

<b>JRPP No:</b>	2011SYE025
<b>DA No:</b>	16/2010-S969(2)
<b>PROPOSED DEVELOPMENT:</b>	Demolition of existing buildings, excavation, construction of a two (2) level hardware and building supplies warehouse with mezzanine, signage - 164 Condamine Street, Balgowlah, NSW
<b>APPLICANT:</b>	John R. Brogan & Associates Pty Ltd
<b>REPORT BY:</b>	Nancy Sample, Manly Council

## Assessment Report and Recommendation

<b><u>Application Lodged:</u></b>	23 December 2010
<b><u>Applicant:</u></b>	John R. Brogan & Associates Pty Ltd
<b><u>Owner:</u></b>	Bunning's Group Limited
<b><u>Estimated Cost:</u></b>	Original cost - \$14.5 Million
<b><u>Zoning:</u></b>	Manly Local Environmental Plan, 1988 - Industrial
<b><u>Surrounding Development:</u></b>	Residential dwellings, Open Space and Commercial and Retail premises.
<b><u>Heritage:</u></b>	In the vicinity of Street Trees listed as Items of Environmental Heritage on Balgowlah Road.

### **SUMMARY:**

1. DEVELOPMENT CONSENT IS SOUGHT FOR A S96(2) MODIFICATION TO DA16/2010 BEING FOR THE DEMOLITION OF EXISTING BUILDINGS, EXCAVATION, CONSTRUCTION OF A TWO (2) LEVEL HARDWARE AND BUILDING SUPPLIES WAREHOUSE WITH MEZZANINE, SIGNAGE AND TWO (2) LEVELS OF BASEMENT CAR PARKING – BUNNING'S WAREHOUSE.
2. THE ORIGINAL DEVELOPMENT APPLICATION WAS CONSIDERED BY JRPP ON 22 JULY 2010 WHO DETERMINED THAT A 'DEFERRED COMMENCEMENT APPROVAL' BE ISSUED BY COUNCIL. PLANS COMPLYING WITH THE 'DEFERRED COMMENCEMENT' CONDITIONS WERE SUBMITTED TO COUNCIL ON 10 SEPTEMBER 2010 AND A LETTER ACTIVATING THE CONSENT WAS ISSUED BY COUNCIL ON 19 NOVEMBER 2010.
3. THIS APPLICATION WAS NOTIFIED TO ALL RELEVANT ADJOINING AND NEARBY PROPERTY OWNERS AND NO SUBMISSIONS RECEIVED.
4. THIS APPLICATION WAS REFERRED TO THE BALGOWLAH PRECINCT COMMUNITY FORUM FOR COMMENTS.
5. SITE INSPECTION IS RECOMMENDED.
6. THIS APPLICATION IS RECOMMENDED FOR APPROVAL.

### **LOCALITY PLAN**

Shaded area is subject site.



## **Introduction**

*Additional supporting documentation referred to in this assessment:-*

Letter from John R. Brogan & Associates Pty Ltd dated 22.12.2010 entitled 'Request to amend development consent conditions' and received at Council on 23 December 2010.

### *Subject Property and surrounding area*

The site is located at 164 Condamine Street known legally as lot 2 in DP 533586, lot 15 in DP 532064, Lot 2 in DP 562483 and lot 1 in DP 533586 and forms an 'L' shape. The site has an overall area of 7327.4m<sup>2</sup> with three street frontages being Roseberry (East) at 30.5m, Balgowlah (South) at 78m and Condamine (West) at 78m.

The property adjoins the Harvey Norman development to the North. The Roseberry Street side is opposite commercial developments being a three storey development known as Manly Freezers, a two storey building including the Roseberry Sandwich Bar at grade (with offices above), a three storey building currently housing a 'Paul's Warehouse' and a two storey building for 'Fantastic Furniture'.

