

3.3	1262 Pittwater Road, Narrabeen – Modification of DA2009/1446 to Extend Hours and Relocate Garbage Storage Enclosure for a Residential Flat Building
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SECTION 96 APPLICATION ASSESSMENT REPORT

Assessment Officer: Simon Taylor

Address / Property Description: 1262 Pittwater Road, Narrabeen

Modification Application No: MOD2010/0158

Approved Development: Development Consent No. DA2009/1446 for construction of residential flat buildings containing 48 units and associated basement carparking

Consent Determination Date: 30 March 2010

Proposed Modifications: Modification of Condition No. 5 to extend the construction hours and delete Condition No. 15 to relocate the garbage storage enclosure

Application Lodged: 9 July 2010

Plans Reference: HM1063 W03 Revision H

Amended Plans: Not applicable

Applicant: Aranda Properties

Owner: Aranda Properties

Locality: D1 Collaroy/Narrabeen

Category: One (housing)

Draft WLEP 2009 Permissible or Prohibited Land use: R3 Medium Density Residential / Permitted with consent

Variations to Controls (Cl.20/Cl.18(3)): No additional variations

Referred to ADP: Yes (more than 2 unresolved objections)

Referred to WDAP: N/A

Land and Environment Court Action: No

SUMMARY

Submissions: Three (3)

Submission Issues: Additional construction site noise and disruption

Assessment Issues: Noise, garbage room access and conflict with bus stop

Recommendation: Approval - subject to conditions

Attachments: N/A

LOCALITY PLAN (not to scale)



Subject Site: Lot 20, DP 1148058, No. 1262 Pittwater Road, Narrabeen

Public Exhibition: The subject application has been publicly exhibited in accordance with Environmental Planning and Assessment Regulation 2000, Warringah Local Environment Plan 2000 and Warringah Development Control Plan 2008. As a result, the application was notified to 167 adjoining land owners and occupiers and to 3 persons who made a submission to the original development application for a period of not less than 14 calendar days commencing on 23 July 2010 and being finalised on 9 August 2010.

SITE DESCRIPTION

Description: The subject site has a registered title of Lot 20, DP 1148058 (previously forming part of the now defunct Lot 3, DP 1094308), and is commonly known as 1262 Pittwater Road, Narrabeen. The site is located on the eastern side of Pittwater Road, approximately 45m from Robertson Street (to the south). The subject site is irregular in shape; comprises an area of 3,363m²; and has a west/east orientation.

The site has a western street-front boundary measuring 85.765m, an eastern 'dog-leg' rear boundary measuring 66.71m and 15.24m, a southern side boundary measuring 30.925m and a northern 'dog-leg' side boundary measuring 43.470m and 12.89m.

Topography: The site is generally level, falling approximately 0.7m from rear boundary to front boundary.

Existing: The subject site is currently a construction site, with the development approved under Consent No. DA2009/1446 being carried out. Directly adjacent the site to the east (also formerly part of the now defunct Lot 3, DP 1094308), is another construction site fronting Ocean Street, with development consisting of a residential flat building (18 units) and associated basement carparking.

Surrounding Area: The surrounding area is mixed in character, consisting of detached/apartment style housing, and commercial/business premises. Directly adjacent the site to the south is the Sands Hotel.

Site Burdens/Constraints: The site is affected by Type 4 Acid Sulfate Soils; whilst Pittwater Road is a designated arterial road.



Proposed location of garbage bin enclosure behind telephone box (left photo - taken on 30 July 2010), and view from Pittwater Road (right photo - taken on 17 September 2010)

SITE HISTORY / APPROVED DEVELOPMENT

2008-2009: Council granted Consent No. DA2008/1274 on 2 March 2009, for subdivision of Lot 3, DP 1094308 into two (2) lots (i.e. the subject site, and the adjoining site to the east).

2009-2010: Council granted Consent No. DA2009/1446 on 30 March 2010, for construction of a residential flat building containing 48 units and associated basement carparking.

