

4.2**1-3 Powells Road, Brookvale – Use of Premises as an Industry, Shop and Further Education Establishment****Purpose**

To gain Council determination of an application referred from the Manager Development Assessment and the Warringah Development Assessment Panel (WDAP).

Summary

The above Development Application was detailed in the report of the Manager Development Assessments and was referred to the Warringah Development Assessment Panel (WDAP) Meeting on 8 December 2010 as the proposal is a Category 3 development in the C8 Belrose North Locality and is required to be the subject of an independent public hearing pursuant to Clause 15 of WLEP 2000. The WDAP Minutes and the report of the Manager Development Assessments to WDAP Meeting are attached as Attachment's 'A' and 'B' respectively.

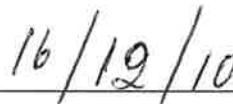
The Panel concurred with the recommendation of the Manager Development Assessment that this application for approval be adopted.

RECOMMENDATION OF DIRECTOR PLANNING AND DEVELOPMENT SERVICES

That the application be approved subject to the Conditions No.1-13 in the recommendation of the Manager Development Assessments to the Panel dated 8 December 2010.

Adopted

Rik Hart
General Manager



Date

Minutes of Warringah Development Assessment Panel held on 8 December 2010

WARRINGAH DEVELOPMENT ASSESSMENT PANEL MEETING

4.2	1-3 Powells Road, Brookvale – Use of Premises as an Industry, Shop and Further Education Establishment
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Panel Member

Mary-Lynne Taylor, Chairperson, Lawyer

Brett Newbold, Urban Design Expert

Susan Hopley, Environmental Expert

Alan Linnell, Community Representative

DA2010/1329

Application Details

Use of premises as an industry, shop and further education establishment.

Site Description

Lot 1 in DP 789370, 1-3 Powells Road, Brookvale.

Independent Public Hearing

This report is of an independent public hearing that has been convened pursuant to cl 15 of WLEP because this application is for Category 3 development. The application was advertised as such and there were no objections.

The Chairperson informed the hearing that applications for Category 3 development entail additional requirements. In particular, the Panel can only recommend that consent be granted if it is satisfied that the proposed development is consistent with the desired future character of the locality as described in the F3 Brookvale Industrial Locality Statement [WLEP2000 cl 12(3)(b)]. Further, the Panel must consider the Statement of Environmental Effects, prepared by the applicant that addresses the items listed in Schedule 15 [WLEP2000 cl 15(1)].

Desired Future Character

For this application being a Category 3 item to be satisfactory, the application has to be consistent with the desired future character of the F3 Brookvale Industrial Locality.

The Brookvale Industrial locality will remain an industrial and employment centre incorporating industries, warehouses and ancillary service uses.

New development or significant redevelopment will be designed to incorporate landscaping to soften the visual impact of industrial buildings and their associated parking and other paved areas as viewed from the street.

At the interface of the locality with adjoining and adjacent residential areas, buildings will be sited and designed and the use of land managed to minimise interference with the amenity of such residential areas.

Allotments are to be consolidated where necessary to ensure the development of one allotment will not render an adjoining allotment unsuitable for development.

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Site Visit

An inspection of the site was undertaken by the Panel and staff members prior to the Public Hearing.

Proceedings in Brief

The Panel took a view of the site and was aware of the details of the application. The Panel notes no written submissions were received. No objectors address the Panel at the hearing.

The Panel recommends approval of the application in accordance with the Council assessment report and subject to the conditions which the Panel found satisfactory.

RECOMMENDATION OF WARRINGAH DEVELOPMENT ASSESSMENT PANEL (CATEGORY 3 ITEM)

That the recommendation of the Manager Development Assessments for approval be adopted.

Voting 4/0



Report to the Warringah Development Assessment Panel on 8 December 2010

4.2 1-3 Powells Road, Brookvale – Use of Premises as an Industry, Shop and Further Education Establishment

DEVELOPMENT ASSESSMENT REPORT

Assessment Officer: Lashta Haidari
Address: Lot 1 in DP 789370, 1-3 Powells Road, Brookvale
Proposal Description: Use of premises as an industry, shop and further education establishment

Development Application No: DA2010/1329
Application Lodged: 24 August 2010
Plans Reference: Drawing No. 33-89 – Prepared by Robert A Brell & Associates P/L.
Amended Plans: No
Applicant: Boston Blyth Fleming Pty Ltd
Owner: M R Giuffrida, V & E Giuffrida & Sons Pty Ltd

Locality: F3 Brookvale Industrial
Category: **Category 1**-industries
Category 2 – shops (which sells goods manufactured on the same land as the industry producing them)
Category 3 - Shops and further education
Draft WLEP 2009 Permissible or Prohibited Land use: **Permissible** – Light Industry and Industrial retail outlet.
Prohibited – Retail Premises and Information & education facility.
Clause 20 Variations: No variation sound
Referred to ADP: NO
Referred to WDAP: YES (Referred to WDAP for a public hearing in accordance with Clause 15 of WLEP 2000.
Land and Environment Court Action: NO
SUMMARY
Submissions: No submissions were received.
Submission Issues: None
Assessment Issues: Draft WLEP 2009, Desired Future Character for the F3 locality, Schedule 15 (SEE), and Schedule 17.
Recommendation: Approval
Attachments: Site Plan

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LOCALITY PLAN (not to scale)



Subject Site:

Lot 1 in DP 789370, 1-3 Powells Road, Brookvale

Public Exhibition:

The subject application has been publicly exhibited in accordance with the EPA Regulation 2000, Warringah Local Environment Plan 2000 and Warringah Development Control Plan. As a result, the application was notified to 222 adjoining land owners and occupiers for a period of 21 calendar days commencing on 3 September 2010 and being finalised on 28 September 2010. Furthermore, the application has been advertised within the Manly Daily on 1 September 2010 and a notice was placed upon the site.