### *Property Burdens and Constraints*

The subject site is located on land considered to be affected by Type 5 Acid Sulphate soils and an assessment in relation to the works has been submitted to Council and considered. No objections to the works proposed have been raised as a result of internal expert consideration on the basis of the impact upon the Acid Sulphate soil layer. Relevant conditions of consent have been previously approved for the management of such soils.

The subject site is not located within an area identified as being prone to landslip and is not identified on Council's Landslips Potential Hazards Plan (part of the Manly LEP 1988).

The subject site is not located within an area identified and being 'Bushfire Prone' on Council's Bushfire Prone Land Map (part of the Manly LEP 1988).

In terms of the site being located on flood prone land, the Manly Lagoon floodplain management study dated June 1996 included an 'interim policy' which identifies Condamine Street and Roseberry Street as being located within a 1:100 year flood prone area. As such any new development is to be considered carefully and on merit and where the finished floor level / lowest level is located lower than at R.L.3.2AHD certain conditions should be applied. This is not the case for the proposal as the lowest level of the car park is around R.L.6.20AHD. An approved condition of consent requires that the lower levels of the development be waterproofed and rendered safe from inundation by flood.

Balgowlah Road is listed as an Item of Environmental Heritage and includes street trees that may be affected by the proposal. Such impacts have been considered by Council's Landscape Architect and suitable conditions of consent previously approved.

In terms of easements affecting the subject site, there is a sewer line that runs across the site from the southern (Balgowlah Road) side and leaving the site via the eastern side (under adjoining properties towards Roseberry Street). This would not preclude the development as proposed and a standard condition of consent was previously recommended to ensure that Sydney Water is involved with the detailed consideration of any impacts to this line.

Accordingly, it is concluded that there are no burdens or constraints that would preclude the development as proposed subject to the imposition of existing approved conditions of consent in relation to environmental matters and construction issues. The relevant referrals have been undertaken in this regard and expert advice sought from within Council and externally.

#### *Description of proposed development*

The proposal includes the relocation of passenger lifts from the Northern side of the entrance lobby to the eastern side of that area and the addition of one (1) passenger lift adjoining the existing lifts (location provided on plans).

An air duct has been included adjoining the main entry area running throughout the building.

The finished floor level of Warehouse Level 1 has also been reduced in height from R.L.12.60 to R.L.12.40.

The finished floor level of Warehouse Level 2 has been reduced from R.L.18.60 to R.L.18.30. The proposal includes the relocation of the mezzanine staff area (Reposition and Amenities Module from Statement) of approximately 260m<sup>2</sup> (extracted from Statement) from R.L.21.00 to adjoining Warehouse Level 2 at R.L.18.30. Therefore, the mezzanine level at R.L.21.00 has been entirely removed from plans.

The cafe/playground and amenities area to Warehouse Level 2 has been relocated towards the north but the north to south orientation of these works remains as approved.

The overall ridge level has been lowered to an 11m average height as previously required by JRPP.

#### **Applicant's Supporting Statement**

The applicant provided a letter entitled a 'Request to amend approved drawings' prepared by John R. Brogan & Associates dated 22.12.2010 received by Council on 23.12.2010 in support of the application.

#### **Precinct Community Forum Comments**

The application was referred to the Balgowlah Precinct Community Forum for comments due to the nature of the S96 Modification being a S96 (2) Modification relating to physical implications for the streetscape and approved built form. At the date of the preparation of this assessment report no comments had been received from the Forum relating to this application.

#### **Access Committee**

The application was forwarded to the Council's Access Committee for consideration on 09 January 2011 and comments below received on 03 February 2011:

*'Current plans show previous Access Committee comments taken on board; and also show that the disability access for employees has significantly improved with the latest changes i.e. moving the offices down to a level of the warehouse'*

### **Engineers Comments**

No objections to the proposal subject to the imposition of previously approved conditions of consent which remain in force.

### **Building Comments**

No objections to the proposal subject to the imposition of previously approved conditions of consent which remain in force.

### **Heritage Comments**

No objections to the proposal subject to the imposition of previously approved conditions of consent which remain in force.

