

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/1145
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Responsible Officer:	Jordan Howard
Land to be developed (Address):	Lot 23 DP 819441, 238 Condamine Street MANLY VALE NSW 2093
Proposed Development:	Alterations to replace underground fuel storage tanks with associated site works
Zoning:	Warringah LEP2011 - Land zoned R3 Medium Density Residential
Development Permissible:	No
Existing Use Rights:	Yes
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Applicant:	Ampol Australia Petroleum Pty Ltd

Application Lodged:	29/08/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Industrial
Notified:	06/09/2024 to 20/09/2024
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 2,358,794.90
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PROPOSED DEVELOPMENT IN DETAIL

This Development Application seeks development consent for alterations to replace underground fuel storage tanks with associated site works. Specifically, the following works form part of the proposal:

- Removal of five (5) Underground Petroleum Storage System (UPSS) tanks;
- Installation of two (2) 60kL compartmentalised UPSS tanks;
- Installation of one (1) underground oil/water separator;
- Replacement of fuel dispensers, hoses, and pipework;
- Decommissioning and removing of the existing vent pipes to be replaced with new vent pipes;
- Resurfacing of the fuel forecourt, crossovers and hard stand areas post UPSS tank installation;
- Construction of an enclosed bin storage area, measuring 4.2m by 3m with a sloping roof with a maximum height of 2.7m, on a new concrete slab; and

- Other minor works.

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

Assessment - Concurrence - Roads and Maritime Service - SEPP (Transport and Infrastructure) 2021, s2.118

Warringah Local Environmental Plan 2011 - Zone R3 Medium Density Residential

Warringah Local Environmental Plan 2011 - 6.2 Earthworks

Warringah Development Control Plan - B7 Front Boundary Setbacks

Warringah Development Control Plan - B9 Rear Boundary Setbacks

Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting

SITE DESCRIPTION

Property Description:	Lot 23 DP 819441 , 238 Condamine Street MANLY VALE NSW 2093
Detailed Site Description:	<p>The site is located on the corner of Condamine Street and Koorala Street. It is legally described as Lot 23 in DP 819441, and is commonly known as 238 Condamine Street, Manly Vale NSW 2093. The site has a surveyed area of 1570sqm.</p> <p>The site is located within the R3 Medium Density Residential zone and currently contains a Ampol service station (with automotive service center), convenience store, and associated car parking. Surrounding land uses are predominately commercial in nature with residential housing located to the north and east. Access to the site is provided</p>

from Condamine Street via a one ingress driveway and a separate egress driveway.

The site largely comprises of paved areas, gravel areas and built form, with an area of vegetation located at the east of the site.

Map:



SITE HISTORY

The land has been used as a service station for an extended period of time. A search of Council's records has revealed the following relevant history:

Consent 78/89 for additions to the existing service station was granted on 28 April 1978.

Consent 90/185 was granted on 14 June 1990 for the installation of an underground storage tank in the existing petrol station.

Consent 3781DA was granted on 21 March 2000 for the erection of new and replacement signage.

Consent DA2021/1684 was granted on 5 November 2021 for Alterations and additions to an existing service station including signage. This involved replacing Caltex signage at the existing service station to reflect the rebranding of Caltex service stations to Ampol service stations Australia wide.

Applications DA2024/0996 and DA2024/1140, both submitted in 2024, were either returned due to insufficient information or canceled before being accepted by Council and did not proceed to assessment or determination.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact</p>

Section 4.15 Matters for Consideration	Comments
and economic impacts in the locality	The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

- Does the existing use satisfy the definition of "existing use" under the *Environmental Planning and Assessment Act 1979* (the 'Act')?

Section 4.65 of the Act defines an existing use as:

"(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for this Division, have the effect of prohibiting that use, and

(b) the use of a building, work or land:

- (i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
- (ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse."*

This necessarily requires the following questions to be answered:

1. Was the use of the building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for this Division, have the effect of prohibiting that use?

Comment:

Refer to the section of this report on Site History for an outline of Council records relating site history. There is evidence that the service station has been on site for an extended period of time, with Consent 78/89 granting development consent for additions to the existing service station on 28 April

1978, prior to the coming into force of Warringah Local Environmental Plan 2011 on 9 December 2011.

2. Was the use of the building, work or land granted development consent before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use?

Comment:

The use of the building, work or land was lawfully approved prior to the coming into force of Warringah Local Environmental Plan 2011 on 9 December 2011.

3. Has the use of the building, work or land been carried out within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse?

Comment:

Refer to the section of this report on Site History for an outline of Council records relating site history. Evidence in the form of prior development consents reveals that the use of the building, work or land was carried out within one year from the date on which the provision having the effect of prohibiting the use commenced. It is also noted that a recent development consent (DA2021/1684) found that the site benefited from existing use right during the assessment of that application (dated 5 November 2021), demonstrating the historical and ongoing use of the site as a service station.

- **What is “the land on which the existing use was carried out” for the purposes of cl 162-167 of the Environmental Planning and Assessment Regulation 2021 (“the Regulation”)?**

Meagher JA in *Steedman v Baulkham Hills Shire Council* [No. 1] (1991) 87 LGERA 26 stated (at 27) the rule to be applied as follows: “if the land is rightly regarded as a unit and it is found that part of its area was physically used for the purpose in question it follows that the land was used for that purpose”.

