

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

|                            |              |
|----------------------------|--------------|
| <b>Application Number:</b> | Mod2016/0060 |
|----------------------------|--------------|

|   |  |
|---|--|
| <b>Responsible Officer:</b>               | Alex Keller  |
| <b>Land to be developed (Address):</b>    | Lot 1 DP 1072972, 1 / 0 Warringah Road BEACON HILL NSW 2100                                    |
| <b>Proposed Development:</b>              | Modification of Development Consent 97/173 granted for a service station and convenience store |
| <b>Zoning:</b>                            | LEP - Land zoned R2 Low Density Residential  |
| <b>Development Permissible:</b>           | No   |
| <b>Existing Use Rights:</b>               | Yes  |
| <b>Consent Authority:</b>                 | Warringah Council  |
| <b>Land and Environment Court Action:</b> | No   |
| <b>Owner:</b>                             | Ampol Petroleum Ltd  |
| <b>Applicant:</b>                         | Caltex Australia Pty Ltd   |

|                                  |  |
|----------------------------------|--|
| <b>Application lodged:</b>       | 15/03/2016                                     |
| <b>Application Type:</b>         | Local  |
| <b>State Reporting Category:</b> | Other  |
| <b>Notified:</b>                 | 31/03/2016 to 18/04/2016                       |
| <b>Advertised:</b>               | Not Advertised, in accordance with A.7 of WDCP |
| <b>Submissions:</b>              | 1  |
| <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

Warringah Local Environmental Plan 2011 - Zone R2 Low Density Residential

## SITE DESCRIPTION

|                                   |   |
|-----------------------------------|---|
| <b>Property Description:</b>      | Lot 1 DP 1072972 , 1 / 0 Warringah Road BEACON HILL NSW 2100  |
| <b>Detailed Site Description:</b> | <p>The site is known as Lot 1 Warringah Road and is a triangular shape parcel of land having an area of 1088 square metres (sqm) with a width of 41.7 metres (m) and a depth of 41.8m. The service station land is bounded by Warringah Road to the south and Cornish Avenue to the north. Adjacent land to the east is developed for a McDonalds restaurant. The site has entry and exit driveways for both road frontages providing convenient single direction vehicle through access for refuelling. The main buildings on the site include the covered refuelling area and service centre ("Caltex shop") building. Ancillary areas of the site include customer parking, waste bin enclosure and landscaping. The service station is not used for mechanical repairs to vehicles. Currently the service station and ancillary convenience store operates from 5.30am to 12.30am, 7 days per week.</p> <p>Surrounding development consists of detached dwellings in a landscaped setting on opposite sides of the road, to the north and south. To the east is a "McDonalds" restaurant with drive through facility and car parking. Beacon Hill sports fields are located 75m to the east of the site on the opposite side of Willandra Road.</p> <p>The land is identified as being contaminated land and has frontage to a main road (MR328). The land is within landslip classification area "A" and is not subject to bushfire hazard. There are no significant trees or unique environmental features on the site.</p> |

Map:



## SITE HISTORY

**Development Consent No.59/124** provided for the construction of a service station, neighbourhood shops and car parking area. This consent also related to the adjoining neighbourhood shopping centre which have been subdivided from the subject property since. The adjoining shopping centre subsequently became the subject of consent for the re-development for a McDonald's Restaurant.

**Development Consent 79/92** dated 2 May 1979 provided for alterations to the existing service station. A further consent was issued in November 1986 for the erection of 2 pole signs within the existing service station. (Consent No. 86/483)

**Development Application No.DA1997/63** for the Refurbishment and upgrade of existing Service Station to include a Convenience Store (Consent No.97/173) was approved by Council on 27 June 1997.

**Consent No. 1999/1449** was for signage and exterior upgrade of the existing service station.

## PROPOSED DEVELOPMENT IN DETAIL

The proposed modification seeks to amend two (2) conditions of Consent.

Firstly, Condition No.4 of the consent to extend trading hours of the operation to 24 hours 7 days a week.

