

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/0149
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Responsible Officer:	Dean Pattalis
Land to be developed (Address):	Lot 22 DP 6033, 47 Sydenham Road BROOKVALE NSW 2100
Proposed Development:	Use as a heavy industrial storage establishment and associated alterations and additions
Zoning:	Warringah LEP2011 - Land zoned E4 General Industrial
Development Permissible:	No
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Applicant:	Peter Princi Architects

Application Lodged:	26/02/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Industrial
Notified:	14/05/2024 to 14/06/2024
Advertised:	14/05/2024
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Refusal

Estimated Cost of Works:	\$ 176,000.00
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EXECUTIVE SUMMARY

This development application seeks consent for use as a *heavy industrial storage establishment* and associated alterations and additions.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to constituting sensitive development, being designated development, in accordance with the requirements of Schedule 3, Part 2 (13 - Chemical Storage Facility) under the Environmental Planning and Assessment Regulation 2021. The site is located within a low risk precinct of the NBC Flood Hazard Map which triggers designated development as the requirements state that development for the purposes of a chemical storage facility is designated development if the facility is located on a floodplain.

The critical assessment issues relate to the proposed development of a *heavy industrial storage establishment* being a prohibited land use in the E4 General Industrial zone. The characterisation of this land use is discussed within this report under the Land Use Tables of Warringah Local Environmental Plan 2011. As a prohibited land use the proposal is therefore considered to be inconsistent with the aims of WLEP 2011.

Due to the proposed gasses to be stored on site, the application constitutes designated development, the application was referred to the Department of Planning, Housing and Infrastructure (DPHI). The advice provided by the Industry Assessment (Hazards) Team of DPHI finds that insufficient information has been provided to demonstrate that the development is able to adequately manage hazards or impacts to the biophysical environment. The referral advised that there is not enough evidence submitted with the application to support the findings and conclusions that were established in the Environmental Impact Statement (EIS) submitted with the application. The EIS is therefore considered to be insufficient to address the relevant parts of the Environmental Planning & Assessment Act 1979 and Environmental Planning and Assessment Regulation 2021 as discussed within this report. The submitted Preliminary Hazard Analysis (PHA) is also considered insufficient to satisfy the requirements of SEPP (Resilience and Hazards) 2021, as per the advice from DPHI.

In addition and as discussed within the relevant sections of the assessment report, the proposal is also considered to be inconsistent with objectives of Warringah Development Control Plan 2011, as a result of non-compliances with Clause C3 Parking Facilities and Clause D3 Noise.

One submission was received during the community notification period in regards to existing unauthorised works which is addressed in the relevant section of this report.

The existing site is currently used as a depot for empty gas bottles (as approved under DA2023/0193) by the operators known as "Speedgas". The functions of the business operations flow between the subject site at 47 Sydenham Road and the adjoining site to the north at 49 Chard Road. The adjoining northern site possesses development consent to store and fill carbon dioxide and argon gas which are considered non-flammable and non-hazardous. This differs from the now-proposed development which includes flammable and hazardous LPG. The subject site at 47 Sydenham Road does not currently hold consent for gas or chemical storage, but rather empty bottles only.

In accordance with the above and related discussion within the assessment report, the report concludes with a recommendation to the NBLPP of refusal of the development application.

PROPOSED DEVELOPMENT IN DETAIL

The development application seeks consent for use as a heavy industrial storage establishment and associated alterations and additions, including the following works:

- Installation of a below ground LPG Gas Tank and filling platform above
- Erection of a nitrogen gas storage cylinder
- Rooftop, staircase and balustrade works to an existing storage shed

The existing premises is used as a depot for storage of empty gas bottles only and does not have consent for storage or filling of any volumes of gas or chemicals which is now proposed.

The proposed chemical storage also constitutes designated development under Schedule 3, Part 2 (13) under the Environmental Planning and Assessment Regulation 2021. The site is located within a

low risk precinct of the NBC Flood Hazard Map which triggers designated development as the requirements state that development for the purposes of a chemical storage facility is designated development if the facility is located on a floodplain.

Amended Information

Amended Information has been provided during the assessment process in response to a Council RFI. The information included a new Preliminary Acid Sulfate Soils Assessment Report, updated Risk Screening Documentation and Preliminary Hazard Analysis, as well as an updated architectural plan depicting the LPG gas filling platform.

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

Assessment - Nominated Integrated Development - EPA - Protection of the Environment Operations Act 1997, s43(d), 48, 55 - Scheduled activity
Warringah Local Environmental Plan 2011 - Zone E4 General Industrial
Warringah Development Control Plan - A.5 Objectives
Warringah Development Control Plan - B6 Merit Assessment of Side Boundary Setbacks
Warringah Development Control Plan - B10 Merit assessment of rear boundary setbacks
Warringah Development Control Plan - C3 Parking Facilities
Warringah Development Control Plan - D3 Noise

SITE DESCRIPTION

Property Description:	Lot 22 DP 6033 , 47 Sydenham Road BROOKVALE NSW 2100
Detailed Site Description:	<p>The subject site is known as Lot 22, No. 47 Sydenham Road, Brookvale. The site is zoned E4 General Industrial.</p> <p>The site is an irregularly shaped allotment with a total site</p>

area of 991m².

The site is generally flat.

The existing site is currently used as a depot for empty gas bottles (as approved under DA2023/0193) by the operators known as "Speedgas". The functions of the business operations flow between the subject site at 47 Sydenham Road and the adjoining site to the north at 49 Chard Road. The adjoining northern site possesses development consent to store and fill carbon dioxide and argon gas which are considered non-flammable and non-hazardous. The subject site at 47 Sydenham Road does not currently hold consent for gas or chemical storage.

Adjoining and surrounding sites consist of general industrial and light industrial land uses of varying functions.

Map:



SITE HISTORY

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:

Application **DA2023/0193** for Use of premises as a depot and associated alterations and additions (Approved 12/07/2023)

- Consent granted for use as a depot for empty gas bottle storage. Consent was suitably conditioned to ensure no quantities of gas or chemicals are permitted on-site. The adjoining site to the north (49 Chard Road) which is operated by the same owner, currently holds consent for the storage of non-flammable and non-hazardous Co₂ and argon gas.

BLD2022/01806 - Building Works Investigation

- As per Council's records, Council's Building Compliance Officer has conducted multiple inspections of the property and it was observed that the premises was being used as a storage facility of empty gas bottles, which were then refilled on the adjacent site at 49 Chard Road, Brookvale. No evidence was obtained that 47 Sydenham Road was being used for the purpose of the filling distribution of gas bottles. The currently approved use under DA2023/0193, being a depot rather than a heavy industrial storage facility, is consistent with the findings of the building works investigation. Council's compliance investigation is placed in abeyance until the determination of the subject development application.