Comment:

Having regard to the above case law, it is noted that the whole of the area of the land was physically used for the purpose in question and therefore, it is considered that the land was used for that purpose and that existing use rights apply to the whole of the subject site.

- **What are the planning principles that should be adopted in dealing with an application to alter enlarge or rebuild and existing use?**

The judgement in *Fodor Investments v Hornsby Shire Council* (2005) NSWLEC 71, sets out the planning principles that should be applied in dealing with development applications seeking to carry out development on the basis of existing use rights. The principles of *Fodor Investments v Hornsby Shire Council* (2005) NSWLEC 71 however have been varied by more recent judgements of the Court to the extent described in *Saffioti v Kiama Municipal Council* [2019] NSWLEC 57 and *Made property Group Pty Ltd v North Sydney Council* [2020] NSWLEC 1332 in that the planning controls apply to the existing use provided they do not derogate, due to the planning controls within an EPI being 'incorporated provisions' and therefore matters for consideration as described within Clause 4.67 of

the Environmental Planning and Assessment Act, 1979.

The following four principles adopted by the NSW Land and Environment Court in this case will have general application in dealing with development applications that rely on existing use rights:

1. How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?

While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessments.

Comment:

Planning Principle 1 makes it clear that, whilst an existing use rights development cannot be assessed against numerical controls governing bulk and scale, such controls still need to be taken into account in order to gain an informed understanding of the future context of the character of surrounding development.

The judgement indicates that care must be taken in this assessment to avoid any de facto application of these standards and that failure to comply with these standards cannot be a consideration in the assessment. The focus of the assessment therefore, is to draw a comparison between the height, bulk, scale and density of the proposed development and the height, bulk, scale and intensity of existing development in the surrounding area and what is likely to occur in the vicinity in the future, based on the applicable planning controls.

Front Boundary Setbacks

Warringah Development Control Plan Clause B7 Front Boundary Setbacks establishes that development is to maintain a minimum setback from the front boundary of 6.5m. Furthermore, an exception is provided for corner allotments or sites with a double street frontage, where the minimum front building setback is 6.5m to both frontages, which allows the front setback to be reduced to 3.5m for the secondary frontage, provided the character of the street is considered. In this case, Condamine Street is taken as the primary frontage and Koorala Street is taken as the secondary frontage.

The proposed development includes some variations this control, including:

At the primary frontage:

- Proposed Petrol Pumps: 5m from the Condamine Street frontage.
- Proposed Underground Oil/Water Separator: 3m from the Condamine Street frontage.

At the secondary frontage:

- Proposed Underground Fuel Tanks: 3.5m from the Koorala Street frontage.
- Reinstalled Gas Cage: 1.7m from the Koorala Street frontage.

Despite these non-compliances, development consent should be granted for the following reasons:

- These built form controls are applicable to development intended within the R3 Medium Density Residential zone, whereas the service station is an existing use that requires a

particular built form and layout not envisioned by the controls.

- The proposal presents as expected for a service station adjoining a main road.
- Many non-compliant elements are existing and are proposed to be replaced or reinstated.
- The proposed works will not significantly alter the bulk and scale of the development.
- Non-compliances relate to underground elements and minor above ground elements.
- Sufficient openness and access is maintained along road frontages to the approval of Council's Traffic team and Transport for NSW (subject to conditions).

Landscaped Open Space and Bushland Setting

Warringah Development Control Plan Clause D1 Landscape Open Space and Bushland Setting requires that the total soft landscaped area shall total 40% (628sqm) of the site area. The proposal presents a 20.9% (327.5sqm) landscaped open space, representing a 47.9% (300.5sqm) non-compliance. The proposed landscaped open space area is as existing and remains unchanged.

Despite this non-compliance, development consent should be granted for the following reasons:

- These built form controls are applicable to development intended within the R3 Medium Density Residential zone, whereas the service station is an existing use that requires a particular built form and layout not envisioned by the controls.
- The proposal presents as expected for a service station adjoining a main road.
- The level of landscaped open space is unchanged by the proposal, with the non-compliance an existing site feature.

Conclusion

Whilst the proposal fails to satisfy the front boundary setback and landscaped open space requirement of the Warringah Development Control Plan, the proposed works will not significantly alter the bulk and scale of the development and the development will continue to present as as expected for a service station adjoining a main road. As such, Council considers the proposed development acceptable in relation to bulk and scale.

2. What is the relevance of the building in which the existing use takes place?

Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists. However, where the existing building is proposed for demolition, while its bulk is clearly an important consideration, there is no automatic entitlement to another building of the same floor space ratio, height or parking provision.

Comment:

No change of use or demolition and reconstruction of significant existing site buildings (i.e. the service center and shop) is proposed.

3. What are the impacts on adjoining land?

The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.

Comment:

The proposed works are not considered to result in adverse impacts on the adjoining land as a result

of proposed works.

4. What is the internal amenity?

Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.

Comment:

The site will maintain an acceptable level of internal amenity following the proposed works.