No submissions were received as a result of the notification process.

SITE DESCRIPTION

The subject site is described as Lot 1 in DP 789370, which is commonly known as 1-3 Powells Road, Brookvale. The subject site is a corner allotment between Mitchell and Powells Roads.

The site is currently occupied by a single storey building within which a dividing wall has been constructed to create two separate tenancies. The proposed development relates to the northern tenancy which has a frontage to Powells Road.

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Vehicular access is provided to the site from Powells Road as well as Mitchell Road. The driveway from Powells Road is located on the western side of the site. Vehicular access to a car park area for 6 vehicles is also provided to the rear (south) of the site from Mitchell Road. The applicant has indicated that each tenancy has been allocated 3 car parking spaces within this car park.

The surrounding land uses incorporate industrial and commercial uses surrounding the subject site.

RELEVANT BACKGROUND

A search of the Council's records reveals previous consent relating to the subject sites that are relevant to the subject application as follows:

Consent No	Description of works	Determination Date
DA2004/0616	Change of use to a mechanical workshop and signage,	15 July 2004

The northern tenancy of the building (subject of the DA) is currently occupied by 'Artfocus Gallery' and studio. The applicant has indicated that this site has been used for this purpose since May 2007.

Council has recently advised the owners of Artfocus that a Development Consent is required for the current use of the building. Hence, the applicant has lodged the subject DA.

STATUTORY CONTROLS

- a) Environmental Planning and Assessment Act 1979 (EPA Act 1979); and
- b) Environmental Planning and Assessment Regulations 2000.
- c) State Environmental Planning Policy No. 55 – Remediation of Land
- d) State Environmental Planning Policy - Infrastructure
- e) Warringah LEP 2000
- f) S94A Development Contributions Plan
- g) Draft Warringah LEP 2009

PROPOSED DEVELOPMENT

The applicant seeks consent to use the premises for 'Artfocus Gallery and Studio' for the production of art, art classes and as an art gallery.

The applicant has indicated that three (3) permanent artists will work at the studio with 100% of their work manufactured on the site. The majority of the work manufactured on the site is sold outside the premises. Some of the work produced on site is exhibited and sold on site, which also includes works from other artists.

The applicant also seeks consent to use the premises for art classes for adults and school students (Aged 7 to 18 years). The classes for school student are broken into the four terms of eight weeks. In addition to the art classes, special classes are provided for year 12 HSC students for the production of major art projects.

Hours of operation

The proposed hours of operation will be:

Monday to Saturday: 7.30am to 9pm

Sunday: closed

Hour of operations for the Art Classes:

Monday to Thursday: 4pm to 7pm

Report to the Warringah Development Assessment Panel on 8 December 2010

Staff

Three (3) permanent artists work at the studio at any given time.

Signage

There are no signs proposed as part of this application.

PUBLIC EXHIBITION

The subject application has been publicly exhibited in accordance with the EPA Regulation 2000, Warringah Local Environment Plan 2000 and Warringah Development Control Plan. As a result, the application was notified to 222 adjoining land owners and occupiers for a period of 21 calendar days commencing on 3 September 2010 and being finalised on 28 September 2010. Furthermore, the application has been advertised within the Manly Daily on 1 September 2010 and a notice was placed upon the site

No submissions were received as a result of the notification process.

LAND AND ENVIRONMENT COURT ACTION

No Land & Environment Court action has been taken with respect to the subject application.

REFERRALS

Development Engineers

Council's Development Engineers has reviewed the proposal and has raised no objection or conditions to the proposed development.

Building Assessment & Compliance

Council's Building Assessment and Compliance section has reviewed the proposal and has raised no objection to the proposed development subject to conditions, which have incorporated within the recommendation of this report.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on State Environmental Planning Policy No.55 – Remediation of Land, State Environmental Planning Policy (Infrastructure) 2007 and Warringah Local Environmental Plan 2000 in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	See discussion on "Draft Environmental Planning Instruments" in this report.
Section 79C (1) (a)(iii) – Provisions of any development control plan	The application was advertised and notified in accordance with the requirements of Warringah Development Control Plan.
Section 79C (1) (a)(iia) – Provisions of any planning agreement	None Applicable.
Section 79C (1) (a)(iv) – Provisions of the regulations	Clause 7 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia. Accordingly, appropriate conditions of consent are recommended for imposition should this application be considered suitable for approval. Clauses 93 and 94 of the Regulation require the consent authority to consider the fire safety and structural capacity of a building. This matter will be addressed via specific conditions of consent.