The conditions currently states:

*"4. The trading and / or operating hours of the services station and convenience store, or any part thereof, are to be confined to, 5.30am to 12.30am, 7 days. "*

Proposed Modified Condition:

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*" 4. The trading and / or operating hours of the service station and convenience store, or any part thereof, are permitted to occur 24 hours a day, 7 days per week."*

Secondly, the modification seeks to delete Condition No.6 to remove the requirement for a boom gate at the easternmost exit crossing on Cornish Road.

The conditions currently states:

*"6. The easternmost exit crossing in Cornish Road is to be closed to traffic between 10.00pm and 6.00am, 7 days by boomgate. Details to be provided with the Building Application. "*

It is requested that this condition be deleted.

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 A.

## 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 DA1997/63, 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><br>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 DA1997/63. |

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| Section 96(1A) - Other Modifications   | Comments   |
|--|--|
| <p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(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</p> | <p>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.</p> |
| <p>(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.</p>  | <p>See discussion on “Public Exhibition” in this report.</p>   |

## 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)(iiia) – 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</p> |

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| Section 79C 'Matters for Consideration'   | Comments  |
|---|---|
|   | <p>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 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 | <p>(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.</p> <p>(ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>  |
| Section 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   | Subject to conditions 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 106 of the Act defines an existing use as meaning:

*"(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 Division 4A of Part 3 or Division 4 of this Part, 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 a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part 4 of the Act, have the effect of prohibiting that use?

Comment:

The applicant has provided evidence in the form of development consent which reveals that the use of the building land commenced as a lawful purpose in 1959 or soon thereafter, under the Warringah Planning Scheme Ordinance. This was prior to the coming into force of Warringah Local Environmental Plan 2011 on 9 December 2011. Development Consent No.59/124 provided for the construction of a service station, shopping and car parking area, this consent also related to the adjoining neighbourhood shopping centre which has been subdivided from the subject property since (redeveloped for a McDonalds Restaurant).

2. Was the use of the building / work / 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 land was lawfully approved by Council in 1959 for a service station and a later consent issued for refurbishment of the service station was issued on 27 June 1997, prior to the coming into force of Warringah Local Environmental Plan 2011 on 9 December 2011.

3. Has the use of the building / work / 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:

The applicant has provided evidence in the form of development consent details which reveals that the use of the building / work / land was continued following refurbishment of the service station in 1997, which is prior to one year from the date on which the provision having the effect of prohibiting the use commenced.

- **What is "the land on which the existing use was carried out" for the purposes of cl 42(2)(b) of the Environmental Planning and Assessment Regulation 2000 ("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: "that 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 / was not 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 which should be applied in dealing with development applications seeking to carry out development on the basis of existing use rights.

The following four principles adopted by the 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:

No change to the physical buildings, structures or car parking is proposed. Therefore, the built form controls and considerations of bulk and scale are not applicable to the proposal.

## **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 physical works are proposed for the modification. However the intensity of use will change by the extension of operating hours allowing customers to use the service station 24 hours per day, 7 days per week. This raises the principal issue of potential noise disturbance associated with service station operations and customer activity. The site is currently restricted to operating hours of "5:30am to 12:30am, 7 days". The site is within a low density residential area and existing use rights are considered in the context of likely activity, noise, security, deliveries, customer vehicles, and whether the same level of activity during the day should be permitted throughout the night and early morning. In this case, conditions are recommended to restrict certain activities to ensure potential noise disturbance is minimised between 12:30am and 5:30am.

## **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 assessment has quantified potential operational emissions pertaining to customer generated noise, truck deliveries, including consumables/waste/fuel deliveries and mechanical plant. The results of the noise assessment by *Muller Acoustic Consulting* demonstrates that the LAeq(15min) operational noise emissions from the proposed extension of trading hours would satisfy relevant criteria at all assessed receivers. Noise modelling identified that customer noise emissions are predicted to satisfy the relevant sleep disturbance at all assessed receivers. Therefore, it is recommended the proposed modification to 24hr includes the following measures to reduce potential noise impacts to adjacent land, including the following :

- fuel and goods deliveries vehicles occur during day and evening periods (ie not at night);
- the tyre inflation point on site would not contain an audible alarm;
- the existing fences around the mechanical plant will be retained;
- use of the high flow diesel pump be turned off during the late evening and early morning period to reduce truck noise.

