

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2020/0598
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Responsible Officer:	David Auster
Land to be developed (Address):	Lot 1 DP 1001963, 638 Pittwater Road BROOKVALE NSW 2100
Proposed Development:	Modification of Development Consent DA2019/0239 granted for demolition works and construction of a mixed use development
Zoning:	Warringah LEP2011 - Land zoned B5 Business Development WLEP Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011
Development Permissible:	No
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Marval Property Pty Ltd S & A Apartments Pty Ltd RNSAL Property Enterprises Pty Ltd
Applicant:	BBF Town Planners

Application Lodged:	23/11/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Mixed
Notified:	02/12/2020 to 16/12/2020
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

Architectural plan modifications

The proposed modifications are summarised as follows:

Basement Level B3

- The provision of an additional car parking space increasing the total number of parking spaces at this level from 64 to 65.

Basement Level B2

- The provision of an additional car parking space increasing the total number of parking spaces at this level from 58 to 59.

Basement Level B1

- A reduction of 6 car parking space reducing the total number of parking spaces at this level from 35 to 28. These spaces are proposed to be used for a sprinkler control valve room, car parking exhaust plant room, additional fire stair and storage. A car park supply plant room and MSB & Comms Room are also provided to the east of Lift 3.

These carparking changes result in a reduction in overall approved parking spaces from 157 to 152.

Mezzanine Floor Plan

- The provision of mezzanine storage areas to each of the approved commercial spaces including those associated with the approved SOHO apartments.

Condition modifications

The application also seeks the modification of the following conditions:

Condition 1 – This condition is to be modified to reflect the modified plans.

Condition 82 – This condition needs to be modified to reflect the modified carparking numbers noting that this condition as imposed incorrectly referred to there being 86 residential spaces and a total of 159 car parking spaces where in fact there were only 84 resident spaces and a total of 157 car parking spaces depicted on the stamped approved Architectural plans. Accordingly, it is requested that the condition be modified to read as follows:

82. Allocation of Spaces

~~159~~ 152 car parking spaces shall be provided, made accessible, and maintained, at all times (unless they must be removed to comply with the condition requiring vehicle access to No. 640 Pittwater Road). The spaces shall be allocated as follows:

~~88~~ 87 - Residential (Including spaces for persons with a disability)

9 - Residential - Visitors (Including spaces for persons with a disability)

~~62~~ 56 - Commercial/retail including customer parking (Including spaces for persons with a disability)

Car-parking provided shall be used solely in conjunction with the uses contained within the development. Each car parking space allocated to a particular unit / tenancy shall be line marked and numbered or signposted to indicate the unit / tenancy to which it is allocated.

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

Condition 85 – This condition needs to be modified to reflect the modified number of surplus parking spaces. Accordingly, based on a required total quantum of 106 car spaces, it is requested that the condition be modified to read as follows:

85. Surplus Parking Spaces

The 46 53 surplus car parking spaces must not be allocated to any of the proposed apartments or retail tenancies.

They may be used for visitor/customer parking prior to any redevelopment of the site but must be available to be reallocated when an application for the redevelopment of the site is lodged (i.e. any application to add additional apartments).

Reason: To ensure the site is suitably developed in the future and adequate car parking is provided.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 2.5 Additional permitted uses for particular land
 Warringah Local Environmental Plan 2011 - Zone B5 Business Development
 Warringah Development Control Plan - C3 Parking Facilities

SITE DESCRIPTION

Property Description:	Lot 1 DP 1001963 , 638 Pittwater Road BROOKVALE NSW 2100
Detailed Site Description:	<p>The site is located on the eastern side of Pittwater Road, the northern side of Orchard Street and the western side of Charlton Lane.</p> <p>The site is "L" shaped and has an area of 2662sqm. The site has boundaries of 16.21m with Pittwater Road, 7.365m with the corner, 90.61m with Orchard Road, 40.235m with Charlton Lane, 39.655m with No. 642 Pittwater Road, and</p>

21.925m and 39.85m with No. 640 Pittwater Road.

Existing on the site is a two storey building. The front portion is currently used for retail purposes and the rear as a loading dock. There is one large tree, located on the southern boundary near the rear of the site. There is a line of trees to the east of the site as well as some on the corner of Pittwater Road and Orchard Road.