Conclusion

The use has been approved under a previous environmental planning instrument and, therefore, is a lawful use. Subsequently, the use can be retained under the current environmental planning instrument (Warringah Local Environmental Plan 2011).

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 06/09/2024 to 20/09/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Ms Natalie Bradey	92 / 8 Koorala Street MANLY VALE NSW 2093

The following issues were raised in the submission:

- Construction noise and limitation of constructions hours**

The submission commented on the potential for noisy construction works and requested that works be limited to between 7am to 5pm on Monday to Friday.

Comment:

An standard General Requirements condition of consent is included in the recommendations of this report. This condition includes the limitation of construction and material delivery to between the hours of 7am to 5pm on Monday to Friday, between the hours of 8am to 1pm on Saturday, and no works on Sunday and Public Holidays. There is also a limitation on demolition and excavation works to between 8am and 5pm on Monday to Friday only. These are Council's standard construction, delivery, demolition and excavation hours restrictions and are considered sufficient to ensure that works do not interfere with reasonable amenity

expectations of residents and the community, whilst allowing time for construction works to occur.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Contaminated Lands)	<p>General Comments</p> <p>The following works form part of the proposal: Removal of five (5) Underground Petroleum Storage System (UPSS) tanks; Installation of two (2) 60kL compartmentalised UPSS tanks; Installation of one (1) underground oil/water separator; Replacement of fuel dispensers, hoses, and pipework; Decommissioning and removing of the existing vent pipes to be replaced with new vent pipes; Resurfacing of the fuel forecourt, crossovers and hard stand areas post UPSS tank installation; Construction of an enclosed bin storage area, measuring 4.2m by 3m with a sloping roof with a maximum height of 2.7m, on a new concrete slab; and Other minor works</p> <p>Recommendation</p> <p>APPROVAL - subject to conditions</p>
Environmental Health (Industrial)	<p>General Comments</p> <p>The following works form part of the proposal: Removal of five (5) Underground Petroleum Storage System (UPSS) tanks; Installation of two (2) 60kL compartmentalised UPSS tanks; Installation of one (1) underground oil/water separator; Replacement of fuel dispensers, hoses, and pipework; Decommissioning and removing of the existing vent pipes to be replaced with new vent pipes; Resurfacing of the fuel forecourt, crossovers and hard stand areas post UPSS tank installation; Construction of an enclosed bin storage area, measuring 4.2m by 3m with a sloping roof with a maximum height of 2.7m, on a new concrete slab; and Other minor works</p> <p>Recommendation</p> <p>APPROVAL - subject to conditions</p>
NECC (Development Engineering)	<p>The proposal includes the removal and replacement of the existing fuel tanks and bowzers. There is no increase in impervious area and the stormwater from the new concrete pavement is proposed to be</p>

Internal Referral Body	Comments
	<p>treated prior to disposal. Connection of stormwater from the treatment device to the existing system is acceptable. The existing driveway crossings are to remain which is acceptable.</p> <p>Development Engineering support the proposal, subject to conditions as recommended.</p>
Traffic Engineer	<p>Proposal description: Alterations to replace underground fuel storage tanks with associated site works</p> <p>The proposal is for the following upgrade works at the service station located at 238 Condamine Street, Manly Vale.</p> <ul style="list-style-type: none"> • Removal of five (5) Underground Petroleum Storage System (UPSS) tanks; • Installation of two (2) 60kL compartmentalised UPSS tanks; • Installation of one (1) underground oil/water separator; • Replacement of fuel dispensers, hoses, and pipework; • Decommissioning and removing the existing vent pipes to be replaced with new vent pipes; • Resurfacing of the fuel forecourt, crossovers and hard stand areas post UPSS tank installation; • Construction of an enclosed bin storage area, measuring 4.2m by 3m with a sloping roof with a maximum height of 2.7m, on a new concrete slab; and • Other minor works. <p>The traffic team has reviewed the following documents:</p> <ul style="list-style-type: none"> • Plans (Master Set) – Drawing No. 22259, designed by TfA Project Group, dated 09/05/2024, and • Statement of Environmental Effects, Ref No. 630.031691.00005-L01-v2.0, prepared by SLR Consulting Australia, dated 21 August 2024. <p>Traffic notes/comments:</p> <ul style="list-style-type: none"> • It is noted that vehicular access, general circulation, and onsite parking will remain generally unchanged by the proposal, though they will be repaired and resealed upon completion of the work. Safe and efficient tanker tracking is proposed. • None of the proposed works are expected to alter the efficiency and safety of general vehicular access, parking, and onsite circulation. • According to the SEE, a Construction Management Plan (CMP) will be prepared and submitted to the Certifier for

Internal Referral Body	Comments
	<p>approval prior to the issuance of the Construction Certificate.</p> <ul style="list-style-type: none"> Section 3 of the SEE states that the proposal does not involve an expansion or intensification of the current use. It is not anticipated that the proposal will increase traffic during peak times, and therefore, it is expected to have no negative impact on the capacity and performance of the road network. <p>Conclusion</p> <p>Subject to conditions, the application can be supported on traffic grounds.</p>

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 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 who raised no objections, subject to conditions which have been included in the recommendation of this report.