## **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:

No change to the internal site building is proposed however conditions are recommended to minimise amenity impacts including restricting tanker resupply, ensuring no audible noise alarm for the tyre inflation outlet, limiting the use of the high flow diesel outlet late at night and maintaining existing screen fences for plant equipment. The proposed changes to remove the boom gate have no adverse impact on surrounding land as this barrier gate has never been installed or used.

## **Conclusion**

The use has been approved under a previous EPI (Warringah LEP 1988 and Warringah Planning Scheme Ordinance) and therefore, is a lawful use. Subsequently, the use can be retained under the current EPI (WLEP 2011). The proposed modifications are considered to have minimal environmental or social impact and will not adversely impact on the amenity of surrounding residential development, subject to conditions.

## **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 1 submission/s from:

| Name:                 | Address:                               |
|-----------------------|--|
| Ms Penelope Gae Cross | 26 Willandra Road BEACON HILL NSW 2100 |

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

- Noise and deliveries
- Truck refuelling
- Convenience store
- Residential area

The matters raised within the submissions are addressed as follows:

- *Concern that the 24 hour operation will extend noise disturbance at night from customer activities including taxi's, waste bin use and delivery trucks.*

Comment:

The Caltex service station is on a busy main road and the site has been subject to a noise assessment by an expert noise consultant, *Muller Acoustic Consulting*, to address potential noise issues relating to 24 hour trading. Restrictions recommended include time limitations on delivery vehicles (resupply of shop items and fuel), ensuring no sound alarm on tyre inflation pump outlet and maintaining the solid fence enclosures around mechanical plant. These issues are addressed by conditions of consent for the modification and an additional requirement for the high flow diesel bowser to be switched off between 12:30pm and 5:30am is recommended to discourage heavy vehicles from using the site late at night or in the early morning. This is consistent with the existing hours of consent.

Subject to conditions this issue does not warrant refusal of the application.

- *Concern that truck refuelling activities will create noise from activity and reversing signals of those vehicles.*

Comment:

This issue is addressed by recommended modification to conditions to restrict the use of the high flow diesel bowser between 10pm and 6am as well as conditions to restrict re-supply times by petrol tankers to the site to prevent noise disturbance late and night or in the early morning period.

Subject to conditions this issue does not warrant refusal of the application.

- *Concern that the toilets and convenience store component will become a late night stop over for shopping including night shift workers.*

Comment:

The public access to the toilets and convenience store is managed by the service station attendant. The store entry does not open out toward the adjacent dwellings to the north or south and the customer service area within the shop is an enclosed room which will contain normal conversational noise. An external service window is not proposed for the cashier. The store component has a limited range of products and does not have an eating area, such as tables / chairs, that would encourage persons to congregate or stay to eat food purchased on the site. Therefore, the use of the toilets or convenience store late at night and in the early morning period is not considered to generate sufficient unreasonable noise to have an adverse effect on the surrounding residential amenity.

This issue does not warrant refusal of the application.

- *Concern that the site is within a residential area and the modification will have an adverse effect on the surrounding residential amenity.*

Comment:

The site is within an R2 Low Density Residential zone, however the service has 'existing

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use rights' and therefore the land use is permitted to remain or undertake development changes despite being a prohibited use. However, the site is subject to conditions of consent and these conditions include measures to ensure no unreasonable impact on the surrounding residential amenity. The Noise Assessment (NA) by *Muller Acoustic Consulting* has quantified potential operational emissions pertaining to customer generated noise, truck deliveries, including consumables/waste/fuel deliveries and mechanical plant. The results of the NA demonstrate that the LAeq(15min) operational noise emissions from the proposed extension of trading hours would satisfy relevant criteria at all assessed receivers. Noise modelling identified that customer noise emissions are predicted to satisfy the relevant sleep disturbance at all assessed receivers.

Subject to the existing and recommended modification conditions, this issue does not warrant refusal of the application.

## MEDIATION

No requests for mediation have been made in relation to this application.