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	There are no current draft environmental planning instruments.
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 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 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 29</u> of the EP&A Regulation 2021 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 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to a Council RFI. Amended information was formally accepted by Council on 9 July 2024.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p>

Section 4.15 Matters for Consideration	Comments
	<p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 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 69</u> of the EP&A Regulation 2021 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 69</u> of the EP&A Regulation 2021 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>
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 proposed development will have a detrimental environmental impact on the locality considering the character of the proposal and nature of the proposed land use.</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 unsuitable 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	This assessment has found the proposal to be contrary to the relevant requirement(s) of the Warringah Local Environmental Plan 2011 and Warringah Development Control Plan 2011 and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

Designated Development - Environmental Planning and Assessment Act 1979 and Associated Regulations

The following tables discuss those matters that are relevant to the proposed development under the Designated development provisions of both the Act and its associated Regulations.

Environmental Planning & Assessment Act 1979 (Part 4, Division 4.3)	Comments
Section 4.10 (1) Designated development - Designated development is development that is declared to be designated development by an environmental planning instrument or the regulations.	<p>The proposed development has been identified as being Designated development under Schedule 3 of the Regulations, specifically Part 2, (13)(2) "Chemical storage facilities". This identifies that any chemical storage facilities on land that is identified as being on a floodplain are Designated development.</p> <p>The site is identified as being within a Low Risk Flood Planning Precinct, hence any chemical storage (irrespective of the quantity) is Designated development.</p>
Section 4.12 (8) - Designated development	<p>Any application for Designated development is to be accompanied by an environmental impact statement (EIS), prepared by or on behalf of the applicant in the form prescribed by the regulations.</p> <p>An EIS has been provided by the applicant, prepared by Corona Projects, dated December 2023. A discussion on the EIS's consistency with the prescribed form is provided elsewhere in this report.</p>
Section 4.16(9) - Restrictions on determination of development applications for designated development	The application cannot be determined until the consent authority has forwarded to the Planning Secretary any submissions received during notification. One submission received during notification has been forwarded (acknowledged in correspondence by Director for Industry Assessments - DPHI dated 4 July 2024), as required by Section 4.16(9).

Environmental Planning and Assessment Regulation 2021 (Part 3, Division 5; Part 8, Divisions 2 and 5 and Schedule 3)	Comments
Section 56 - Notice of development applications	<p>The provisions of Section 56 require that Designated development be publicly notified in the following manner:</p> <ul style="list-style-type: none"> <input type="checkbox"/> the consent authority must publish notice of the application on the consent authority's website; <input type="checkbox"/> give notice of the application to any public authorities that, in the consent authority's opinion, may have an interest in the determination of the application and persons that own or occupy the land adjoining the land to which the application relates; and <input type="checkbox"/> ensure that the public notice contains the relevant information specified in Section 56(6). <p>The application was publicly exhibited on Council's website, for a period of 30 days, between 14 May 2024 and 14 June 2024.</p> <p>Notification was made in writing to adjoining property owners to the subject site.</p>

Environmental Planning and Assessment Regulation 2021 (Part 3, Division 5; Part 8, Divisions 2 and 5 and Schedule 3)	Comments
	<p>The application was also referred to the following public authorities:</p> <ul style="list-style-type: none"> <input type="checkbox"/> NSW Department of Planning, Housing and Infrastructure; <input type="checkbox"/> WaterNSW; <input type="checkbox"/> NSW Environment Protection Authority; <input type="checkbox"/> Ausgrid; <p>The responses from these public authorities are discussed elsewhere in this report.</p>
Section 58 - Exhibition of notice of designated development application	The applicant was provided with a sign, with the necessary information, prior to the notification period commencing. The applicant has provided photographic evidence that the sign was installed on the site, in a location that was able to be read from the adjoining road reserve of Sydenham Road.
Section 60 - Submissions about designated development to be given to Planning Secretary	During the public exhibition of the application as Designated development, no submissions were received from the public. However, when the application was initially notified as Local development, 1 submission was received. These submissions have been forwarded to the Planning Secretary, as required by Section 60.
Section 173 - Application to Planning Secretary for environmental assessment requirements	<p>The applicant for any Designated development is to apply to the Planning Secretary for environmental assessment requirements to be provided in the environmental impact statement that supports the application.</p> <p>The NSW Department of Planning has provided the applicant with "Planning Secretary's Environmental Assessment Requirements SEARS (1818)" in correspondence dated 25 October 2023.</p>
Section 176 - Notice of environmental assessment requirements	Written notice of the requirements of SEARS 1818 were received by Council on 25 October 2023.
Section 177 - Expiry of environmental assessment requirements for State significant development	SEARS (1818) was issued on 25 October 2023 and the application has been made within the 2 year period since the requirements were issued.
Section 190(1) - Form of environmental impact statement / information	<p>Section 190(1) requires that form of an EIS must contain the following information:</p> <p><i>(a) the name, address and professional qualifications of the person who prepared the statement,</i> <i>(b) the name and address of the responsible person,</i> <i>(c) the address of the land—</i> <i>(i) to which the development application relates, or</i> <i>(ii) on which the activity or infrastructure to which the statement relates will be carried out,</i></p>

Environmental Planning and Assessment Regulation 2021 (Part 3, Division 5; Part 8, Divisions 2 and 5 and Schedule 3)	Comments
	<p><i>(d) a description of the development, activity or infrastructure,</i> <i>(e) an assessment by the person who prepared the statement of the environmental impact of the development, activity or infrastructure, dealing with the matters referred to in this Division.</i></p> <p>This information is provided for in the EIS.</p>
Section 190(3) - Form of environmental impact statement / declaration	Section 190(3) requires that the person who has prepared the EIS has done so in accordance with the Regulations; all available information relevant to the proposal; and that all the information contained in the statement is not false or misleading. The EIS contains a statement that affirms these requirements have been complied with.
Section 191 - Compliance with environmental assessment requirements	<p>Section 191 requires that the EIS contains all of the necessary requirements for assessment made under SEARS 1818. The SEARS requirements were (in summary):</p> <ul style="list-style-type: none"> <input type="checkbox"/> the strategic and statutory context of the subject land; <input type="checkbox"/> a consideration of whether the site is suitable for the proposed development; <input type="checkbox"/> any hazard or risks; <input type="checkbox"/> consideration of any soil and water impacts / risks; <input type="checkbox"/> adequate / appropriate waste management measures; <input type="checkbox"/> potential impacts on air quality and any measures required to mitigate impacts; <input type="checkbox"/> any generation of noise and vibration; <input type="checkbox"/> the provision of adequate traffic and transport facilities; <input type="checkbox"/> potential visual impact; and <input type="checkbox"/> any impact on heritage, Aboriginal or non-Aboriginal. <p>The EIS (prepared by Corona Projects, dated December 2023) has provided a detailed response to the SEARS.</p>
Section 192 - Content of environmental impact statement	<p>Section 192(1) specifies certain basic content requirements for an EIS, in subsections (a) to (f).</p> <p>Referral advice from the Industry Assessments (Hazards) Team of DPHI which is outlined elsewhere in this report, states that there is not enough evidence submitted with the application to support the findings and conclusions that were established in the EIS. The application is therefore insufficient in this regard.</p>
Section 193 - Principles of ecologically sustainable development	<p>Section 193 requires a consideration of the principles of ecologically sustainable development as they relate to the proposal; which include:</p> <ul style="list-style-type: none"> <input type="checkbox"/> the precautionary principle; <input type="checkbox"/> inter-generational equity;