Condition 5(a) and 15 of Consent No. DA2009/1446 stipulated as follows:

5. General Requirements

(a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

7.00 am to 5.00 pm inclusive Monday to Friday

8.00 am to 1.00 pm on Saturday,

No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community. (DACPLB10)

15. Garbage storage enclosure

The garbage storage enclosure within the Pittwater Road frontage is to be relocated and is to be situated adjacent to the southern elevation of the approved driveway.

Amended plans demonstrating compliance are to be submitted to the satisfaction of the Certifying Authority prior to the issue of any Construction Certificate.

Reason: To minimise the impact on the public domain and bus stop.

PROPOSED MODIFICATIONS

The applicant seeks to modify Condition No. 5. (a) (General Requirements) and Condition No. 15 (Garbage storage enclosure) of Consent No. DA2009/1446, in the following manner:

Condition No. 5. (a) (General Requirements): In an attempt to reduce the length of the construction period, make it a more efficient construction operation and to replace lost time due to poor weather, the applicant seeks to extend the approved construction hours from 5.00pm to 6.00 pm inclusive Monday to Friday (1 additional per day) and from 1.00pm to 5.00 pm on Saturdays (4 additional hours on Saturdays). This represents an additional 9 hours per week overall.

In accordance with information submitted with this application, *“activities carried out within the proposed periods (outside the normal hours) will be low impact construction works”*.

In support of the current application, the applicant submitted a noise report, prepared by Acoustic Logic Consultancy, dated 15 June 2010.

The applicant also refers to an example of another site (also managed by the applicant), whereby Council has consented to extended construction hours identical to that proposed (see MOD2009/0231 - 41 Roseberry Street and 76-78 Kenneth Road, Manly Vale - approved 15 October 2009).

Condition No. 15 (Garbage storage enclosure): The applicant seeks to delete this condition so as to locate the garbage storage enclosure where it was originally proposed under DA2009/1446 (i.e. in the front setback of Unit 16) prior to Condition 15 being imposed on the consent. Justification for deleting Condition 15 is as follows:

- *The location in accordance with condition no. 15 would result in Unit 2 losing private open space. The proposed location would not compromise amenity space at Unit 16;*
- *The location in accordance with condition no. 15 would result in a potential vehicular movement/pedestrian hazard (i.e. residents would only be able to access the enclosure via the driveway);*
- *Traffic exiting the site and/or heading south along Pittwater Road would be obstructed by a refuse collection vehicle that parks adjacent to the driveway;*
- *Furthermore, buses would be obstructed from accessing the nearby bus shelter, by a refuse collection vehicle that parks adjacent to the driveway; and*
- *A refuse collection vehicle would be able to park beyond the nearby bus shelter, thus reducing obstruction of buses travelling along Pittwater Road.*

The applicant stated in the application that the proposed location would *“have less impact on the public domain and bus stop”*.

Since lodging this application, concerns raised in relation to the relocation of the garbage storage enclosure have resulted in the applicant agreeing to delete this component from the application.

AMENDMENTS TO THE SUBJECT APPLICATION

No amendments have been sought as part of this application.

STATUTORY CONTROLS

- a) Environmental Planning and Assessment Act 1979;
- b) Environmental Planning and Assessment Regulation 2000;
- c) State Environmental Planning Policy - Design of Residential Flat Development;
- d) Warringah Local Environmental Plan 2000;
- e) Warringah Development Control Plan; and
- f) Draft Warringah Local Environmental Plan 2009.

PUBLIC EXHIBITION

The subject application has been publicly exhibited in accordance with the Environmental Planning and Assessment Regulation 2000, Warringah Local Environment Plan 2000 and Warringah Development Control Plan 2008. As a result, the application was notified to 167 adjoining land owners and occupiers and to 3 persons who made a submission to the original development application for 14 days commencing on 23 July 2010 and finishing on 9 August 2010.

As a result of the public exhibition process, submissions have been received from:

Name	Address
Jody Thomas and Claude Dihel	7/42 Ocean Street, Narrabeen
Patricia Mills	8/42 Ocean Street, Narrabeen
Darren Matson	42 Ocean Street, Narrabeen (unit no. withheld)

The matters raised within the submissions are addressed hereunder:

Additional construction site noise and disruption

The residents are concerned that the extended construction hours will result in an unreasonable impact on their amenity, by way of additional noise disturbance and disruption, particularly on Saturday afternoons.