## REFERRALS

| Internal Referral Body                    | Comments  |
|---|---|
| Environmental Investigations (Industrial) | Environmental Investigations has reviewed the modification and has no objections subject the proposal implementing the recommendations detailed in the acoustic report prepared by: <i>Muller Acoustic Consulting Pty Ltd</i> document No. MAC160221RP1 dated 18 February 2016. This is addressed by recommended conditions for the modification. |
| Traffic Engineer                          | There are no objections with regard to traffic and parking on the proposed modification to operating hours of the service station.  |

| External Referral Body | Comments  |
|------------------------|---|
| Ausgrid: (SEPP Infra.) | The proposed modification was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended. |

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

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

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

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

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

## SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used as a service station purposes for a significant period of time, since 1959 or soon thereafter. In this regard, it is considered that the site is contaminated and therefore, further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered in the context of the modification of the land use proposed.

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

Given the proposal is for a modification of consent to change hours of operation and delete a previous requirement for a boom-gate the modification does not proposed any works that will trigger the requirement to conduct a Phase 1 Investigation. Therefore, no Phase 2 Environmental Site Assessment is warranted in this case. Notwithstanding, Council is satisfied that the land can remain suitable for the purpose for which the development is to be continued for and any remediation works would be appropriate to be addressed with a major refurbishment or change of use of the site.

Clause 7(1)(c) stipulates that *"if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose"*.

The extent of any potential remediation of the site is uncertain due to the lack of a Phase 2 Environmental Site Assessment. Therefore, before any remediation of the site could be recommended and undertaken, a Phase 2 Environmental Site Assessment would be required in accordance with the SEPP and the Contaminated Lands Management Act 1997 to confirm the presence of contamination, what any such contamination may actually consist of and the precise locations and depths of any contamination. Council is satisfied that the land use conditions of consent can be modified for the purpose for which the development will continue to be carried out subject to conditions as recommended.

## SEPP (Infrastructure) 2007

### Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

### Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

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## Roads and Maritime Service (RMS)

Clause 104 and Schedule 3 of the SEPP requires that the following development(s) are referred to the RMS as Traffic Generating Development:

| <b>Purpose of Development</b>   | <b>Size or Capacity</b><br>(Site with access to any road) | <b>Size of Capacity</b><br>(Site with access to classified road or to a road that connects to classified road if access is within 90m of connection, measured along alignment of connecting road) |
|---|---|---|
| Service stations (including service stations which have retail outlets) | 200 or more motor vehicles                                | Any size or capacity  |

**Note:** Under Clause 104(2) of the SEPP, 'relevant size of capacity' is defined as meaning:

*"(2) (a) in relation to development on a site that has direct vehicular or pedestrian access to any road - the size or capacity specified opposite that development in Column 2 of the Table to Schedule 3, or*

*(b) in relation to development on a site that has direct vehicular or pedestrian access to a classified road or to a road that connects to a classified road where the access (measured along the alignment of the connecting road) is within 90m of the connection - the size or capacity specified opposite that development in Column 3 of the Table to Schedule 3."*

## Comment:

While the land use for a service station is identified as a purpose of development for referral to the Roads and Maritime Service the modification is not changing the existing access or proposing any building works (such as signage). The proposal only seeks to extend night time trading hours to enable 24 hour service and remove the requirement for a boom gate facing Cornish Avenue, since the boom gate was never installed. This will not create any unreasonable traffic generation issues for the surrounding street capacity. Therefore, no referral to the RMS is required and no other referral issues have arisen pursuant to the SEPP.

## **Warringah Local Environment 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

The modification only relates to an amendment to the hours of operation, therefore the Principle Development Standards are not applicable to the proposed modification.

