engineering consideration are required to be satisfactory for the redevelopment. The proposal does not meet Council's Floodplain Engineering and Development Engineering requirements as detailed under the heading 'Internal Referral's' within this report due to

insufficient or inadequate design.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

## **D9 Building Bulk**

### Merit consideration

The development is considered against the underlying Objectives and requirements of the DCP *Part D9 Building Bulk Control* as follows:

- *To encourage good design and innovative architecture to improve the urban environment.*

#### Comment:

The requirements of this part of the DCP seeks that large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief. While the proposal is a warehouse / storage building and situated within an industrial area the streetscape presentation requires priority consideration since the side wall elements are matched with the adjacent buildings for function / fire separation. The side setbacks are subject to merit consideration of the circumstances (similarities and differences) of adjacent industrial buildings. Good design and innovative architecture responds to the build from controls and desired local character for the front setback.

Non-compliant elements that project large elements of building bulk into the front setback area do not *improve the urban environment* and set an unfavourable precedent against Council's ability to maintain consistent streetscape outcomes. In this case setbacks newer development along Green Street and Cross Street have sought to not protrude bulky building elements forward of the 4.5m setback area. In this case the building is over-extended into the front setback at both the upper and lower storey levels, particularly along Green Street. This effectively eliminates future opportunities for suitable trees and landscape elements due to the setbacks space being further compromised by ramps, stairs, retaining walls and pathways also required in front of the building.

The submitted plans and amended plans are inconsistent with this objective.

- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

#### Comment:

The requirements of this part of the DCP seek that building height and scale needs to relate to topography and site conditions. The site is to be completely cleared of the existing building and the main site constraints for the proposal to respond are the stormwater easement along the western side and the flood planning level (FPL) affecting the building ground floor level whereby a minimum freeboard applies which therefore influences the 11m height control. The topography of the land is near level. In response to this a 4.5m wide setback would allow a gentle sloping

embankment and minimise the need for any retaining walls along the street frontages.

Addressing Part D9 of the DCP seeks that the use of colour, materials and surface treatment is used to reduce building bulk. In this regard, the building design has created a reverse approach to this requirements and used colours and reverse articulation (for both the original and amended plans) that exaggerate and draw attention to visual bulk. This includes overhanging elements and eliminating large areas of the 4.5m street frontage setbacks to bring the building visually closer to the front boundaries.

Achieving Part D9 of the DCP requires that landscape plantings are to be provided to reduce the visual bulk of new building and works. This outcome has not been done and the building brought forward which significantly compromises the available space for any large full canopy trees of 10m to 12m height with a 10m diameter canopy to be suitable for the setback areas to screen the building bulk and complement the existing larger trees along Green Street and Cross Street (including future planting and any likely public footpath widening).

Part D9 of the DCP seeks to ensure that the appearance of building mass is reduced by articulating walls, which is particularly important to minimise visual impact when viewed from the street and nearby properties. In applying the use of wall articulation the proposal has sought to exploit the front setback rather than recess and reduce forward bulk. Visual impact is general exacerbated by cantilevered and over-extended elements into the front setback area, including the over-height wall sections. Neither sets of plans are appropriate by way of excessive non-compliance with the front boundary setback which is exacerbated by over height elements. Facades that face the streets have an impact on the public domain. High quality facades are a balanced composition of building elements, textures, materials and colour selections. The proposal includes elements that over-exaggerate window hoods or overextend wall elements into the front setback that deliberately magnifies and draws visual attention to non-compliances within the front setback.

Given the above reasons and requirements the submitted plans and amended plans are inconsistent with this objective.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

## **E11 Flood Prone Land**

### Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To ensure the development is compatible with the flow regime of the waterway.*

### Comment:

The proposed building is larger than the existing building footprint on the site, and the width of open space along the western boundary has decreased significantly to only 3m. This would cause the depth of the floodwaters to rise, and therefore impact on the adjacent property. It is proposed that this will be accommodated by site level adjustments to replace the volume

function of the existing wider ground level driveway and open areas along the western side of the building. Details of these changes have not been shown on the plans to address this issue to the satisfaction of Council Flood Engineering assessment. The proposal has not met this objective.