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Section 79C 'Matters for Consideration'	Comments
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	<p>(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the General Principles of Development Control in this report in this report and are found to be acceptable and reasonable.</p> <p>(ii) The proposed will not have a detrimental social impact in the locality considering the character of the proposal as it provides a facility to be used by the community within the local area.</p> <p>(iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the proposed land use. In this regard, the proposal will provide additional facility (in the form of studio and art classes) in the local area that will benefit the community within this locality.</p>
Section 79C (1) (c) – the suitability of the site for the development	The proposal is for the change of use. The site is considered suitable for the proposed development, having regard to the size and floor space of the existing building to use the premises for the production of art, art classes, and as an art gallery.
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	The application was notified to adjoining and surrounding residents and businesses. No submissions were received as a result of the notification process.
Section 79C (1) (e) – the public interest	<p>Pursuant to case law of <i>Ex Gratia P/L v Dungog Council</i> (NSWLEC 148), the question that needs to be answered is “<i>Whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development</i>”? For the reasons stated in this report, it is apparent that there is public benefit to be gained from the operation of this facility. There are no unreasonable impacts that will result from the operation of the proposed development, therefore, the finding is that the benefits outweigh any disadvantage and as such the proposed development will have an overall public benefit.</p> <p>Additionally, the proposal satisfies the requirements of WLEP 2000 and will have no detrimental effect on the public interest, subject to appropriate conditions.</p>

DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS:

The public exhibition of the draft Warringah Local Environmental Plan 2009 (DWLEP 2009) commenced on 12 October 2009 and ended on 30 December 2009. The draft LEP was adopted by Council at its meeting held on 8 June 2010. The DWLEP 2009 is therefore a mandatory matter for consideration under Section 79 (1) (a) (ii) of the Environmental Planning and Assessment Act, 1979.

Definition

Proposed Land Use	Definition under WLEP 2000	Definition under Draft WLEP 2009
The production and manufacturing of art at the premises.	Industries	Light Industry
Art Classes	Further Education	Information & Education facility
The exhibition and sale of art works produced on site	Shop (which sells goods manufactured on the same land as the industry producing them)	Industrial retail outlet
The exhibition and sale of art works not produced on site	Shop	Retail Premises

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Land Use Zone and Permissibility:

Land Use Zone	Proposed Land Use	Permissible or Prohibited
IN1 - General Industrial	Light Industry	Permissible
	Industrial retail outlet	Permissible
	Information & Education facility	Prohibited*
	Retail Premises	Prohibited*

Additional Permitted used for particular land – Refer to Schedule 1: Not Applicable

Under the provisions of the draft DWLEP 2009 the subject site is located within the IN1 General Industrial zone. Within this zone Information and education facility and retail premises will be a prohibited uses.

The relevance of a draft LEP and the weight to be given to it relies on the facts of the particular case and circumstances. The Land and Environmental Court in a number of cases (see *Mathers v North Sydney Council* [2000] NSWLEC 84, *Haywood and Bakker Pty Ltd v North Sydney Council* [2000] NSWLEC 138 *Blackmore Design Group Pty Ltd v North Sydney Council* [2001] NSWLEC 279) has considered the weight to be given to a draft LEP and the effect of savings provisions. In summary, the primary principles arising from Land and Environment Court cases are that the weight to be placed upon a draft LEP when determining a development application depends on:

1. The imminence of the draft LEP and the degree of certainty that it will come into force;
2. The extent of conflict between proposed development and planning objectives contained in the draft LEP;
3. The existence and applicability of savings provisions in the draft LEP.

In relation to the first principle, the fact that WLEP 2009 has been through the public exhibition and has been adopted by Council the plan is considered both imminent and certain and therefore is at a stage to be given significant weight as a consideration under section 79C.

In relation to the second principle, an assessment of the proposed development (i.e. the information and further education facility and retail components of the development) in relation to the objectives of the IN1 zone is as follows:

- **To provide a range of industrial and warehouse land uses.**

Comment: The exhibition and sale of art works not manufactured on site fall under the definition of 'retail premises' and the art classes fall under the definition of "information and education facility", both uses whilst ancillary to the overall use of the premises are not defined as an industrial or warehouse uses. Therefore the proposed development would technically be inconsistent with this objective. However, the proposed uses are compatible with the character of industrial and warehouse type of development in that the use is established and have no adverse effect on industry or other uses in the area. The activity and the hours of the proposed use are not such as to conflict with the core hours associated with industry and warehouses uses.

For the above reasons, the prohibited land uses (i.e. retail premises and information and further education) proposed within this application are supported in relation to this objective.

- **To encourage employment opportunities.**

Comment: The proposed development is consistent with the intent of this objective, in that the proposed development will provide a facility that can benefit the local workforce in the area. The proposed operation will not undermine the principal function of the area as an employment-generating centre as it in itself will generate some employment.

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- **To minimise any adverse effect of industry on other land uses.**

Comment: The proposed development is for change of use only, there is no works proposed externally to the existing building. The proposed use will have no unreasonable impact on industry or other uses in the area in that the proposed use and hours will not conflict with the core hours associated with industry and warehouses uses.

