

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/1837
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Responsible Officer:	Georgia Quinn
Land to be developed (Address):	Lot 1 SP 19670, 1 / 98 Old Pittwater Road BROOKVALE NSW 2100
Proposed Development:	Strata Subdivision
Zoning:	Warringah LEP2011 - Land zoned IN1 General Industrial
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Cecilia Pieruszka Frank Pieruszka
Applicant:	BBF Town Planners

Application lodged:	16/11/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Subdivision only
Notified:	05/12/2018 to 11/01/2019
Advertised:	Not Advertised
Submissions Received:	0
Recommendation:	Refusal

Estimated Cost of Works:	\$ 0.00
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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 Development Control Plan - C3 Parking Facilities

SITE DESCRIPTION

Property Description:	Lot 1 SP 19670 , 1 / 98 Old Pittwater Road BROOKVALE NSW 2100
Detailed Site Description:	<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 1175m².</p> <p>The site is located within the IN1 General Industrial zone from WLEP 2011 and accomodates 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 perimeter boundaries. There are no obvious threatened species.</p> <p>Owners Consent Requirement</p> <p>Owners consent for Strata Properties is to include the Owners Corporation seal and minutes of an extraordinary/annual meeting stating the Owners Corporation support the lodgement of a Development Application with Council. No such documentation has been provided with this application, therefore the application is recommended for refusal.</p>

Map:



SITE HISTORY

Background of Site:

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

Development Application DA2014/1095

This development application for the change of use of a premises as a warehouse and distribution centre was approved under delegation on 18 November 2014.

Development Application DA2015/0786

This development application for the fit out and use of a premises as a gym was approved under delegation on 6 November 2015.

Modification Application Mod2016/0095

This application for modification of development consent DA2015/0786 was approved under delegation on 5 July 2016.

Development Application DA2018/0905

This development application for the strata subdivision of one (1) Lot into two (2) Lots was lodged with Council 30 May 2018.

Following a preliminary assessment of the application, Council wrote to the applicant outlining a fundamental issue that would not allow Council to support the application in its current form. No Owners Corporation consent including the Stamp and minutes from a general meeting were provided.

The applicant subsequently withdrew the application on 21 June 2018.

Background of Application:

On 16 November 2018, Development Application DA2018/1837 was lodged with Council.

On 13 March 2019, Council wrote to the applicant to advise of insufficient information, and requested additional information be provided. Specifically, the letter identified that no Owners Corporation consent was provided and if such documentation was not provided within the allocated time frame, Council would request the withdrawal of the application.

Ongoing correspondence with the applicant was had between the dates of 13 March and 22 May 2019, however no Owners Corporation consent was provided.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for the subdivision of one (1) lot of an existing strata plan into two (2) lots.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
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)	<p><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 of consent.</p> <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 clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&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&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000</p>

Section 4.15 Matters for Consideration'	Comments
	<p>requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 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 of 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 clause is not relevant to this application.</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>(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>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

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 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 Safety Department. There are no objections to approval of the development subject to inclusion of 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 Standards. Issues such as this however may be determined at Construction Certificate Stage.</i></p> <p>Compliance with Relevant Legislation</p> <p>Prior to the issue of the Strata Plan of Subdivision (including any Stratum), all relevant matters must be satisfied to the satisfaction of the Certifying Authority, and evidence must be provided that the development complies with clause 17 Strata Schemes Development Regulation 2016 and the relevant Strata Schemes Development Act 2015.</p> <p>Reason: To ensure compliance with the Consent issued, compliance with relevant legislation requires that adequate provision is made, where required for fire safety, occupant safety, egress, access and other facilities in the premises for building occupants.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	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.

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 for commercial purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the commercial land use.

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.

Warringah Local Environmental 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

Principal Development Standards

N/A - no physical works involved.

Further, the minimum subdivision lot size Control is not applicable to this application, in accordance with Clause 4.1 (ie. the minimum subdivision lot size does not apply to the subdivision of individual lots in a strata plan).

Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision - consent requirements	Yes
4.1 Minimum subdivision lot size	Yes

Detailed Assessment

Warringah Development Control Plan

Built Form Controls

N/A - no physical works involved.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.7 Exhibition, Advertisement and Notification of Applications	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	No	Yes
D3 Noise	Yes	Yes
D8 Privacy	Yes	Yes
D18 Accessibility	Yes	Yes
D20 Safety and Security	Yes	Yes

Detailed Assessment

C3 Parking Facilities

Description of non-compliance

The proposal indicates that the existing parking provisions are to be split evenly between the two (2) allotments, ie. 7 spaces per lot.

Appendix 1 of the WDCP provides a car parking rate for a gymnasium as 4.5 spaces per 100m² GFA and 1.3 spaces per 100m² 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 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 (+/-)
Gymnasium	4.5 spaces per 100m ² GFA	20 spaces (rounded up)	7 spaces	-13 spaces
Warehouse	1.3 spaces per 100m ² GFA	7 spaces (rounded up)	7 spaces	nil
Total		27 spaces	14 spaces	

As detailed above, the proposal does not provide adequate off street car parking in accordance with the requirements of this Control and Appendix 1 of the WDCP.

However, the above mentioned on-site car parking provisions have been previously reviewed (as part of DA2015/0786) by Council's Traffic Engineer who raised no objection. As such, the off street parking provision was approved under DA2015/0786 and as this application proposes no physical change, it is considered this existing arrangement satisfactorily achieves this objective.

- *To site and design parking facilities (including garages) to have minimal visual impact on the street frontage or other public place.*

Comment:

This objective is not applicable to the application as no new car parking facilities are proposed.

- *To ensure that parking facilities (including garages) are designed so as not to dominate the street frontage or other public spaces.*

Comment:

This objective is not applicable to the application as no new car parking facilities are proposed.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect 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.

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, in this regard the application is not considered to be acceptable and is recommended for refusal.

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
- Inconsistent with the objects of the Environmental Planning and Assessment Act 1979

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2018/1837 for the Strata Subdivision on land at Lot 1 SP 19670,1 / 98 Old Pittwater Road, BROOKVALE, for the reasons outlined as follows:

1. **No Owners Consent provided.**
Owners consent for Strata Properties is to include the Owners Corporation seal and minutes of an extraordinary/annual meeting stating the Owners Corporation support the lodgement of a Development Application with Council. No such documentation has been provided with this application.

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

Signed



Georgia Quinn, Planner

The application is determined on 04/06/2019, under the delegated authority of:



Daniel Milliken, Acting Development Assessment Manager