Environmental Planning and Assessment Regulation 2021 (Part 3, Division 5; Part 8, Divisions 2 and 5 and Schedule 3)	Comments
	<p><input type="checkbox"/> conservation of biological diversity and ecological integrity; and</p> <p><input type="checkbox"/> improved valuation, pricing and incentive mechanisms.</p> <p>The EIS contains a discussion on this matter.</p> <p>Referral advice from the Industry Assessments (Hazards) Team of DPHI which is outlined elsewhere in this report, states that there is not enough evidence submitted with the application to support the findings and conclusions that were established in the EIS. The application is therefore insufficient in this regard.</p>
Section 194 - Publication of environmental impact statements —the Act, s 5.8	The application has been publicly notified, most recently between the period of 14 May and 14 June 2023. The EIS was made available in hard copy form at Council offices in Dee Why, Manly, Mona Vale and Avalon. The public exhibition notice of the EIS was made available on the NSW Planning Portal. The EIS was also made available on Council's website, as both the determining authority and the Council within which the land is located. Therefore, the application is consistent with the requirements of Section 194.
Schedule 3, Part 2, Clause 13 - Chemical storage facilities	<p>Schedule 3 - Designated Development defines a range of land uses / activities that are within the category of "Designated" development.</p> <p>Specifically, the proposed development is consistent with Part 2, Clause 13(2)(e) which nominates as Designated development any chemical storage facility (irrespective of capacity) that is located on a floodplain. The land is defined under Council's relevant flood studies as being within a "Low Risk Precinct" for potential flood events. Hence, the application has been assessed as Designated development.</p>

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 application has been publicly exhibited from 14/05/2024 to 14/06/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Gavin Cooke	3 / 51 Chard Road BROOKVALE NSW 2100

One submission was received during the community notification period and the following concerns were raised:

- Existing site already accommodating an LPG filling tank without consent

Comment

The site has been subject to extensive action conducted by Council's Building Compliance Team, most notably under BLD2022/01806. Council staff have undertaken multiple inspections of 47 Sydenham Road in relation to this issue. The investigation is still open but Council is currently satisfied that the premises is being used as a storage facility of empty gas bottles, which are then refilled on the adjacent site at 49 Chard Road, Brookvale. Any existing tanks are considered to be empty and no evidence has been obtained that 47 Sydenham Road is currently being used for the purpose of filling gas bottles.

These findings were relied upon for the assessment of DA2023/0193 which approved the use of 47 Sydenham Road as a depot for empty gas bottles and some associated alterations and additions. Under this consent, conditions were imposed that the site is not permitted to be used for the filling of gas bottles or the storage of any quantities of gas or chemicals (Condition 16 and 20 of DA2023/0193).

The tank referred to within the objection is not shown on any plans as it does not form part of the current DA.

Council's Compliance Team remain satisfied that 47 Sydenham Road is operating in accordance with the conditions of DA2023/0193.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>SUPPORTED</p> <p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>
Environmental Health (Acid Sulfate)	<p>SUPPORTED</p> <p>General Comments</p> <p>This application is seeking consent for works to the premises including erection of a Nitrogen tank and installation of an underground LPG tank.</p>

Internal Referral Body	Comments
	<p>The property has been classed as a Class 4 acid sulfate soils risk. A Geotechnical Ground Testing Report has stated the following:</p> <p><i>Due to the variable results of groundwater identification on the day of drilling, and the height of groundwater measured in the groundwater monitoring well over the subsequent three weeks, it is likely that the site is influenced by a variable water table. Based on the depth of the proposed tank installation, we would expect the proposed works to be significantly influenced by the presence of groundwater on site.</i></p> <p>Given the above, an Acid Sulfate Soils assessment is to be carried out to determine if Actual Acid Sulfate Soils or Potential Acid Sulfate Soils exist on the property. The report is to provide a conclusion and recommendation on Acid Sulfate Soils.</p> <p>UPDATED REFERRAL COMMENTS</p> <p>A Preliminary Acid Sulfate Soils Assessment was conducted by Ascent Geo dated 24 June 2024. The conclusions found no detection of potential or actual acid sulfate soils therefore no further assessment for acid sulfate soils is required.</p> <p>Environmental Health recommends approval subject to conditions.</p>
Environmental Health (Contaminated Lands)	<p>SUPPORTED</p> <p>General Comments</p> <p>This application is seeking consent for works to the premises including erection of a Nitrogen tank and installation of an underground LPG tank.</p> <p>A Risk Screening Document and Preliminary Hazard Analysis was conducted by Hakem dated December 2023.</p> <p>The Statement of Environmental Effects (SEE) dated December 2023 states the following:</p> <p><i>The use will be ancillary to 49 Chard Road. It will be a depot for storage, as well as the storage of non hazardous gas above ground, being Nitrogen.</i></p> <p><i>It is a light industrial operation. The LPG tank is below ground, and not unlike the service stations in the area. It will be a warehouse and distribution centre.</i></p> <p>The SEE also states;</p> <p><i>There will be some minor excavation for footings, which will be approximately 300mm, but otherwise there will be no other cut and fill</i></p>