The surrounding development consists of industrial properties to the east and north, commercial properties to the west and the Brookvale bus depot to the south. Warringah Mall is located a few hundred metres to the south west.

Map:



SITE HISTORY

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

- **DA2019/0239** for demolition works and construction of a mixed use development, approved by the Council on 17 April 2020.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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 and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2019/0239, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(1A) - Other Modifications	Comments
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, and	<p>Yes</p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <ul style="list-style-type: none"> • The modifications sought do not materially change the approved development and generally comprise of a minor reconfiguration of the basement layout (without changing its footprint) and reducing the quantum of car parking spaces. The reduction in car parking spaces contributes to promoting alternative sustainable modes of transport in a well connected locale.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2019/0239 for the following reasons:</p> <ul style="list-style-type: none"> • The modifications do not alter the footprint of the approved development; • The modifications do not alter the approved envelope of the approved development; • The modification do not change the external appearance of the building; • The modifications do not change the approved use of the building; and • The modifications do not alter the quality of accommodation afforded to future occupants.
(c) it has notified the application in accordance with:	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation

Section 4.55(1A) - Other Modifications	Comments
(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 under section 72 that requires the notification or advertising of applications for modification of a development consent, and	2000, Warringah Local Environment Plan 2011 and Warringah Development Control Plan.
(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.	No submissions were received in relation to this application.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for commercial purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.

Section 4.15 'Matters for Consideration'	Comments
	<p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation was submitted with the original application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter has been addressed via a condition in the original consent.</p>
<p>Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</p>	<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 The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(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.</p>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered suitable for the proposed development.</p>
<p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>See discussion on “Notification & Submissions Received” in this report.</p>
<p>Section 4.15 (1) (e) – the public</p>	<p>No matters have arisen in this assessment that would justify the</p>

Section 4.15 'Matters for Consideration'	Comments
interest	refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 02/12/2020 to 16/12/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

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

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p><i>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</i></p>
Traffic Engineer	<p>The proposed modification results in a reduction in the total number of approved parking spaces from 157 to 152. Given the existing surplus in parking provision, the proposed parking reduction is supported by Transport team.</p> <p>The allocation of parking spaces to the proposed uses shall be in accordance the DCP requirements, is as follows:</p> <ul style="list-style-type: none"> • 56 spaces for the commercial tenancies spread across two floors (B1 & B2) • 9 spaces for visitors on level B2 • 87 spaces for the residential component of the development spread across two floors (B2 & B3)

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

Clause 7(1)(a) of SEPP 55 requires the consent authority to consider whether land is contaminated. There are existing conditions of consent to carry out a Phase 2 Site Investigation prior to construction of the development. The proposed mezzanine levels are wholly internal to the approved building, and will not have any impacts on the amount or location of excavation required. These conditions are not proposed for removal from the consent, and the proposal is considered acceptable in this regard.

SEPP 65 - Design Quality of Residential Apartment Development

The proposed mezzanine levels in the commercial units of the development are entirely internal, and will not have any significant impacts in relation to the requirements of SEPP 65. The areas where the mezzanines are proposed will have reduced floor to ceiling heights, but the areas covered are limited, and each commercial unit will still contain ample space with adequate floor to ceiling heights. The proposal is considered acceptable in relation to SEPP 65 considerations.

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

Development Standard	Requirement	Approved	Proposed	Complies
Height of Buildings:	11m	13.44m	No change	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.5 Additional permitted uses for particular land	Yes
4.3 Height of buildings	Yes

Detailed Assessment

2.5 Additional permitted uses for particular land

The original DA was approved subject to being an additional permitted use under Schedule 1 of the LEP. The additional permitted use for the site is as follows:

5 Use of certain land in the vicinity of Pittwater Road and Roger Street, Brookvale

(1) *This clause applies to land in the vicinity of Pittwater Road and Roger Street, Brookvale, shown as "Area 5" on the Additional Permitted Uses Map.*

(2) *Development for the following purposes is permitted with consent—*

(a) *office premises,*

(b) *retail premises,*

(c) *shop top housing.*

(3) *Consent must not be granted under this clause to development for the purposes of shop top housing unless the consent authority is satisfied that the development will not have a significant adverse impact on any adjoining land in Zone IN1 General Industrial.*

The proposed mezzanine levels will not alter the overall approved use of the development, and being entirely internal to the building, will not cause any new significant adverse impact on any adjoining land. The proposed modification is acceptable in this regard.

