

Nos. 16-20 Roger Street, Brookvale



Proposed demolition of existing buildings and construction of a mixed use development incorporating basement and ground level car parking, ground level retail and office space and shop-top housing comprising 60 x 2-bedroom apartments

Addendum to Statement of Environmental Effects For Warringah Council Prepared by Geoff Goodyer

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Project No. 10-067**

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1. Executive summary

- 1.1. Symons Goodyer Pty Ltd prepared a Statement of Environmental Effects dated June 2010 that assessed the impacts of a proposal is to demolish the existing buildings and construct a new mixed-use development with ground level retail and office space with shop-top housing comprising 60 x 2-bedroom units at 16-20 Roger Street, Brookvale.
- 1.2. This Addendum to the Statement of Environmental Effects examines in more detail the provisions of draft *Warringah Local Environmental Plan 2009*. It should be read in conjunction with the original Statement of Environmental Effects.
- 1.3. It is considered that the proposal satisfies both the existing town planning controls and the aims and objectives of the draft planning controls. Furthermore, the proposal satisfies the wider planning intent in the *North East Subregion – Draft Subregional Strategy*.
- 1.4. It is concluded that there is no planning reason why the proposal should not be approved.

2. Draft Warringah Local Environmental Plan 2009

- 2.1. Before turning to the specific provisions of draft *Warringah Local Environmental Plan 2009* ("the draft LEP") it is necessary to first identify how it should be treated.
- 2.2. Clause 1.8A of the draft LEP is a savings provision. It provides that any development applications lodged *before* the commencement of the Plan but determined *after* its commencement are to be assessed as if the Plan has been exhibited as a draft but not made.
- 2.3. There is a long line of caselaw in the Land and Environment Court of NSW that deals with the question of how a draft environmental planning instrument is to be taken into account in the assessment of a development application. In *Blackmore Design Group Pty Ltd v North Sydney Council* [2001] NSWLEC 279, Lloyd J as he then was collected the authorities and identified a two-step process:
 - "21. *The first question is the weight to be given to the 2001 LEP. That question is governed by cl 5(3) of that instrument: "the environmental planning instrument repealed or amended by this plan shall apply as if this plan had been exhibited but had not commenced". With the benefit of hindsight it is possible to say that although the 2001 LEP had not been made, at the time of lodgement of the development application on 13 November 2000 it was both certain and imminent. At that stage, the then draft LEP had been exhibited three times, had been formally adopted by the council and had been forwarded to the Department of Urban Affairs and Planning for making by the Minister.*
 30. *Whether one applies the test of "significant weight", or "some weight", or "considerable weight" or "due force" or "determining weight" to the later instrument is not, however, the end of the matter. The savings clause still has some work to do. The proposed development is a permissible development by dint of the savings clause. In giving the 2001 LEP the weight of being imminent and certain, that does not mean that there is no further inquiry. It is necessary to look at the aims and objectives of the later instrument and then see whether the proposed development is consistent therewith. Various expressions have been used to define this concept, but the approach which has been favoured in the Court of Appeal is to ask whether the proposal is "antipathetic" thereto (Coffs Harbour Environment Centre Inc v Coffs Harbour City Council (1991) 74 LGRA 185 at 193)."*
- 2.4. In terms of the first question posed by Lloyd, it is considered that the draft LEP is imminent and certain, having undergone a period of formal public exhibition (1 October -31 December 2009), having been subsequently adopted by Council (8 June 2010) and then referred to the Minister with a request that he make the plan. In these circumstances it should be given significant weight.

- 2.5. The second question then arises: is the proposal antipathetic to the aims and objectives of the draft LEP?
- 2.6. The aims of the draft LEP (clause 1.2) are listed below, with a comment as to whether the proposal is antipathetic to those aims:

- (1) *This Plan aims to make local environmental planning provisions for land in Warringah in accordance with the relevant standard environmental planning instrument under section 33A of the Act.*

[Comment: Consistent]

- (2) *The particular aims of this Plan are as follows:*

- (a) *to create a land use framework for controlling development in Warringah that allows detailed provisions to be made in any development control plan made by the Council,*

[Comment: Consistent]

- (b) *to recognise the role of Dee Why and Brookvale as the major centres and employment areas for the sub-region,*

[Comment: Consistent. The proposal provides ground floor office and retail floor space in excess of the existing provision on site. Residential component adds vitality, safety and security to the area and enhances Brookvale as an employment area.]

- (c) *to maintain and enhance the existing amenity and quality of life of the local community by providing for a balance of development that caters for the housing, employment, entertainment, cultural, welfare and recreational needs of residents and visitors,*

[Comment: Consistent. Proposal provides for housing choice and employment. The site is ideally located for good access to jobs, services and public transport.]