Comment: It is likely that unrestricted construction within the hours proposed, specifically Saturday afternoons, would cause an unreasonable impact on the amenity of neighbours of the subject site. However, it is considered that restricting the type of construction activities within the hours proposed would reasonably ameliorate this concern.

Therefore, condition 5(a) is to be modified allowing internal works only within the additional hours proposed. Furthermore, no deliveries to and from the site shall be permitted during these times.

It is considered that this modification would ensure that the construction works would not unduly impact on the reasonable expectations of residents and the community, whilst also assisting the applicant in reducing the length of the construction period.

MEDIATION

Mediation was not requested for this application.

LAND AND ENVIRONMENT COURT ACTION

Land and Environment Court action is not required for this application.

REFERRALS

External Referrals

Energy Australia: No objection.

Comment: Condition no. 3 of consent no. DA2009/1446 would ensure that works - including the proposed modifications - would be carried out in accordance with Energy Australia's referral response to the original application.

Internal Referrals

Environmental Health & Protection: No objection, subject to the inclusion of a condition limiting works undertaken within the additional hours to internal works only, and restricting deliveries to the site or movement of vehicles and the like on site to standard construction hours (i.e. as per condition 5(a) at present).

Comment: Rather than include a new condition of consent, the terms raised by EH&P are to be incorporated within a modified version of condition 5.

Waste Officer: The proposed location of the garbage storage enclosure would be too far from the driveway crossover (some 25 metres) for refuse collectors to collect the bins. Furthermore, wheeling the bins to the driveway crossover would be via a bus shelter (involving potential pedestrian and Occupational Health and Safety issues).

If a layback in the kerb on Pittwater Road were to be provided immediately adjacent the proposed garbage storage enclosure location, refuse bins could be wheeled to the back of the truck, with this arrangement considered satisfactory to the Waste Team. A sign would be required in close proximity advising that no parking is permitted in front of the layback and the kerb on the south side of the layback is permitted during collection hours.

Comment: In principle, providing a layback and sign would address the Waste Sections concerns however, in accordance with discussions held with the Development and Traffic Engineers, the installation of a layback in this location would set an undesirable precedent for random laybacks in the street, whilst also having the potential to confuse pedestrians (i.e. pedestrians may view the layback as a form of crossing similar to pram ramps on street corners).

A further sign could be installed stating that the layback is not for pedestrians; however this would contribute to the proliferation of signage and structures (i.e. bus shelter, bus timetable sign, lamp post, telephone box, prospective no parking and no pedestrian signs), within close proximity of the proposed location.

As such, it is considered that the proposed location of the garbage storage enclosure is unworkable, unless separate consent can be obtained for a layback and associated signage. However; discussions with the relevant departments of Council is that such support is unlikely; therefore, this component of the application cannot be supported.

The applicant has been advised that the proposed location of the garbage storage enclosure is unacceptable and to separately come up with an alternative solution and submit a new modification application dealing with this issue. The applicant has agreed to the deletion of this element from the application and to consult with Council prior to the lodgement of another modification application.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

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

Section 96(1A)	Comments
Section 96(1A) (a) - Is the Modification to Consent of Minimal Environmental Impact?	Subject to compliance with the condition recommended by Environmental Health & Protection, it is considered that any environmental impacts resulting from the additional construction hours would be minimal. The proposed location of the garbage storage enclosure would result in an unacceptable environmental impact; hence this component of the proposal has been deleted.
Section 96(1A) (b) - Would the consent as proposed to be modified be substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was previously modified?	Subject to the deletion of the garbage storage enclosure component of this proposal, it is considered that the development would remain substantially the same, with the only modification being considered linked to extended construction hours.
Section 96(1A) (c) & (d) - Public Exhibition of subject application / submission	See discussion on "Public Exhibition" in this report.
Section 96 (3) - Consideration of the matters referred to in section 79C (1) relevant to the development, the subject of this application	See discussion on "Matters for Consideration under Section 79C" in this report.

