



**STATEMENT OF ENVIRONMENTAL EFFECTS  
RELATING TO A DEVELOPMENT APPLICATION  
FOR A VEHICLE STORAGE FACILITY AND TAKE WAY CAFE  
AT 69 BASSETT STREET MONA VALE**



**Prepared for  
Chrome Temple  
Job No. 22190  
August 2023**

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## 1

# Introduction

## 1. INTRODUCTION

This is a Statement of Environmental Effects (SEE) relating to a development application (DA) for the demolition of existing structures and construction of a three-storey vehicle storage building with a ground floor take-away cafe at 69 Bassett Street Mona Vale.

The DA submission follow a pre-lodgment meeting with Council on 9 August 2022. The manner in which the proposal responds to the matters raised is detailed in the table at **Appendix A**.

The SEE contains the following sections:

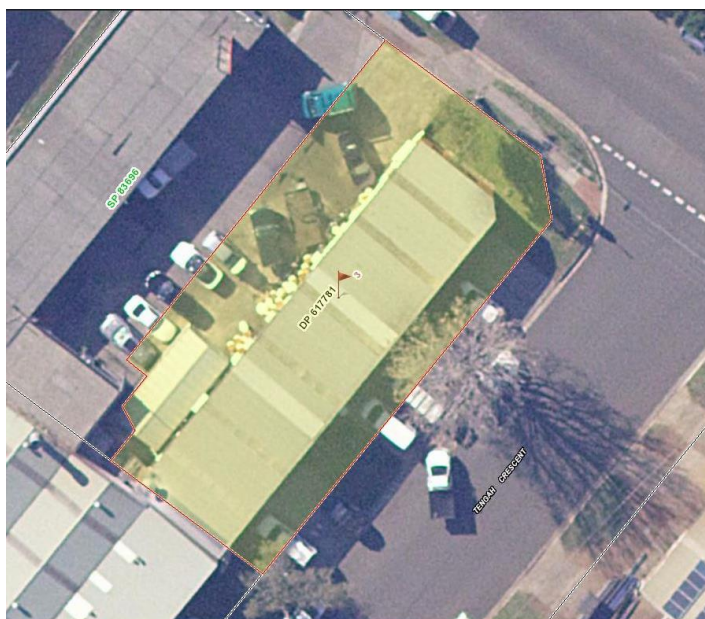
- **Section 2** examines the characteristics of the subject property;
- **Section 3** details the nature of the surrounding locality;
- **Section 4** provides a detailed description of the proposal;
- **Section 5** discusses the zoning and development controls relating to the land; and
- **Section 6** provides an assessment of the proposal in relation to the relevant matters for consideration under Section 4.15(1) of the Environmental Planning and Assessment Act, 1979.

## 2

## The Site

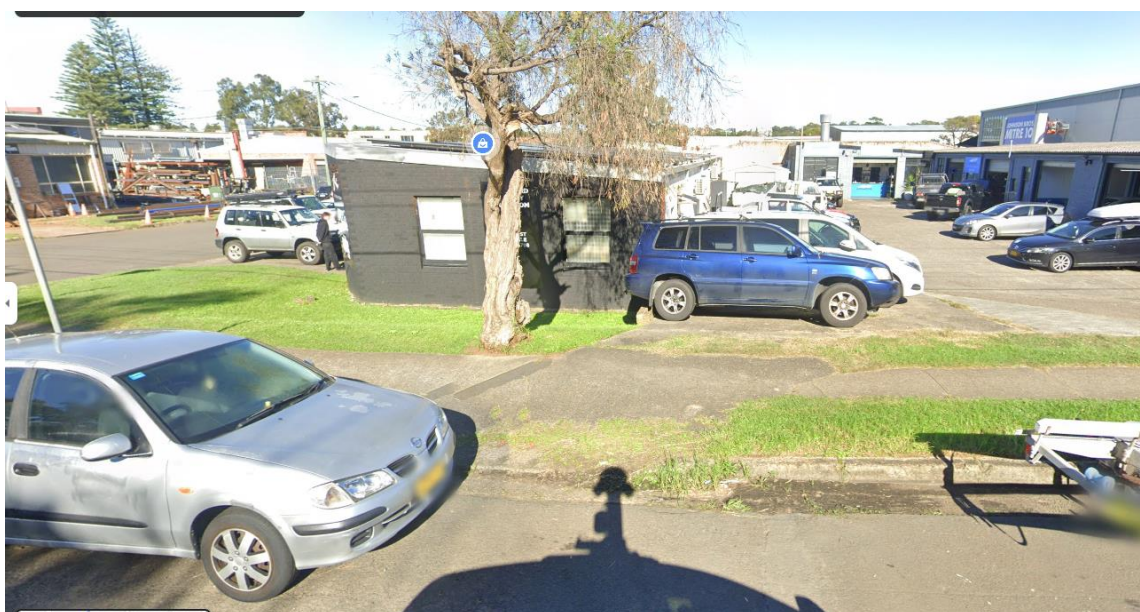
## 2. THE SITE

The site is known as 69 Bassett St Mona Vale and is Lot 3 in DP617781 (see **Figure 1**). This land is comprised of a generally rectangular shaped lot with frontage of around 18.9m to Bassett St. The site presently contain a single storey industrial building (see **Figure 2**). The site is subject to an existing covenant, however as indicated in **Appendix B**, the applicant's legal advice is that this covenant does not prevent from consent being granted.