- *To ensure that existing development is not adversely affected through increased flood damage and/or flood hazard as a result of new development.*

Comment:

The proposal has not provided sufficient detailed information to address this issue. Consideration of the proposal includes the narrowing of the existing space along the western side of the site and potential displacement. It is noted that the property to the east has a constructed wall to the boundary and sections of the stormwater line run under building in some section of the catchment. A flood management report has been provided and Council's Flood Engineering assessment is not satisfied that the potential increased flood hazard and potential flood damage risk has been eliminated by the redevelopment design proposed. Insufficient detail is provided with the development application to address whether the FPL needs to be raised in accordance with the higher 1% AEP as detailed by Council's Flood Engineering referral response. Therefore, the proposal has not met this objective.

- *To provide for the safety of people and property.*

Comment:

The ground floor level will be raised in order to comply with the FPL and the site is not in a location with hazardous velocity flows (by steep terrain). Suitable exits are provided to ensure egress from the building. Subject to conditions (including evacuation / FPL safety measures re materials, electrical systems and the like) the proposal is able to satisfy this clause.

- *To provide a mechanism to control development on flood prone land.*

Comment:

The objective of this clause requires that development addresses the appropriate flood engineering considerations and is of a satisfactory design. The proposal has not demonstrated this which includes obligations under Clause 5.21 of the Warringah LEP 2011.

- *To ensure a sustainable and holistic catchment wide approach is taken to development on flood prone land.*

Comment:

The objective of this clause requires that development addresses the appropriate catchment considerations and holistic requirements of council for the long term planning considerations applicable to Brookvale in context of the site and catchment. The proposal has not demonstrated this to the satisfaction of Council's Flood Engineering considerations which includes obligations under Clause 5.21 of the Warringah LEP 2011.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

## **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 2021**

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2021.

A monetary contribution of \$92,837 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$9,283,744.

## **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.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of Clause 4.3 Height of Buildings has not adequately addressed and demonstrated that:

a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and



b) There are sufficient environmental planning grounds to justify the contravention.

2) The proposed development will not be in the public interest because it is inconsistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

The application has raised a number of concerns with regard to internal referral advice sought from referral bodies of Council's *Design & Sustainability Advisory Panel*, Traffic, Development Engineering and Flood Engineering have not been resolved to the satisfaction of Council to support the proposal in either its original development application plans submitted or the amended plan version submitted.

The development has been found to not comply with the numerical Height of Buildings Development Standard contained in the Warringah LEP 2011 and Notwithstanding, the merit consideration with the non-compliance with the LEP development standard, the development does not satisfy the requirements of cl 4.6 Exceptions to development standards for the height variation to be supported. In this regard, the proposal is inconsistent with the underlying objectives of cl 4.3 Height of Buildings and development standard of the *IN1 Industrial* zone under the Warringah *LEP 2011*.

The development is inconsistent with the objectives contained within the WDCP 2011 relating to building bulk, front boundary setbacks, building height and streetscape. These issues would require some substantial re-design (including the amended plans provided) to address in reviewing the plans and therefore cannot be addressed by conditions.

Accordingly, the development application is recommended for refusal.

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 the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council , as the consent authority REFUSE Development Consent to Development Application No DA2021/0139 for the Demolition works and construction of a mixed use building accommodating 17 self storage units and 23 industrial units including carparking and landscape works on land at Lot 100 DP 817162,2 Cross Street, BROOKVALE, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Warringah Local Environmental Plan 2011.
2. Pursuant to Section 4.55 (1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause Zone IN1 General Industrial of the Warringah Local Environmental Plan 2011.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.3 Height of Buildings of the Warringah Local Environmental Plan 2011.
4. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.6 Exceptions to Development Standards of the Warringah Local Environmental Plan 2011.
5. Pursuant to Section 4.55 (1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 5.21 Flood Planning of the Warringah Local Environmental Plan 2011.
6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B7 Front Boundary Setbacks of the Warringah Development Control Plan.
7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C2 Traffic, Access and Safety of the Warringah Development Control Plan.
8. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C4 Stormwater of the Warringah Development Control Plan.
9. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C6 Building Over or Adjacent to Constructed Council Drainage Easements of the Warringah Development Control Plan.
10. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D9 Building Bulk of the Warringah Development Control Plan.
11. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause E11 Flood Prone Land of the Warringah Development Control Plan.

