



Warringah Council

## S96(1A) APPLICATION TO MODIFY A DEVELOPMENT CONSENT ASSESSMENT REPORT

**Assessment Officer:** Nick England  
**Address / Property Description:** Lot 8 DP 604034 (No.255) Condamine Street, MANLY VALE

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**Proposal:** Modification of consent (DA2007/0474) to amend ground floor layout, provide 1<sup>st</sup> floor terrace and amend access driveway at Lot 8 DP 604034 (No.255) Condamine Street, MANLY VALE.  
**Development Application No:** MOD2008/0230  
**Plans Reference:** Sheets 1 to 5 (Amended: Dec 2008)  
**Applicant:** Nick Ristevski  
**Owner:** Bagi Pty Ltd  
**Application Lodged:** 08/08/2008  
**Amended Plans:** Nil

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**Locality:** G6 Manly Vale Business  
**Category:** Category 3 (bulky goods shop)  
**Clause 20 Variations:** NO  
**Land and Environment Court Action:** NO  
**Referred to WDAP:** NO  
**Referred to ADP:** NO

### SUMMARY

**Submissions:** 18/08/2008 to 03/09/2008 (Notification Period) - One Outside Notification Period(s) - Nil  
**Submission Issues:** Inadequate manoeuvring area; Traffic safety  
**Assessment Issues:** Car parking; Integrated development (Development adjacent watercourse)  
**Recommendation:** Section 96 Approval  
**Attachments:** Nil

**LOCALITY PLAN** (not to scale)



**Subject Site:** Lot 8 DP 604034 (No.255) Condamine Street, MANLY VALE

**Notified Residences:** Under the provisions of the applicable Development Control Plan the subject modification has been notified to the adjoining property owners and occupiers. As such, there were 7 notification letters sent.



## SITE DESCRIPTION

The site is known as Lot 8, DP 604034, 255 Condamine Street, Manly Vale. The site is located on the western side of Condamine Street, between Kenneth Road and Pitt Street.

The site is generally rectangular in shape with a total area of 863m<sup>2</sup>. A watercourse enters the site from the approximate centre of the rear boundary and extends across the site to the north east side of the northern boundary.

Existing development in the site consists of a partly demolished timber building and a partly constructed concrete block basement on the eastern side of the site which is in a poor condition. There is a driveway along the southern boundary. A concrete retaining wall, located approximately 200mm-600mm east of the eastern boundary, has been constructed along the length of the site frontage in the Council road reserve. The land on the western side of the retaining wall is approximately 1.7m lower than that on the eastern side of the wall. As such, the partially constructed lower ground floor is below street level. The remainder of the site is heavily vegetated and overgrown with weeds.

The majority of the site is classified as Acid Sulfate Soil Type 5 and the southern part of the site is classified as Acid Sulfate Soil Type 4.

Surrounding development consists of an industrial / bulky goods retailing to the north and south of the site and residential development to the west.

## RELEVANT BACKGROUND

The consent subject to the proposed modification, being DA2007/0474 for "First Floor Addition to Existing (Partially Completed) Ground Floor of a Building and Use as a Bulky Goods Showroom" was considered at the IHAP meeting of 24 June 2008 and an operational determination (approval) issued on 7 July 2008. No previous modifications have been lodged.

Of particular relevance is Condition No.5 which reads:

*The car park layout to the rear of the building is to be amended to be generally consistent with the 'Revised Parking Layout' drawing in Attachment 1 of the Parking Assessment prepared by GTA Consultants dated 17 March 2008 submitted with the application, with the exception that the driveway must be 3.8 metres in width, the small carspace adjacent to the disabled carparking space is deleted and the disabled carspace is moved north to the position of the small carspace which is to be deleted. The amended plans are to be submitted to the Certifying Authority, prior to the issue of the Construction Certificate.*

**Reason:** *To ensure that an acceptable carpark layout is provided.*

This effectively requires minor amendment of the parking layout in Sheet 1 of the approved plans.