Source – Six Maps

Figure 1 – Site



Source – Google Maps

Figure 2 – Existing building from Bassett St

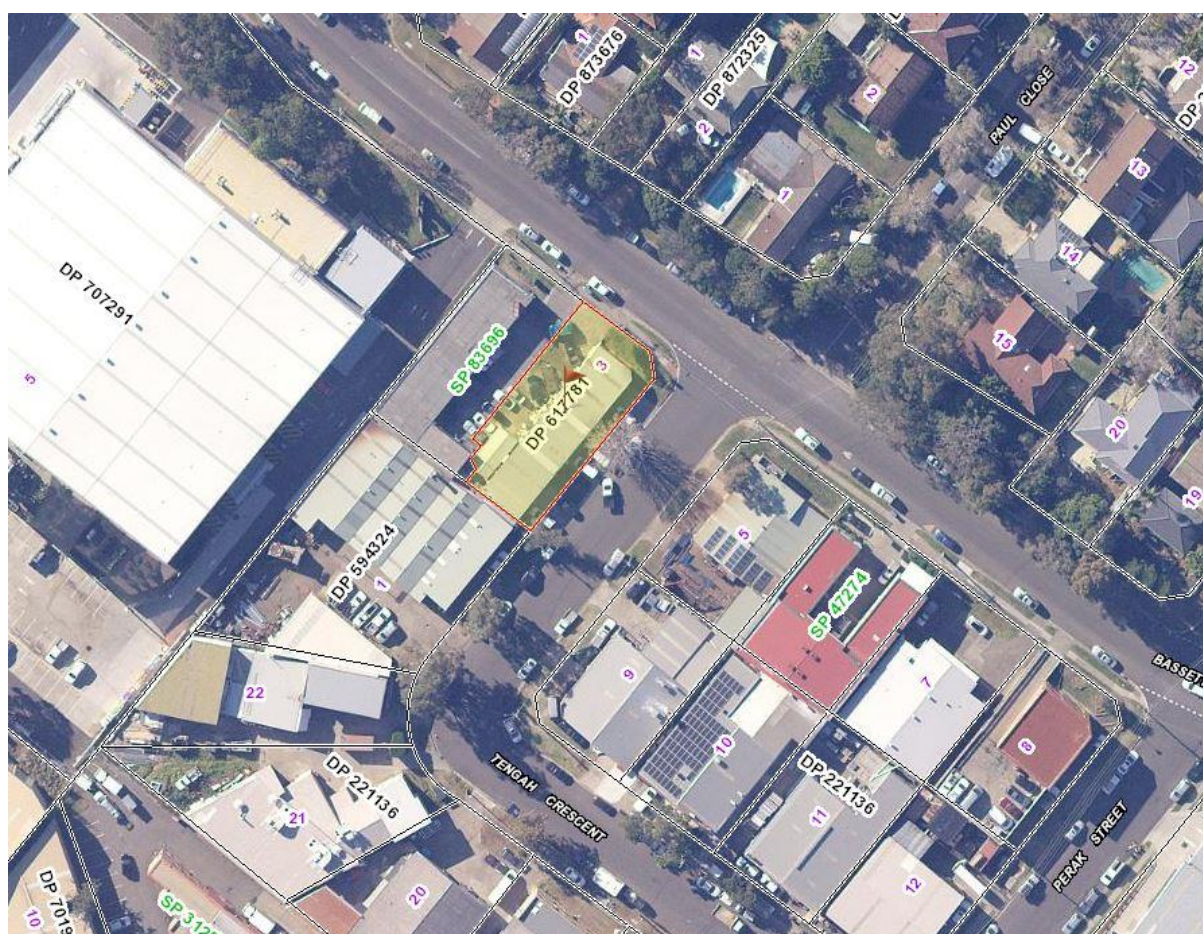


## 3

## Surrounding Environment

### 3. SURROUNDING ENVIRONMENT

The land is located on corner of Bassett St and Tengah Crescent in Mona Vale. The site is typical of the locality where there is a combination of recent and older style 1-3 storey industrial buildings (see **Figure 3**). Across Bassett Street is low density residential development.



Source – Google Maps

Figure 3 – similar development around the site

## 4

# The Proposal

## 4. THE PROPOSAL

### 4.1 Details of the proposal

The proposal includes the demolition of existing structures and construction of a three-storey vehicle storage building with a ground floor take-away cafe. More specifically the proposal will involve:

- Demolition of all existing structures on the site;
- Minor excavation to allow for construction footings, it being noted that due to flood levels, the ground floor slab is elevated above existing ground level to varying degrees;
- Construction of a new 3 storey vehicle storage building including :
  - At Ground Level – a vehicle storage unit is provided with ancillary space, bathroom and toilet and a parking space for the owner/tenant. The take away cafe has an area of 14sqm and has an external bench seating area for patrons waiting for their order. Common areas include the vehicular access, car lift, plant room, disabled toilet, entry lobby and stair/lift access, staff kitchen and two visitor car space including a space for people with a disability;
  - At First Floor Level – 2 vehicle storage units are provided with ancillary space, bathroom and toilet and a parking space for the owner/tenant. Common areas include the vehicular access, car lift and lift and stair access;
  - At Second Floor Level – a vehicle storage units are provided with ancillary space, bathroom and toilet and a parking space for the owner/tenant. Common areas include the vehicular access, car lift, owners lounge and terrace and lift and stair access;
- Building information signage in the form of two ‘Chrome Temple’ signs on the eastern façade;
- Landscaping of the site as detailed on the submitted drawings.

The proposal is of contemporary design predominantly comprising concrete construction with a rendered and painted finish. Use of glazing, metal elements and different colours will add visual interest to the appearance of the building (see **Figure 4**).

