

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2013/0198
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Responsible Officer:	Mitchell Drake
Land to be developed (Address):	Lot 1 DP 867107 , 788 Pittwater Road BROOKVALE NSW 2100 Lot 78 DP 793530 , 5 - 9 Carter Road BROOKVALE NSW 2100 Lot 12 DP 9504 , 238 Harbord Road BROOKVALE NSW 2100
Proposed Development:	Modification of Development Consent DA2012/0168 granted for Demolition Works, Alterations and Additions to existing building and Construction of new development for Use as a Vehicle Sales or Hire Premises and Vehicle Repair Station and Signage
Zoning:	LEP - Land zoned B5 Business Development LEP - Land zoned IN1 General Industrial LEP - Land zoned IN1 General Industrial LEP - Land zoned IN1 General Industrial
Development Permissible:	Yes - Zone B5 Business Development Yes - Zone IN1 General Industrial
Existing Use Rights:	No
Consent Authority:	Warringah Council
Land and Environment Court Action:	No
Owner:	Robert Kingsley Gaha Glen Lesley Gaha Ladena Pty Ltd RKG Properties Pty Limited Giara Pty Limited
Applicant:	Maurice Sartorelli

Application lodged:	08/10/2013
Application Type:	Local
State Reporting Category:	Other
Notified:	21/10/2013 to 05/11/2013
Advertised:	Not Advertised in accordance with A.7 of WDCP
Submissions:	1
Recommendation:	Approval

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (upto the time of determination) by the applicant, persons who have made submissions regarding the application and any advice provided by relevant Council / Government / Authority Officers on the proposal.

SUMMARY OF ASSESSMENT ISSUES

There are no assessment issues.

SITE DESCRIPTION

Property Description:	Lot 1 DP 867107 , 788 Pittwater Road BROOKVALE NSW 2100 Lot 78 DP 793530 , 5 - 9 Carter Road BROOKVALE NSW 2100 Lot 12 DP 9504 , 238 Harbord Road BROOKVALE NSW 2100
Detailed Site Description:	The site is irregularly shaped and consists of three allotments facing Pittwater Road, Carter Road and Harbord Road respectively. Lot 1, No. 788 Pittwater Road is located on the corner of Pittwater Road and Carter Road and has an area of 2,718.98m², Lot 78, No. 5-9 Carter Road has an area of 1,546.32m² and Lot 12, No. 238 Harbord Road has an area of 765.21m². The site has a combined surveyed area of approximately 5,030.51m². Lot 1, No. 788 Pittwater Road is irregular in shape and accommodates the open forecourt and existing part single/part double storey Mazda motor vehicle showroom and associated service division. Lot 78, No. 5-9 Carter Road is rectangular in shape and accommodates an open car park and a small outbuilding which is used for vehicle storage by Mazda. Lot 12, No. 238 Harbord Road is rectangular in shape and accommodates an industrial building and open car parking area to the rear. Lot 1, No. 788 Pittwater Road gains separate vehicle access from the open forecourt via an existing crossover onto

Pittwater Road and from the Service and Parts Division via an existing crossover onto Carter Road. No. 5-9 Carter Road gains vehicle access via an existing crossover onto Carter Road. Lot 12, No. 238 Harbord Road gains vehicle access via an existing crossover onto Harbord Road.

Map:



SITE HISTORY

A review of Council records indicates that apart from the original application DA2012/0168 for *"Demolition Works, Alterations and Additions to existing building and Construction of new development for Use as a Vehicle Sales or Hire Premises and Vehicle Repair Station and Signage"* granted consent on 02/07/2012, there are no other works or applications relevant to the subject modification.

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks approval to modify the development consent by correcting an error within the labelled plans indicating the facade on the Carter Road frontage is RL 33.330. The height of this facade is 32.330 and is thus 1m lower than previously indicated on the approved plans. The modification will not result in an actual physical change in the development. The correct height of the facade at its lowest point on the Carter Road Frontage is 5.6m from existing ground level.

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment A.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2012/0168, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 96(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 96(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	Yes The modification, as proposed in this application, is considered to be of minimal environmental impact.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2012/0168
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Warringah Local Environment Plan 2011 and Warringah Development Control Plan.

Section 96(1A) - Other Modifications	Comments
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on “Public Exhibition” in this report.

Section 79C Assessment

In accordance with Section 96(3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 79C(1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act, 1979, are:

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 79C (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 79C (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 79C (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent. <u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation was submitted with the original application <u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this Clause within the Regulations. No Additional information was requested.

Section 79C 'Matters for Consideration'	Comments
	<u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent. <u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original consent <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This Clause is not relevant to this application. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent. <u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This Clause is not relevant to this application.
Section 79C (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. (ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 79C (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” in this report.
Section 79C (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental

Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and Warringah Development Control Plan.