- **To enable other land uses that provides facilities or services to meet the day to day needs of workers in the area.**

Comment: The proposed development will provide a facility to the local workforce in that information and education component of the proposed use will provide a form of leisure use that will be available to the workers in the area. Accordingly, it is considered that the proposed development is consistent with the intent of this objective.

- **To enable a range of compatible community and leisure uses.**

Comment: As indicated above, it is considered that the information and education component of the proposed use will provide a form of leisure to the community. Further, the retail component of the use is considered to be a compatible land use with the character of the area in that in that the use is established and have no adverse effect on industry or other uses in the area.

- **To maintain the industrial character of the land in landscaped settings.**

Comment: The proposed development is for change of use only and as indicated above is considered to be compatible with the industrial character of the area. There is limited landscaping available on site at present and this situation will not be altered as a result of the proposed development.

Having regard to the above assessment, the proposed development within this zone is consistent with the majority of the objectives of this zone and therefore the proposed development can be supported.

In relation to the third principle DWLEP 2009 contains a savings provision under Cl 1.8A which states:

"If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced".

In this particular circumstance reference is made to the Land and Environment court case (in *Blackmore Design Group Pty Ltd v North Sydney Council* [2001] NSWLEC 279), where the judgement summarises the weight to be given to a draft LEP, particularly, in the circumstances where it was a draft when an application was lodged and has since been gazetted with a transitional provision.

"49 The fact that LEP 2010 has been made ensures that the plan is certain and imminent and accordingly, that plan must be given significant weight in the determination of the application. However, due to the savings provision, the inquiry does not stop there. In Blackmore at [30], Lloyd J states:

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)".

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DWLEP 2009 is still a draft document (at the time of writing this report) and has not commenced. In accordance with the above judgement and given that the proposed development was found to be consistent with the majority of the aims and objectives of the IN1 zone the proposal is supported in this instance.

Principal Development Standards:

The only development standard under the Draft WLEP 2009 that is relevant to the assessment of this application is the building height control. The proposed development is for change of use and does not alter the existing building height as indicated in the table below:

Development Standard	Required	Proposed	Complies
Building Height	11m (measured from existing ground level to highest point of building)	No changes	N/A

ENVIRONMENTAL PLANNING INSTRUMENTS (EPI's)

State Environmental Planning Policies (SEPPs)

Further consideration is required for the following State policies:

State Environmental Planning Policy No 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 industrial and warehouse type purposes for a significant period of time. 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.

State Environmental Planning Policy - Infrastructure

Consideration under Clause 45 of SEPP Infrastructure is not required as no external construction works are proposed:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists),
- immediately adjacent to an electricity substation,
- within 5m 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 5m of an overhead electricity power line.

The application was referred to Energy Australia to determine if the subject site was within or immediately adjacent to any of the above electricity infrastructure. Energy Australia by letter dated 2 September 2010 stated that the subject site was not affected by any of the above electricity infrastructure. In this regard, the subject application is considered to satisfy the provisions of Clause 45 SEPP Infrastructure.

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SEPP No. 64 – Advertising of Land

SEPP 64 is not applicable to the proposed development, as the proposed development does not seek to propose any new signage as part of this application.

Draft State Environmental Planning Policy (Competition) 2010

In determining a development application under Part 4 of the EP&A Act, Council is required under section 79C(1)(b) of the Act to consider the likely economic impacts of a proposed development within a locality.

The Draft SEPP has been developed to promote economic growth and competition and to remove anti-competitive barriers in environmental planning and assessment. It will attempt to achieve this aim by:

- a) Prohibiting Council from considering the commercial viability of proposed development, and
- b) Overcoming restrictions in planning instruments on the number of a particular type of retail premises and their proximity to other retail premises of that type.

The Draft SEPP defines commercial development as development for purposes of (or including or any combination of) the following:

- (a) Retail premises;
- (b) Business premises; and
- (c) Office premises.

The Draft SEPP identifies the following areas of economic impact which Council cannot consider in its determination of a development application:

- The commercial viability of the proposed commercial development;
- The loss of trade to other existing or proposed commercial development;
- Restrictions imposed by an LEP or DCP on the number of particular types of retail premises within a development; and
- Restrictions imposed by an LEP or DCP on the proximity of particular types of retail premises to other retail premises.

The Draft SEPP was released for public comment from 27 July 2010 to 26 August 2010.

Comment: The development involves the exhibition and sale of art works that is either produced on the premises or brought into the premises to be placed on exhibition and sold at the premises. Both uses are defined under the Draft SEPP as commercial development. As such, the development is considered to be consistent with the provisions of the Draft SEPP.

Regional Environmental Planning Policies

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 F3 Brookvale Industrial Locality under Warringah Local Environment Plan 2000. The Desired Future Character Statement for this locality is as follows:

The Brookvale Industrial locality will remain an industrial and employment centre incorporating industries, warehouses and ancillary service uses.

New development or significant redevelopment will be designed to incorporate landscaping to soften the visual impact of industrial buildings and their associated parking and other paved areas as viewed from the street.

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At the interface of the locality with adjoining and adjacent residential areas, buildings will be sited and designed and the use of land managed to minimise interference with the amenity of such residential areas.

Allotments are to be consolidated where necessary to ensure the development of one allotment will not render an adjoining allotment unsuitable for development.