An Operational Management Plan has been prepared and submitted with the DA which includes measures to ensure the proposal has minimal impacts on the surrounding area.



Figure 4 – proposed works (east elevation)

## 5

## Zoning and Development Controls

### 5. ZONING AND DEVELOPMENT CONTROLS

#### 5.1 Zoning

Pursuant to the provisions of Pittwater Local Environmental Plan 2014 ('the LEP') the subject property is zoned E4 General Industrial (see **Figure 6**). The proposed use can be categorised as 'self-storage premises' which is defined in the LEP as:

*premises that consist of individual enclosed compartments for storing goods or materials (other than hazardous or offensive goods or materials).*

The proposed use which involves the storage of private motor vehicles in 'individual enclosed compartments' consistent with the above definition. The subject vehicles are not intended to be sold commercially and access will not be provided to the general public.

The ground floor also accommodates a take-away cafe which is a 'take away food and drink premises' as defined in the LEP and a permitted use. The proposed signage is also a permissible use.



Source – ePlanning Spatial Viewer

**Figure 6 – Zoning**



## 5.2 Development Controls

The following legislation and planning documents are relevant to the assessment of the subject DA:

- State Environmental Planning Policy (Resilience and Hazards) 2021;
- State Environmental Planning Policy (Biodiversity and Conservation) 2021;
- State Environmental Planning Policy (Industry and Employment) 2021;
- Pittwater Local Environmental Plan 2014;
- Pittwater 21 Development Control Plan.

## 6

## Evaluation under Section 4.15

## 6. EVALUATION UNDER SECTION 4.15 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1997

### 6.1 Environmental planning instruments

#### 6.1.1 State Environmental Planning Policy (Resilience and Hazards) 2021

In relation to the provisions relating to the coastal environment, the site is not within the coastal area indicated on the relevant mapping.

In relation to the provisions relating to contamination, the proposal is accompanied by a Preliminary Site Investigation which notes that there is some potential for contamination and recommends further investigation. This should not preclude the use of the site as proposed.

#### 6.1.2 State Environmental Planning Policy (Biodiversity and Conservation) 2021

In relation to the provisions regarding Vegetation in Non-Rural Areas, as noted in the description of the site in Section 2 of this report, there is no vegetation of particular significance on the subject site likely to be affected by the proposed works and all street trees are to be retained.

#### 6.1.3 State Environmental Planning Policy (Industry and Employment) 2021

Chapter 3 of this SEPP relates to advertising and signage. The proposal includes two signs with the words 'Chrome Temple' which could constitute either a 'building information sign' or a 'business information sign'. In any event both uses are permissible with consent. The matters required to be considered under this SEPP are discussed in the following table.

Criterion	Comment
<b>1 Character of the area</b>	
Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	Yes, the proposed signage is compatible with the existing and desired character of this industrial area.
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	Yes. Signage in the area is generally modest and relates to the nature of the use withing the site.
<b>2 Special areas</b>	
Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	No. There are no areas of sensitivity that will be affected by the proposed signs. The proposed signs do not face toward the residential area across Basset Street.
<b>3 Views and vistas</b>	

Criterion	Comment
Does the proposal obscure or compromise important views?	No. No views will be affected.
Does the proposal dominate the skyline and reduce the quality of vistas?	No. The signs do not extend above the proposed roofline of the building and will not affect the skyline or any vistas.
Does the proposal respect the viewing rights of other advertisers?	Yes. Proposed signage does not obstruct or clutter views of existing signage of neighbouring properties or any general advertising signs in the locality.
<b>4 Streetscape, setting or landscape</b>	
Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	Yes. The signs are of a modest size compared to the overall scale of the tenancy and building generally. The proposed signs are of a scale, proportion and form appropriate to the building on which they are located and the streetscape and setting within which this building is located. The proposed signs will enhance the presentation of the building by adding visual interest in a co-ordinated manner.
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	Yes. The signage will contribute to the visual interest of the setting as discussed above. Having regard to the length of building façade, a satisfactory visual outcome is achieved.
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	Yes. Existing signage will be removed and replaced by more appropriate signage.
Does the proposal screen unsightliness?	No. However, they will have visual interest to otherwise blank elements of the façade.
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	No. The signs are within the overall building form.
<b>5 Site and building</b>	
Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	Yes. The signs are appropriate given their location and function which is provide the name of the building/business.
Does the proposal respect important features of the site or building, or both?	Yes. The architectural integrity of the building is maintained and by providing visual interest, the signs enhance building appearance.
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	No. The signs are standard functional signs.
<b>6 Associated devices and logos with advertisements and advertising structures</b>	
Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	No. The signage is simple and does not need elaborate structures.
<b>7 Illumination</b>	
Would illumination result in unacceptable glare?	No. Whilst illumination is proposed it will not result in unacceptable glare or light spillage

Criterion	Comment
Would illumination affect safety for pedestrians, vehicles or aircraft?	No. The relatively low level of light emission from signs would not affect safety.
Would illumination detract from the amenity of any residence or other form of accommodation?	No. The proposed signs do not face the adjoining residential area.
Can the intensity of the illumination be adjusted, if necessary?	Not necessary. Illumination levels will be minimal and comply with any relevant conditions of consent.
Is the illumination subject to a curfew?	No. Low intensity lighting is provided which does not need to be limited.
<b>8 Safety</b>	
Would the proposal reduce the safety for any public road?	No. The signage is designed and located in a manner that does not distract drivers or impact on road safety in adjoining streets. No flashing or moving signage is proposed.
Would the proposal reduce the safety for pedestrians or bicyclists?	No.
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	No.