Internal Referral Body	Comments
	<p><i>as a result of the proposal.</i></p> <p>A Geotechnical Ground Testing report provided by AscentGEO dated 27 September 2022 <i>encountered groundwater at 2.6m in borehole 1. Subsurface conditions encountered generally comprised of mixed fill material overlying clayey sand and sandy clay soil. Soil excavation will be required for the installation of the new tank. It is anticipated that these excavations will encounter variable depth uncontrolled fill and clayey sand/sandy clay soil.</i></p> <p>As the LPG tank is proposed to be situated below ground level, there is the disturbance of soil and the potential offsite removal of soil. Environmental Health has considered land contamination however given there is no change of use or major modification to the land, the removal of soil from the site can be managed via a condition of consent.</p> <p>Environmental recommends approval subject to conditions.</p>
Environmental Health (Industrial)	<p>SUPPORTED</p> <p>General Comments</p> <p>This application is seeking consent for works to the premises including erection of a Nitrogen tank and installation of an underground LPG tank.</p> <p>The Statement of Environmental Effects states: <i>The proposed LPG tank will be underground, with a filling platform on top, which is over an existing hard stand area.</i></p> <p>Can the applicant advise if the site will be accessible by the public for refilling of LPG tanks? What safety measures are in place for public safety?</p> <p>Council's records identify an approval in 2023 which approves the use of the site as a storage facility for pallets and vehicles, which is ancillary to the operation of the business known as "Speedgas". no chemical storage was proposed at the time.</p> <p>This application for a filling station and underground LPG tank changes the use and requires further assessment from Environmental Health.</p> <p>The applicant will need to provide a management plan for the control of potential noise and potential odour associated with the operation of the filling station. The management plan is to include how noise and odour are to be managed, how complaints are addressed and by whom.</p> <p>With separate occupants so close in 51 Chard Street, it is important not to add an adverse noise or odour impact.</p>

Internal Referral Body	Comments
	<p>Environmental Health recommends approval subject to conditions.</p> <p><u>Planner Comment</u></p> <p><i>In accordance with the above referral comments, the recommendation of approval by Environmental Health is subject to conditions of consent. The condition relates to A Noise and Odour Management Plan, as the application has not demonstrated how potential noise and potential odour associated with the operation of the filling station shall be managed, how complaints are addressed and by whom. This determination recommends refusal and therefore there are no conditions of consent. It is therefore considered that insufficient information is provided in this context.</i></p>
NECC (Development Engineering)	<p>SUPPORTED</p> <p>The proposed development is in Region 2. On-site detention is not required as the site is flood affected. A geotechnical report has been provided. Vehicle crossing construction is not proposed. Development engineering raises no objections to the proposed development, subject to conditions.</p>
NECC (Flooding)	<p>SUPPORTED</p> <p>The proposal is for the alterations to the existing commercial infrastructure. The works include a below ground LPG gas tank, capped with a 0.70m concrete filling platform, and a 10.1m tall nitrogen gas storage tank.</p> <p>The property is primarily within the Low Risk Flood Precinct. It has the following flood characteristics:</p> <ul style="list-style-type: none"> • Probable Maximum Flood (PMF) Level: 10.07m AHD • PMF Life Hazard Category: H1-H3 <p>The proposal is generally compliant with Section E11 of the Warringah DCP and Clause 5.21 of the Warringah LEP.</p>
NECC (Riparian Lands and Creeks)	<p>SUPPORTED</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> • Supplied plans and reports; • Relevant LEP and DCP clauses; • Protection of Waterways and Riparian Land Policy; • Northern Beaches Water Management for Development Policy (WMD Policy) <p>The site is within an industrial area that is part of the Greendale Creek catchment. The site is not close to a watercourse but stormwater from the site will pass through the stormwater system and into Greendale Creek.</p> <p>The proposal is for installation of LPG gas tank, gas filling platform over, erection of gas storage cylinder (nitrogen), and cover to an</p>

Internal Referral Body	Comments
	<p>existing building with access stairs. The proposal does not increase hard surface area or change the quality of stormwater runoff leaving the site. It is noted that the site is likely influenced by a variable water table, but that the proposed underground tank is for LPG gas and not another petroleum fuel. As such, the proposal does not raise concerns regarding the quality of the water entering Greendale Creek. No objections regarding riparian lands and creeks provided conditions are adhered to.</p>
NECC (Water Management)	<p>SUPPORTED</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> • Supplied plans and reports; • Northern Beaches Water Management for Development Policy (WMD Policy); and • Relevant LEP and DCP clauses <p>The proposal is for excavation, installation of tank and overlying filling platform, storage cylinder, and cover and stairs for existing building. The proposal is not expected to increase impervious surface area but excavation is required for installing the storage tank. The geotechnical report provided indicates that the site is likely influenced by a variable water table, and that the works would likely be significantly influenced by the presence of groundwater.</p> <p>Additional geotechnical investigation must be undertaken to assess the presence of groundwater, guide any dewatering plans, and confirm the need for a WaterNSW dewatering approvals.</p>
Traffic Engineer	<p>SUPPORTED</p> <p>The application seeks consent for the change of use of an existing industrial storage facility with alterations and additions to provide a gas refilling facility with a warehouse-style building occupying a total gross floor area of 165 sqm. The proposed works include a gas filling platform, LPG gas tank (below ground), gas storage cylinder (above ground) and cover to an existing storage building with access stairs.</p> <p>There appears to be some discrepancies between the information provided in the Traffic and Parking Assessment (TPA) dated 2 February 2023 and the Statement of Environmental Effects (SoEE) dated March 2024. The TPA specifies that the site will operate during weekdays from 8:00am to 4:00pm and will employ two full-time staff. The SoEE specifies hours of operation as the existing Monday to Friday 6am to 6pm, and Saturday 7am to 5pm. The Transport Network section has reviewed and provided comments with respect to traffic generation impacts, access and parking based on the submitted TPA.</p> <p>Traffic Generation and Impact to Road Network</p>

Internal Referral Body	Comments
	<p>A Traffic and Parking Assessment (TPA) has been prepared by ParkTransit. Based on TfNSW's Guide to Traffic Generating Developments the development would result in 2 vehicle trips per hour during the evening peak period. The projected future traffic generation is unlikely to result in any significant impacts to the local road network.</p> <p>Access and Parking</p> <p>The Warringah Development Control Plan (WDCP) 2011, specifies parking rates for industry, at 1.3 spaces per 100 m2 GFA (including up to 20% of floor area as office space component. The WDCP requires a total of 3 parking spaces (rounded up) which would provide for staff and visitor parking. The TPA states that the proposal includes an open area which is suitable to accommodate up to four car spaces, however details regarding the location of the parking spaces are not shown on the plans. The proposed parking spaces need to be designed and clearly signposted and linemarked in accordance with AS/NZS 2890.1:2004 Parking Facilities Part 1: Off-Street car parking. Designated parking spaces must be appropriately located to not obstruct the turning paths of service/delivery vehicles, and cannot be used for storage of materials or be obstructed preventing access. The parking requirements can be conditioned as part of the Consent with the amended plans to be submitted for approval prior to the issue of a Construction Certificate.</p> <p>Vehicular access to the development is provided using the existing two driveways located off the Sydenham Road frontage. The TPA specifies that a total of three deliveries per week will be undertaken and restricted to a standard small rigid truck. A swept path analysis has been provided using the design vehicle dimensions for a Small Rigid Vehicle (SRV). It should be noted that larger trucks have been observed to access the current site and swept paths for the largest vehicle type would be required if the future use were to also accommodate Medium Rigid or Heavy Rigid Vehicles. The area designated as manoeuvring areas must be kept clear of obstructions at all times. Provisions for larger truck access and circulation within the site would consequently affect the location of any proposed parking spaces. The current proposal however may be acceptable if restrictions were in place to limit access to the gas refilling facility to vehicles no larger than an SRV, which is to be included with the provision of an Operational Management Plan.</p> <p>The proposal can only be supported subject to the recommended Conditions.</p> <p><u>Planner Comments</u> <i>In accordance with the above referral comments, a total of 3 vehicle</i></p>