The proposed development is to use the premises by 'Artfocus Gallery and Studio' for the production of art, art classes and as an art gallery. In accordance with the WLEP 2000, the proposed development is defined and categorised as follows:

Category 1

The production or manufacture of art at the premises falls under the definition of 'Industry' and is a Category 1 use in this locality.

Category 2

The exhibition and sale of art works manufacture on site is a Category 2 use in the locality being a 'shop which sells goods manufactured on the same land as the industry producing them.

Category 3

The exhibition and sale of art works not manufacture on the site falls under the general definition of 'shop' and is a Category 3 use in this locality; and

The use of the premises for art classes fall under the definition of 'further education' which is also a Category 3 use in this locality.

Pursuant to Clause 12(3) (b) of WLEP 2000, before granting consent for development classified as Category 2 and 3, the consent authority must be satisfied that the development is consistent with the desired future character described in the relevant locality statement. Accordingly, an analysis of the various relevant components of the Desired Future Character of the F3 Brookvale Industrial Locality is as follows;

The Brookvale Industrial locality will remain an industrial and employment centre incorporating industries, warehouses and ancillary service uses.

Comment: The proposed development is consistent with this component of the DFC, in that the predominant proposed use (i.e. the production or manufacture of art at the premises) is define as an industrial use which is consistent with the DFC.

The proposed shop and further education use will not undermine the principal function of the locality as an employment-generating centre as these uses will generate some employment.

New development or significant redevelopment will be designed to incorporate landscaping to soften the visual impact of industrial buildings and their associated parking and other paved areas as viewed from the street.

Comment: The proposed development is for change of use only. As no significant works are proposed to the existing building, the proposed development proposal is considered to be consistent with this element of the DFC.

At the interface of the locality with adjoining and adjacent residential areas, buildings will be sited and designed and the use of land managed to minimise interference with the amenity of such residential areas.

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Comment: The subject site does not adjoin residential development and therefore this component of the DFC is not applicable to the proposed development.

Allotments are to be consolidated where necessary to ensure the development of one allotment will not render an adjoining allotment unsuitable for development.

Comment: The proposed development will not render the adjoining allotment unsuitable for development and therefore the consolidations of the lots are not required. The proposed development is therefore consistent with this component of the DFC.

For the above reasons, it is considered that the proposal is consistent with the Desired Future Character Statement.

Built Form Controls for Locality F3 Brookvale Industrial

The following table outlines compliance with the Built Form Control's of the above locality statement:

Standard	Permitted	Proposed	Compliant
Building Height	11.0m	The proposed is for change use and will alter the existing building height	N/A
Front Building Setback	4.5m	The proposed is for change use and will alter the existing building height	N/A
Subdivision	Minimum allotment size for subdivision is 4000m ²	No subdivision is proposed	N/A

Clause 20 Variation

Clause 20 Variations are not applicable to this development.

General Principles of Development Control

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

General Principles	Applies	Comments	Complies
CL38 Glare & reflections	YES	No changes are proposed to the external facade that would alter or increase the existing level of glare and reflection from the existing building.	YES
CL39 Local retail centres	NO	No Comment	Not Applicable
CL40 Housing for Older People and People with Disabilities	NO	No Comment	Not Applicable
CL41 Brothels	NO	No Comment	Not Applicable
CL42 Construction Sites	YES	There is no demolition and construction proposed as the use is already established on site.	YES
CL43 Noise	YES	Development will not result in noise emission, which would unreasonably diminish the amenity of the area and will not result in noise intrusion, which would be unreasonable to surrounding properties. Any sound producing plant or equipment cannot exceed 5dBA which is addressed via condition.	YES
CL44 Pollutants	NO	No Comment	Not Applicable
CL45 Hazardous Uses	NO	No Comment	Not Applicable

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General Principles	Applies	Comments	Complies
CL46 Radiation Emission Levels	NO	No Comment	Not Applicable
CL47 Flood Affected Land	NO	No Comment	Not Applicable
CL48 Potentially Contaminated Land	Yes	Refer to assessment under SEPP 55. In summary, Council records indicates that the site poses no risk of contamination and therefore, no further consideration is required under Clause 48.	YES
CL49 Remediation of Contaminated Land	NO	No Comment	Not Applicable
CL49a Acid Sulfate Soils	NO	This application is for the use of an existing building and involves no earthwork. Therefore, no further consideration of this Clause is required.	Not Applicable
CL50 Safety & Security	YES	The existing building has adequate safety, security and passive surveillance of the parking area.	YES
CL51 Front Fences and Walls	NO	No comment	Not Applicable
CL52 Development Near Parks, Bushland Reserves & other public Open Spaces	YES	The subject site does not adjoin or not near a park, bushland reserve and other public open space.	YES
CL53 Signs	NO	No new signage is proposed as part of this application.	Not Applicable
CL54 Provision and Location of Utility Services	NO	The subject site will utilise existing utilities services located on the site.	Not Applicable
CL55 Site Consolidation in 'Medium Density Areas'	NO	No Comment	Not Applicable
CL56 Retaining Unique Environmental Features on Site	NO	The subject site is not constrained by any environmental features.	Not Applicable
CL57 Development on Sloping Land	NO	No Comment	Not Applicable
CL58 Protection of Existing Flora	NO	No Comment	Not Applicable
CL59 Koala Habitat Protection	NO	No Comment	Not Applicable
CL60 Watercourses & Aquatic Habitats	NO	No Comment	Not Applicable
CL61 Views	YES	The proposed development will not alter the existing envelope.	YES
CL62 Access to sunlight	YES	The development will not create any additional overshadowing impact upon the neighbouring properties as it is for a fit out only.	YES
CL63 Landscaped Open Space	NO	No Comment	Not Applicable
CL63A Rear Building Setback	NO	No Comment	Not Applicable
CL64 Private open space	NO	No Comment	Not Applicable
CL65 Privacy	YES	Given the location of the development within an established industrial area, the development will not result in any adverse privacy impacts. As such, it is considered satisfactory with regard to the requirements of the General Principles.	YES
CL66 Building bulk	NO	The proposed development is within the footprint of the existing building and therefore the bulk and scale of the building will not be altered as result of this development.	Not Applicable