#### 6.1.4 Pittwater Local Environmental Plan 2014

The following clauses of the LEP are relevant.

Clause 2.3 Zone objectives and land use table – the site is zoned E4 General Industrial where self-storage premises are permitted with consent. The proposal is consistent with the objectives of this zone as it:

- Provides an appropriate and compatible land use;
- Provides an efficient and viable land use;
- Minimises adverse effects on other land uses by facing activity and signage generally away from the adjoining residential area;
- Encourages employment opportunities;
- To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area (ie the take away coffee shop);
- Accommodates a use that is not appropriate to locate in other zones;
- Supports the provision of a healthy, attractive, functional and safe light industrial area.

Clause 4.3 Height of Buildings – pursuant to this clause and the relevant map, the site is subject to an 11m height control. The proposal mostly complies with this control as indicated on the submitted plans, however, some elements are above the control. This non-compliance can be approved pursuant to Clause 4.6 of the LEP and is addressed in detail in the submitted Request to Breach the Height Control. In short, the proposed height is considered appropriate as:

- Part of the increase in height is necessitated by having to provide a ground floor level that above the required flood planning level (around 1.4m above existing ground levels). This is similar to the degree of non-compliance as the main part of the building;
- The proposed height of the main building element is RL14.96m which is compatible with the building heights of surrounding development including the approved

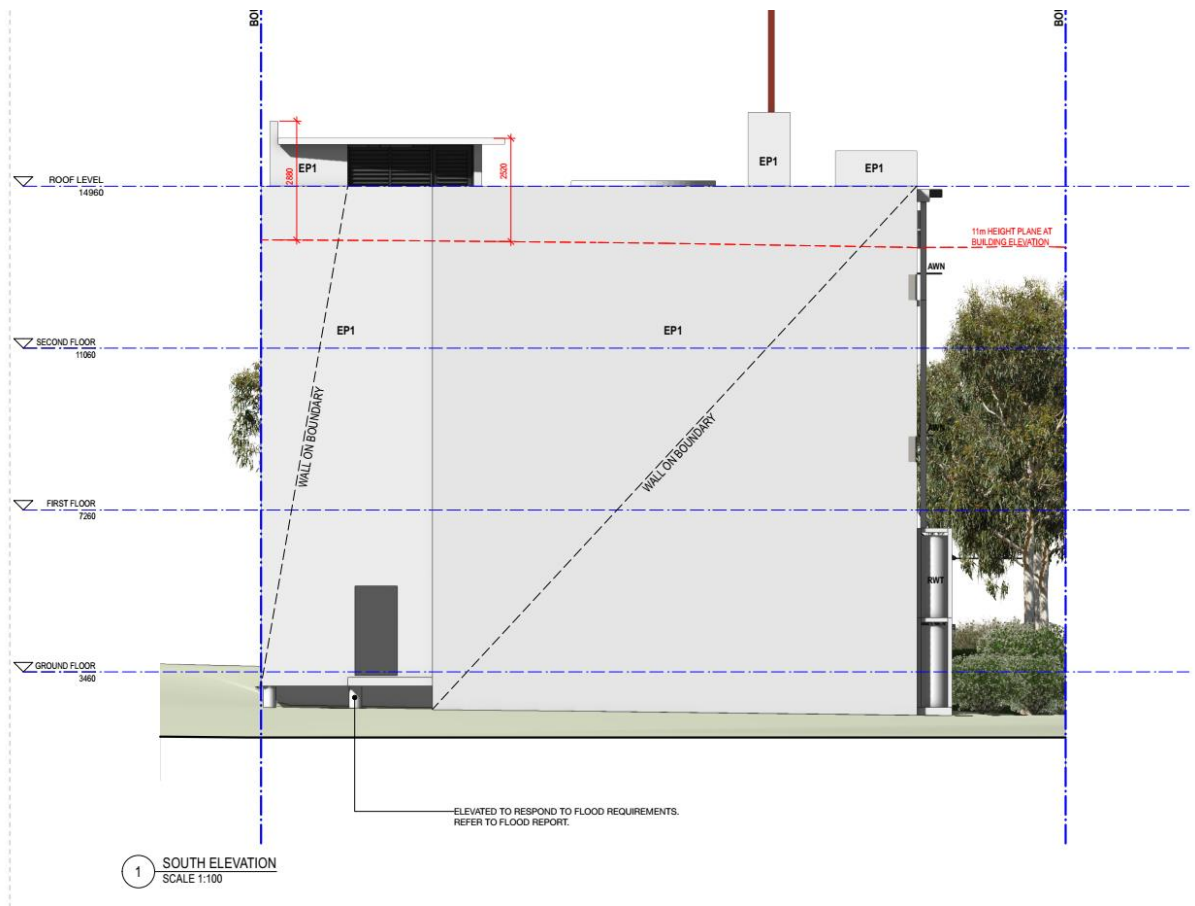


development immediately to the south (RL15.35m) and the Mitre 10 building at RL15m. The elements that sit above this are minor and designed to give prominence to the corner of the building or to improve amenity in the form of a skylight;

- There are no adverse amenity impacts from the breach of the height control.



Figure 7 – North elevation



**Figure 8 – South elevation**

Clause 4.4 Floor Space Ratio – the proposed FSR is 0.98:1 which is less than the 1:1 permitted on the site.

Clause 7.1 Acid Sulfate Soils – the site is identified as containing Class 3 acid sulfate soils. The submitted Geotech Report recommends further investigation of this issue.