Internal Referral Body	Comments
	<i>parking spaces are required for the site providing for staff and visitors. However, details regarding the location of the parking spaces are not shown on the plans. The proposed parking spaces must be designed and clearly signposted and linemarked in accordance with AS/NZS 2890.1:2004 Parking Facilities Part 1: Off-Street car parking. Designated parking spaces must be appropriately located to not obstruct the turning paths of service/delivery vehicles, and cannot be used for storage of materials or be obstructed preventing access. Council's Traffic Engineer has recommended conditions of consent to address this, however this determination recommends refusal and therefore there are no conditions of consent. It is therefore considered that insufficient information is provided in this context.</i>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p>SUPPORTED</p> <p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.</p>
Department of Planning, Housing and Infrastructure	<p>UNSUPPORTED</p> <p>The application constitutes designated development and was therefore referred to the Department of Planning, Housing and Infrastructure (DPHI) for concurrence. The application was specifically referred to the Industry Assessments (Hazards) Team of DPHI. The following comments were provided:</p> <p><u>First Response dated 30 April 2024</u></p> <p><i>We have been asked to provide comment on a proposal on 47 Sydenham Road, Brookvale, which is proposed to install a new LPG tank and filling platform and a nitrogen tank in an existing storage shed for empty gas tank, truck parking etc. It is also acknowledged that the storage component at 47 Sydenham Road is an ancillary facility to the gas distribution operation at 49 Chard Road, Brookvale.</i></p> <p><i>As only the EIS was provided to us, there is not enough evidence to support the finding as established in section 5.1.1 of the EIS. Can you please forward me the risk assessment (aka PHA)? Also, if there's any layout of the proposed tanks location and the filling frequency of the tank.</i></p> <p><i>In addition, we seek clarification on the following:</i></p> <ol style="list-style-type: none"> <i>1. Whether the proposal at 47 Sydenham Road will involve decanting from the proposed new LPG tank and N2 to other empty tanks?</i> <i>2. What is the numbers and size of empty cylinders/ tanks currently handle on site? Are they gas empty, or having residue gas remain within the cylinders/tanks? If so, what are the types of DGs in these cylinders/tanks?</i>

External Referral Body	Comments
	<p>3. For the operation at 49 Chard Road, Brookvale, is it operate under the same management, and whether there's an existing PHA or original EIS for the gas distribution facility. I am wondering whether there is a need to consider the cumulative risk between the two sites. However, this will depend on the nature and scale of operation at 49 Chard Road.</p> <p>The first request for further information from DPHI was given to the applicant who subsequently provided amended information including a written response to the questions raised in the referral, an updated diagram of the proposed LPG filling platform, as well as an updated Risk Screening and Preliminary Hazard Analysis Report. This information was then referred back to DPHI for an updated referral:</p> <p><u>Second Response dated 18 July 2024</u></p> <p>We have reviewed the following attached documents obtained from the Planning Portal in regards to the development application DA 2024/0149 at 47 Sydenham Road, Brookvale:</p> <p>[1] The drawing "Filling Platform Section" for project "Alterations and Additions, 47 Sydenham Road, Brookvale NSW 2100" (issue B, dated June 2024, prepared by Peter Princi Architects);</p> <p>[2] Geotechnical Assessment, Project: Alterations & Additions, 47 Sydenham Road, Brookvale NSW (reference AG 24237, version 1, dated 24 June 2024, prepared by AscentGeo);</p> <p>[3] SEPP (Resilience and Hazards), Risk Screening Documentation and Preliminary Hazard Analysis, Speed Gas Pty Ltd, 47 Sydenham Road, Brookvale NSW (revision 2, dated 13 June 2024, prepared by Hazkem);</p> <p>[4] The letter "Re: Development Application – DA-2024/0149 – 47 Sydenham Road, Brookvale" (dated 13 June 2024, prepared by Corona Projects); and</p> <p>[5] The undated document prepared by Speed Gas referencing the above documents with responses to 3 items.</p> <p>It is understood that documents [1] to [5] above were submitted by the Applicant to Council following the Department's Hazards advice of 30 April 2024 in the e-mail chain below.</p> <p>Having reviewed the above documents, we are still not able to adequately understand the proposed operations of DA 2024/0149 at 47 Sydenham Road and how these proposed operations interacts with existing operations at the adjacent 49 Chard Road. As such:</p> <p><input type="checkbox"/> we are not able to verify if the responses provided in documents [1], [2], [4], and [5] are technically consistent with requirements under Australian Standard 1596 The storage and handling of LP Gas (AS 1596) and Australian Standard 1894 The storage and handling of non-flammable cryogenic and refrigerated liquids (AS 1894). These standards are especially relevant for operations involving LPG and nitrogen respectively, to which these materials have been mentioned by the Applicant in the current and prior information. Compliance with these standards are expected for any site handling these materials;</p>

