

REPORT TO APPLICATION DETERMINATION PANEL

Meeting held on 14 January 2015

21 Tepko Road Terrey Hills - Use of Units 8 and 9 as storage premises

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2014/0982
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Responsible Officer:	Mitchell Drake
Land to be developed (Address):	Lot 200 DP 1101971 , 21 Tepko Road TERREY HILLS NSW 2084
Proposed Development:	Use of Units 8 and 9 as storage premises
Zoning:	LEP - Land zoned IN2 Light Industrial
Development Permissible:	No
Existing Use Rights:	No
Consent Authority:	Warringah Council Application Determination Panel
Land and Environment Court Action:	No
Owner:	Palmarc Investments Pty Ltd
Applicant:	David Fleeting Architects

Application lodged:	10/09/2014
Application Type:	Local
State Reporting Category:	Commercial/Retail/Office
Notified:	01/10/2014 to 16/10/2014
Advertised:	Not Advertised in accordance with A.7 of WDCP
Submissions:	6
Recommendation:	Refusal

Estimated Cost of Works:	\$ 0
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ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon 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

Warringah Local Environmental Plan 2011 - Zone IN2 Light Industrial

Warringah Development Control Plan - D3 Noise

Warringah Development Control Plan - D12 Glare and Reflection

SITE DESCRIPTION

Property Description:	Lot 200 DP 1101971 , 21 Tepko Road TERREY HILLS NSW 2084
Detailed Site Description:	The subject site is legally known as Lot 200, DP1101971, and commonly referred to as 21 Tepko Road Terrey Hills. The site is a light industrial complex, irregular in shape with an overall site area of 5028sqm. The site is level with no significant features. The site is currently occupied by 11 separate units and associated carparking and landscaping. Pedestrian and vehicle access is from Tepko Road via the 60m long driveway. The site is surrounded by a mix of light industrial/commercial and residential landuses.

Map:



SITE HISTORY

In December 2013, the unauthorized use of the units as 'Commercial Premises' was the subject of a Notice of Intention to Issue an Order. In January 2014, the Order was issued to cease the use of the premises as 'Commercial Premises'.

Unauthorized building works had also been carried out to Unit 9, which was the subject of a Building Certificate Application.

The following Development Application is relevant to the site and the current application:

- Development Application No. DA2014/0413 - Proposed Use as a Vehicle Hire Outlet" was lodged on 15 April 2014. The proposed use was defined as a "Vehicle Sales or Hire Premises" which falls under the definition of "Commercial Premises" and is a prohibited use in the IN2 Light Industrial Zone under WLEP 2011 and so the Development Application was refused for this reason on 16/06/2014.

There are no other prior works or applications relevant to the subject proposal.

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks consent for the use of Units 8 and 9 within the existing complex located at 21 Tepko Road, Terrey Hills for the purpose of "Storage Premises" to store a fleet of 9-10 corporate cars and limousines which are to be used for hire purposes. The business is known as "Aria Corporate Cars and Limousines". The use involves 10-12 drivers and 2-3 office staff operating from the site/premises.

The proposed hire business operates on the basis that *"bookings (are) made for the hire of the stored*

vehicles, with the stored vehicles and drivers despatched to bookings as required. The vehicles are typically stored in Unit 9, although some vehicles are retained by drivers at their home address during the week, depending on the number and location of the bookings".

The operation hours of the proposal are:

Office: 9am to 5pm - Monday to Friday

Use of the Stored Hire Vehicles: Not Stated in DA

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:

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)(iia) – 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 of 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 Clause is not relevant to this 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. <u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to