Clause 7.2 Earthworks – the amount of cut and fill proposed is not significant as the ground floor slab is required to be above the flood level;

Clause 7.4 Floodplain Risk Management – this lot is subject to flood risk and is proposed to be constructed to minimise flood risk. This is addressed in detail in the submitted Flood Report.

Clause 7.5 Coastal risk planning – this lot is not indicated as being subject to coastal risk on the relevant map.

Clause 7.10 Essential services – in accordance with this clause the following services are/will be available to the site:

- (a) the supply of water,
- (b) the supply of electricity,
- (c) the disposal and management of sewage,
- (d) stormwater drainage or on-site conservation,
- (e) suitable vehicular access.

## 6.2 Draft environmental planning instruments

All the relevant draft EPI's of relevance to the proposal have been considered however there are no specific implications that arise.

## 6.3 Development control plans

### 6.3.1 Pittwater 21 DCP

The relevant provisions of this DCP are considered in the following table.

Provision	Comment
A3.4 Key objectives of the Pittwater 21 Development Control Plan	The proposal is consistent with the environmental, social and economic objectives of the DCP. The proposed development is compatible with the existing and desired future character of the area.
<p>A4.9 Mona Vale Locality</p> <p>The salient points from the Mona Vale 'Desired Character' statement are noted and commented upon below.</p> <p>Retail, commercial and light industrial land uses will be employment-generating.</p> <p>Future development will maintain a building height limit below the tree canopy and minimise bulk and scale. Existing and new native vegetation, including canopy trees, will be integrated with the development. Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards.</p> <p>Light industrial land uses in Darley and Bassett Streets will be enhanced as pleasant, orderly, and economically viable areas.</p>	<p>The proposed use will be employment generating.</p> <p>The proposal is slightly above the height control however this is appropriate to this context and compatible with the height of the proposed 7 canopy trees as indicated on the landscape plan.</p> <p>The proposed building is contemporary and uses façade modulation and other building elements to break down visible scale. The proposed colours are mostly neutral and will be compatible with the industrial environment.</p> <p>The building is built to site above the flood hazard that affects the site.</p> <p>The building will enhance the quality of this industrial area.</p>
B1.4 Aboriginal Heritage Significance	The site is not identified as one where aboriginal relics are likely to be found.
B3.11 Flood prone land	A Flood Report submitted with the DA addresses this issue.
B3.6 Contaminated Land and Potentially Contaminated Land	A Preliminary Site Investigation Report submitted with the DA addresses this issue.
B4.20 Protection of Estuarine Water Quality	The submitted stormwater details and appropriate water quality treatment during construction, will ensure that the proposal will not have any adverse impacts on the estuarine environment.
B5 Water Management	A stormwater plan has been submitted with the DA.
B6 Access and Parking	In the preDA comments, Council acknowledged that the nature of the proposed use was unique. Accordingly as discussed in the Traffic Report, the proposal should be assessed on its merits and the provision of a single car space

Provision	Comment
	per unit plus 3 visitor spaces is considered to be appropriate for the storage units and take away coffee shop.
B8 Site works management	Appropriate measures will be put in place during construction to ensure protection of the environment. Soil management plans have been submitted with the DA.
C3 DESIGN CRITERIA FOR INDUSTRIAL DEVELOPMENT	
C3.1 Landscaping	The submitted landscape plan will ensure the outcomes for this section are achieved.
C3.2 Safety and Security	The submitted architectural plans ensure the outcomes for this section are achieved. Although partly open to the street at ground level, the building is proposed to be made secure by the provision of roller shutters.
C3.3 View Sharing	There are no buildings in the vicinity that are likely to be affected in terms of loss of views.
C3.4 Accessibility	An Accessibility Report submitted with the DA addresses this issue.
C3.6 External storage areas	The only external storage is for waste and this is shielded from view from the public domain.
C3.7 Pollution Control	Appropriate conditions of consent will ensure that the proposal will not result in any unreasonable pollution impacts.
C3.8 Building facades	These provisions indicate that: "Building facades to any public place and including carpark entry points must not contain any stormwater, sewer, gas, electrical or communication service pipe or conduit that is visible from the public place" . However, variations permitted include where service pipes or conduits into facades are treated as a design element of the façade, as is the case here.
C3.9 Energy and water conservation	The submitted details indicate the manner in which the proposal addresses these issues.
C3.10 Waste and Recycling Facilities	A Waste Site Management Plan forms part of the DA documentation.
C3.11 Signage	<p>The proposed 2 wall signs facing Tengah Crescent meet the requirements of this clause by:</p> <ul style="list-style-type: none"> <li>not extending laterally beyond the wall of the building upon which it is attached;</li> <li>not covering any window or architectural projections;</li> <li>not having a signage area greater than 4.5sq m;</li> <li>being illuminated and the upper sign being not less than 2.6m above the ground. The lower sign is closer to ground level however it is smaller and will identify the building entry; and</li> <li>not projecting more than 300mm from the wall.</li> </ul> <p>Whilst only one of each type of sign is noted as being permitted, given the modest nature of the signs and their location they are considered appropriate. Further the sign near the top of the building is aimed at assisting wayfinding from a distance whilst the one near ground level identifies the entry to the building when in proximity.</p> <p>The 'café' sign is recessed into the building and will not be prominent in the public domain.</p>
C3.13 Industrial Development Adjoining Residential Land	As indicated in the submitted shadow diagrams, the proposal will not result in any unreasonable overshadowing of adjacent residential properties. Good separation will also ensure that privacy is not unreasonably affected. The DCP notes that: <i>Elevated decks, verandahs and balconies may incorporate</i>