Transport for NSW (TfNSW)

Section 2.119 - Development with frontage to classified road states:

The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—

(a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and

(b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—

(i) the design of the vehicular access to the land, or

(ii) the emission of smoke or dust from the development, or

(iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and

(c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.

Comment:

This Development Application required referral to Transport for NSW (TfNSW) for comment in accordance with Clause 2.119 of the State Environment Planning Policy (Transport and Infrastructure) 2021. Following a review of the submitted application, TfNSW raised no objections to the application, subject to conditions. Compliance with the referral response from TfNSW will be included as a condition of consent.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the consent authority to consider whether land is contaminated.

In response to the above requirements of Chapter 4, the applicant has submitted a Remediation Action Plan (dated 23 May 2024), prepared by Tetra Tech Coffey. This plan was informed by an Environmental Site Assessment, also undertaken by Tetra Tech Coffey (dated March 2024), which identified contamination on site, including petroleum hydrocarbon and asbestos.

Therefore, as there is a potential for contaminants to exist on the site, sub-section 4.6 (1)(b) and 7(1)

(c) of this chapter must be considered.

Sub-section 4.6(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, a Remediation Action Plan 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. In this regard, it 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 are included as conditions in the recommendation of this assessment.

Sub-section 4.6 (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"*.

Council's Contaminated Lands Officer has reviewed and supported the application, subject to conditions. It can therefore be 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 are included as conditions in the recommendation of this assessment.

Warringah Local Environmental Plan 2011

Is the development permissible?	No
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	11m	3.2m	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

Zone R3 Medium Density Residential

Proposed Use	Permitted or Prohibited
Service station	Prohibited

The proposal relies on existing use rights. See relevant heading within this assessment report for detailed discussion.

The underlying objectives of the R3 Medium Density Residential zone:

- *To provide for the housing needs of the community within a medium density residential environment.*

Comment:

Not applicable.

- *To provide a variety of housing types within a medium density residential environment.*

Comment:

Not applicable.

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

Comment:

The service station use provides for the day to day needs of residents by way of fuel, vehicle servicing and the sale of essential items.

- *To ensure that medium density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Comment:

The service station has existed on the site for several decades and therefore forms part of the streetscape character of the area. The proposal presents as expected for a service station adjoining a main road.

- *To ensure that medium density residential environments are of a high visual quality in their presentation to public streets and spaces.*

Comment:

The service station has existed on the site for several decades and therefore forms part of the streetscape character of the area. It serves the essential needs of residents and vehicles traveling along Condamine Street. The proposal presents as expected for a service station adjoining a main road.

It is considered that the development satisfies the objectives of the zone, where applicable in this circumstance.

6.2 Earthworks

The objectives of Clause 6.2 - 'Earthworks' require development:

(a) to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, and

(b) to allow earthworks of a minor nature without requiring separate development consent.

In this regard, before granting development consent for earthworks, Council must consider the following matters:

(a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality

Comment:

The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality.

(b) the effect of the proposed development on the likely future use or redevelopment of the land

Comment:

The proposal will not unreasonably limit the likely future use or redevelopment of the land.

(c) the quality of the fill or the soil to be excavated, or both

Comment:

The excavated material will be processed according to the Waste Management Plan and Remedial Action Plan for the development. Conditions of consent have been recommended by Council's Contaminated Lands Officer relating to disposal of soil and imported fill.

(d) the effect of the proposed development on the existing and likely amenity of adjoining properties

Comment:

The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Conditions have been included in the recommendation of this report to limit impacts during excavation/construction.

(e) the source of any fill material and the destination of any excavated material

Comment:

The excavated material will be processed according to the Waste Management Plan and Remedial Action Plan for the development. Conditions of consent have been recommended by Council's Contaminated Lands Officer relating to disposal of soil and imported fill.

(f) the likelihood of disturbing relics

Comment:

The site is not mapped as being a potential location of Aboriginal or other relics and has been disturbed for use as a service station for several decades.

(g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area

Comment:

The site is not located in the vicinity of any watercourse, drinking water catchment or environmentally sensitive areas.

Having regard to the above assessment, it is concluded that the proposed development is consistent

with the aims and objectives of WLEP 2011, WDCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies*
B2 Number of storeys	3	1	-	Yes
B3 Side Boundary Envelope	North: 4m	Inside envelope	-	Yes
	East: 4m	Inside envelope	-	Yes
B5 Side Boundary Setbacks	North: 0.9m	Existing Workshop/Shop: 4.4m Proposed Bin Store: 29.2m	- -	Yes Yes
	East: 0.9m	Existing Workshop/Shop: 16m Proposed Bin Store: 7.3m	- -	Yes Yes
B7 Front Boundary Setbacks	Primary: 6.5m (Condamine Street)	Existing Workshop/Shop: 12.4m Proposed Petrol Pumps: 5m Proposed Underground Oil/Water Separator: 3m	- N/A N/A	Yes Yes (existing use rights) Yes (existing use rights)
	Secondary: 3.5m (Koorala Street)	Existing Workshop/Shop: 14.2m Proposed Bin Store: 7m Proposed Underground Fuel Tanks: 3.5m Reinstalled Gas Cage: 1.7m	- - N/A N/A	Yes Yes Yes (existing use rights) Yes (existing use rights)
B9 Rear Boundary Setbacks	N/A - no rear setback for corner allotments	N/A	N/A	N/A
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (628sqm)	20.9% (327.5sqm)	N/A	Yes (existing use rights)