Section 79C 'Matters for Consideration'	Comments
	consider AS 2601 - 1991: The Demolition of Structures. This Clause is not relevant to this application. <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 would be addressed via a condition of any 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 of 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. In summary, the noise and illumination impacts on nearby residential amenity is unacceptable. (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 unsuitable 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	This assessment has found the proposal is contrary to the relevant requirement(s) of the Warringah Local Environmental Plan 2011 as the land-use is identified as a prohibited use and will result in a development that is unsuitable and inappropriate in the locality because of its impacts on the amenity of the surrounding residential area. Council's records reveal that the existing unauthorised operations are having a detrimental impact on residential amenity and have been doing so on an ongoing basis. Approval of this application would create an undesirable precedent such that it would detract from the character of the area and be contrary to the reasonable expectations of the community. In this regard, the development, as proposed, is not considered to be 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 6 submission/s from:

Name:	Address:
Terrey Hills Progress Association	PO Box 267 TERREY HILLS NSW 2084
Pamela Acott	P0 Box 267 TERREY HILLS NSW 2084
Ross Maxwell Pitcher Mrs Kerry Ann Pitcher	6 Carramar Grove TERREY HILLS NSW 2084
Christopher Theodore Rowbotham Mrs Anne Isabelle Rowbotham	5 Carramar Grove TERREY HILLS NSW 2084
Sharen Marie Caccamo	61 Myoora Road TERREY HILLS NSW 2084
Mr Mark Warren Dickinson	7 Carramar Grove TERREY HILLS NSW 2084

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

- ***Prohibition of Use***
- ***Noise impacts***
- ***Amenity Impacts***

The matters raised within the submissions are addressed as follows:

- ***The submissions raise concerns with regards to the permissibility of the proposed landuse***

Comment:

The proposed use as defined is assessed in detail under the Clause "Land Use Table", contained within this report. In summary, it is agreed that the proposed landuse is a prohibited use. This prohibition is fatal to the application and has been listed as a reason for refusal.

- ***The submissions raised concerns with regards to noise impacts from the proposed (currently operating) landuse.***

Comment:

The impacts of the proposed use in terms of noise impacts are assessed in detail under Clause D3 - Noise, contained within this report. In summary, it is agreed that the proposed landuse is unacceptable in terms of noise, impacts on the surrounding residential area. This impact is fatal to the application and has been listed as a reason for refusal.

- ***The submissions raised concerns with regards to overall amenity impacts from the proposed (currently operating) landuse.***

Comment:

The impacts of the proposed use in terms of overall amenity impacts are assessed in detail under Clause D3 - Noise and D12 - Glare and Reflection, contained within this report. In summary, it is agreed that the proposed landuse is unacceptable in terms of the adverse impacts on the overall amenity of the surrounding residential properties. This impact is fatal to the application and has been listed as a reason for refusal.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	No objection to proposed development subject to no conditions.
Traffic Engineer	No objection is raised on the proposal in principal.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

Warringah Local Environment 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

There are no changes proposed to the Principal Development Standards.

Detailed Assessment

Zone IN2 Light Industrial

The applicant states that the proposed landuse falls under the definition of "Storage Premises", which is defined as:

Storage Premises meaning: a building or place used for the storage of goods, materials, plant or

machinery for commercial purposes and where the storage is not ancillary to any industry, business premises or retail premises on the same parcel of land, and includes self-storage units, but does not include a heavy industrial storage establishment or a warehouse or distribution centre.

A review of the plans and the Statement of Environmental Effects was undertaken and the following comments are made:

The storage of the hire cars is in fact ancillary to the business of the hire company or "Vehicle Hire or Sales Premises", which is a form of "Retail Premises" as defined in the LEP. Therefore, the storage of the hire cars is not consistent with the definition of "Storage Premises" and so cannot be regarded as Storage Premises.

Additionally, the mode of operation of the proposed use is such that it involves the carrying out of a "Vehicle Hire" premises, whereby the vehicles are hired by the customer (booked by Aria staff in the office at the premises) and, instead of the customer attending the site, the hire vehicles are dispatched from the premises, driven by a professional driver/ chauffeur to the the customers home, work place or other place.