External Referral Body	Comments
	<p> <input type="checkbox"/> we are not able to conclude if the preliminary risk screening provided in document [3] has been performed appropriately in accordance with the Department's Applying SEPP 33. Please note that document [3] is not a Preliminary Hazard Analysis despite the document titled in that manner, given that the document states "there is no requirement for a Preliminary Hazard Analysis to be undertaken based on the being assessed as not potentially hazardous"; </p> <p> <input type="checkbox"/> we consider queries in the Department's Hazards advice of 30 April 2024 remain outstanding; and </p> <p> <input type="checkbox"/> we are not able to determine if development application DA 2024/0149 is potentially hazardous under Chapter 3 of the Resilience and Hazards SEPP (formerly SEPP 33) or capable to operate in compliance with AS 1596 and AS 1894 due to the uncertainties above. </p> <p> <i>Notwithstanding, it is now clear that from the above documents that 47 Sydenham Road and 49 Chard Road substantially operates as an integrated operation under the same management of Speed Gas. As such, any proposal from 47 Sydenham Road should take into full consideration of 49 Chard Road and vice versa to ensure that the cumulative hazards or risks from this integrated operation is fully understood. To illustrate this point, although the Applicant states "no decanting will occur at 47 Sydenham Road", there is no information provided thus far suggesting that LPG decanting would not occur at 49 Chard Road through LPG supplied at 47 Sydenham Road through LPG piping across the border or by other means. That is, the conveyance of LPG from 47 Sydenham Road to 49 Chard Road is possible. This appears contrary to your description of 49 Chard Road having been approved for non-flammable, non-toxic carbon dioxide and argon only.</i> </p> <ol style="list-style-type: none"> <i>1. clearly describe the integrated operations at 47 Sydenham Road and 49 Chard Road;</i> <i>2. perform a preliminary risk screening for the integrated operations at 47 Sydenham Road and 49 Chard Road in accordance with the Department's Applying SEPP 33, providing clear description of class, quantity and location of all dangerous goods and hazardous materials associated with the integrated operation;</i> <i>3. submit a Preliminary Hazard Analysis in accordance with the Department's Multi-level Risk Assessment and Hazardous Industry Planning Advisory Paper No. 6, 'Hazard Analysis' if the preliminary risk screening indicates that the integrated operations at 47 Sydenham Road and 49 Chard Road is 'potentially hazardous' under Chapter 3 of the Resilience and Hazards SEPP (formerly SEPP 33);</i> <i>4. provide adequate information with clear diagrams showing that the integrated operations at 47 Sydenham Road and 49 Chard Road complies with all relevant Australian Standards especially and not limited to AS 1596 and AS 1894, even if the integrated operations is not 'potentially hazardous'. We expect these diagrams to show that the site layout can comply with all AS 1596 and AS 1894 separation distances (on-site and off-site); and</i>

External Referral Body	Comments
	<p><i>5. provide clear responses to the queries in the Department's Hazards advice of 30 April 2024 in view of the new information in items 1 to 4 above.</i></p> <p><u>Planner Comment</u> As stated above, the applicant's amended response did not satisfactorily address the requirements of the request for information from DPHI provided on 30 April 2024. There is not enough evidence submitted with the application to support the findings and conclusions that were established in the Environmental Impact Statement (EIS) submitted with the application. The EIS is therefore considered to be insufficient to address the relevant parts of the Environmental Planning & Assessment Act 1979 and Environmental Planning and Assessment Regulation 2021 as discussed elsewhere in this report. The submitted Preliminary Hazard Analysis (PHA) is also considered insufficient to satisfy the requirements of SEPP (Resilience and Hazards) 2021.</p>
Nominated Integrated Development - WaterNSW - Water Management Act 2000, s90(2) - Water management works approval to construct and use a specified water supply/drainage/flood work at a specified location	<p>SUPPORTED</p> <p>The Geotechnical Ground Testing Report provided with the application prepared by AscentGeo (dated 27 September 2022) states that it is likely that the site is influenced by a variable water table.</p> <p>The application was referred to WaterNSW as integrated development under the Water Management Act 2000.</p> <p>The referral response did not object the application, whilst providing General Terms of Approval to be included in any consent granted by Council.</p>
Nominated Integrated Development - EPA - Protection of the Environment Operations Act 1997, s43(d), 48, 55 - Scheduled activity	<p>RETURNED</p> <p>The application was referred to the Environmental Protection Authority.</p> <p>The EPA returned this request for the following reason/s:</p> <p><i>I refer to your invitation to the NSW Environment Protection Authority (EPA) to provide requirements for the preparation of the Environmental Impact Statement for the proposed Chemical storage facility – 47 Sydenham Road Brookvale.</i></p> <p><i>Based on the information provided, the EPA has no comment on this proposal and no further consultation is required. This is because:</i></p> <ul style="list-style-type: none"> <i>• the proposal does not constitute a Scheduled Activity under Schedule 1 of the Protection of the Environment Operations Act (1997) and so, will not require an Environment Protection Licence under this Act,</i> <i>• the proposal is not being undertaken by or on behalf of a NSW Public Authority, nor are there activities for which the EPA is the appropriate regulatory authority.</i>

External Referral Body	Comments
	<ul style="list-style-type: none"> • <i>the site is not being regulated by the EPA under the Contaminated Land Management Act (1997).</i>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs 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 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 (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 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 who raised no objections.

SEPP (Resilience and Hazards) 2021

Chapter 3 – Hazardous and Offensive Development

Chapter 3 of State Environmental Planning Policy (Resilience and Hazards) 2021 (the SEPP) applies to the application, based on the nature of the proposal.

The relevant provisions of Chapter 3 are discussed below:

3.2 Definitions of “potentially hazardous industry” and “potentially offensive industry”

Of relevance to the proposed development is the definition of a "potentially hazardous industry" which means:

"... a development for the purposes of any industry which, if the development were to operate without employing any measures (including, for example, isolation from existing or likely future development on other land) to reduce or minimise its impact in the locality or on the existing or likely future development on other land, would pose a significant risk in relation to the locality—

*(a) to human health, life or property, or
(b) to the biophysical environment,*

and includes a hazardous industry and a hazardous storage establishment."

In accordance with advice received from Industry Assessments (Hazards) - DPHI outlined elsewhere in this report, there is insufficient evidence provided with the application to confirm whether the proposed development is potentially hazardous.

3.1 Aims, objectives etc

The proposed development is considered against the objectives of the SEPP, below:

☐ *to amend the definitions of hazardous and offensive industries where used in environmental planning instruments, and*

Comment:

The Warringah Local Environmental Plan 2011 (WLEP 2011) provides a definition of a "hazardous storage establishment". Based on the findings of this assessment report, the proposed development is considered to align with this land use.

☐ *to render ineffective a provision of any environmental planning instrument that prohibits development for the purpose of a storage facility on the ground that the facility is hazardous or offensive if it is not a hazardous or offensive storage establishment as defined in this Policy, and*

Comment:

A hazardous storage establishment is a prohibited land use in the E4 General Industrial zone pursuant to WLEP 2011.

☐ *to require development consent for hazardous or offensive development proposed to be carried out in the Western Division, and*

Comment:

Not relevant to the proposed development.

☐ *to ensure that in determining whether a development is a hazardous or offensive industry, any measures proposed to be employed to reduce the impact of the development are taken into account, and*

Comment:

Referral advice received from Industry Assessments (Hazards) - DPHI states that the "Risk Screening Documentation and Preliminary Hazard Analysis" prepared by Hazkem Pty Ltd is not a valid Preliminary Hazard Analysis. The proposal is therefore insufficient in this regard.

