

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2016/0095
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<b>Responsible Officer:</b>	Phil Lane
<b>Land to be developed (Address):</b>	Lot 1 SP 19670, 1 / 98 Old Pittwater Road BROOKVALE NSW 2100
<b>Proposed Development:</b>	Modification of Development Consent DA2015/0786 granted for Fit out and use of premises as a gym
<b>Zoning:</b>	LEP - Land zoned IN1 General Industrial
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Warringah Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Cecilia Pieruszka Frank Pieruszka
<b>Applicant:</b>	Connor Pettersson

<b>Application lodged:</b>	20/04/2016
<b>Application Type:</b>	Local
<b>State Reporting Category:</b>	Commercial/Retail/Office
<b>Notified:</b>	18/05/2016 to 02/06/2016
<b>Advertised:</b>	Not Advertised, in accordance with A.7 of WDCP
<b>Submissions:</b>	4
<b>Recommendation:</b>	Approval

### 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 all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (upto the time of determination) by the applicant, persons who have made submissions regarding the application and any advice provided by relevant Council / Government / Authority Officers on the proposal.

### SUMMARY OF ASSESSMENT ISSUES

# NORTHERN BEACHES COUNCIL

## Warringah Development Control Plan - C3 Parking Facilities

### SITE DESCRIPTION

<b>Property Description:</b>	Lot 1 SP 19670 , 1 / 98 Old Pittwater Road BROOKVALE NSW 2100
<b>Detailed Site Description:</b>	<p>The subject site consists of a general industrial, factory allotment located on the south-western corner of Old Pittwater Road and Clearview Place, Brookvale. The site is legally known as Lot 1 in SP 19670, No. 1/98 Old Pittwater Road, Brookvale.</p> <p>The site is irregular in shape with a frontage of approximately 100m along Old Pittwater Road and 126.4m along Clearview Place. The site has an area of 1175m<sup>2</sup>.</p> <p>The site is located within the IN1 General Industrial zone from WLEP 2011 and accommodates two, two storeys factory buildings with carparking at ground level.</p> <p>Surrounding development consists of similar buildings.</p> <p>The site falls slightly from the street at a slope of 3%.</p> <p>The site has trees in the frontage and the perimeter boundaries. There are no obvious threatened species.</p>

Map:



### SITE HISTORY

DA2015/0786 - Fit out and use of premises as a gym approved 6 November 2015

## PROPOSED DEVELOPMENT IN DETAIL

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment C.

## 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 DA2015/0786, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 96(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 96(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	<b>Yes</b> The modification, as proposed in this application, is considered to be of minimal environmental impact.
(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	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 DA2015/0786.
(c) it has notified the application in accordance with:  (i) the regulations, if the regulations so require, or	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Warringah Local Environment Plan 2011 and Warringah Development Control Plan.

# NORTHERN BEACHES COUNCIL

Section 96(1A) - Other Modifications	Comments
(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	
(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.	See discussion on "Public Exhibition" in this report.

## Section 79C Assessment

In accordance with Section 96(3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 79C(1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act, 1979, are:

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 79C (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 79C (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 79C (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No Additional information was requested.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has</p>

# NORTHERN BEACHES COUNCIL

Section 79C 'Matters for Consideration'	Comments
	<p>been addressed via a condition in the original consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p>
Section 79C (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) 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. (ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 79C (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” in this report.
Section 79C (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

Existing Use Rights are not applicable to this application.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and Warringah Development Control Plan.

As a result of the public exhibition process council is in receipt of 4 submission/s from:

Name:	Address:
Mrs Carole Middup	6 / 98 Old Pittwater Road BROOKVALE NSW 2100
Mr Robert Atkins	11 / 98 Old Pittwater Road BROOKVALE NSW 2100
Mrs Jan Cooch	2 / 98 Old Pittwater Road BROOKVALE NSW 2100

The following issues were raised in the submissions and each have been addressed below:



- Parking
- No objections

The matters raised within the submissions are addressed as follows:

- Parking

Comment: According to other tenants/owners there were initial "teething issues" with the operates of the gym and associated parking arrangements. It is also noted there were other persons parking within the complex who did not work there and/or utilising the services of this complex and/or units.

The Strata Plan has recently passed a by-law that now limits visitors parking to two hours only, which has also helped to resolve some of our previous parking problems. This includes signage and potential wheel clamping of vehicles that do not adhere to these by-laws.

Given the above it is considered that this issue is resolved.

- No objections

Comment: All submissions had no objections to the proposed modified hours and current operations of the gym.