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	Warringah Local Environmental Plan 2000
Section 79C (1) (a)(ii) - Provisions of any draft environmental planning instrument	Draft Warringah Local Environmental Plan 2009
Section 79C (1) (a)(iii) - Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 79C (1) (a)(iia) - Provisions of any planning agreement	None applicable.
Section 79C (1) (a)(iv) - Provisions of the regulations	The provisions of the relevant regulations were considered under the assessment of the original application and the proposed extended construction hours would not alter the development already approved. Furthermore, the provisions of the regulations were applied against the proposed location of the garbage storage enclosure in the original application, with it being deemed that the location was unacceptable - hence the imposition of Condition No. 15.
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	The potential environmental impact relating to the extended construction hours is additional noise and vibration caused by construction, with this impact being addressed under the General Principles of Development Control section in this report. In summary, it is considered that this potential environmental impact would be minimal, and will be mitigated and managed by modifying condition no. 5 in an appropriate manner. The social and economic impacts of the proposed development would be consistent and compatible with the proposed use (i.e. the proposed development would be in keeping with the Desired Future Character Statement).

Section 79C 'Matters for Consideration'	Comments
	The proposed garbage storage enclosure relation would not be practical or functional and would not satisfy Council's Waste Services requirements in the absence of physical measures (ramp and signage) which are not supported. Accordingly, this component is not supported and has been deleted from any approval of this application.
Section 79C (1) (c) - The suitability of the site for the development	The proposed extended construction hours have no bearing on the suitability of the site for the development, which was considered favourably in the assessment of the original application.
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	<p>It is in the public interest to restrict construction activities outside of the standard construction hours; however, it is also in the public interest to reduce the length of the construction period (where possible). It is considered that the manner in which condition No. 5(a) has been modified would be a satisfactory compromise, with regard to protecting the public interest.</p> <p>However, as outlined above, it would not be in the public interest to allow the garbage storage enclosure to be located where proposed, hence why this component has been deleted from the application.</p>

DRAFT ENVIRONMENTAL PLANNING INSTRUMENT:

Draft Warringah Local Environmental Plan 2009 (Draft WLEP 2009)

Definition: Residential flat buildings

Land Use Zone: R3 Medium Density Residential

Permissible or Prohibited: Permitted with consent

Principal Development Standards: The proposed modifications do not involve any amendment to the lot size or building height, therefore the Principal Development Standards are not relevant to the assessment of this proposal.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPI's)

State Environmental Planning Policies (SEPPs)

The proposed modifications would not alter the previous assessment of the relevant State Environmental Planning Policies.

Regional Environment Plans (REPs)

There are no Regional Environmental Planning Policies applicable to this application.

Local Environment Plans (LEPs)

Warringah Local Environment Plan 2000 (WLEP 2000)

Desired Future Character (DFC)

The subject site is located in the D1 Collaroy/Narrabeen Locality under WLEP 2000.

The DFC Statement for this locality is as follows:

The Collaroy/Narrabeen locality will be characterised by detached style housing and apartment style housing in landscaped settings and a range of complementary and compatible uses. New apartment development will be confined to the "medium density areas" shown on the map.

Outside the "medium density areas", future development will maintain the visual pattern and predominant scale of existing detached style housing in the locality. All new development will be of a low scale and articulated with generous spaces between buildings to retain the open lake and seaside character of the locality and create visual interest. Unless exemptions are made to the housing density standard in this locality statement, any subdivision of land is to be consistent with the predominant pattern, size and configuration of existing allotments in the locality.

The use of materials that blend with the colours and textures of the natural landscape are to be encouraged. Building designs are to incorporate the fine detail found in some of the older existing cottages.

Buildings and development along the Collaroy/Narrabeen Beachfront will address the current and future hazards of wave impact and coastal erosion.

The locality will continue to be served by the existing local retail centres in the areas shown on the map. Future development in these centres will be in accordance with the general principles of the development control provided by clause 39.

The proposed development is defined as 'housing' under the WLEP 2000 dictionary, and is identified as Category One development in this locality.

The proposed modifications would not alter the previous assessment of the development against the Desired Future Character Statement.