* A service station has been operating on the site for several decades and relies on existing use rights. The above controls are geared towards residential development and therefore do not strictly apply to the service station. Existing use rights development cannot be assessed against numerical controls governing bulk and scale, rather such controls are taken into account in order to gain an informed understanding of the site context and character of surrounding development. The bulk and scale of the proposed development has been assessed in the section of this report concerning Existing Use Rights, and overall that assessment has found the proposal to be supported.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B2 Number of Storeys	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	N/A	N/A
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
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
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B7 Front Boundary Setbacks

Warringah Development Control Plan Clause B7 Front Boundary Setbacks establishes that development is to maintain a minimum setback from the front boundary of 6.5m. Furthermore, an exception is provided for corner allotments or sites with a double street frontage, where the minimum

front building setback is 6.5m to both frontages, which allows the front setback to be reduced to 3.5m for the secondary frontage, provided the character of the street is considered. In this case, Condamine Street is taken as the primary frontage and Koorala Street is taken as the secondary frontage.

The proposed development includes some variations this control, including

At the primary frontage:

- Proposed Petrol Pumps: 5m from the Condamine Street frontage.
- Proposed Underground Oil/Water Separator: 3m from the Condamine Street frontage.

At the secondary frontage:

- Proposed Underground Fuel Tanks: 3.5m from the Koorala Street frontage.
- Reinstalled Gas Cage: 1.7m from the Koorala Street frontage.

Nonetheless, a service station has been operating on the site for several decades and this proposal relies on existing use rights. The controls within this Clause are geared towards residential development and therefore do not strictly apply to the service station. Existing use rights development cannot be assessed against numerical controls governing bulk and scale, rather such controls are taken into account in order to gain an informed understanding of the site context and character of surrounding development. The bulk and scale of the proposed development has been assessed in the section of this report concerning Existing Use Rights, and overall that assessment has found the proposal to be supported. As such, further merit assessment of this Clause is not required, in this instance.

It is also noted that the *TfNSW Guide to Traffic Generating Developments* specifies that "*petrol pumps must not be closer than 4 metres to the property alignment of any public street.*" The proposed replacement pumps remain in their existing locations, which maintain this minimum clearance to Condamine Street and Koorala Street frontages.

B9 Rear Boundary Setbacks

This subject site is a corner allotment where the rear setback control does not apply.

D1 Landscaped Open Space and Bushland Setting

Warringah Development Control Plan Clause D1 Landscape Open Space and Bushland Setting requires that the total soft landscaped area shall total 40% (628sqm) of the site area. The proposal presents a 20.9% (327.5sqm) landscaped open space. The proposed landscaped open space area is as existing and remains unchanged.

Nonetheless, a service station has been operating on the site for several decades and this proposal relies on existing use rights. The controls within this Clause are geared towards residential development and therefore do not strictly apply to the service station. Existing use rights development cannot be assessed against numerical controls governing bulk and scale, rather such controls are taken into account in order to gain an informed understanding of the site context and character of surrounding development. The bulk and scale of the proposed development has been assessed in the section of this report concerning Existing Use Rights, and overall that assessment has found the proposal to be supported. Furthermore, this feature of the subject site is existing and unchanged by the proposal. As such, further merit assessment of this Clause is not required, in this instance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$23,588 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,358,795.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2024/1145 for Alterations to replace underground fuel storage tanks with associated site works on land at Lot 23 DP 819441, 238 Condamine Street, MANLY VALE, subject to the conditions printed below:

Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
D03	C	Proposed Demolition Plan	TfA Project Group	9 May 2024
D04	D	Proposed Site Plan & Tanker Path	TfA Project Group	9 May 2024
D05	F	Conceptual Stormwater Management Plan	TfA Project Group	9 May 2024
D06	B	Proposed Erosion & Sediment Control Plan	TfA Project Group	9 May 2024
D07	C	Proposed Tank Excavation Cross-Section	TfA Project Group	9 May 2024
D08	C	Site Forecourt Run-Off Risk Zones	TfA Project Group	8 August 2024
D09	A	Proposed Bin Enclosure Plans & Elevations	TfA Project Group	27 August 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Remedial Action Plan	Final	Tetra Tech Coffey	23 May 2024
Waste Management Plan	-	SLR Consulting Australia	21 August 2024

Preliminary Risk Screening Report	0.1	SLR Consulting Australia	26 June 2024
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In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

2. **Compliance with Other Department, Authority or Service Requirements**

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	Undated
Transport for NSW (TfNSW)	TfNSW Referral Response	13 September 2024

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website www.northernbeaches.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

3. **Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifier for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative requirement.