- (d) *in relation to residential development, to:*

- (i) *protect and enhance the residential use and amenity of existing residential environments, and*

[Comment: Consistent. Proposal achieves design principles of SEPP 65 and rules-of-thumb in *Residential Flat Design Code*. Amenity of existing residential areas is unaffected.]

- (ii) *promote development that is compatible with neighbouring development in terms of bulk, scale and appearance, and*

[Comment: **Consistent**. The building is comparable in scale with more recent development (eg: Col Crawford on opposite side of street). Note that the area is in transition and more recent developments have a larger scale than older developments, reflecting the existing built form controls.]

- (iii) *increase the availability and variety of dwellings to enable population growth without having adverse effects on the character and amenity of the Warringah area,*

[Comment: **Consistent**. The proposal provides extremely well located and affordable housing.]

- (e) *in relation to non-residential development, to:*

- (i) *ensure that non-residential development does not have an adverse effect on the amenity of residential properties and public places, and*

[Comment: **Consistent**. The proposed non-residential uses (offices and shops) are compatible with shop-top housing.]

- (ii) *maintain a diversity of employment, services, cultural and recreational facilities,*

[Comment: **Consistent**. The proposal increases the area of offices and shops on the site, supporting employment.]

- (f) *in relation to environmental quality, to:*

- (i) *achieve development outcomes of quality urban design, and*

[Comment: **Consistent**. The proposal has been architecturally designed. The facade is well articulated to provide a rhythm to the streetscape and break up the bulk of the building. Good pedestrian environments are created.]

- (ii) *encourage development that demonstrates efficient and sustainable use of energy and resources, and*

[Comment: **Consistent**. The proposal satisfies energy targets of BASIX program. Natural light and cross ventilation is provided to the units in accordance with the rules of thumb in the *Residential Flat Design Code*. Proximity to shops, services, jobs and public transport reduces travel times and distances and therefore reduces greenhouse gas emissions.]

- (iii) *achieve land use relationships that promote the efficient use of infrastructure, and*

[Comment: **Consistent**. The site is serviced with reticulated water and sewerage and other utility infrastructure.]

- (iv) *ensure that development does not have an adverse effect on streetscapes and vistas, public places, areas visible from navigable waters or the natural environment, and*

[Comment: **Consistent**. The building is architecturally designed and improves the pedestrian environment.]

- (v) *protect, conserve and manage biodiversity and the natural environment, and*

[Comment: **Consistent**. There is no vegetation on site requiring conservation. There are no significant natural features on the site. Water runoff quality is controlled.]

- (vi) *manage environmental constraints to development including acid sulphate soils, land slip risk, flood and tidal inundation, coastal erosion and biodiversity,*

[Comment: **Consistent**. The site is not subject to any environmental hazards.]

- (g) *in relation to environmental heritage, to recognise, protect and conserve items and areas of natural, indigenous and built heritage that contribute to the environmental and cultural heritage of Warringah,*

[Comment: **Consistent**. The site is not a heritage item, is not in the vicinity of a heritage item, and is not within a conservation area.]

- (h) *in relation to community well being, to:*

- (i) *ensure good management of public assets and promote opportunities for social, cultural and community activities, and*

[Comment: **Consistent**. The site is extremely well located for access to community facilities at Warringah Mall and to public transport to other community facilities.]

- (ii) *ensure that the social and economic effects of development are appropriate.*

[Comment: **Consistent**. The proposal provides good social and economic outcomes. Housing choice is improved with well located and affordable housing. Homes are located close to jobs. Employment is provided with new retail and commercial spaces.]

2.7. The objectives of the B5 – Business Development zone are listed below, with a comment as to whether the proposal is antipathetic to those objectives:

- *To enable a mix of business and warehouse uses, and specialised retail uses that require a large floor area, in locations that are close to, and that support the viability of, centres.*

[**Comment: Consistent.** The proposal provides 500 m² of commercial floor space and 750 m² of retail floor space. The spaces are large and contiguous to enable flexibility in terms of their layout and use. The office and retail spaces are close to, and support, the Brookvale commercial centre and Warringah Mall.]

- *To provide for the location of vehicle sales or hire premises and bulky goods premises.*

[**Comment: Consistent.** The proposal is not antipathetic to this objective. It would be inappropriate for all developments to provide for these types of uses and the proposal complements those uses as they exist in the vicinity of the site.]

- *To create a pedestrian environment that is safe, active and interesting by incorporating street level retailing and business uses.*

[**Comment: Consistent.** Street level pedestrian access is provided to the retail and office spaces. A pedestrian colonnade creates a good pedestrian environment that is softened by landscaping.]

2.8. In summary, the proposal is not antipathetic to the aims and objectives of the draft LEP. Consequently, applying the caselaw identified above, the proposal should not be refused on the grounds of inconsistency with the provisions of the draft LEP.