### **Waste Comments**

No objections to the proposal subject to the imposition of previously approved conditions of consent which remain in force.

### **Environmental Health Comments**

No objections to the proposal subject to the imposition of previously approved conditions of consent which remain in force.

### **Planning Comments**

#### **SEPP (Infrastructure) 2007**

The proposal was considered by the RTA under SEPP Infrastructure 2007 previously and conditions applied and approved by JRPP. The proposed relocation of internal uses as previously approved will have no impact upon the surrounding road network and the scale of works considered in this application is relatively minor when compared to the scheme as previously approved. The current S96 (2) Modification application was referred to the RTA for further comments on 13 January 2010.

A letter was received from the RTA dated 4 March 2011 stating that:-

*'The RTA has reviewed the Section 96 application and has no objections to the proposed amendments to this development application.'*

#### **SEPP (Major Development) 2005**

This S96 (2) Modification application is to a previously development application that was identified as being of a value (over \$10AUD million) and regional significance. Part 13F of the SEPP states that this type of S96 Modification application 'may' be determined by the Joint Regional Planning Panel. Accordingly this assessment has been referred to the JRPP for consideration.

#### **SEPP64 Advertising and Signage**

No changes proposed to the approved signage are included as part of this application.

#### **Environmental Planning & Assessment Act 1979 – Section 79(C)(1)**

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) the provisions of:**
  - (i) any environmental planning instrument, and**

#### **Manly Local Environmental Plan 1988:**

The site is in zone No 4 – The Industrial Zone which permits the development of bulky goods retailing with the consent of Council.

The proposed S96 (2) Modification including the relocation of the mezzanine staff area (Reposition and Amenities Module from Statement) of approximately 260m<sup>2</sup> (extracted from supporting information) from R.L.21.00 to adjoining warehouse level 2 at R.L.18.30 and the addition of one (1) passenger lift.

The following comments are made in regard to the objectives for the Industrial Zone as stated in Clause 10 of the Manly Local Environmental Plan 1988;

*(a) to provide for suitable industrial activities in order to increase local employment opportunities,*

The previously approved proposal will generate employment opportunities (130 jobs) for the local area, however, the nature of these opportunities may not be 'industrial' in their nature as the proposal includes a focus on retail based activity. This application includes nothing that requires additional consideration in this assessment as the number of jobs to be generated will not change; however, the nature of those jobs may change as the design of the new staff area included in this application allows for full disabled access and access for prams.

*(b) to minimise negative visual impact of development by limiting the size and scale of buildings and having regard to suitable landscaping, and*

The proposed S96 (2) primarily relates to internal amendments to one specific section of the previously approved scheme. The proposed changes will not have a negative effect upon the approved landscape scheme nor will they have a negative effect the level of bulk and scale of the building itself as previously approved. Therefore, the previous assessment of these matters stands and the S96 (2) meets this objective.

*(c) to encourage the provision of industrial activities by permitting specific office and subsidiary activities in association with the primary industrial use.*

The proposal includes the relocation of the approved mezzanine 'staff' level including staff areas and offices which was one of the specific uses as previously considered and approved by the JRPP. Therefore, the approved scheme is deemed to have satisfied this objective and this S96 (2) Modification application includes the same uses as approved.

#### Clause 28 - Retailing of bulky goods in Zone No 4

*(1) This clause applies to land within Zone No 4.*

The proposed warehouse development is located on within Zone No.4.

*(2) Subject to subclause (3), nothing in this plan shall prevent a person, with the consent of the council, from carrying out on land to which this clause applies development for the purpose of the retail sale of bulky goods from a building or site in or on which those goods are stored, manufactured, displayed or processed.*

*(3) The council shall not grant consent to an application for the consent to carry out development referred to in subclause (2) unless it is satisfied:*

*(a) that suitable land is not available for the proposed development in any nearby business centre, and*

The current S96 (2) does not require the assessment of the previously approved scheme i.e. the Bunning's Warehouse concept itself and therefore this issue is considered to have been assessed and the scheme satisfied the criteria above.