4. **General Requirements**

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
 - 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 8.00 am to 1.00 pm inclusive on Saturday,
 - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) Construction certificate plans are to be in accordance with all finished levels identified on approved plans. Notes attached to plans indicating tolerances to levels are not approved.
- (c) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (d) At all times after the submission of the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (e) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (f) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (g) Prior to the release of the Construction Certificate, payment of the following is required:
 - i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
 - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
 - iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.
- (h) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (i) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (j) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (k) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (l) Prior to the commencement of any development onsite for:

- i) Building/s that are to be erected
- ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
- iii) Building/s that are to be demolished
- iv) For any work/s that is to be carried out
- v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

- (m) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (n) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (o) Should any construction cranes be utilised on site, they are to be fitted with bird deterrents along the counterweight to discourage raptor (bird) nesting activity. Deterrents are to remain in place until cranes are dismantled. Selection of deterrent methods is to be undertaken in accordance with the recommendations of a suitably qualified ecologist.
- (p) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

- (4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

5. Road Occupancy Licence (ROL) from Roads and Maritime Services

The developer shall apply for a Road Occupancy Licence (ROL) from the TfNSW Transport Management Centre (TMC) prior to commencing work within the classified road reserve or within 100m of traffic signals. The application will require a Traffic Management Plan (TMP) to be prepared by a person who is certified with 'Prepare a Work Zone Traffic Management' accreditation or equivalent. Should the TMP require a reduction of the speed limit, a Direction to Restrict will also be required from the TMC.

Reason: To inform the relevant Roads Authority of proposed disruption to traffic flows.

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$23,587.95 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$2,358,794.90.

The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council's website at Northern Beaches Council - Development Contributions.

Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.

7. Security Bond

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, and details demonstrating payment are to be submitted to the Certifier prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at www.northernbeaches.nsw.gov.au).

Reason: To ensure adequate protection of Council's infrastructure.

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

8. Stormwater Disposal

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent in accordance with AS/NZS 3500 and Council's Water Management for Development Policy, prepared by an appropriately qualified and practicing Civil or Hydraulic Engineer who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG), indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to the existing stormwater connection.

Details demonstrating compliance are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for disposal of stormwater management arising from the development.

9. Construction Traffic Management Plan

A Construction Traffic Management Plan (CTMP) and report shall be prepared by a Transport for NSW accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to issue of any Construction Certificate.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase.
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken.
- Make provision for all construction materials to be stored on site, at all times.
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period.
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed.
- Where access is required across private property not in the direct ownership of the proponent, such as a private road/driveway, community title road or right of way, the CTMP is to include:
 - Evidence of the legal right and terms to use the access route or provide owners consent from the owners/strata/community association.
 - Demonstrate that direct access from a public space/road is not viable for each stage of works.

- An assessment to be carried out of the physical constraints of the Right of Carriageway to determine the maximum size of vehicle that may access the site via the Right of Carriageway during construction.
- Unless owner/strata/community associations consent is obtained, vehicles are not to exceed 24 tonnes or 7.5 metres in length (an assessment must be undertaken that the surface is capable of supporting up to 24 tonnes, otherwise the weight limit should be reduced in the CTMP). If consent is obtained, a copy must be included in the CTMP.
- No construction vehicles, materials or plant are to be located or parked in the private road/driveway, community title road or right of way.
- How any disruption to other users of the private road/driveway, community title road or right of way will be minimised and all users kept informed of likely disruption where the access will be closed or blocked for any given time.
- If trees are located within or overhang the access route, a tree protection plan prepared by an Arborist with minimum AQF Level 5 in arboriculture demonstrating how any trees within the Right of Carriageway will be protected from damage by construction vehicles. Should any tree protection measures be required on private land in accordance with AS4970-2009 Protection of trees on development sites, owner's consent must be obtained.
- A Dilapidation report, including photographic surveys, of the private road/driveway/right of way must be included prior to any works commencing on the site. The report must detail the physical condition of the private road/driveway/right of way, and any other adjacent private property assets (including trees) or adjacent public property that may be adversely affected by vehicles servicing the development site to undertake works or activity during site works.
- A requirement for Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, to be submitted after the completion of works and prior to the Occupation certificate. The report must:
 - Compare the post-construction report with the pre-construction report,
 - Clearly identify any recent damage or change to the private road/driveway/right of way and whether or not it is likely to be the result of the development works,
 - Should any damage have occurred, identify remediation actions taken.
 - Be submitted to Council with the Occupation Certificate.
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site.
- Make provision for parking onsite. All Staff and Contractors are to use any basement parking once available.
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior.
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety.
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the

footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees.

- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site.
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site.
- Specify that the public roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council.
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent.
- Proposed protection for Council and adjoining properties.
- The location and operation of any on site crane.

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted.

A copy of the approved CTMP must be kept on-site at all times while work is being carried out.

The development is to be undertaken in accordance with the Construction Traffic Management Plan approved by Northern Beaches Council Traffic Team.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.

10. **Boundary Identification Survey**

A boundary identification survey, prepared by a Registered Surveyor, shall be provided in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of any Construction Certificate.

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

11. **Installation and Maintenance of Sediment Control**

Prior to any works commencing on site, including demolition, an erosion and sediment control

plan must be prepared by a suitably qualified person in accordance with the following documents and provided to the Principal Certifier:

1. Council's relevant development control plan,
2. The guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate' (the Blue Book) (as amended from time to time), and
3. The 'Do it Right On-Site, Soil and Water Management for the Construction Industry' (Southern Sydney Regional Organisation of Councils and the Natural Heritage Trust) (as amended from time to time).

Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To ensure no substance other than rainwater enters the stormwater system and waterways.

12. **Plans of Underground Petroleum Storage System Design & Construction**

Prior to any Construction Certificate (CC) being issued certification is to be provided from a duly qualified person (as defined under Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2019) that the design of the Underground Petroleum Storage System is compliant with relevant legislation and standards including the following:

- I The Protection of the Environment Operations Act 1997
- I Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2019
- I AS4897–2008: Design, installation and operation of underground petroleum storage systems

The certification by a duly qualified person is to be submitted to the satisfaction of the Principal Certifying Authority.

Prior to engagement proof of qualifications demonstrating that the persons engaged are a duly qualified are to be provided to the satisfaction of the Principal Certifying Authority.

Reason: To ensure compliance with legislation and environmental protection

13. **Compliance with Standards**

The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure the development is constructed in accordance with appropriate standards.

14. **Sydney Water "Tap In"**

The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifier demonstrating the works are in compliance with Sydney Water requirements.

Please refer to the website www.sydneywater.com.au for:

- “Tap in” details - see <http://www.sydneywater.com.au/tapin>
- Guidelines for Building Over/Adjacent to Sydney Water Assets.

Or telephone 13 000 TAP IN (1300 082 746).

Reason: To ensure compliance with the statutory requirements of Sydney Water.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

15. Work Zones and Permits

Prior to commencement of the associated works, the applicant shall obtain a Work Zone Permit where it is proposed to reserve an area of road pavement for the parking of vehicles associated with a construction site.

A separate application is required with a Traffic Management Plan for standing of construction vehicles in a trafficable lane and a Roads and Maritime Services Work Zone Permit shall be obtained for State Roads.

Reason: To ensure Work zones are monitored and installed correctly.

16. Demolition Traffic Management Plan

As a result of the site constraints, limited vehicle access and parking, a Demolition Traffic Management Plan (DTMP) shall be prepared by an suitably accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to commencing any demolition work.

Due to heavy traffic congestion throughout the area, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm.

The DTMP must:-

- Make provision for all construction materials to be stored on site, at all times.
- The DTMP is to be adhered to at all times during the project.
- Specify construction truck routes and truck rates. Nominated truck routes are to be distributed over the surrounding road network where possible.
- Provide for the movement of trucks to and from the site, and deliveries to the site. Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site is not permitted unless prior approval is granted by Council's Traffic Engineers.
- Specify that, due to the proximity of the site adjacent to ##### School, no heavy vehicle movements or construction activities effecting vehicle and pedestrian traffic are permitted in school zone hours (8:00am-9:30am and 2:30pm-4:00pm weekdays).
- Include a Traffic Control Plan prepared by an TfNSW accredited traffic controller for any activities involving the management of vehicle and pedestrian traffic.
- Specify that a minimum fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measures.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes, structures proposed on the footpath areas (hoardings, scaffolding or temporary shoring) and extent of tree protection zones around Council street trees.
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the DTMP must engage and

consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities. These communications must be documented and submitted to Council prior to work commencing on site.

- Specify spoil management process and facilities to be used on site.
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of demolition. At the direction of Council, the applicant is to undertake remedial treatments such as patching at no cost to Council.

The DTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and are to be paid at the time that the Demolition Traffic Management Plan is submitted.

Reason: This condition is to ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems. The DTMP is intended to minimise impact of construction activities on the surrounding community, in terms of vehicle traffic (including traffic flow and parking) and pedestrian amenity adjacent to the site.

DURING BUILDING WORK

17. Implementation of Demolition Traffic Management Plan

All works and demolition activities are to be undertaken in accordance with the approved Demolition Traffic Management Plan (DTMP). All controls in the DTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate TfNSW accreditation. Should the implementation or effectiveness of the DTMP be impacted by surrounding major development not encompassed in the approved DTMP, the DTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved DTMP is to be kept onsite at all times and made available to the accredited certifier or Council on request.

Reason: To ensure compliance and Council’s ability to modify the approved Construction Traffic Management Plan where it is deemed unsuitable during the course of the project.

18. Implementation of Construction Traffic Management Plan

All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate TfNSW accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to Council on request.

Reason: To ensure compliance of the developer/builder in adhering to the Construction Traffic Management procedures agreed and are held liable to the conditions of consent.

19. Ongoing Management

The applicant shall be responsible in ensuring that the road reserve remains in a serviceable state during the course of the demolition and building works.

Reason: To ensure public safety.

20. Removing, Handling and Disposing of Asbestos

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

21. Survey Certificate

A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all perimeter walls columns and or other structural elements, floor levels and the finished roof/ridge height are in accordance with the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier when the external structure of the building is complete.

Reason: To demonstrate the proposal complies with the approved plans.

22. Waste Management During Development

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

Details demonstrating compliance must be submitted to the Principal Certifier.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

23. Requirement to Notify about New Contamination Evidence

Any new information revealed during demolition works that has the potential to alter previous conclusions about site contamination or hazardous materials shall be immediately notified to the Council and the Principal Certifier.