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

Name:	Address:
Scott McIntyre	780 Pittwater Road BROOKVALE NSW 2100

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

- Performance Wall Height
- Bulk and Scale
- Signage Impacts

The matters raised within the submissions are addressed as follows:

- *The objector has requested that the "Performance Wall" be reduced in height to a maximum 3.17m from the approved facade on the Carter Road Elevation.*

Comment: The maximum height of the performance wall was subject to a condition of consent requiring an 11m maximum height. This height as indicated on the approved plans was at RL37500. the error in plan data results in the actual height of the performance wall being 10.41m when measured from existing ground level, however the performance wall remains at RL37500. There is no physical change to the development as proposed in terms of overall height. The requested Performance Wall height would result in an RL of 35500 overall height of 8.410m which is considered unreasonable due to the controls requiring an 11m maximum height limit.

- *The modification will result in the "Performance Wall" having an unreasonable bulk and scale.*

Comment: Site inspection and a review of the surrounds indicates that the bulk and scale of the development remains commensurate with that within the area. The proposal remains consistent in terms of bulk and scale and the objection carries no determining weight.

- *The objector states that the proposed "Performance Wall" will obstruct views of the "Ford" Signage on their property from the Pittwater Road Warringah Road intersection.*

Comment: The Ford sign is in a prominent position and will retain adequate site identification provisions. The objection carries no determining weight.

MEDIATION

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

REFERRALS

No referrals were sent in relation to this application

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

Nil

Warringah Local Environment Plan 2011

Is the development permissible?	Zone B5 : Yes Zone IN1: Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	Variation	Complies
Height of Buildings:	11m	6.6m min - 11m max	5.6m min 10.41m max	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
Land Use Table	Yes
Part 4 Principal development standards	Yes
4.3 Height of buildings	Yes

Clause	Compliance with Requirements
Part 5 Miscellaneous provisions	Yes
5.3 Development near zone boundaries	Yes

Warringah Development Control Plan

Built Form Controls

There are no changes to the Built Form Controls as part of this modification.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
Part A Introduction	Yes	Yes
A.5 Objectives	Yes	Yes
Part D Design	Yes	Yes
D9 Building Bulk	Yes	Yes

POLICY CONTROLS

Warringah Section 94A Development Contribution Plan

Section 94 contributions were levied on the Development Application.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

The proposal has been assessed against the relevant matters for consideration under Section 79C of the EP&A Act 1979. This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects specified in S.5(a)(i) and (ii) of the Environmental Planning and Assessment Act 1979

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant approval Modification Application No. Mod2013/0198 for Modification of Development Consent DA2012/0168 granted for Demolition Works, Alterations and Additions to existing building and Construction of new development for Use as a Vehicle Sales or Hire Premises and Vehicle Repair Station and Signage on land at Lot 1 DP 867107,788 Pittwater Road, BROOKVALE, Lot 78 DP 793530,5 - 9 Carter Road, BROOKVALE, Lot 12 DP 9504,238 Harbord Road, BROOKVALE, subject to the conditions printed below:

A. Add Condition No.1B - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
CCA - 20/ 5 Carter Road Elevations Sheet 1 of 2	06/05/2013	AS Architects

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans. (DACPLB01)

B. Modify Condition No.18. Height of performance wall - to read as follows:

18. Height of performance wall

The maximum height of the 'Performance Wall' as indicated on the amended plans is not to exceed a maximum RL37500.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Interim/Final Occupation Certificate.

Reason: To maintain compliance with WLEP 2011

I am aware of Warringah's Code of Conduct and, in signing this report, declare that I do not have a Conflict of Interest.

Signed

Mitchell Drake, Development Assessment Officer

The application is determined under the delegated authority of:

Steven Findlay, Development Assessment Manager

ATTACHMENT A

No notification plan recorded.

ATTACHMENT B

Notification Document	Title	Date
 2013/303981	Notification Map	21/10/2013

ATTACHMENT C

	Reference Number	Document	Date
	2013/290730	DA Acknowledgement Letter - Maurice Sartorelli	08/10/2013
	2013/292316	application to modify a consent	09/10/2013
	2013/292326	applicant details	09/10/2013
	2013/292329	plans master set	09/10/2013
	2013/298658	File Cover	15/10/2013
	2013/298664	Request further information	15/10/2013
	2013/303948	Notification Letters - 53	21/10/2013
	2013/303981	Notification Map	21/10/2013
	2013/324879	Owners consent clarification	30/10/2013
	2013/320491	Online Submission - McIntyre	05/11/2013