Provision	Comment
	<p>privacy screens where necessary and should, where possible, be located at the front or rear of the building. In this case the top level terrace is located at the front of the building. Given the very generous separation, privacy screens are not considered necessary and would block northern winter sun, reducing the ability to enjoy the terrace.</p> <p>An Operational Management Plan has been prepared and submitted with the DA which includes measures to ensure the proposal has minimal impacts on the surrounding area.</p>
C3.14 Car/Vehicle/Boat Wash Bays	A wash bay is provided.
C3.15 Undergrounding of Utility Services	Undergrounding of services are not considered appropriate in this circumstance.
C3.19 Food Premises Design Standards	Appropriate conditions of consent can ensure compliance.
D9 Mona Vale Locality D9.1 Character as viewed from a public place	The proposal will improve the overall appearance of the site when viewed from the public domain.
D9.2 Scenic Protection general	The material provided with the DA demonstrates that the scenic character of the area will be improved by the proposed building.
D9.3 Building colours and materials	As detailed in the submitted plans the proposed colours and materials are predominantly neutral with elements of brighter colours to add interest.
D9.6 Front building line - 6.5m or established building line, whichever is the greater	The proposed front setback to Bassett Street is generally consistent with the 6.5m requirement, however First floor level is slightly less. Given that the proposed setback is greater than the existing setback (a minimum of 3.6m) and greater than other developments fronting Bassett Street, the proposed setback is appropriate.
D9.7 Side and rear building line	The proposal is built to the side and rear boundaries as expected by the nil setback control in this section.

#### 6.4 Any planning agreement that has been entered into or draft agreement offered

There are no planning agreements or draft planning agreements that are of relevance to the proposal.

#### 6.5 Any matter prescribed by the regulations that apply to the land

There are no regulations of specific relevance to the proposal.

#### 6.6 The likely impacts of that development

The potential impacts of the proposal have been addressed in **Section 6.1** and **Section 6.3** of this report or in the assessment of specific issues in the other DA documentation.

#### 6.8 The suitability of the site for the development

The site is typical of the Mona Vale industrial area and is suited to a site of this nature. The use is a very 'clean' type of use and will have minimal potential for impacts. Accordingly its location opposite residential areas is not problematic.

#### 6.9 Submission made in accordance with this Act or the regulations

This is a matter for Council to consider however the proposal has been designed to minimise impacts on surrounding development.

#### **6.10 The public interest**

The proposal is in the public interest as it generally complies with the provisions of the LEP and DCP and will maintain the visual quality of the locality through a design which is sensitive to the site and its surrounds.

## 7

## Conclusion

### 7. CONCLUSION

The proposal has been designed to not have minimal adverse impacts and to be generally consistent with the LEP and DCP controls. It represents a great aesthetic improvement to the subject land and locality.

We are of the view that the proposal provides for a good quality planning outcome for the site and seek Council's support for the proposal.

## Response to matters raised in preDA comments



**RESPONSE TO PRE-LODGEEMENT MEETING NOTES  
CHROME TEMPLE GARAGE – 69 BASSETT STREET MONA VALE  
APRIL 2023**

**Categorisation of Development**

Regarding council's concern about the Owners Lounge and terrace on the second storey, these spaces are only for the use of the owners. This restriction of use is outlined in the Operation Plan of Management, included with this development application.

The 'kiosk' is now referred to as the 'takeaway coffee shop'.

**Building Height**

The maximum flood planning level is 3.92m AHD.

The level of the concrete roof is RL 14.960m AHD. There are a number of roof elements that extend beyond the roof, but these are a small proportion of the building and contribute less to the bulk and scale. These elements that extend beyond the main roof add visual interest to the building. They vary in height with RLs of 15.860m, 16.160m and 16.760m.

The roof level of the proposed development is higher than what was submitted for the pre-lodgement meeting, however this should not drastically alter council's analysis of the building height.

The proposed roof level is 12.27m above the natural ground level of the overall site (approximately 2.69m AHD). A Clause 4.6 variation request is provided with this development application addressing this building height non-compliance.

Council notes that Clause 4.3(2B) allows for the building height to be 10.5m above the flood planning level, which would be 14.420m AHD. The proposed roof level is 11.04m above the flood planning level. The ground floor of the building has been elevated above natural ground as a flood control measure (refer to Flood Management Report). We note that the ground floor of the proposed development is at RL 3.460m, which matches the ground floor level of the approved building on 4-8 Tengah Crescent but is below the flood planning level of the site. The design of the development required a balance between the requirements for flood control and to limit bulk and scale with the building height.

The approved building on 4-8 Tengah Crescent has a roof parapet height of RL 15.350m AHD. This building is built to the boundary with 69 Bassett Street. The Mitre 10 building has roof ridge of approximate RL 15.000m AHD. Council noted the design of building for the pre-lodgement meeting is considered consistent with what has been approved and on surrounding sites – the proposed building is below the height of the two neighbouring buildings so council's pre-lodgement analysis should not differ.

The proposed design maintains the stepped design submitted for the pre-lodgement meeting. Landscaped area to the front setback of Bassett Street has been increased and the landscape design includes canopy trees, following council's notes.

**Floor Space Ratio**

FSR is 0.98:1

Following the pre-lodgement meeting, the operation of the building has been changed so that parking has been provided within each unit for the respective unit owners. This parking satisfies parking requirements for the storage premises component of the building (refer to Traffic Impact Assessment report). Common circulation area on each floor has been excluded from gross floor area calculation. Additionally, the parking within each unit has been excluded from the gross floor area calculation. This results in a development with complying FSR.