Council's records indicate previous development consents, part of which the application subject to the proposed modification relies upon, in particular a partially completed basement level. These include the following:

### **Development Application No. 2000/5263**

This involved alterations and additions to the existing building and use of the building as a factory unit, was approved on 29 March 2001. The first floor consisted of a storage area, workshop, reception, showroom and office area and the ground floor area was to be used for storage and secure parking for two vehicles. A timber deck and stairs was proposed on the northern side of the building. Three (3) parking spaces plus one (1) stacked car parking space were proposed to the rear of the building. A turning area was also provided. Vehicular access was proposed into the basement. No internal connection was provided between the basement and the first floor.

### **Development Application No. 2005/0356**

This involved the change of the use of the building approved under DA2000/5263, from a factory unit to a bulky goods shop for the retailing of mattresses and bedding, was approved on 25 October 2005. The application did not seek approval for any external changes to the building. Only minor internal modifications were proposed.

### **Modification Application No. 2000/5263/1**

This application sought to modify the consent for DA2000/5263 to allow the demolition of the existing building which was proposed to be elevated. This application was withdrawn prior to determination.

## **PROPOSAL IN DETAIL**

The modification to the existing consent consists of the following:

- Increase in gross floor area on the lower ground floor area by 8.1m<sup>2</sup>;
- New rear deck 49m<sup>2</sup> in area which is for the purposes of covering 2 car spaces and providing open space for employees of the bulky goods shop; and
- Amended driveway gradients to access the rear car parking area.

## **CONSIDERATION UNDER S96(1A) OF THE EPA ACT 1979**

The subject application has been lodged pursuant to Section 96(1A) of the Environmental Planning and Assessment Act 1979. Section 96(1A) of the Environmental Planning and Assessment Act 1979 stipulates:

*A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:*

*(a) it is satisfied that the proposed modification is of minimal environmental impact*



Comment: The proposed modifications essentially relate to the three aspects of the proposed layout, being: floor space, rear setback and driveway gradients. The potential impacts of these are discussed below.

**Floor space:** An additional 8.1m<sup>2</sup> of floor space is proposed. This additional area is located on the northern elevation of the proposed building and whilst extending part of the building outwards a maximum of 1.84 metres from the northern elevation will not increase the distance of the building from the northern boundary (1.5 metres). The proposed additional floor space is unlikely to require additional car parking for the approved bulky goods use, given the very minor nature of the increase.

**Rear Setback:** The proposed upper ground floor deck will increase the rear setback of the approved structure by 6.5m. The G6 locality does not have a rear setback control, however the deck proposes an adequate distance from the rear boundary (approximately 35m), northern side boundary (4m) and southern side boundary (3.8m). Given the proposed distances, the deck is not likely to cause any adverse impact on adjoining properties.

**Driveway gradients:** The driveway gradients in the proposed modification (illustrated on the east elevation, Sheet 4) are to be modified from an elevated ramp as approved to a sloping driveway which generally follows the contour of the land. After clarification and amendment, the proposed gradient is acceptable to Council's Development Engineers and the proposed driveway is adequate for general vehicle access to the approved bulky goods use.

- (b) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*

Comment: The proposed modifications are within the scope of the original proposal, which was to make alterations and additions to a partially completed building for a bulky goods shop. With the proposed modifications, the proposal will remain substantially the same development as that approved.

- (c) *it has notified the application in accordance with:*
- (i) *the regulations, if the regulations so require, or*
  - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

The application was notified in accordance with Part 1 of the Warringah DCP. One submission was received. The submission was from Mr John Koorey of 36 Bower Street, Manly. The issues raised in the submission are as follows;

1. *The proposed modification will compromise traffic safety.*

Comment: A turning area and a turning bay is part of the approved development, as further enforced by condition no.5. The width of the amended driveway will not change



and vehicles will be able to turn on site and leave the site in a forward direction providing reasonable opportunity for sight distances from existing vehicles.

2. *How will delivery trucks be able to turn on the site?*

**Comment:** This matter was addressed in the original assessment of the proposal. The Parking Assessment prepared by GTA Consultants dated 17 March 2008 states that all sales orders would be delivered from the main warehouse in Rockdale and not from the site. In the event that new stock is required to be delivered to the showroom in the future, this could be undertaken outside the opening hours of the development when there is no carpark usage occurring (with the exception of staff parking). A condition of consent was included to ensure that no deliveries occur during opening hours.