## Compliance Assessment

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| Clause                               | Compliance with Requirements |
|--------------------------------------|------------------------------|
| Part 1 Preliminary                   | Yes                          |
| Land Use Table                       | Yes                          |
| 4.3 Height of buildings              | Yes                          |
| 5.3 Development near zone boundaries | Yes                          |
| 5.8 Conversion of fire alarms        | Yes                          |
| 6.4 Development on sloping land      | Yes                          |

## Detailed Assessment

### Zone R2 Low Density Residential

| Land use definition: WLEP 2011  | Permitted or Prohibited |
|---|-------------------------|
| <p><b>service station</b> means a building or place used for the sale by retail of fuels and lubricants for motor vehicles, whether or not the building or place is also used for any one or more of the following:</p> <p>(a) the ancillary sale by retail of spare parts and accessories for motor vehicles,</p> <p>(b) the cleaning of motor vehicles,</p> <p>(c) installation of accessories,</p> <p>(d) inspecting, repairing and servicing of motor vehicles (other than body building, panel beating, spray painting, or chassis restoration),</p> <p>(e) the ancillary retail selling or hiring of general merchandise or services or both.</p> | Prohibited              |

The underlying objectives of the R2 Low Density Residential zone:

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

#### Comment:

The site contains an existing approved service station. The adjoining land to the east is developed for a restaurant (McDonalds) and the remaining boundaries are defined by Warringah Road and Cornish Avenue. The modification does not propose any building works and subject to conditions will not create unreasonable noise impacts that would affect the housing needs of the community to ensure the ongoing use does not reduce the existing amenity of residential land in the vicinity of the site.

It is considered that the development satisfies this objective.

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

#### Comment:

The Service Station is located on a main road that carries significant traffic volumes each day servicing the population of the central area of the northern beaches region.

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Service Stations are common land uses for main roads and the site has convenient access due to the site being part of a land parcel (including the adjacent Lot) that is bounded on roadways on three sides. The supply of fuel is an essential service to meet the day to day needs of residents. Service stations also commonly include a small ancillary retail area stocked with a limited range of consumer items such as milk, bread, car products, newspapers, batteries, snack foods and the like to serve the convenience needs of residents.

It is considered that the development satisfies this objective.

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

## Comment:

The modification does not propose any ancillary site works. Therefore, the existing landscaping on the site will remain unchanged

It is considered that the development satisfies this objective.

## Warringah Development Control Plan

### Built Form Controls

The modification only relates to an amendment to the hours of operation, therefore the Principle Development Standards are not applicable to the proposed modification.

### Compliance Assessment

| Clause                              | Compliance with Requirements | Consistency Aims/Objectives |
|-------------------------------------|------------------------------|-----------------------------|
| Part A Introduction                 | Yes                          | Yes                         |
| A.5 Objectives                      | Yes                          | Yes                         |
| B1 Wall Heights                     | Yes                          | Yes                         |
| B3 Side Boundary Envelope           | Yes                          | Yes                         |
| B5 Side Boundary Setbacks           | Yes                          | Yes                         |
| B7 Front Boundary Setbacks          | Yes                          | Yes                         |
| C2 Traffic, Access and Safety       | Yes                          | Yes                         |
| C3 Parking Facilities               | Yes                          | Yes                         |
| C4 Stormwater                       | Yes                          | Yes                         |
| C8 Demolition and Construction      | Yes                          | Yes                         |
| C9 Waste Management                 | Yes                          | Yes                         |
| Non-Residential Development         | Yes                          | Yes                         |
| Part D Design                       | Yes                          | Yes                         |
| D3 Noise                            | Yes                          | Yes                         |
| E1 Private Property Tree Management | Yes                          | Yes                         |
| E4 Wildlife Corridors               | Yes                          | Yes                         |

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| Clause                                     | Compliance with Requirements | Consistency Aims/Objectives |
|--|------------------------------|-----------------------------|
| E6 Retaining unique environmental features | Yes                          | Yes                         |
| E10 Landslip Risk                          | Yes                          | Yes                         |

## Detailed Assessment

### **D3 Noise**

#### Merit consideration

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

- *To encourage innovative design solutions to improve the urban environment.*

#### Comment:

The proposal involves an extension to the existing hours of operation to permit 24 hour trading, 7 days per week. No physical changes to the service station is required. Subject to conditions to address certain activities that may generate noise disturbances from existing installation and refuelling activities the proposal is considered to satisfy this objective.

