



101-105 Old Pittwater Road, Brookvale

Section 4.55 Planning Statement

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101-105 OLD PITTWATER ROAD, BROOKVALE

Minor amendments to approved mixed-use self
storage and industrial development

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Prepared under instructions from
Hannas Group

by

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INTRODUCTION

This submission has been prepared as supporting documentation for an application made pursuant to Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* to modify the consent for Development Application DA2022/0717 for Demolition works and construction of a mixed use development comprising self-storage units and industrial units including lot consolidation at 101-105 Old Pittwater Road, Brookvale.

The application seeks approval for some minor changes to the approved development including a reduction in the amount of excavation by reducing the floor to ceiling heights in the basement and ground floor levels and lifting the basement slab up 1.62 metres and the ground floor slab up 0.62 metres.

The proposed amendments are supported by the following amended documentation:

Document	Author
Revised Architectural Package	Rothelowman
Revised Civil and Stormwater Plans	Henry & Hymas Consulting Engineers
Traffic Consultant Statement	CBRK

This Statement has been prepared pursuant to Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979*. The Statement provides an assessment of the amended proposal having regard to the relevant legislative context, social economic and environmental impacts, potential amenity impacts of the development on the surrounding locality and the measures proposed within the application to mitigate such impacts.

The Statement details the amended proposal against applicable environmental planning instruments and development control plans including:

- Warringah Local Environmental Plan 2011
- Warringah Development Control Plan 2011

Having regard to the applicable legislative framework, the proposed amendments to the approved development are minor, and such that the development retains the same fundamental characteristics and is therefore substantially the same development. The amended development remains consistent with the aims and objectives of the relevant environmental planning instruments and development control plan whilst improving compatibility with the emerging character of the locality.

The proposed modifications are contained internally within the building, are of minor environmental impact, and do not result in any adverse impact and accordingly approval is warranted.

SITE DESCRIPTION AND LOCATION

2.1 Site Description

The site is legally described as Lot 1 in DP 1284167 and is officially identified as 101-105 Old Pittwater Road, Brookvale. An aerial view of the site and surrounds is provided at Figure 1.



Figure 1:

Aerial View of the site (Source: Six Maps, Department of Lands 2023)

The site is a regular shaped allotment with an area of 4,211 square metres. The site has a 39.441 metre frontage to Old Pittwater Road, a northern boundary of 100.17 metres, a southern boundary of 100.88 metres and an eastern boundary of 42.05 metres.

The topography of the site is characterised by a gradual fall from the western boundary (front) to the eastern boundary (rear).

There are two Brush Box street trees in the road reserve of Lot 1 DP 402645 (99 Old Pittwater Road). The site does not support any significant trees or vegetation.

The site is currently improved by a single storey, metal industrial building on Lot 1 DP402645. This building has a 3.5-5 metre setback to old Pittwater Road and occupies the majority of the lot. Lots 2 and 4 are improved by single storey industrial building which has a 3.5-5 metre setback to Old Pittwater Road and extends the length of the site. The majority of Lot 3 is improved by a single storey metal warehouse building.

A shared, central driveway provides vehicular access to the four allotments.

Photograph 1:

Site viewed from Old Pittwater Road (looking north-east)



Photograph 2:

99 Old Pittwater Road (part of the development known as 101-105 Old Pittwater Road)

Photograph 3:

101 Old Pittwater Road (also known as 105 Old Pittwater Road)





Photograph 4:

View along the central
driveway (between 99
and 101 Old Pittwater
Road)

2.2 Surrounding Development

The site adjoins 97 Old Pittwater Road to the north. This property is improved by a three-storey mixed use development which includes a childcare centre with frontage to Old Pittwater Road, self-storage units within the basement and light industrial units on levels one and two. The development was approved under DA2014/1360 on 28 May 2015. A variation to the height of buildings standard of up to 2.391 metres was granted for the development.

To the south the site adjoins 107 Old Pittwater Road. This property is improved by a single storey development with food and drink promises and commercial premises facing Old Pittwater Road and industrial floorspace located to the rear of the building. A driveway is proposed along the northern boundary of the property which provides access to the rear of the site.

Lot 3 and part of Lot 4 in DP 402645 adjoin 75 Old Pittwater Road to the east. This property is a large property used by a manufacturing company.

The remainder of Lot 4 in DP402645 adjoins 145 Old Pittwater Road which is improved by Warringah Mall.

120 Old Pittwater Road is located opposite the site. This property is improved by an industrial building.

BACKGROUND

3.1 Development Application DA2022/0717

On 1 February 2022, consent was granted to Development Application DA2022/0717 for Demolition works and construction of a mixed use development comprising self-storage units and industrial units including lot consolidation at 101-105 Old Pittwater Road, Brookvale.



Figure 3:

CGI of approved development

PROPOSED MODIFICATIONS

4.1 Proposed Development

The subject application seeks consent for the following primary modifications to the approved development:

- A reduction in the amount of excavation by reducing the floor to ceiling heights in the basement and ground floor levels and lifting the basement slab up 1.62 metres and the ground floor slab up 0.62 metres. No change to the Level 1 slab level.
- The double stacked fire services in the basement are removed and fire egress made more efficient.
- The internal layout of Unit 1 has been slightly reconfigured on the ground floor, whilst the mezzanine has been slightly increased in size.
- Unit 9 has been reduced in size on the ground floor and internally reconfigured to introduce a setback from the rear boundary, whilst the mezzanine has also been reconfigured and slightly increased in size.
- Minor changes to car parking configuration at the ground level adjacent to Unit 1 and 16.
- Unit 27 has been reconfigured and is slightly larger in size as a result of minor changes to nearby lobby.
- The awning for warehouses on Level 1 have been made wider to provide all weather protection to unit entry doors
- Minor changes to the car parking configuration on Level 1 adjacent to Unit 27.