Reason: To protect human health and the environment.

24. Imported Fill

Prior to the importation of any landfill material onto the site, a waste classification report is to be prepared in accordance with the NSW Environment Protection Authority Guidelines, the report shall state in an end statement that the fill material is suitable for the proposed use on the land.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the fill being imported to the site.

Reason: To ensure that imported fill is of an acceptable standard.

25. UPSS decommissioning requirement

Decommissioning and removal of underground storage tanks are to be supervised by a duly qualified person (as defined under Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2019) and in accordance with, but not limited to:

I Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2019.

I AS 1940:2017 The Storage and Handling of Flammable and Combustible Liquids.

I AS 4976-2008 The removal and disposal of underground petroleum storage tanks.

I SafeWork NSW requirements.

Reason: To ensure compliance with legislation and protection of human and environmental health.

26. Off-site Disposal of Contaminated Soil - Chain of Custody

'Chain of Custody' documentation including receipts shall be kept for the exportation of waste (fill and/or soil material) from the site.

Details demonstrating compliance are to be submitted to the Crown Certifier within seven (7) days of transport and made available to Council upon request.

Reason: For protection of environment.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

27. Stormwater Disposal

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified Civil Engineer.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development.

28. Validation for Remediation

Validation for Remediation

At the completion of remediation works a validation report is to be prepared by a suitably qualified and experienced environmental consultant specialising in land contamination and submitted to Council within 60 of completing remediation works.

The Validation Report must be prepared by an appropriately qualified and experienced environmental consultant in accordance with the requirements of the following:

I State Planning Policy (Resilience and Hazards) 2021;

I Contaminated Land Management Act 1997;

I Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2019; and

I Relevant NSW EPA guidelines including the NSW EPA Guidelines for Consultants reporting on contaminated Land: Contaminated land guidelines 2020

The report shall document the following:

1. The extent of validation sampling, and the results of the validation testing,

2. That the remediation and validation of the site has been undertaken in accordance with the approved Remedial Action Plan, prepared by Tetra Tech Coffey, Dated 23 May 2024 (reference: 754-SYDEN346453-R02 - AMPOL_22259_Manly Vale_RAP_Final).

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

Reason: Protection of the environment, SEPP compliance.

29. **Petrol Station Certification requirements**

Prior to the issue of an Occupation Certificate, documentation is to be submitted to the satisfaction of the Principal Certifier in relation the matters detailed as follows:

- a) That the fuel tanks have been installed in accordance with Australian Standard 1940. A copy of the Workcover NSW Dangerous Goods License must be provided.
- b) That the fuel pumping system of underground storage tanks has been installed with all relevant Codes including Australian Institute of Petroleum's Code of Practice for the Design, Installation and Operation of Underground Petroleum Storage Systems (CP22-1994).
- c) That any the LPG facility has been installed in accordance with the relevant Australian Standards including Australian/New Zealand Standard 1596 - The Storage and Handling of LP Gas.
- d) That fuel filling area shall be operated in accordance with all relevant Codes and Manuals including the Australian Institute of Petroleum's Code of Practice for the Design, Installation Operation of Underground Petroleum storage systems (CP22-1994).
- e) That delivery tankers shall be parked wholly within the site during unloading. Tankers shall enter and exit the site in a forward direction and tankers shall only remain on-site during unloading operations. All tanker deliveries shall only be made during the approved hours of operation outside peak usage periods.
- f) That any washing of vehicles/boats/trucks/buses etc is to be conducted in a car wash bay, which is roofed and bunded to exclude rainwater. All wastewater from car washing is to be discharged to the sewer under a Trade Waste Agreement from Sydney Water. Alternative water management and disposal options may be possible where water is recycled, minimised or re-used on the site. Any such alternative option is to comply with all relevant Standards.

The following Standards applied at the time of determination:

- Environment Protection Authority's Environment Protection Manual for Authorised Officers: Technical Section Small Business (Car Washing Waste)
- Environment Protection Authority's Environment Protection Manual for Authorised Officers - Technical Section Water (Bunding and Spill Management)

Details demonstrating compliance are to be submitted to the Principal Certifier.

Reason: To ensure that wastewater is disposed of in a manner that is not harmful to the environment.

30. **Waste Management Confirmation**

Prior to the issue of an Occupation Certificate, evidence / documentation must be submitted to the Principal Certifier that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

31. **Fuel-Filling Area**

The fuel filling area shall be operated in accordance with all relevant Codes and Manuals including the Australian Institute of Petroleum's Code of Practice for the Design, Installation Operation of Underground Petroleum storage systems (CP22-1994).

Reason: To provide for the correct disposal of liquid wastes.

32. **Tanker Delivery**

Delivery tankers shall be parked wholly within the site during unloading. Tankers shall enter and exit the site in a forward direction and tankers shall only remain on-site during unloading operations. All tanker deliveries shall only be made during the approved hours of operation outside peak usage periods.

Reason: To protect the amenity of the surrounding neighbourhood.

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

Signed



Jordan Howard, Planner

The application is determined on 05/11/2024, under the delegated authority of:



Rodney Piggott, Manager Development Assessments