(b) that the proposed development will not detrimentally affect:

(i) *existing or future industrial development within Zone No 4, or*

The impacts of the overall scheme as proposed were considered during the previous assessment in DA16/2010 and the proposal was found, by Council and the JRPP to be acceptable and supportable. This proposal includes changes to the built form which require consideration by the JRPP. This assessment concludes that the proposal will not have a detrimental effect on existing or future development within this zone.

(ii) *the range of services offered by existing shops located in any nearby business centre.*

The surrounding industrial area includes existing suppliers for the building trade along with an array of other uses being light industrial and wholesale in nature such as Manly Freezers who are a frozen food wholesaler. The proposal includes physical changes that will improve the flow and accessibility of the internal space within the warehouse development and will not affect the intrinsic nature of the scheme as previously approved and therefore any associated economic impacts remain as previously assessed.

**Clause 33 – Development on land identified on Acid Sulphate Soils Planning Map**

The subject site is located on Class 5 land as identified on the Acid Sulphate Soils Planning Map within the Manly Local Environmental Plan 1988. The subject site is located within 500m from Class 3 or 4 lands which may lower the watertable below 1 metre in Class 1, 2, 3 or 4 lands. Accordingly, the proposed works are likely to impact upon Acid Sulphate Soils and the relevant information was requested by Council. The applicant has previously submitted detailed analysis in regard to this matter.

***79C(1)(a)(ii) - any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and***

There is no draft instrument that requires further consideration.

***79C(1)(a)(iii) - any development control plan, and***

**Manly Development Control Plan for the Industrial Zone 1991:**

The following is an assessment of the proposal's compliance with the numerical standards of the Development Control Plan. Where a variation is proposed to the standards, an assessment is included in the Planning Comments:

Site Area 7327.4m <sup>2</sup> Primary Control	Requirement	Compliance with Control
Section 2.1 – FSR*	No standards are made in respect to floor space ratio. In practice, scale of floor areas will be determined by the need to provide usable industrial floor space with easy access to loading dock facilities as well as to meet on-site car parking requirements. It is anticipated that floor space ratios achieved in new developments will tend to be in the order of 1:1.  = 7327.4m <sup>2</sup>	NO 1.4:1 GFA* = 10,548.86m <sup>2</sup>  - Exceeds FSR control for zone as previously approved by JRPP.

Section 2.2 – Building Height	11m	YES
Section 3.1-Access	a) Vehicles enter/leave forward direction;	YES
	b) Minimum driveway access 5m;	5.8m (Roseberry) 10.2 (Condamine) YES and subject to imposition of all relevant conditions.
	c) Adequate sightlines for entry /exit;	YES Subject to imposition of all relevant conditions.
	d) Room for trucks to manoeuvre safely;	YES Subject to imposition of all relevant conditions.
	e) n/a	-
3.2- Loading Facilities	Minimum of one loading bay for each industrial unit;	YES
	Minimum dimensions for loading bay being 7.6m by 3m x 3.4m high;	YES Subject to imposition of all relevant conditions.
3.3 Vehicular parking	a) One space per 50m <sup>2</sup> of gross floor area for industrial use or retailing of bulky goods;	YES 139 spaces required 270 spaces provided
	b) One space per 100m <sup>2</sup> of gross floor area for warehousing and storage of bulky goods;	N/A- the design of stores combines retail and storage together.
	Additional may be required where required (subject to further assessment)	Complies and provides car parking in excess of Council requirements.
4.1 Setbacks	4.5m minimum along street frontage;	YES Roseberry -4.5m Balgowlah - 5.3m and above Condamine – 4.85m These setbacks all include landscaping.
	Buildings may be constructed to rear or side boundaries unless this may cause undue prejudice to adjacent properties;	YES  Applicant agrees to engineer solution where necessary.
4.2 Landscaping	Setbacks to be landscaped with trees.	YES Increased landscaped setbacks through submission of amended plans.  Recommended conditions of consent include requirement to include native species.