Whilst the original modification proposed to amend this parking layout, it was made clear to the applicant that no change to this arrangement could be supported. Condition No.5 remains in place to ensure adequate turning space is provided in any event.

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

Section 96(5) requires consideration of relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act, 1979. These are provided below:

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "WLEP 2000" in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	Refer to discussions on Draft Environmental Planning Instruments in the body of the report.
Section 79C (1) (a)(iii) – Provisions of any development control plan	The modification was notified in accordance with Part 1 of the Warringah Development Control Plan.
Section 79C (1) (a)(iia) - Provisions of any Planning Agreement or Draft Planning Agreement	None applicable.
Section 79C (1) (a)(iv) - Provisions of the regulations	Clause 7 of the EPA Regulations 2000 requires the consent authority to consider the provisions of the Building Code of Australia. The existing conditions in the original consent will apply to the works proposed in the modification.
Section 79C (1) (b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	Considered under Section 96(1A)(a) above.
Section 79C (1) (c) – The suitability of the site for the development	Not applicable – considered under original approval.
Section 79C (1) (d) – Any submissions made in accordance with the EPA Act or EPA Regs	Considered under Section 96(1A)(c) & (d) above.
Section 79C (1) (e) – The public interest	Not applicable – considered under original approval.

## State Environmental Planning Policies

### SEPP Infrastructure

Clause 45 of SEPP Infrastructure requires all applications (including modifications) which propose works within 5m of any exposed overhead electricity power line to be referred to the



relevant energy authority. No external power connections are affected by the approved works or modification, and therefore no referral is required. The modification complies in all other respects with the provisions of SEPP 65.

## **STATUTORY CONTROLS**

### **Warringah Local Environmental Plan 2000**

#### **Desired Future Character**

The subject site is located in the G6 Manly Vale Business Locality under Warringah Local Environmental Plan 2000. The Desired Future Character Statement for this locality is as follows:

#### *G6 MANLY VALE BUSINESS LOCALITY*

*The Manly Vale Business locality will be characterised by a mix of retail and business uses that may incorporate low-rise shop-top housing.*

*Condamine Street will be enhanced by ensuring the design of buildings and use of land maintains activity at street level and creates a cohesive and attractive streetscape. Vehicle access will be encouraged from streets other than Condamine Street.*

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

Clause 12(3)(b) requires the consent authority to consider if the development is consistent with the Desired Future Character of the locality statement. The proposed modification is to an existing consent for Category 3 development, which under the original assessment was considered *bulky goods shop*.

The modification is substantially the same as the approved development, which in turn was found by the then IHAP to be consistent with the Desired Future Character in the original assessment of the application.

The proposed modification is therefore considered consistent with the DFC Statement.

#### **Clause 15 (Category Three Development)**

Clause 15 of the WLEP 2000 specifies that new Category 3 development requires the consideration of an independent public hearing, the function of which is taken up by the Warringah Development Assessment Panel (WDAP).

The Charter of the WDAP specifies that the only modifications which are required to be considered by the Panel are Section 96(2) modifications of which the original consent was provided by the Panel. The WDAP has assumed the role of the previous IHAP, which makes the modification potentially subject to the Charter.

As the proposed modification is considered to be a Section 96(1A) application, the proposal does not need to be referred to the WDAP and can be dealt with under delegated authority.