## MEDIATION

## REFERRALS

Internal Referral Body	Comments
Traffic Engineer	The proposal is for change of use of a part of a warehouse floor area, unit 1 at 98 Old Pittwater Road, to an indoor recreation centre. Given consideration to the size of the proposed recreational centre with maximum capacity of 8 patrons, and availability of visitor parking spaces on site as indicated by the applicant, no objection is raised on the proposal on traffic grounds.

## 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)

Nil

## Warringah Local Environment Plan 2011

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

### Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
Land Use Table	Yes
Part 6 Additional Local Provisions	Yes
6.3 Flood planning	Yes
6.4 Development on sloping land	Yes

## Warringah Development Control Plan

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
Part A Introduction	Yes	Yes
A.5 Objectives	Yes	Yes
Part C Siting Factors	Yes	Yes
C3 Parking Facilities	Yes	Yes

### Detailed Assessment

## C3 Parking Facilities

### Description of non-compliance

The approved development uses part of the existing premises as a gym and maintains part of the use of the building as a warehouse. Car parking for the site as a whole must be considered.

Appendix 1 of the WDCP provides a car parking rate for a gymnasium of 4.5 spaces per 100m<sup>2</sup> GFA and warehouse of 1.3 spaces per 100 m<sup>2</sup> GFA (including up to 20% of floor area as office premises space component. Office premises component above 20% determined at office premises rate) for a warehouse use.

The premises (gym) has a total of 14 car spaces allocated to it.

## Merit consideration

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

- *To provide adequate off street carparking.*

### Comment:

The development provides the following on-site car parking:

Use	Appendix 1 Calculation	Required	Provided	Difference (+/-)
Gym	4.5 spaces per 100m <sup>2</sup> GFA	20 spaces (rounded up)	14 spaces in total	-6 spaces
Warehouse	1.3 spaces per 100 m2 GFA	7 spaces (rounded up)	24 visitors spaces	17 spaces
<b>Total</b>		27 spaces	38 spaces	11 spaces

Whilst the proposal is deficient by 6 spaces, the complex provides for a surplus of 11 spaces. Based on the hours of operation of the gym, the timed parking in the complex, the availability of public transport and the overall surplus the proposal is consistent with the objectives of the control.

As detailed above, the proposal provides adequate off street car parking in accordance with the requirements of this control and Appendix 1 of the WDCP.

## **POLICY CONTROLS**

### **Warringah Section 94A Development Contribution Plan**

Section 94 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 Modification Application No. Mod2016/0095 for Modification of Development Consent DA2015/0786 granted for Fit out and use of premises as a gym on land at Lot 1 SP 19670,1 / 98 Old Pittwater Road, BROOKVALE, subject to the conditions printed below:

### A. Modify Condition 9 - Hours of Operation to read as follows:

The hours of operation are to be restricted to:

- Monday to Friday 6.00 am to 8.30 pm
- Saturday 7.00 am to 11.00 am (inclusive).

Upon expiration of the permitted hours, all operations shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

Reason: Information to ensure that amenity of the surrounding locality is maintained. (DACPLG08)

I am aware of Warringah's Code of Conduct and, in signing this report, declare that I do not have a Conflict of Interest.

**Signed**

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**Phil Lane, Senior Development Planner**

The application is determined under the delegated authority of:

**Rodney Piggott, Development Assessment Manager**
















**ATTACHMENT A**

No notification plan recorded.

**ATTACHMENT B**

No notification map.

## ATTACHMENT C

Reference Number	Document	Date
 2016/155126	SEA Map Notification	27/08/2015
 MOD2016/0095	1/98 Old Pittwater Road BROOKVALE NSW 2100 - Section 96 Modifications - Section 96 (1a) Minor Environmental Impact	20/04/2016
 2016/122630	DA Acknowledgement Letter - Connor Pettersson	20/04/2016
 2016/130083	Modification Application Form	26/04/2016
 2016/130087	Applicant Details	26/04/2016
 2016/130088	Report - Statement of Environmental Effects	26/04/2016
 2016/149875	Clarification of Section 96 Application (1) or (1A)	13/05/2016
 2016/155283	Re: MOD2016/0095 - Unit 1 No. 98 Old Pittwater Road Brookvale	17/05/2016
 2016/155906	Notification Letter - 81 posted 18/05/2016	17/05/2016
 2016/164741	Online Submission - Pieruszka	25/05/2016
 2016/165873	Online Submission - Middup	26/05/2016
 2016/166725	Online Submission - Atkins	27/05/2016
 2016/166729	Online Submission - Atkins	27/05/2016
 2016/169925	Online Submission - Cooch	31/05/2016
 2016/174482	Traffic Engineer Referral Response	03/06/2016