Built Form Controls (Development Standards)

The proposed modifications would not alter compliance with the built form controls already assessed under the approved application; therefore a further assessment of Built Form Compliance is not considered necessary.

General Principles of Development Control

The following General Principles of Development Control as contained in Part 4 of Warringah Local Environmental Plan 2000 are relevant to the assessment of proposed development:

General Principles	Applies	Comments	Complies
CL42 Construction sites and CL43 Noise	YES	<p>Condition 5(a) is to be modified so that works carried out in the extended hours are limited to internal works only, and that no deliveries to or from the site shall be permitted during the extended hours.</p> <p>Furthermore, the applicant will be reminded that suitable measures must be taken to prevent noise and any noise disturbance during the extended hours, and should Council receive complaints regarding noise that are reasonably justified the applicant will be required to have noise levels assessed by an acoustic consultant to demonstrate compliance that noise emissions do not exceed 5 dB(A) above the background level (LA90) when measured at the nearest affected residential premises. The applicant is to keep a record of complaints on site relating to noise.</p> <p>It is considered that compliance with the above points would reduce the likelihood of unreasonable impacts on the surrounding amenity.</p>	Yes , subject to modifying condition No. 5

General Principles	Applies	Comments	Complies
CL70 Site facilities	YES	It is considered that the proposed location of the garbage storage enclosure would not be practical or functional in the absence of a set of undesirable physical measures being required in the road reserve of Pittwater Road. As outlined above, this component of the proposal has been deleted from the application with the agreement of the applicant.	No

SCHEDULES

It is considered that the proposed modifications would not alter the assessment of the relevant Schedules, as carried out in the original application.

POLICY CONTROLS

The modification application proposal is not subject to the application of Council's Section 94A Development Contributions Plan.

CONCLUSION

The proposal has been considered against the relevant matters for consideration under Sections 79C and 96(1A) of the Environmental Planning and Assessment Act 1979. This assessment has taken into consideration the documentation supporting the application, and public submissions, with it being considered that the extended construction hours would not result in an unreasonable impact on surrounding, adjoining, adjacent and nearby properties subject to amendments to Condition 5(a) as contained within the Recommendation.

However, as outlined above, the proposed relocation of the garbage storage enclosure back to its original location prior to the imposition of Condition 15 of the consent is unacceptable, and is not supported and has been deleted from the draft modifications to the consent. This matter has been discussed with the applicant who has agreed to delete this component from the application and follow the matter up with a separate application after having further consultations with Council.

Accordingly, it is recommended that condition No.5 (a) be modified to allow extended construction hours as detailed within the Recommendation section of this report.

RECOMMENDATION

That Modification Application No. MOD2010/0158 to modify Consent No. DA2009/1446, at Lot 20, DP 1148058, No. 1262 Pittwater Road, Narrabeen, be approved in accordance as follows:

That Condition 5 be modified to read as follows:

5. General Requirements:

- (a) Unless authorised by Council:

Building construction, deliveries to the site and movement of vehicles on site are restricted to:

7.00 am to 5.00 pm inclusive Monday to Friday
8.00 am to 1.00 pm inclusive on Saturday,
No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

8.00 am to 5.00 pm Monday to Friday only.

Additionally, internal works within the buildings proper can be carried out between the following hours:

5.00 pm and 6.00 pm inclusive Monday to Friday; and
1.00 pm and 5.00 pm inclusive on Saturdays.

Special Notes on Extended Construction hours:

- i) No deliveries are to take place to or from the site during the extended hours.
- ii) Suitable measures must be taken to prevent noise and any noise disturbance during the extended construction times. Should Council receive complaints regarding noise that can be reasonably justified, the applicant will be required to have noise levels assessed by the acoustic consultant to demonstrate compliance with this condition with regard to noise levels generated. The applicant is to keep a record of complaints on site relating to noise.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (e) Prior to the release of the Construction Certificate payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (f) Smoke alarms are to be installed throughout all new and existing portions of any Class 1a building in accordance with the Building Code of Australia prior to the occupation of the new works.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No building, demolition, excavation or material of any nature shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) All sound producing plant, equipment, machinery or fittings will not exceed more than 5dB(A) above the background level when measured from any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community. (DACPLB10)