2.9. It is also relevant to comment on the planning intent of the draft LEP. This can be identified from the “Background Paper” that accompanied the public exhibition of the draft LEP. Relevantly, it said:

The existing F1 Brookvale Centre and F2 Brookvale Service Centre localities are business based localities that align Pittwater Road and provide a service function to the broader industrial areas to the east and the west of Pittwater Road. They also provide a business corridor between the industrial areas of Brookvale and the residential/ retail areas of Dee Why.

It is proposed to translate this function using the B5 Business Development zone. Notably, this corridor includes significant automobile operations and the zone is proposed to be quarantined for use in this area and amongst other matters will support the established automobile operations. In determining the most appropriate standard instrument zone(s) for

Brookvale it should be noted that existing F1 Brookvale Centre locality makes provision for the development of shop top housing, however, the F2 Brookvale Service Centre locality discourages this land use. Since the commencement of Warringah LEP 2000, no significant take up of this development opportunity has occurred within the F1 locality. Within the B5 Business Development zone (which will be made up of the F1 and F2 localities) it is proposed that shop top housing will be prohibited.

This position is justified on the basis that the Pittwater Road corridor through the centre of Brookvale does not represent optimum residential land as would seem apparent by the lack of market interest to date. The corridor is flanked by industrial lands and lies on a major traffic corridor. Further, with a view to promoting the role of the area as current and future employment lands it is appropriate that competition with residential markets does not hinder this process.

- 2.10. The prohibition of shop top housing is grounded on two main bases.
- 2.11. The first, that “the Pittwater Road corridor through the centre of Brookvale does not represent optimum residential land” is not directly relevant to the subject site as it does not front Pittwater Road. Rather, it is set back from Pittwater Road on a side street and therefore does not suffer the perceived disadvantages of properties fronting Pittwater Road (although it should be noted that, within Warringah, there are corridors of medium density housing fronting Pittwater Road in Manly Vale, Dee Why and Narrabeen).
- 2.12. The second is the “lack of market interest to date”. This statement was true at the time it was made (ie: prior to the publication of the Background Paper in October 2009), notwithstanding approval for 39 shop-top housing apartments at 517 Pittwater Road which is currently under construction. However, the market is now showing significant interest in shop top housing in the Brookvale area, demonstrated by development applications lodged this year including this proposal for 60 shop-top housing apartments, at 638 Pittwater Road for 57 shop-top housing apartments, and at 16 Roger Street for 20 shop-top housing apartments. The lodgement of another proposal incorporating 24 shop-top housing apartments at 10-12 Roger Street is imminent.
- 2.13. Consequently, the two stated reasons for the draft proposal to prohibit shop-top housing do not apply to the subject site and, in these circumstances, the existing planning controls, which permit shop-top housing, should be given determining weight.

3. Conclusion

- 3.1. The proposed development has been assessed in detail in terms of the draft *Warringah Local Environmental Plan 2009*. The draft LEP is a relevant matter for consideration and should be given significant weight as its gazettal is imminent and certain.
- 3.2. The proposal is consistent with the aims and objectives of the draft LEP. The proposal is also consistent with the planning intent underlying the provisions of the draft LEP as they relate to this proposal.
- 3.3. It is considered that the draft LEP is not a matter that would warrant the refusal of the proposal.

Appendix A Details of the Author

ACADEMIC QUALIFICATIONS

Bachelor of Town Planning (Honours), University of New South Wales (1988).
Master of Professional Accounting (Distinction), University of Southern Queensland (1999).

PROFESSIONAL EXPERIENCE

1997 to present SYMONS GOODYER PTY LTD

Principal town planning consultant responsible for providing expert town planning advice to a diverse range of clients.

Expert witness in the Land and Environment Court.

Statutory and strategic projects within numerous Council areas, including Ashfield, Bankstown, Canterbury, Hornsby, Ku-ring-gai, Lane Cove, Leichhardt, Liverpool, Manly, Mosman, North Sydney, Pittwater, Randwick, Rockdale, Sutherland, Warringah, Waverley, and Woollahra.

1988 to 1997 WARRINGAH COUNCIL

Manager, Planning and Urban Design Branch (1994-7). Responsible for drafting of operative provisions of the Warringah Local Environmental Plan 2000.

Senior Strategic Planner (1993-1994)

Development Assessment Officer (1988-1993)

1986 to 1988 MARRICKVILLE MUNICIPAL COUNCIL

Town Planner

1986 EDWARDS MADIGAN TORZILLO BRIGGS INTERNATIONAL PTY LTD

Town Planner

1984 RYDE MUNICIPAL COUNCIL

Student Town Planner

PUBLICATIONS

Goodyer, G (1988)

Retail and office activities in industrial areas in the Sydney region. University of New South Wales.

Goodyer, G (1989)

Hi-tech industry. Planning Law and Practice, UNSW, 1989.

Goodyer, G (1995)

Modern Planning Instruments. Health and Building Surveyors' Association (NSW) Conference, 1995.