□ to ensure that in considering any application to carry out potentially hazardous or offensive development, the consent authority has sufficient information to assess whether the development is hazardous or offensive and to impose conditions to reduce or minimise any adverse impact, and

Comment:

The information provided with the application is not considered sufficient for the full extent of the potential hazards of the development to be readily determined. The proposal is defined as a heavy industrial storage establishment which is a prohibited land use in the zone.

□ to require the advertising of applications to carry out any such development.

Comment:

The application has been advertised, as Designated Development, for the period prescribed under the Act and its associated regulations (30 days).

3.7 Consideration of Departmental guidelines

The relevant Departmental guidelines that apply to the proposed development are:

- Planning Circular PS 21-031 "Planning and assessment guidelines for hazardous industry"; and*
- Hazardous and Offensive Development Application Guidelines January 2011.*

PS 21-031 dates from 2 December 2021 and requires specifically that a preliminary hazard analysis (PHA) be provided in any application for potentially hazardous industry. The circular requires that:

- ☐ the PHA is to make an estimation on the risk to people, property and the environment at the proposed location;
- ☐ the consent authority is to take the PHA into account during the assessment of the proposal; and
- ☐ if such risk exceeds nominated acceptability criteria, the development is to be classified as 'hazardous industry'.

As discussed elsewhere in this report, referral advice received from Industry Assessments (Hazards) - DPHI states that the "Risk Screening Documentation and Preliminary Hazard Analysis" prepared by Hazkem Pty Ltd is not a valid Preliminary Hazard Analysis. The proposal is therefore insufficient in this regard.

3.8 Storage facilities

Based on the nature of the proposed development, this clause is relevant in the assessment of the application.

The clause would have the effect of limiting any prohibitions on storage facilities, if identified as hazardous or offensive.

The proposal is identified as hazardous storage establishment in accordance with the land use tables of WLEP 2011 which is prohibited.

3.11 Preparation of preliminary hazard analysis

Section 3.11 requires that any application for the purposes of a potentially hazardous industry must prepare a preliminary hazard analysis in accordance with the current circulars or guidelines published by the Department of Planning and submit the analysis with the development application.

As discussed elsewhere in this report, referral advice received from Industry Assessments (Hazards) - DPHI states that the "Risk Screening Documentation and Preliminary Hazard Analysis" prepared by Hazkem Pty Ltd is not a valid Preliminary Hazard Analysis. The proposal is therefore insufficient in this regard.

3.12 Matters for consideration by consent authorities

Section 3.12 requires the consideration of the following matters for any potentially hazardous development:

(a) current circulars or guidelines published by the Department of Planning relating to hazardous or offensive development, and

Comment:

The relevant guidelines and circulars have been considered in the assessment of the proposed development.

(b) whether any public authority should be consulted concerning any environmental and land use safety requirements with which the development should comply, and

Comment:

The application was referred to a number of public authorities, specifically the NSW Department of Planning, Housing and Infrastructure. The Department has reviewed the application and has advised the information submitted is insufficient to properly determine the potential hazards resulting from the proposal.

(c) in the case of development for the purpose of a potentially hazardous industry—a preliminary hazard analysis prepared by or on behalf of the applicant, and

Comment:

As outlined previously, the PHA submitted with application is considered insufficient in accordance with referral correspondence by DPHI provided within this report.

(d) any feasible alternatives to the carrying out of the development and the reasons for choosing the development the subject of the application (including any feasible alternatives for the location of the development and the reasons for choosing the location the subject of the application), and

Comment:

No consideration of alternatives or reasons for the proposal have been provided.

(e) any likely future use of the land surrounding the development.

Comment:

All adjoining allotments of land to the subject site are similarly zoned, and used, for general industrial purposes. The nearest non-industrial zones / land uses are approximately 300 metres to the east (public recreation zone) and 200 metres to the north (business zone adjacent Pittwater Road). The proposed land use is not considered to be consistent with the desired future character of the locality.

3.13 Advertising of applications

The application has been advertised for the prescribed period under the Environmental Planning & Assessment Act 1979 and associated Regulations.

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for industrial purposes for a significant period of time with no prior land uses. Council's Environmental Health Officer (Contaminated Lands) has reviewed the application and raised no objection.

Conclusion

In accordance with the above discussion, the proposed development is considered to be inconsistent with the requirements of Chapter 3 of State Environmental Planning Policy (Resilience and Hazards) 2021 is therefore unsupported in this regard.

Warringah Local Environmental Plan 2011

Is the development permissible?	No
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	No
zone objectives of the LEP?	No

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	11m	10.1m (nitrogen tank) 8m (storage shed)	- -	Yes Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.21 Flood planning	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes

Detailed Assessment

Zone E4 General Industrial

The proposal is considered to align with the definition for a heavy industrial storage establishment under WLEP 2011. This is a prohibited land use in the E4 General Industrial zone.

The WLEP 2011 definition states:

heavy industrial storage establishment means a building or place used for the storage of goods, materials, plant or machinery for commercial purposes and that requires separation from other development because of the nature of the processes involved, or the goods, materials, plant or machinery stored, and includes any of the following—

- (a) a hazardous storage establishment,*

(b) a liquid fuel depot,

(c) an offensive storage establishment.

In accordance with the dictionary,

liquid fuel depot means *a premises used for the bulk storage of petrol, oil, petroleum or other inflammable liquid for wholesale distribution and at which no retail trade is conducted.*

The statement of environmental effects provided with the application states that the site will be used as a depot for storage, however the proposed installation of an LPG gas tank, being a flammable liquid, instead aligns with the definition of a liquid fuel depot.

hazardous storage establishment means *a building or place that is used for the storage of goods, materials or products and that would, when in operation and when all measures proposed to reduce or minimise its impact on the locality have been employed (including, for example, measures to isolate the building or place from existing or likely future development on other land in the locality), pose a significant risk in the locality—*

(a) *to human health, life or property, or*

(b) *to the biophysical environment.*

As per referral advice from Industry Assessments (Hazards) of the Department of Planning, Housing and Infrastructure, it could not be concluded based on the information currently provided with the application whether the proposed works are potentially hazardous. The referral states that there is not enough evidence submitted with the application to support the findings and conclusions that were established in the Environmental Impact Statement (EIS) and was not able to conclude if the information submitted with the application is consistent with AS 1596 and AS 1894. The referral also stated that insufficient information was provided to determine whether the preliminary risk screening provided with the application had been performed appropriately in accordance with SEPP (Resilience and Hazards) 2021. The referral comments also state that the "Risk Screening Documentation and Preliminary Hazard Analysis" prepared by Hazkem Pty Ltd is not a valid Preliminary Hazard Analysis which was requested in the first set of referral comments on April 30 2024.