(FSR\* = Floor Space Ratio, GFA\* = Gross Floor Area)

**Comment:**

### FSR

The proposal includes the relocation of previously approved floor space from being a mezzanine level at R.L.21.00 to adjoining the approved Warehouse 2 level at R.L.18.30. The proposal includes no overall change to total Gross Floor Area. Therefore, the level of FSR has not been changed as part of this application and remains as per the previous approval by the JRPP.

<u>Issues</u>	<u>Applicable</u>	<u>Not Applicable</u>
<b>Views</b>		✓
Privacy		✓
Heritage – Actual Property		✓
Heritage – In Vicinity	✓	
Threatened Species		✓
Foreshore Scenic Protection Area		✓
Excavation	✓	
Landslip and Subsidence		✓
BASIX		✓

### **Comment:**

#### Heritage – in Vicinity

The Section 96 (2) Modification being considered will have no additional impact upon the street trees listed within the Manly Local Environmental Plan 1988 as Heritage Items. Accordingly, this matter was assessed at the time of the previous development application.

#### Excavation

The level of excavation was assessed in the original proposal and found to be reasonable given the scope of the works proposed and use of the land proposed.

#### ***79C(1)(a)(iia)- any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and***

There is no such agreement proposed as part of this application nor is there any such agreement currently pertaining to the development.

#### ***79C(1)(a) (iv)- the regulation***

The Environmental Planning and Assessment 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 worthy of approval.

Clause 92 of the Environmental Planning and Assessment Regulation 2000 requires Consent Authority to consider AS 2601 - 1991: *The Demolition of Structures*. Accordingly, appropriate conditions of consent are recommended for imposition should this application be considered worthy of approval.



**79C(1) (b)- the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality**

*Social Impacts*

The proposal being a change to the location of approved internal facilities will allow people with physical disabilities improved access to employment opportunities at Bunning's.

*Economic Impacts*

The proposal will not change the level of employment generated nor will it affect the overall economic benefit that the development will bring to the area.

*Environmental Impacts*

The proposal will not increase the overshadowing of neighbouring properties as demonstrated on shadow diagrams provided with the application. The proposed relocation of the 'staff' area which was previously the 'mezzanine' level is to the northern side of the approved warehouse development. This amendment will not increase the visual bulk to this facade as the previous application includes the Bunning's green colour to this facade and the proposed office module element will effectively 'blend' into the approved facade being the same colour and located behind the approved front facade to Condamine Street. The openness of the view through from Roseberry Street will be affected; however, the bulk of the office will be recessed into the site being located over half way between Roseberry Street and Condamine Street.

**79C(1) (c)- the suitability of the site for the development,**

There are no burdens or constraints that would preclude the development as proposed because this S96(2) Modification includes no physical development to the site that will change the footprint of the warehouse as the works are located above ground level.

**79C(1) (d)- any submissions made in accordance with this Act or the regulations**

The application was notified to nearby and adjoining property owners in accordance with Council's Notification Policy with no submissions received.

**79C(1) (e) the public interest.**

The public interest is served though the detailed assessment of this development application under the relevant local planning controls and legislation and consideration of any submissions received relating to it by Council.

**Section 96(2) of the Environmental Planning and Assessment Act 1979**

Section 96(2) of the EP and A Act 1979 states:

*'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 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 is considered to be substantially the same development as that for which consent was originally granted.

- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a*

*concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*

The application was forwarded to the RTA for consideration who responded on 4 March 2011 and raising no objections to the proposed Modification. No recommended additional conditions of consent were forthcoming from the RTA. Therefore, the previous requirements set out and conditioned within DA35/2004 remain in force.

## **CONCLUSION:**

The application has been assessed having regard to Section 79C of the Environmental Planning and Assessment Act 1979, the Manly Local Environmental Plan 1988 and the Development Control Plan for the Residential Zone 2007 Amendment 1 and is considered favourable.