## Built Form Controls for Locality G6 Manly Vale Business

The following table outlines compliance with the Built form Controls for the G6 Manly Vale Business locality:

Built Form Standard	Approved	Proposed	Compliance
Building Height	2 storeys and 8.13 metres max	No change	YES
Front Setback	The first floor is level with the street level. The first floor is aligned on the street frontage.	No change.	YES

## GENERAL PRINCIPLES OF DEVELOPMENT CONTROL

The following applicable General Principles of Development Control as contained in Part 4 of Warringah Local Environmental Plan 2000 apply to the proposed modification:

General Principles	Applies	Comments	Complies
CL72 Traffic Access & Safety	YES	The amended driveway gradient will not affect the ability for vehicles to enter and exit the site in a forward direction as per the original approval. The modification is consistent with this General Principle.	YES
CL73 On-site loading and unloading	YES	The amended modification will ensure adequate turning area for loading and unloading and existing Condition No.5 will remain to ensure this is provided on-site.	YES
CL74 Provision of car parking	YES	<p>In accordance with Schedule 17, to determine the minimum car parking requirement for bulky goods shops, comparisons must be drawn with developments for a similar purpose. Provision is also to be made for car/trailer combinations and adequate on site parking spaces for service/delivery vehicles at a convenient location, separated from customer parking.</p> <p>A Parking Assessment prepared by GTA Consultants dated 17 March 2008 was submitted with the original application.</p> <p>The Parking Assessment indicates that based on comparable site surveys, 2.2 spaces per 100 square metres of Gross Leasable Floor Area (GLFA) is required.</p> <p>The additional 8.1m<sup>2</sup> of floor space in the proposed modification is not of a size to warrant the provision of an additional car space.</p> <p>The proposed modification is consistent with the General Principle.</p>	YES

## SCHEDULES

### Schedule 17 - Carparking Provision

The car parking requirements specified in Schedule 17 have been addressed under Clause 74 of the General Principles of Development Control table in this report.





## **DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS**

No draft environmental planning instruments are applicable.

## **REFERRALS**

### *Development Engineers*

The modification application was referred to Council's Development Engineers for comment, with responses received on 16 October 2008, 8 January 2009 and 17 March 2009. After two (2) amendments to the proposed modification, no objection is raised to the proposed development and the existing conditions of consent remain valid.

### *NSW Department of Water*

The site contains a watercourse and the original consent was Integrated development, with General Terms of Conditions applying the original approved development. After referral to the NSW Department of Water Energy, a response was received dated 5 September 2008, stating that the proposed modification constituted exempt development (controlled activity) under the provisions of the Water Management Act 2000. Therefore it can be assumed that no objection was raised to the proposed modification and the General Terms of Approval issued by the Department remain valid.

### *NSW Roads & Traffic Authority*

The application was referred to the NSW Roads & Traffic Authority on 21 April 2009, in accordance with Clause 30 / Schedule 10 of the Warringah LEP 2000. However, this Clause had been deleted (as effective from date in the Government Gazette) from WLEP 2000 on 12 December 2008. This referral was therefore sent in error and the NSW Roads & Traffic Authority were informed of this and advised that no response to the referral is required

## **CONCLUSION**

The site has been inspected and the application assessed having regard to the provisions of Section 96(1A) of the Environmental Planning and Assessment Act, 1979.

The proposed works have no adverse environmental impact and the modification is considered substantially the same development as that approved in consent DA2007/0474

It is considered that the proposed modification satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed. Accordingly, the proposal is recommended for approval.



Warringah Council

## RECOMMENDATION (SECTION 96 APPROVAL)

That the Modification application No.MOD2008/0230 to Development Application No: 2007/0474 Lot 8 DP 604034 (No.255) Condamine Street, MANLY VALE be approved subject to the following modifications as described below:

A. Condition No.1 to read as follows:

### Approved Plans And Supporting Documentation

The development is to be carried out in compliance with the following plans and documentation listed below and endorsed with Council's stamp, except where amended by other conditions of consent:

Drawing Number	Dated	Prepared By
Sheets 1 to 5 (hand drawn)	December 2008	Designer Group Pty Ltd
C1-3273 (Driveway Plan & Sections)		

The parking arrangements in plan no.C1-3273 are to be consistent with the "Revised Parking Layout" referred to Condition No.5

No construction works (including excavation) shall be undertaken prior to the release of the Construction Certificate.

Note: Further information on Construction Certificates can be obtained by contacting Council's Call Centre on 9942 2111, Council's website or at the Planning and Assessment Counter.

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

Signed

Date

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Nick England  
**Senior Development Assessment Officer**

Signed

Date

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Peter Robinson  
**Manager / Planning & Development Assessment**