Zone B5 Business Development

The proposal is permissible as an additional permitted use under Schedule 1 of the LEP. See discussion under clause 2.5 of the LEP in this report.

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
B5 Side Boundary Setbacks	Northern boundaries - Merit Assessment	Nil	No change	Yes
B7 Front Boundary Setbacks	Front portion (Pittwater Road and Orchard Road) - consistent with adjacent buildings	Nil	No change	Yes (consistent with adjacent buildings)
	Rear portion (Orchard Road and Charlton Lane) - 4.5m	Orchard Road - Nil Charlton Lane - Basement - 6.0m Above ground levels - 6.0m	No change	Yes
B9 Rear Boundary Setbacks	Merit Assessment - the site does not have a rear boundary. This control does not apply.	N/A	N/A	N/A

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B6 Merit Assessment of Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B10 Merit assessment of rear boundary setbacks	N/A	N/A
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C8 Demolition and Construction	Yes	Yes
D2 Private Open Space	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
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

C3 Parking Facilities

The original application was approved with a surplus of 53 car spaces. These spaces are intended to cater for future development, should the site be rezoned or granted a height limit increase as part of any future Brookvale masterplan. As such, a condition of consent requires that the 53 surplus spaces not be allocated to any unit on site (commercial or residential), and must be utilised for visitor / customer parking until such future redevelopment may occur. No indications have been given of the extent of any such future development.

The proposed modifications relate to the provision of mezzanine levels in the commercial units. These mezzanine levels are noted on the plans as "store", and are intended for storage purposes. It is noted that they have a floor to ceiling heights of 2.1m to 2.205m. They are not therefore considered to add additional floor space, and do not alter the parking rates applicable to the development.

Given the surplus in parking approved for the development, the minor proposed reduction of 5 spaces is acceptable.

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 2019

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, 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 approval to Modification Application No. Mod2020/0598 for Modification of Development Consent DA2019/0239 granted for demolition works and construction of a mixed use development on land at Lot 1 DP 1001963,638 Pittwater Road, BROOKVALE, subject to the conditions printed below:

A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A02A Version S4.55	08.09.20	Barry Rush & Associates
A03A Version S4.55	08.09.20	Barry Rush & Associates
A04A Version S4.55	08.09.20	Barry Rush & Associates
A11A Version S4.55	08.09.20	Barry Rush & Associates
A19A Version S4.55	08.09.20	Barry Rush & Associates

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

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

B. Modify Condition 82 to read as follows:

82. Allocation of Spaces

152 car parking spaces shall be provided, made accessible, and maintained, at all times (unless they must be removed to comply with the condition requiring vehicle access to No. 640 Pittwater Road). The spaces shall be allocated as follows:

87 - Residential (Including spaces for persons with a disability)

9 - Residential - Visitors (Including spaces for persons with a disability)

56 - Commercial/retail including customer parking (Including spaces for persons with a disability)

Car-parking provided shall be used solely in conjunction with the uses contained within the development. Each car parking space allocated to a particular unit / tenancy shall be line marked and numbered or signposted to indicate the unit / tenancy to which it is allocated.

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

Reason: To ensure that adequate parking facilities to service the development are provided on site.

C. Modify Condition 85 to read as follows:

85. Surplus Parking Spaces

The 53 surplus car parking spaces must not be allocated to any of the proposed apartments or retail tenancies.

They may be used for visitor/customer parking prior to any redevelopment of the site but must be available to be reallocated when an application for the redevelopment of the site is lodged (i.e. any application to add additional apartments).

Reason: To ensure the site is suitably developed in the future and adequate car parking is provided.

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

Signed



David Auster, Planner

The application is determined on 24/02/2021, under the delegated authority of:



Anna Williams, Manager Development Assessments