

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2020/0408
<b>Responsible Officer:</b>	Gareth David
<b>Land to be developed (Address):</b>	Lot A DP 413126, 26 Orchard Road BROOKVALE NSW 2100
<b>Proposed Development:</b>	Modification of Development Consent DA2020/0160 granted for to use the premises as an artisan food and drink industry and associated signage
<b>Zoning:</b>	Warringah LEP2011 - Land zoned IN1 General Industrial
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Christian Eugen Boller Bruno Frischknecht G & A Bland Holdings Pty Ltd
<b>Applicant:</b>	Bucketty's Brewery Pty Ltd
<b>Application Lodged:</b>	08/09/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Commercial/Retail/Office
<b>Notified:</b>	Not Notified
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks to modify Development Application No DA2020/0160 by:

- Removing Condition 20- Removal of Redundant Driveways. This condition stated that::

*All redundant driveways shall be removed and reinstated to Council standard kerb and gutter. Suitably prepared plans shall be submitted to approved by Council. All costs associated with the works shall be borne by the applicant.*

*A plan checking fee (amount to be advised) and lodgement of a performance bond may be required*

*from the applicant prior to the release of the approval.*

*Reason: To maximise on street car parking by removing driveways that are no longer needed in accordance with Council policy*

## 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 the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

## SUMMARY OF ASSESSMENT ISSUES

Warringah Development Control Plan - C2 Traffic, Access and Safety  
Warringah Development Control Plan - C3 Parking Facilities  
Warringah Development Control Plan - D20 Safety and Security

## SITE DESCRIPTION

<b>Property Description:</b>	Lot A DP 413126 , 26 Orchard Road BROOKVALE NSW 2100
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the southern side of Orchard Road.</p> <p>The site is regular in shape (excluding the access handle) with a frontage of 20.117m along Orchard Road (which contains two driveway crossovers) and a depth of 50.29m. The site has a access handle at the rear which services Mitchell Road which is 20.1m in length. The site has a area of approximately 1159.0m<sup>2</sup>.</p> <p>The site is located within the IN1 General Industrial zone and accommodates two warehouse buildings with concrete car parking area at the rear which is accessed via Mitchell</p>

Road. The the main, larger warehouse building located on the Orchard Road frontage contains an internal mezzanine level.

The site is relatively level with no vegetation upon the site.

### **Detailed Description of Adjoining/Surrounding Development**

Adjoining and surrounding development is characterised by warehouse units with various industrial and business uses. To the east of the subject site is a car park servicing two adjoining businesses. To the north east of the site at (23 Orchard Road) there is a motor works shop with what appears to be a residential unit above, however, Council records show no planning history confirming this residential use.

Map:



### **SITE HISTORY**

The land has been used for industrial purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

- Development consent 70/135 issued by Warringah Council on 13 July 1970 for 'Installation of Underground tank for Mineral Turps & Bowser '.
- DA2004/0668 - Alterations to Existing Car Repair, Car Dealer and Hire of Motor Vehicles (reconstruct Roof Over Existing Workshop & Vehicle Wash Bay) - Approved 23 September 2004
- DA2020/0160 - To use the premises as an artisan food and drink industry and associated signage - Approved 07/08/2020

## 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 DA2020/0160, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(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	<b>Yes</b> The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:
(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 DA2020/0160 for the following reasons:
(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 proposal would be removing an imposed condition and would not result in a change to the built form of what was originally approved with DA2020/0160. Therefore, it is considered that this modification of consent would have minimal environmental impact and is not required to be notified, in-line with the Northern Beaches Community Participation Plan.
(d) it has considered any submissions	No submissions were received in relation to this

Section 4.55(1A) - Other Modifications	Comments
made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	application.

#### Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	<p>Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. In response to the above requirements of the SEPP, the applicant submitted a Preliminary Environmental Site Investigation dated 31 July 2020 and prepared by Metech Consulting in the original Development Application.</p> <p>Based on the recommendations of this report, Council was satisfied that the land is suitable for the purpose for which the development is proposed to be carried out and the recommendations included in the investigation are included as conditions in the Recommendation of the original Application. This modification would not have an impact upon these recommendations.</p>
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;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.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent</p>



Section 4.15 'Matters for Consideration'	Comments
	<p>authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;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</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&amp;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.</p> <p><u>Clause 143A</u> of the EP&amp;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.</p>
Section 4.15 (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	<p>(i) <b>Environmental Impact</b> 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.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (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

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application was not notified.

## 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 Environmental Plan 2011

Is the development permissible?	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

## Compliance Assessment

Clause	Compliance with Requirements
6.1 Acid sulfate soils	Yes
6.4 Development on sloping land	Yes

## Warringah Development Control Plan

## Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C9 Waste Management	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D3 Noise	Yes	Yes
D20 Safety and Security	Yes	Yes

### Detailed Assessment

#### **C2 Traffic, Access and Safety**

The modification seeks to maintain the existing driveway and crossovers located on Orchard Road to enable the industrial function of the building and adaptive reuse of the building over the long term. Given that this is an existing arrangement and no intensification of the existing crossover is proposed, this is considered acceptable in this instance. Furthermore, the traffic and parking report submitted within the original application demonstrates that there will be sufficient on-street parking spaces available within the surrounding area during the proposed hours of operation. In order to maintain safety, a condition is to be imposed ensuring that no vehicles are to enter or leave the site using the easternmost driveway crossover while the use of the premises for an artisan food and drink industry (as approved under DA2020/0160) is operational. A sign is also to be erect clearly indicating no vehicular access via this driveway.

#### **C3 Parking Facilities**

The traffic and parking report submitted within the original application demonstrates that there will be sufficient on-street parking spaces available within the surrounding area during the proposed hours of operation. The maintenance of the existing crossover would not result in inadequate on- street parking.

#### **D20 Safety and Security**

In order to maintain safety, a condition is to be imposed ensuring that no vehicles are to enter or leave the site using the easternmost driveway crossover while the use of the premises for an artisan food and drink industry (as approved under DA2020/0160) is operational. A sign is also to be erect clearly indicating no vehicular access via this driveway. Furthermore, conditions were imposed on the original consent ensuring that the outdoor seating area is to be appropriately marked with a temporary fence around the entire boundary and that the location of the pedestrian entry is appropriately marked with arrows/directions. Subject to these conditions, the proposal would maintain the objectives of this control.

### **POLICY CONTROLS**

#### **Northern Beaches Section 7.12 Contributions Plan 2019**

Section 7.12 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.

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 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 to Modification Application No. Mod2020/0408 for Modification of Development Consent DA2020/0160 granted for to use the premises as an artisan food and drink industry and associated signage on land at Lot A DP 413126, 26 Orchard Road, BROOKVALE, subject to the conditions printed below:

### **A. Delete Condition 20 - Removal of Redundant Driveways which read as follows:**

All redundant driveways shall be removed and reinstated to Council standard kerb and gutter. Suitably prepared plans shall be submitted to approved by Council. All costs associated with the works shall be borne by the applicant.

A plan checking fee (amount to be advised) and lodgement of a performance bond may be required from the applicant prior to the release of the approval.

Reason: To maximise on street car parking by removing driveways that are no longer needed in accordance with Council policy

### **B. Add Condition 47 - Restriction on Orchard Road Driveway Use to read as follows:**

No vehicles are to enter or leave the site using the easternmost driveway crossover while the use of the premises for an artisan food and drink industry (as approved under DA2020/0160) is operational. A sign, legible from the street, shall be permanently displayed to indicate that this driveway cannot be used for vehicular access or parking. This sign must be located wholly within the site boundaries.

Reason: To ensure traffic and pedestrian safety

In signing this report, I declare that I do not have a Conflict of Interest.

**Signed**



**Gareth David, Planner**

The application is determined on //, under the delegated authority of:



**Steven Findlay, Manager Development Assessments**