

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2020/0376
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Responsible Officer:	Lashta Haidari
Land to be developed (Address):	Lot 4 DP 30928, 38 Orchard Road BROOKVALE NSW 2100
Proposed Development:	Modification of Development Consent DA2019/0743 granted for Use of premises as a Hardware and Building Supplies premises with associated alterations and additions and signage
Zoning:	Warringah LEP2011 - Land zoned IN1 General Industrial
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Archiland Property Pty Ltd
Applicant:	Archiland Property Pty Ltd

Application Lodged:	20/08/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	31/08/2020 to 14/09/2020
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

### PROPOSED DEVELOPMENT IN DETAIL

The applicant is seeking to modify Development Consent No. DA2019/0743 in the following manner:

#### 1. Deletion of Condition **15 - Right of Way or Shared Access way**

~~The applicant is to provide details of the Right of Way or Shared Accessway demonstrating the access arrangements/agreements regarding the shared driveway. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.~~

~~Reason: To ensure the ROW/Shared Accessway does not become an item of contention relating to future development of adjoining lots.~~

The reason provided by the applicant for the deletion of Condition 15 is that ROW for the purpose of

vehicle passage is not necessary in the context of this development scheme because:

- based on empirical data collected onsite, the proposal will only generate up to 4 vehicles per hour (vph) in the AM and PM peak periods.
- the projected traffic generation outcome will have minimal impact on the road network capacity.
- it is expected that there will only be some 1 vehicle movement every 15 minutes, so it is unlikely that there will be a vehicular conflict on the driveway.

Council's Traffic Engineer has reviewed the information in support of deletion for Condition 15, and has raised no concerns or objections to the deletion of Condition 15.

Other changes proposed within the proposed modification includes:

- Remove window openings within western elevation, change cladding and external finishes, New roller shutter door to rear, and infill brick work to various openings as marked (blend & fill to match).
- A fire rating is required for the western wall construction compliance as determined by a BCA assessment /fire audit report Submitted with the construction certificate application.

## 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

There are no assessment issues.

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 4 DP 30928 , 38 Orchard Road BROOKVALE NSW 2100
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### Detailed Site Description:

The property is legally described as Lot 4, Section 3, within DP30928. known as as 38 Orchard Road, Brookvale. The subject site has a land area of 969.4m<sup>2</sup> (as calculated by survey) and is rectangular in shape and located on the southern side of the Orchard.

The property is currently occupied single storey brick clad building, with metal deck roof with 9 parking spaces located at the rear of the site. The access to the property is via a shared concrete driveway along the eastern side boundary providing vehicle access and car parking to the rear of the site.

The property is zoned IN1 General Industrial under the Warringah Local Environmental Plan 2011 (LEP) as is most of the surrounding land.

Map:



### SITE HISTORY

Development Application DA2019/0743 approved use of premises as a Hardware and Building Supplies premises with associated alterations and additions and signage was approved on 3 October 2019.

### 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 DA2019/0743, 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 as the proposed modification relates to the deletion of condition and removing window opening on the western elevation.
(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 DA2019/0743 as the proposed changes are minor in nature.
(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.
(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 "Notification & Submissions Received" in this report.

#### 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	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. The subject site has been used for industrial purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
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 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 the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and	<p>(i) <b>Environmental Impact</b></p> <p>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>



Section 4.15 'Matters for Consideration'	Comments
economic impacts in the locality	<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

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 31/08/2020 to 14/09/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition of the application Council received no submissions.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p><i>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</i></p>