- *To ensure that noise emission does not unreasonably diminish the amenity of the area or result in noise intrusion which would be unreasonable for occupants, users or visitors.*

#### Comment:

The noise assessment by *Muller Acoustic Consulting* has quantified potential operational emissions pertaining to customer generated noise, truck deliveries, including consumables/waste/fuel deliveries and mechanical plant. The results of the NA demonstrate that the LAeq(15min) operational noise emissions from the proposed extension of trading hours would satisfy relevant criteria at all assessed receivers. Noise modelling identified that customer noise emissions are predicted to satisfy the relevant sleep disturbance at all assessed receivers surrounding the site.

Having regard to the above assessment, it is concluded that the proposed development, subject to conditions is consistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

## **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. Mod2016/0060 for Modification of Development Consent 97/173 granted for a service station and convenience store on land at Lot 1 DP 1072972,1 / 0 Warringah Road, BEACON HILL, 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) Relevant reports and documentations:

| <b>Reports / Documentation – All recommendations and requirements contained within:</b> |               |                            |
|---|---------------|----------------------------|
| <b>Report No. / Page No. / Section No.</b>  | <b>Dated</b>  | <b>Prepared By</b>         |
| Noise Assessment Report   | February 2016 | Muller Acoustic Consulting |

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. (DACPLB01)

### **B. Modify Condition No.4 to read as follows:**

#### 4. Trading Hours

The trading and / or operating hours of the service station and convenience store, or any part thereof, are permitted to occur 24 hours a day, 7 days per week.

Reason: Land use management.

#### C. Add Condition No.4A "Operational Management" to read as follows:

##### 4A. Operational Management

The following operational management measures are to be set in place for the site:

- i) Fuel and goods deliveries for resupply are limited to the hours of 6am to 8pm, 7 days per week.
- ii) The tyre inflation point is not to use an audible alarm.
- iii) The solid acoustic fences around the mechanical plant are to be retained, and access gates to plant / waste enclosures kept closed at night.
- iv) High-flow diesel bowser is to be made unavailable for truck refuelling between 12:30am and 5:30am, 7 days per week.

Reason: To ensure minimal noise disturbance from operational activities affecting surrounding dwellings.

#### D. Delete Condition No.6 (Boomgate to Cornish Road) to read as follows:

##### 6. [Deleted]

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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**Alex Keller, Senior Development Planner**

The application is determined under the delegated authority of:

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**Rodney Piggott, Development Assessment Manager**

## ATTACHMENT A















No notification plan recorded.

## ATTACHMENT B

|   | <b>Notification Document</b> | <b>Title</b>     | <b>Date</b> |
|---|------------------------------|------------------|-------------|
|  | 2016/101548                  | Notification Map | 31/03/2016  |

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## ATTACHMENT C

| Reference Number  | Document   | Date       |
|---|--|------------|
|  2016/083600   | Report - Noise Assessment  | 04/03/2016 |
|  MOD2016/0060  | Lot 1/ Warringah Road BEACON HILL NSW 2100 -<br>Section 96 Modifications - Section 96 (1a) Minor<br>Environmental Impact         | 15/03/2016 |
|  2016/080153   | DA Acknowledgement Letter - Caltex Australia Pty Ltd   | 15/03/2016 |
|  2016/083608   | Consent 97/173   | 17/03/2016 |
|  2016/083584   | Modification Application Form  | 17/03/2016 |
|  2016/083587   | Applicant Details  | 17/03/2016 |
|  2016/083590   | Report Statement of Environmental Effects  | 17/03/2016 |
|  2016/088200   | Environmental Investigations (Industrial) -<br>Assessment Referral - Mod2016/0060 - 1 / 0<br>Warringah Road BEACON HILL NSW 2100 | 21/03/2016 |
|  2016/087926   | File Cover   | 21/03/2016 |
|  2016/101347   | Traffic Engineer Referral Response   | 31/03/2016 |
|  2016/101519  | Notification Letters - 44 - Mod  | 31/03/2016 |
|  2016/101548 | Notification Map   | 31/03/2016 |
|  2016/107708 | General Query - Submission - Cross   | 06/04/2016 |
|  2016/125827 | Environmental Investigations Referral Response -<br>industrial use   | 20/04/2016 |