Parking for the take-away coffee shop is provided on the ground floor. The landscaped area to the front setback of Bassett Street has been increased to the full 6.5m width of the front setback control.

**RESPONSE TO PRE-LODGEEMENT MEETING NOTES  
CHROME TEMPLE GARAGE – 69 BASSETT STREET MONA VALE  
APRIL 2023**

**Covenant**

As indicated in Appendix B of the Statement of Effects – the applicant's legal advice is that the existing covenant does not prevent from consent being granted.

**D9.6 Front Building Line**

The landscaped area to the front setback of Bassett Street has been increased to the full 6.5m width of the front setback control, following council's notes. The landscape design includes canopy trees in the front setback.

**D9.7 Side and rear building line**

The car parking turning area at 71 Bassett Street is sufficient (refer to the Site Analysis Plan).

**Urban Design**

There will be no overlooking of private open space of residential area on the opposite side of Bassett Street. The second-storey terrace is set back from the Bassett Street boundary by 6.5m, with bench seating and a planter limiting access directly to the edge of the building. Additionally, the private open space to the residential area has significant landscape screening.

FSR and building bulk, mass scale and setbacks has been addressed above.

Front setback is landscaped which will provide a buffer to the residential area on the opposite side of Bassett Street.

The proposed design has incorporated council's recommendations on sustainability. Rainwater tanks have been provided for water reuse. Photovoltaic panels are proposed. The selection of materials will be further developed in the subsequent construction documentation stage.

The design has been altered to incorporate council's suggestions for natural ventilation and light to the internal courtyard, with a relocation of the office, toilet and kitchen spaces.

The development application drawings include the requested details and analysis of sustainability features in the proposal. Additionally, the following documentation requested by council has been included:

- Survey
- Streetscape elevation
- Long section
- Context and site analysis
- Flood analysis
- Public domain plan

**Traffic**

The submitted traffic report directly addresses council's notes. In particular, the applicable sections of Pittwater 21 DCP and RMS Guide to Traffic Generating Development have been assessed. Sufficient parking has been provided for owners of each storage unit, staff and visitors, including people with disabilities. An Operation Plan of Management has been included with this application. The proposed development incorporates council's recommendation for a central two-way driveway and separate exit with clockwise circulation. The car lift has been selected to cater for the largest proposed vehicle type. Swept paths have been included in the traffic report.

**Development Engineering**

The submitted engineering plans address council's notes.

**Flooding**

The submitted Flood Management Report addresses council's notes.

**RESPONSE TO PRE-LODGEEMENT MEETING NOTES  
CHROME TEMPLE GARAGE – 69 BASSETT STREET MONA VALE  
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**Environment and Health**

The submitted Acid Sulfate Soils Assessment addresses council's notes.

**Noise**

The submitted Mechanical Noise Emission report addresses council's notes. The Operational Management Plan restricts the use of the terrace, which will ensure there is no additional noise that would be a nuisance to the residential neighbours.

**Food**

The takeaway coffee shop is capable of complying with requirements, subject to detailed design for future stages.

**Contaminated Land**

The submitted Preliminary (Desktop) Site Investigation Report addresses council's notes.

**Coast and catchment**

The submitted engineering plans address council's notes.

### Legal advice regarding covenant



**Confidential**

13 July 2023

Our ref: IFL23001  
Your ref:

MHDP ARCHITECTS  
Level 2, 271 Alfred Street North  
NORTH SYDNEY, NSW, 2060

Attention: Mark Hurcum

**Email**

Dear Mark,

**69 Bassett St, Mona vale | Operation of Restrictive Covenant for Car Parking**

**Introduction and Background**

- 1 Your client owns land described as Lot 3 in DP 617781 located at 69 Bassett Street Mona Vale (Land) and is seeking to redevelop the Land by demolishing the present structures and constructing a three-storey vehicle storage facility and take-away café.
- 2 Pursuant to a development consent 68/234 (**Consent**) and building approval A983/68, a factory was constructed on what is now lots 3 and lot 4 in DP617781.
- 3 The Consent required parking spaces to be provided on the land the subject of the Consent. I understand that this amounted to 12 spaces.
- 4 It was a condition of Consent that the lots 1 and 2 in DP220294 were amalgamated to ensure permanent satisfactory car parking for the completed building (condition (g) of the Consent).
- 5 To overcome the need to comply with condition (g) the then owners of Site (which at the time was lots 1 and 2 in DP220294) entered into a Deed with Warringah Council (now Northern Beaches Council) (**Deed**). Under the Deed, a restrictive covenant was to be registered on each of Lots 1 and 2 in DP220294.
- 6 The terms of the restrictions are set out in dealings: Q218412 and Q238954.
- 7 Dealing Q218412 (**Car Parking Covenant**) is registered on the certificate of title to the Land.
- 8 Relevantly, the Car Parking Covenant provides:

*'1 ...no part of [Lot 1 in DP220294] approved for the parking of motor vehicles under the Council's land use Consent Number 68/234 dated the 1<sup>st</sup> day of October 1968 and Building Approval A983/68 dated the 10<sup>th</sup> day of October 1968 and designated "Twelve parking bays" shall be used at any time for any purpose other than the parking of motor vehicles.*

*2 Nothing shall be located on the land so as to prevent the free ingress and egress of motor vehicles to and from the aforesaid parking bays and Bassett Street Mona Vale.*

- 9 The land with the benefit of the restriction is land owned by the Council, namely part of Bassett Street with a frontage to the Land.
- 10 The Council has the power to release, vary or modify the Car Parking Covenant.
- 11 I understand that Car Parking Covenant insofar as it applies to the Land appears to apply to a hard stand area used for parking of vehicles on the western side of the building on the Land.