The proposed amendments have resulted in a minor reduction in the approved Gross Floor Area from 5,730.7 square metres to 5,625.6 square metres.

4.2 Amended Conditions

4.2.1 Condition No. 1

Condition No. 1 includes the approved architectural plans and engineering plans, and will need to be updated to reflect the amended architectural plans and engineering plans which form part of this S4.55 application.

5.1 Environmental Planning and Assessment Act 1979

5.1.1 Section 4.55

Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 empowers Council to modify a development consent, as follows:

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

(c) it has notified the application in accordance with:

(i) the regulations, if the regulations so require, or

(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be..

In accordance with section 4.55(1A)(a) the proposed modifications are considered to result in only a minor environmental impact for the following reasons:

- The proposed amendments are relatively minor and do not result in any change whatsoever to the intensity of the use.
- The amendments do not result in any meaningful change in relation to the functionality of the approved development which are of any planning consequence.
- The nature of the amendments does not generate any issues which require any further detailed analysis and can only be described as of minor environmental impact.

For these reasons the amendment is considered to be of minimal environmental impact and can therefore be considered under section 4.55(1A) of the Environmental Planning and Assessment Act 1979 (EP&A Act).

In the consideration of the issue of whether or not the amended proposal is 'substantially the same development', the Land & Environment Court case of *Moto Projects (No 2) Pty Ltd v North Sydney Council* [1999] 106 LGERA 298 establishes a number of tests which are of assistance. In the circumstance of the subject development consent, the amendments do not alter the description of the approved development or change or remove the quantum and general arrangement of the approved

use, and do not affect the correct characterisation of the amended proposal as being *substantially* the same as that which has already been approved, for the following reasons:

- The proposed amendments do not radically transform the original proposal (Test 1)
- The proposed amended development is essentially and materially the same development as the development for which consent was originally granted (Test 2)
- The way in which the development is to be carried out is essentially and materially the same (Test 3)
- There is no aspect of the approved development which was important, material or essential to the development when it was approved which is proposed to be removed or substantially altered. (Test 4)

In conclusion, having regard to the guidance provided by the relevant case law, the proposed Section 4.55(1A) modification application to the approved consent satisfies the “substantially the same development test” pursuant to Section 4.55(1A).

5.2 Environmental Planning Instruments

In accordance with Section 4.55(3) of the Environmental Planning and Assessment Act 1979 in determining an application for modification of a consent under this section, 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 provisions of relevant environmental planning instruments and development control plans are relevant matters for consideration under Section 4.15(1) and are addressed below.

5.2.1 Warringah Local Environmental Plan 2011

Zoning and Permissibility

The site is located within the IN1 General Industrial zone pursuant to the Warringah Local Environmental Plan 2011 (WLEP 2011).

The approved development is permissible in the zone with consent and the proposed amendments do not alter the approved uses.

Height

In accordance with clause 4.3(2) ‘Height of Buildings’ of the WLEP 2011 the height of a building on any land is not to exceed the maximum height shown for the land on the ‘Height of Buildings Map’. A height of 11 metres is shown for the site on the height of buildings map.

The approved development resulted in a minor breach to the 11 metres height control of up to 2.27 metres or 20.63%.

However, the proposed amendments do not result in any change to the previously approved overall height of the development, noting that the Level 1 slab level and all roof levels remain unchanged.

Earthworks

The proposed amendments result in a reduction to the amount of excavation on the site of 1.62 metres which is considered a positive outcome as it reduces the impacts associated with the approved excavation on the site.

5.3 Warringah Development Control Plan

The provisions of the Warringah Development Control Plan (WDCP) which are relevant to the proposed modifications are addressed below.

Control	Comment
C3 Parking Facilities	The revised car parking layouts remain in accordance with the relevant Australian Standards.
C4 Stormwater	The approved stormwater plans prepared by Henry & Hymas have been amended to reflect the proposed change in levels.

The minor nature of the proposed amendments is such that they do not raise any further issues for consideration against the relevant provisions of the Warringah DCP beyond those considered in the assessment of the original application.

CONCLUSION

This submission has been prepared as supporting documentation for an application made pursuant to Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* to modify the consent for Development Application DA2022/0717 for Demolition works and construction of a mixed use development comprising self-storage units and industrial units including lot consolidation at 101-105 Old Pittwater Road, Brookvale.

The application seeks approval for some minor changes to the approved development including a reduction in the amount of excavation by reducing the floor to ceiling heights in the basement and ground floor levels and lifting the basement slab up 1.62 metres and the ground floor slab up 0.62 metres.

The proposal amendments are particularly minor and of minimal environmental impact in that the amended proposal retains the fundamental components of the approved layout and spatial characteristics of the development.

As detailed in this submission the proposed modifications may be made by the consent authority in accordance with Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* as the proposed amendments do not radically transform the proposal or alter the overarching fundamental characteristics of the original approval, and so the amended proposal is appropriately categorised as being “substantially the same” as the approved development.

The proposed amendments remain consistent with the aims and objectives of the relevant environmental planning instruments and development control plan and will not result in any adverse impacts. Accordingly, the proposed amendments are considered acceptable and warrant approval.