Internal Referral Body	Comments
Environmental Health (Industrial)	<p><b>General Comments</b></p> <p>Environmental Health has considered the proposal to modify DA2019/0743 for the "Use of premises as a Hardware and Building Supplies premises with associated alterations and additions and signage" as follows:</p> <ol style="list-style-type: none"> <li>1. delete condition 15 (relating to Right of Way or Shared Accessway)</li> <li>2. Remove window openings within western elevation, change cladding and external finishes, New roller shutter door to rear, and infill brick work to various openings as marked (blend &amp; fill to match)</li> </ol> <p>The proposal, if approved, would not appear to impact the amenity of surrounding properties from an Environmental Health perspective.</p> <p><b>Recommendation</b></p> <p>APPROVAL - no conditions</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>The proposal to delete the condition relating to Right of Way or Shared Accessway and to modify the cladding, external finishes, shutter door and some window openings is not considered to increase flood risk, provided that flood compatible materials are used below the Flood Planning Level.</p>
Traffic Engineer	<p><u>Revised Traffic Comments in Review of Additional Information:</u></p> <p>The additional information/traffic assessment dated 17 September 2020 prepared by the applicant's Traffic consultant(TTPA) includes the provision of some form of passing area by removal of a car space at the building frontage. Reviewing the traffic assessment provided, the proposed modification which seek to delete "Condition 15: The establishment of a Right of Way (ROW)" can be supported on traffic grounds.</p> <p><u>Original Comments:</u></p> <p>The proposed modification is for removal of condition 15- Right of Way or Shared Access.</p> <p>Background:</p> <p>The subject condition was imposed on DA2019/0743 containing the following as key aspects:</p> <ul style="list-style-type: none"> <li>- Use of the premises for hardware and building supplies</li> <li>- Building alterations and first floor addition comprising approximately 370m2 of gross floor area</li> <li>- Provision of a total of ten car parking spaces, including two spaces for on-site staff, nine car parking spaces within carpark at the rear of the site and one car parking space at the front of the site, within property boundary;</li> <li>- Traffic generation of 33 vehicles during the weekday morning and evening peak periods, and 43 vehicles during the weekend peak periods (applying the RMS rate to the proposed 774m2 GFA Hardware and Building Supplies Store).</li> </ul>

Internal Referral Body	Comments
	<p>Traffic assessment:</p> <p>The following has been taken into consideration in assessment of the proposed modification:</p> <ul style="list-style-type: none"> <li>- Given the increased floor area, the traffic generating by the site will be approximately doubled in compare with the existing use. This means more vehicle movements in and out of the site.</li> <li>- The increased floor area will result in the need for more on-site parking provision mainly for the use of customers and given the proposed use being a Hardware and Building Supplies Store, more trucks and utes will be accessing the site.</li> <li>- Since the driveway is longer than 30m, in accordance with Australian Standards AS2890.1:2004, the provision of a passing bay is required along the driveway. This is whilst given the proposal is for alternation and addition to an existing building, there is no opportunity for the provision of a passing bay.</li> </ul> <p>Given the above, the removal of condition 15, which requires the provision of a "Right of Way" for the intensification proposed in DA2019/0743, will result in reversing movements onto to the street and adverse impact on the road network. Therefore, the proposed modification is not supported by traffic team.</p>

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)

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
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#### Principal Development Standards

No changes are proposed to the approved building height.

#### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.3 Flood planning	Yes
6.4 Development on sloping land	Yes

### **Warringah Development Control Plan**

#### Built Form Controls

No changes are proposed to the approved built form of the development.

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B6 Merit Assessment of Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B10 Merit assessment of rear boundary setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D3 Noise	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes
E11 Flood Prone Land	Yes	Yes

## THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

## CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

## 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. Mod2020/0376 for Modification of Development Consent DA2019/0743 granted for Use of premises as a Hardware and Building Supplies premises with associated alterations and additions and signage on land at Lot 4 DP 30928,38 Orchard Road, BROOKVALE, subject to the conditions printed below:

### A. Add Condition No.1A - 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
118122_A340 (Issue E)	28/07/2020	Reld Campbell Architecture

#### c) 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.

### B. Delete Condition <15 - Right of Way or Shared Accessway> to read as follows:

The applicant is to provide details of the Right of Way or Shared Accessway demonstrating the access arrangements/agreements regarding the shared driveway.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To ensure the ROW/Shared Accessway does not become an item of contention relating to future development of adjoining lots.

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

**Signed**



**Lashta Haidari, Principal Planner**

The application is determined on 29/09/2020, under the delegated authority of:



**Steven Findlay, Manager Development Assessments**