The fact that the customer does not physically attend the site does not mean the applicant is simply storing cars, as the hire premises is operated from the premises in the form of an office with 2-3 staff, which operates normal business hours for 5 days a week and the floor layout of the premises contains an office, meeting room, lunch room, kitchen and vehicle preparation bay. These facilities indicate that a business is being operated from the premises, one that is appropriately characterised as a "Vehicle Hire or Sales Premises", which is a type of Retail Premises and falls under the Group Term of "Commercial Premises", which is a prohibited landuse in the IN2 Light Industrial Zone.

Warringah Development Control Plan

Built Form Controls

There are no changes proposed to the Built Form Controls.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
C9 Waste Management	Yes	Yes
D3 Noise	No	No
D12 Glare and Reflection	No	No

Detailed Assessment

D3 Noise

Merit consideration

With regard to the consideration of this application, the development is considered against the underlying Objectives of the Control as follows:

- ***To encourage innovative design solutions to improve the urban environment.***

Comment:

This objective is not applicable to the land-use

- ***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, user's or visitors.***

Comment:

A review of Council records indicates a significant number of noise complaints have been received while the unauthorised use has been in operation. These noise complaints are also related to hours of operation being up to 11pm, 7 days per week. It is considered that the noise impacts from car doors, roller shutters, use of a Gernie (high pressure wash machines) and vehicle movement associated with the operation are unacceptable in these circumstances.

The existing use is situated in an unsuitable location in relation to its close interfacing with the adjoining R2 Low Density Residential Zone and as a result the acoustic amenity of nearby properties is impacted upon to a level that unacceptable. The noise impacts from the proposed use have been listed within the reasons for refusal.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

D12 Glare and Reflection

Merit consideration

With regard to the consideration for a variation associated with the development is considered against the underlying Objectives of the Control as follows:

- ***To ensure that development will not result in overspill or glare from artificial illumination or sun reflection.***

Comment:

The submissions received from adjoining residential properties (both prior to the lodgement of the DA and in response to the notification) have raised concerns with regards to the amount of illumination from hire cars and the internal lights of the premises, particularly during evening hours. As these adjoining properties are residential and there are no limitations on the hours of use of the premises for the despatch and return of hire vehicles, it is considered that the use will result in unreasonable artificial lighting impacts to these properties and that the use is not suitable for the location.

- ***To maintain and improve the amenity of public and private land.***

Comment:

As stated above, the lighting associated with the use will create unreasonable glare and lighting impacts and have an unreasonable impact on the amenity of the adjoining properties.

- *To encourage innovative design solutions to improve the urban environment.*

Comment:

Not applicable to the development

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of / WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

CONCLUSION

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

- 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

The application and supporting information has failed to demonstrate that the proposal is a permissible use. Additionally, impacts in terms of noise generation on the adjoining residential properties together with overall amenity impacts combine to result in a use that, notwithstanding the prohibition, is unsuitable for the subject site and location. It is for these reasons that the proposal is recommended for refusal.

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

RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2014/0982 for the Use of Units 8 and 9 as storage premises on land at Lot 200 DP 1101971,21 Tepko Road, TERREY HILLS, subject to the reasons outlined as follows:

1. **Warringah Local Environmental Plan 2011 - Zone IN2 Light Industrial**

Warringah Local Environmental Plan 2011 - Zone IN2 Light Industrial Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act, 1979, the proposed land use is correctly defined as a Vehicle Sales or Hire Premises, and is prohibited development within the IN2 Light Industrial Zone under the Warringah Local Environmental Plan 2011. Therefore, development consent cannot be granted.

2. **Warringah Development Control Plan - D3 Noise**

Warringah Development Control Plan 2012 Clause 3 - Noise, Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act, 1979, the proposed land use has an unreasonable impact in terms of noise generation.

3. **Warringah Development Control Plan - D12 Glare and Reflection**

Warringah Development Control Plan 2012 Clause 12 - Glare and Reflection, Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act, 1979, the proposed land use has an unreasonable impact in terms of increased glare from artificial illumination.

Warringah Development Control Plan 2012 Clause 12 - Glare and Reflection, Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act, 1979, the proposed land use has an unreasonable impact in terms of the overall amenity of the locality generally and the adjoining sites specifically.