The application has therefore not demonstrated that the proposal is able to manage potential hazards or impacts to the biophysical environment and is therefore considered to align with the WLEP definition for a hazardous storage establishment.

The proposed land use constitutes prohibited development and is therefore cannot be supported.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B5 Side Boundary Setbacks	East - Merit Assessment	6.4m (min.)	-	See discussion
	West - Merit Assessment	Nil (existing)	-	See discussion

B7 Front Boundary Setbacks	4.5m	Complies	-	Yes
B9 Rear Boundary Setbacks	Merit Assessment	17m (new works)	-	See discussion

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	No	No
B6 Merit Assessment of Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B10 Merit assessment of rear boundary setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	No	No
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D3 Noise	No	No
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
E10 Landslip Risk	Yes	Yes
E11 Flood Prone Land	Yes	Yes

Detailed Assessment

A.5 Objectives

A detailed assessment of this application has determined that the proposal will not be consistent with the objectives and controls of the following parts of the Warringah Development Control Plan 2011 (WDCP 2011):

- C3 Parking Facilities;
- D3 Noise

As such, it cannot be proven that the application is consistent with the following objectives under Clause A.5 of WDCP 2011:

- *To ensure development responds to the characteristics of the site and the qualities of the surrounding neighbourhood*
To ensure new development is a good neighbour, creates a unified landscape, contributes to the street, reinforces the importance of pedestrian areas and creates an attractive design outcome
To inspire design innovation for residential, commercial and industrial development
To provide a high level of access to and within development.
To protect environmentally sensitive areas from overdevelopment or visually intrusive development so that scenic qualities, as well as the biological and ecological values of those areas, are maintained
To achieve environmentally, economically and socially sustainable development for the community of Warringah

The proposal is therefore unsupported in this context.

B6 Merit Assessment of Side Boundary Setbacks

The development proposes a minimum eastern side setback of 6.4m to the LPG Tank and Filling Platform, as well as a nil western side setback to the alteration works of the storage shed.

The proposed side setback of the LPG Tank and Filling Platform is not considered to be unreasonable. The storage shed also maintains the nil side setback of the existing structure and the alteration works and not considered to unreasonably alter the existing arrangement. The proposed development is therefore considered acceptable in this context.

B10 Merit assessment of rear boundary setbacks

The development proposes a rear setback of 17m to the rooftop work of the existing storage shed. It is noted there is no change to the existing rear setback of the shed. The proposed alteration works are not considered to unreasonably alter the existing arrangement.

C3 Parking Facilities

Description of non-compliance

In accordance with Appendix 1, the vehicle parking requirement for an industrial premises is 1.3 spaces per 100 m² GFA (including up to 20% of floor area as office space component). However, details regarding the location of any vehicle parking spaces are not shown on the plans. The proposed parking spaces must be designed and clearly signposted and linemarked in accordance with AS/NZS 2890.1:2004 Parking Facilities Part 1: Off-Street car parking. Designated parking spaces must be appropriately located to not obstruct the turning paths of service/delivery vehicles, and cannot be used for storage of materials or be obstructed preventing access. Council's Traffic Engineer has recommended conditions of consent to address this, however this report recommends refusal and therefore there are no conditions of consent. It is therefore considered that insufficient information is provided in this context.

Merit consideration

The development is considered against the underlying Objectives of the Control as follows:

- *To provide adequate off street carparking.*

Comment

As mentioned above, it is not considered that adequate off-street carparking is provided based on the information currently before Council.

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

Comment

No parking facilities have been identified on the plans provided with the application and therefore insufficient information is provided to be able to assess the visual impact.

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

Comment

No parking facilities have been identified on the plans provided with the application and therefore insufficient information is provided to be able to assess the impact upon the street frontage.

The proposal is therefore unsupported in this context.

D3 Noise

Description of non-compliance

Council's Environmental Health Officer (Industrial) has reviewed the application in the context of noise and odour pollution. The referral states that the application has not demonstrated how potential noise and potential odour associated with the operation of the filling station shall be managed, how complaints are addressed and by whom. The referral therefore recommends a condition of consent for a Noise and Odour Management Plan, however this report recommends refusal and therefore there are no conditions of consent. It is therefore considered that insufficient information is provided in this context.

Merit consideration

The development is considered against the underlying Objectives of the Control as follows:

To encourage innovative design solutions to improve the urban environment.

Comment:

As stated above, it is considered that insufficient information is provided in regards to innovative design solutions.

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:

Insufficient information is provided in regards to the impact of noise emissions upon the amenity of the area.

The proposal is therefore unsupported in this context.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$ 880 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 176,000.

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 2021;
- 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:

- Inconsistent with the objectives of the DCP
- Inconsistent with the zone objectives of the LEP
- Inconsistent with the aims of the LEP
- Inconsistent with the objectives of the relevant EPIs
- Inconsistent with the objects of the Environmental Planning and Assessment Act 1979

PLANNING CONCLUSION

This proposal, for use as a heavy industrial storage establishment and associated alterations and additions, has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to constituting sensitive development (designated development).

The critical assessment issues have been summarised in the assessment report relating to inconsistencies and non-compliances with the Land Use Tables of WLEP 2011, Objectives of WDCP 2011, requirements of SEPP (Resilience and Hazards) 2021, as well as the designated development requirements of the Environmental Planning and Assessment Regulation 2021.

The concerns raised in the objection pertaining to unauthorised works are addressed in the relevant section of the assessment report.

The proposal is considered to be a prohibited land use in the E4 General Industrial zone whilst insufficient information has been provided to determine the impacts of the proposal in the context of hazard management and biophysical impacts on the local environment. The proposal has therefore been recommended for refusal.

REASON FOR DETERMINATION

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 the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council , as the consent authority REFUSE Development Consent to Development Application No DA2024/0149 for the Use as a heavy industrial storage establishment and associated alterations and additions on land at Lot 22 DP 6033,47 Sydenham Road, BROOKVALE, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of State Environmental Planning Policy (Resilience and Hazards) 2021, as insufficient information has been provided in the Environmental Impact Statement (EIS) to determine consistency with the SEPP requirements for managing hazards or impacts to the biophysical environment.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Warringah Local Environmental Plan 2011.
3. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause Zone E4 General Industrial of the Warringah Local Environmental Plan 2011, as the proposed development is prohibited.
4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause A.5 Objectives of the Warringah Development Control Plan.
5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C3 Parking Facilities of the Warringah Development Control Plan, as insufficient information has been provided to determine the number and location of parking spaces.
6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D3 Noise of the Warringah Development Control Plan, as insufficient information has been provided to assess the noise impacts of the proposal.