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General Principles	Applies	Comments	Complies
CL67 Roofs	NO	The roof form of the existing building will not be altered as part of this application.	Not Applicable
CL68 Conservation of Energy and Water	NO	No Comment	Not Applicable
CL69 Accessibility – Public and Semi-Public Buildings	YES	<p>Clause 69 requires that the sitting, design and construction of the premises available to the public are to ensure an accessible continuous path of travel, so that all people can enter and use the premises. Such access is to comply with the requirement of the Disability Discrimination Act 1992 (DDA Act 1992) and with Australian Standard AS 1428.2 - 1992.</p> <p>The Statement of Environmental Effects (SEE) submitted with the application notes that a continuous path of travel is available from the street to the main door of the premises.</p> <p>Notwithstanding the above, a condition of consent has been included to ensure the development complies with the intent of the DDA and the requirements of the AS1428.2. Accordingly, the proposed development will comply with the provisions of Clause 69.</p>	YES – subject to condition
CL70 Site facilities	NO	The site contains adequate space for general waste and recycling storage, which will not be altered as part of this application.	Not Applicable
CL71 Parking facilities (visual impact)	NO	The application will not alter the existing parking facilities available for the buildings.	Not Applicable
CL72 Traffic access & safety	YES	The existing vehicle access driveway from Skyline Road will not be altered as part of this application.	YES
CL73 On-site Loading and Unloading	No	No Comment	Not Applicable
CL74 Provision of Carparking	YES	<p>Clause 74 stipulates that adequate off-street car parking is to be provided to serve a development and that the application must be assessed against the provisions of Schedule 17 of WLEP 2000.</p> <p>Assessment under the provisions of Schedule 17</p> <p>Schedule 17 stipulates the following relevant parking rates:</p> <p>Industrial premises – 1.3 spaces per 100m²</p> <p>Shop – 1 per 16.4m²</p> <p>Further Education – 1 space per staff member plus adequate area for student parking, bicycle racks, and pick and set down area.</p> <p>The proposed use occupies a total GFA of 265m². The applicant has not nominated a breakdown of what component of the premises will be occupied by the different uses as proposed by this application and therefore an accurate calculation of the number of spaces required for the proposed use cannot be determine.</p> <p>Three (3) on site car parking spaces are available for the subject site. It is considered these are appropriate given there are 3 artists that manufactured work on the site.</p> <p>The art classes held at the premises are broken into four terms of eight weeks and take place from 4pm to 7pm (Monday to Thursday). Given the hours proposed</p>	YES

Report to the Warringah Development Assessment Panel on 8 December 2010

General Principles	Applies	Comments	Complies
		for the art classes, there will be parking available on the street as other local business are generally either closed or closing during the time the classes are held. For the above reason, the proposed development provides sufficient parking spaces for the proposed use.	
CL75 Design of Carparking Areas	YES	The proposed development relies on the existing car parking and the access to the site will not be altered as part of this application.	YES
CL76 Management of Stormwater	YES	The proposed stormwater management of the proposal is considered satisfactory as it will utilise existing stormwater provisions provided for the existing building. Council's Development Engineers were not required to provide comment on the application.	YES
CL77 Landfill	NO	No Comment	Not Applicable
CL78 Erosion & Sedimentation	NO	Change of use only and no disturbance of land.	Not Applicable
CL79 Heritage Control	Yes	The subject site is not defined as (or located) within the vicinity of any items of heritage significance or heritage conservation area. Accordingly no further assessment with regard to heritage matters is required for this application.	Not Applicable
CL80 Notice to Metropolitan Aboriginal Land Council and the National Parks and Wildlife Service	NO	The subject site is not located within the vicinity of any known or potential Aboriginal sites.	Not Applicable
CL82 Development in the Vicinity of Heritage Items	NO	The existing buildings are not defined as items of state heritage significance. Accordingly no consultation is required with the Heritage Council.	Not Applicable
CL83 Development of Known or Potential Archaeological Sites	NO	The subject site is not located within the vicinity of any known or potential archaeological sites	Not Applicable

SCHEDULES

Schedule 8 - Site analysis

This application does not include a site analysis. However, the Statement of Environmental Effects submitted for this application is considered to have satisfactorily addressed the requirement of this Schedule.