### **Advice Sought**

- 12 You seek a written advice as to whether the Car Parking Covenant is enforceable and if so the options for its removal from the title of the Land.

### **Summary Advice**

- 13 In my view, the Car Parking Covenant cannot be enforced by the Council against the current owners of the Land.
- 14 This is because the terms of the Car Parking Covenant do not indicate that the burden of the Car Parking Covenant was intended to run with the Land. As such, it cannot be enforced in equity with the consequence that s88(1) of the *Conveyancing Act 1919 (NSW)* (**Conveyancing Act**) does not operate to enable the Council to enforce it.
- 15 Further, properly construed, the terms of the Car Parking Covenant, mean that once the current use of the Land under the Consent ceases, the Car Parking Covenant is obsolete because by its terms it only operates while the Land is being used pursuant to the Consent.
- 16 On this basis, the Covenant does not need to be varied or removed from the title of the Land. It simply has no work to do and is obsolete if the Land is used other than pursuant to the Consent.
- 17 If, despite the above, it is desirable to remove the Covenant from the title then this could be done:
  - a) by agreement with the Council; or
  - b) by applying to the Supreme Court under s89 of the Conveyancing Act.

### **Advice**

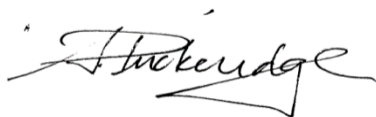
#### *Operation of the Car parking Covenant*

- 18 The Car Parking Covenant does not benefit Lot 4 of DP617781 (Lot 4), despite the fact that the purpose of the Car Parking Covenant was to overcome a requirement for Lots 1 and 2 in DP 22094 to be consolidated.

- 19 The terms of the Car Parking Covenant also limit its operation to the use of the Land pursuant to the Consent.
- 20 At common law the burden of a covenant does not run with the land, although equity may enforce the burden against successors in title:
  - a) where the covenant is negative;
  - b) the covenant benefits the land of the covenantee; and
  - c) the burden of the covenant was intended to run with the land.
- 21 This common law presumption has been modified by s88(1) of the Conveyancing Act which provides that subject to certain limited exceptions, a restriction arising under a covenant may be enforceable against the successor in title of the original covenantor if the instrument creating the restriction clearly indicates:
  - a) the land to which the benefit of the restriction applies;
  - b) the land which is the subject of the burden of the restriction;
  - c) the persons with the right to modify, vary or release the covenant; and
  - d) the persons, if any, whose consent to a release, variation or modification to the restriction is stipulated.
- 22 However, s88(1) only concerns covenants enforceable in equity.
- 23 In the present instance, the Car Parking Covenant is not enforceable in equity. Although the first two requirements identified in paragraph 23 above have been satisfied:
  - a) the Car Parking Covenant prevents certain parts of the Land being used other than for car parking;
  - b) the Car Parking Covenant benefits the Council Land, being part of Bassett Street;the third has not.
- 24 I do not consider that the third requirement is satisfied because the Deed provides that the owners executed the Deed for “themselves, their executors, their administrators and assigns”. It does not refer to successors in title or heirs.
- 25 As such, while not beyond doubt, I consider that it is arguable that the Car Parking Covenant is not enforceable in equity and therefore s88(1) doesn’t operate.
- 26 Further, given the terms of the Car Parking Covenant, it is clearly linked to the Consent and therefore only operates for so long as the Land is being used pursuant to the Consent.
- 27 Once the Land ceases being used pursuant to the Consent, on a proper construction of the covenant, it no longer operates.
- 28 In such an eventuality, the Car Parking Covenant does not need to be released or modified. It simply no longer has any work to do.
- 29 As such, there is no need to seek to release or modify the Car Parking Covenant if it is proposed to redevelop the Land.
- 30 Having said this, it may be considered preferable to remove the Car Parking Covenant from the title of the Land to avoid disputes as to the operation of the Car Parking Covenant in the future.
- 31 In any event, the Car Parking Covenant does not operate to prevent a consent authority from determining to grant consent to a development application which does not comply with the covenant.

- 32 There is nothing in the EPA Act which suggests the Council's decision to release, vary or modify the restriction as to user under cl 1.9A(3) is a precondition' to the grant of consent: See *Chehab v City of Canada Bay* [2002] NSWLEC 220 (**Chehab**) at [29] referring to *Alvanos v Shoalhaven Shire Council* (2001) 119 LGERA 403.
- 33 It therefore remains open to the owner of the Land to lodge an application for development consent and to separately seek to have the covenants varied or released (if necessary).
- 34 If it is considered necessary to remove the Car Parking Covenant from the title of the Land, an application could be made to the Supreme Court under s89(1)(a) of the Conveyancing Act. This section operates to permit the Car Parking Covenant to be partially or wholly extinguished if the Court is satisfied that:
  - a) by reason of a change in the user of the land having the benefit of the Restrictive Covenant, or a change in the character of the neighbourhood or other circumstances of the case which the Court deems material, the Restrictive Covenant ought to be deemed obsolete, or
  - b) that the continued existence of the Car Parking Covenant would impede the reasonable user of the land without securing a practical benefit to the persons entitled to the benefit of the Restrictive Covenant.

Yours Sincerely,



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Partner

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