## **RECOMMENDATION**

That Section 96 (2) Modification to DA16/2010 for Demolition of existing buildings, excavation, construction of a two (2) level hardware and building supplies warehouse with mezzanine, signage and two (2) levels of basement car parking – Bunning's Warehouse at 164 Condamine Street, Balgowlah be **Approved** subject to the original conditions of consent and the following amended condition:-

### **Documents relating to consent.**

The development, except where modified by the conditions of this consent, is to be carried out in accordance with the following plans and documentation and as modified by Deferred Commencement conditions together with all other conditions which remain in force and the amended condition as follows:

*Plans affixed with Council's stamp relating to Development Consent No. 16/10*

<b>Plan No. / Title</b>	<b>Issue/ Revision &amp; Date</b>	<b>Date Received by Council</b>
030 Site Plan – Parking Level 1- Marked as 'Section 96 Issue'	Amendment D, 20 December 2010	23 December 2010
031 Site Plan – Warehouse Level 1- Marked as 'Section 96 Issue' – as amended by left in/out signage for Roseberry Street included on Swept Path Analysis of a 99 <sup>th</sup> Percentile vehicle entering and a 12.5m rigid vehicle exiting the site.	Amendment E 20 December 2010	23 December 2010
SP3 – Swept Path Analysis of a 99 <sup>th</sup> Percentile vehicle entering and a 12.5m rigid vehicle exiting the site (access restricted to 12.5m log trucks only due to extent of conflict with parking and traffic flows indicated on swept path analyses supplied)	Transport & Traffic Planning Associates	14 November 2010
SP7- Swept Path Analysis of a 12.5m rigid vehicle	Transport & Traffic Planning Associates	11 November 2010
032 Site Plan – Warehouse Level 2- Marked as 'Section 96 Issue'	Amendment E 20 December 2010	23 December 2010
100 Floor Plan – Parking Level 2- Marked as 'Section 96 Issue'	Amendment D 20 December 2010	23 December 2010

101 Floor Plan – Parking Level 1- Marked as 'Section 96 Issue'	Amendment D 20 December 2010	23 December 2010
102 Floor Plan – Warehouse Level 1- Marked as 'Section 96 Issue'	Amendment E 20 December 2010	23 December 2010
103 Floor Plan – Warehouse Level 2- Marked as 'Section 96 Issue'	Amendment E 20 December 2010	23 December 2010
110 Floor Plan –Roof Plan - Marked as 'Section 96 Issue'	Amendment E 20 December 2010	23 December 2010
120 Sections – Marked as 'Section 96 Issue'	Amendment E, 20 December 2010	23 December 2010
121 Sections – Marked as 'Section 96 Issue'	Amendment E 20 December 2010	23 December 2010
130 Elevations –North and West- Marked as 'Section 96 Issue'	Amendment E 20 December 2010	23 December 2010
131 Elevations –South and East- Marked as 'Section 96 Issue'	Amendment F 20 December 2010	23 December 2010
1523 LP -01 Landscape Plan- Marked as 'Deferred Commencement Issue'	Amendment D 28 June 2010	30 June 2010
1523 LP -02 Landscape Elevations – Marked as 'Deferred Commencement Issue'	Amendment D 28 June 2010	30 June 2010
150 Internal Cafe Detail Plan-	Amendment A 29 February 2010	08 March 2010
FD01 Sketch idea Showing level of treatment required to Balgowlah Rd Facade to satisfy Deferred Commencement Condition A5 (as endorsed by John R. Brogan & Associates)	18 November 2010	19 November 2010

*Documentation affixed with Council's stamp relating to Development Consent No. 16/2010 (Section 96 (2)):*

Letter entitled 'Request to amend approved drawings' prepared by John R. Brogan & Associates dated 22 December 2010.

*Supporting documentation relating to Development Consent No. 16/10:*

'Statement of Environmental Effects' dated January 2010 prepared by CBHK (as amended).

In the event of any inconsistency between the approved plans and supplementary documentation, the plans will prevail.

*Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council*

All other existing conditions remain in force.