Schedule 15 - Statement of Environmental Effects

Clause 15(1) of Warringah Local Environmental Plan 2000 requires that the consent authority must consider a Statement of Environmental Effects prepared in accordance with the criteria listed in Schedule 15.

A Statement of Environmental Effects (SEE) has been submitted to address Schedule 15 of WLEP 2000.

The applicant has submitted a Statement of Environmental Effects, prepared by Sym

Consideration	Comment
(1) Summary of the Statement of Environmental Effects (SEE)	<p>A Statement of Environmental Effects (SEE) submitted with the application. The documentation addresses the proposal's consistency with all relevant planning controls.</p> <p>Comment: It is considered that the statement submitted adequately addresses the proposal's consistency with all relevant planning controls.</p>

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Consideration	Comment
(2) Consistency of the proposal with the desired future character statement and general principles of development control established by the plan.	<p>The consistency of the proposal with the relevant desired future character statement and general principles of development control is considered in the SEE submitted with the application.</p> <p>Comment: An assessment of the consistency of the proposal with all relevant controls in WLEP 2000 is detailed in this report. The assessment has found that the proposal is generally consistent with the relevant planning controls. Accordingly, the assessment of the proposal in the SEE is considered to be satisfactory.</p>
(3) Objectives of the proposed development.	<p>The applicant has detailed the objectives of the proposed development in the SEE. The objectives for the proposed development as indicated within SEE is as follows:</p> <p><i>"The objective of the proposed development is to regularise the existing use of the site as for the production of art, art classes and as an art gallery".</i></p> <p>Comment: The applicant has satisfactorily described the objectives of the proposal.</p>
<p>(4) An analysis of feasible alternatives.</p> <p>(including (a) Consequences of not carrying out the development and (b) Justification for the development)</p>	<p>The applicant has advised that the consequences of not carrying out of the development include loss of a business which provides a significant contribution to the local community. The reasons why the applicant has stated that the development is necessary, is summarised as follows:</p> <p><i>"The justification for the proposed development as proposed is to legitimise the current (unauthorised) use of the land. In this regard the justification for the development as proposed is:</i></p> <ul style="list-style-type: none"> <i>• The development reflects the established use of the land. The current use has been operating with apparent inconvenience to the locality.</i> <i>• The use provides a positive contribution to the local community in that it supports the development of the local art industry and provides assistance to local community events and community groups.</i> <i>• The industrial locality is most suited to the proposed as it permits the manufacture of art (industry) and the display and sale of the goods produced on the site (as primary activities which are undertaken at the premises) as Category 1 uses. The building with the industrial area also provides the necessary spaces for the proposed uses. In this regard there are no other localities which are more suited to the specific mix used proposed. "</i> <p>Comment: The justification for the development is to provide for a convenient facility for workers and community within the area. The development is not considered to impact upon the ability of the area to be maintained as industrial area and will add to the services available to the community.</p>
(5) Development and context analysis.	<p>The Statement of Environmental Effects submitted with the application provides a detailed description of the proposed development and the context of the development.</p> <p>Comment: The SEE has provided an appropriate description of the development and an analysis of the context of the site.</p>
(6) Biophysical, economic and social considerations and the principles of ecologically sustainable development.	<p>The applicant has stated there are no adverse environmental impacts associated with the development.</p> <p>Comment: The proposal as detailed in the SEE is not considered to provide adverse impacts in relation to the biophysical, economic and social considerations and the principles of ecologically sustainable development.</p>
(7) Measures to mitigate any adverse effects of the development on the environment	<p>The applicant has stated there are no adverse environmental impacts associated with the development.</p> <p>Comment: There are no adverse effects arising from the use as proposed.</p>
(8) Other approvals required	<p>The subject development does not constitute integrated development pursuant to the provisions of the <i>Environmental Planning and Assessment Act 1979</i>. No other approvals are therefore required to enable the proposed development to proceed.</p>

It is considered that the submitted Statement of Environmental Effects in response to the provisions of Schedule 15 adequately addresses the compatibility of the development with the Locality and the DFC.

Report to the Warringah Development Assessment Panel on 8 December 2010

Schedule 17 - Carparking Provision

Refer to 'CL74 Provision of Carparking' in the General Principles of Development Control table in this report.

POLICY CONTROLS

Warringah Section 94A Development Contributions Plan

The Warringah Section 94A Development Contribution Plan is not applicable to the subject proposal as the cost of the development is less the \$100,000.

MEDIATION

Mediation was not requested for this development application

CONCLUSION

The site has been inspected and the application assessed having regard to the provisions of Section 79C of the Environmental Planning and Assessment Act 1979, State Environmental Planning Policy (Infrastructure) 2007, State Environmental Planning Policy No.55 – Remediation of Land, Warringah Local Environmental Plan 2000, Draft Warringah Local Environmental Plan 2009, Warringah Development Control Plan and the relevant 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.

The proposal is to use the existing premises as an industry, shop and further education establishment. The proposed uses are identified as category 1, 2, and 3 in the F3 Brookvale industrial locality. The uses have been found to be consistent with the desired future character of the locality and the relevant provisions of WLEP 2000. The proposed development was also found to be consistent with the aims and objectives under the provisions of DWLEP 2009.

Accordingly, it is considered that the proposed development satisfies the appropriate controls applying to the proposal and that all processes and assessments have been satisfactorily addressed. Accordingly, the proposal is recommended for approval.

RECOMMENDATION - Approval

That the Warringah Development Assessment Panel recommends the General Manager approve Development Application No. DA2010/1329 for use of premises as an industry, shop and further education establishment at Lot 1 in DP 789370, 1-3 Powells Road, Brookvale subject to the following conditions:

GENERAL CONDITIONS

CONDITIONS THAT IDENTIFY APPROVED PLANS

1. Approved Plans and Supporting Documentation

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Job No.33-89 Sketch No. SC1	Not specified	Robert A Brell & Associates Pty Ltd

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No construction works (including excavation) shall be undertaken prior to the release of the Construction Certificate.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

2. Compliance with External Department, Authority or Service Requirements

The development must be carried out in compliance with the following:

External Department, Authority or Service	E-Services Reference	Dated
Energy Australia	DA2010/1329	2 September 2010

(NOTE: For a copy of the above referenced document/s, please see Council's 'E-Services' system at www.warringah.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of External Department, Authority or Bodies. (DACPLB02)

3. No Approval for any Signage

No approval is granted under this Development Consent for signs (as defined under Warringah Local Environment Plan 2000 and State Environmental Planning Policy No. 64). A separate Development Application for any signs (other than exempt and signs permitted under Complying Development) must be submitted for the approval prior to the erection or display of any such signs.

Reason: Control of signage.

4. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) Showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (ii) Showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) Stating that unauthorised entry to the work site is prohibited.Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (c) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) Protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) Where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) Must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

Report to the Warringah Development Assessment Panel on 8 December 2010

- (iv) The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative Requirement.

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 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.

(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) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) 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.)

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

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

6. Compliance with Standards

The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure the development is constructed in accordance with appropriate standards.

Advice to Applicants: At the time of determination in the opinion of Council, the following (but not limited to) Australian Standards are considered to be appropriate:

- (a) AS 1428.2 -1992, Design for access and mobility –Enhanced and additional requirements – Buildings and Facilities.
- (b) All sound producing plant, equipment, machinery or fitting will not exceed more than 5dB (A) above the background levels when measured from any property boundary and will comply with the Environmental Protection Authority's NSW Industrial Noise Policy

***Note:** the listed Australian Standards is not exhaustive and it is the responsibility of the applicant and the Certifying Authority to ensure compliance with this condition and that the relevant Australian Standards are adhered to.

CONDITIONS THAT MUST BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

7. Maintenance of Road Reserve

The public footways and roadways adjacent to the site shall be maintained in a safe condition at all times during the course of the work.

Reason: Public Safety.

8. Building Code of Australia and Upgrading Works

- (a) The tenancy is to be upgraded where required so as to be provided with adequate 'Essential services' in accordance with Part E of the Building Code of Australia.
- (b) Fire resistance and means of egress is to comply with Parts C & D of the BCA.

An alternate solution addressing fire upgrading may also be considered via a construction certificate application.

Reason: Fire Safety, and additional upgrading under Section 93/94 of the Environmental Planning & Assessment Regulation 2000 to ensure an adequate level of fire safety is provided within the premises for the life safety of building occupants.

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

9. Hours of Operation

The hours of operation are to be restricted to Monday to Saturday: 7.30am to 9pm (inclusive).

The hours of operations for the Art classes are to be restricted to: Monday to Thursday: 4pm to 7pm (Inclusive)

Upon expiration of the permitted hours, all service shall immediately cease, no clients shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

Reason: Information to ensure that amenity of the surrounding locality is maintained.

10. Loading Within Site

All loading and unloading operations shall be carried out wholly within the confines of the site and within the approved loading areas, at all times.

Reason: To ensure that deliveries can occur safely within the site and does not adversely affect traffic or pedestrian safety and amenity.

11. Commercial Waste Collection

Waste and recyclable material, generated by this premises, must not be collected between the hours of 9pm and 8am on any day.

Reason: To ensure the acoustic amenity of surrounding properties.

12. Delivery Hours

No deliveries, loading or unloading associated with the premises are to take place between the hours of 10pm and 6am on any day.

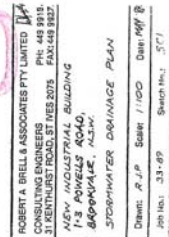
Reason: To protect ensure the acoustic amenity of surrounding properties.

13. Allocation of Spaces

Three (3) car parking spaces are to be provided to the premises and maintained at all times. Each car parking space allocated to the premises shall be line marked and numbered or signposted to indicate the premises to which it is allocated.

Reason: To ensure that adequate parking facilities to service the premises are provided on site.

2010/187600
NED



BASIS OF DESIGN:
Coefficient of runoff $C = 0.95$
Rainfall intensity $I_{30} = 200 \text{ mm/hr}$
recurrence interval storm = Once in 20 years.

Note: Levels shown thus ϕ are one existing surface levels. For finished surface A.L.s refer to Architects drawings.

Demolish and remove existing vehicular crossing and at CE and construct new subdrain crossing and concrete spans in accordance with Maryland State Design requirements.

Construct new keys
and gather to match

Report to General Manager on 13 December 2010