

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2025/0283
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Responsible Officer:	Dean Pattalis
Land to be developed (Address):	Lot 6 DP 30579, 45 Mitchell Road BROOKVALE NSW 2100
Proposed Development:	Modification of Development Consent DA2020/0182 granted for Use of premises as an artisan food and drink premises and construction of signage
Zoning:	Warringah LEP2011 - Land zoned E4 General Industrial
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Applicant:	Four Towns Pty Ltd

Application Lodged:	03/06/2025
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	11/06/2025 to 25/06/2025
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

### PROPOSED DEVELOPMENT IN DETAIL

The application seeks to modify DA2020/0182 by amending the following conditions of consent which currently read as follows:

#### 30. Hours of Operation

*The hours of operation are to be restricted to:*

##### Industrial operations for Brewery & Distillery

- 6:00am to 4:00pm Monday to Friday
- 8:00am to 12:00pm Saturday
- Closed Sunday

### Tasting and Cellar Door

- 4:00pm to 10:00pm Monday to Wednesday
- 4:00pm to 12:00am Thursday and Friday
- 12:00pm to 12:00am Saturdays
- 12:00pm to 10:00pm Sunday and Public Holidays

*Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons 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.*

### **36. Maximum Patron Capacity**

*The capacity of the premises for the tasting/cellar door shall be restricted to:*

- *Total maximum patron capacity of 100 persons between 4pm and 6pm on weekdays and between 12pm and 4pm on weekends*
- *Total maximum patron capacity of 140 persons after 6pm and on weekdays and after 4pm on weekends*

*Reason: To ensure that amenity of the surrounding locality is maintained.*

It is proposed modify the conditions to increase operational hours of the Tasting and Cellar Door on Thursdays and Fridays to 12pm - 12am, as well as allow a maximum capacity of 25 patrons between 12pm - 4pm on Thursdays and Fridays.

### **ASSESSMENT INTRODUCTION**

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the

proposal.

## SUMMARY OF ASSESSMENT ISSUES

Warringah Development Control Plan - C2 Traffic, Access and Safety

Warringah Development Control Plan - D3 Noise

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 6 DP 30579 , 45 Mitchell Road BROOKVALE NSW 2100
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the eastern side of Mitchell Road.</p> <p>The site is regular in shape with a frontage of 15.8m along Mitchell Road and a depth of 34.6m. The site has a surveyed area of 556m<sup>2</sup>. The site is relatively level with no vegetation upon the site.</p> <p>The site is located within the IN1 Light Industrial zone and accommodates a brick industrial unit with concrete car parking area within the front setback. The unit is currently being used as a Artisan food and drink industry. It is noted that the NSW employment zones reforms have been and will come into force on 26 April 2023. These reforms will result in this property changing from a IN1 zone to an E4 zone. The existing use will remain permissible in the new zone.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by warehouse units with varies industrial uses.</p>

Map:



## SITE HISTORY

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

Application **DA2020/0182** for Use of premises as an artisan food and drink premises and construction of signage (Approved 24/08/2020)

Application **Mod2022/0568** for Modification of Development Consent DA2020/0182 granted for Use of premises as an artisan food and drink premises and construction of signage (Approved 13/04/2023)

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2020/0182, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - 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 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	<p>The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2020/0182 for the following reasons:</p> <p>There are no physical works or built form changes proposed under this modification application. The modification works relate to minor amendments to two conditions of consent only which increase hours of operation and patronage.</p>
(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 body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA2020/0182 did not require concurrence from the relevant Minister, public authority or approval body.
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(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</p>	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.

Section 4.55 (2) - Other Modifications	Comments
(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.	No submissions were received in relation to this application.

## Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining a modification application made under Section 4.55 (2) 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 consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

Section 4.15(1) is addressed in the table below.

The reasons given by the consent authority for the grant of the consent that is sought to be modified is discussed as follows:

### Comment on reasons for determination of DA2020/0182

The reasons for the granting of the original consent have been considered in the assessment of this modification application. The proposed changes will result in a modified development that will not conflict with the original reasons for the granting of consent.

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	There are no current draft environmental planning instruments.
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)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.

Section 4.15 'Matters for Consideration'	Comments
Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Clause 29</u> of the EP&amp;A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 2001: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&amp;A Regulation 2021 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 of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of 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 economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.

Section 4.15 'Matters for Consideration'	Comments
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 application has been publicly exhibited from 11/06/2025 to 25/06/2025 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation 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	The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.
Environmental Health (Industrial)	<p><b>General Comments</b></p> <p>The proposal is for a minor extension of the hours of operation as noted in the proposal as it relates to Tasting and Cellar door hours on Thursday and Friday as follows:</p> <p>Current approved Hours - 4:00 pm to 12:00 am Thursday and Friday</p> <p>Proposed hours - 4:00 pm to 12:00 am Thursday and Friday</p> <p>Additionally, an increase patron numbers to accommodate a total maximum patron capacity of 25 persons between 12pm and 4pm on weekdays.</p> <p>The minor amendment is supported by an update Operational Management Plan.</p> <p><b>Recommendation</b></p> <p>APPROVAL - subject to conditions</p>

Internal Referral Body	Comments
Environmental Health (Food Premises, Skin Pen.)	<p><b>General Comments</b></p> <p>The proposal is for a minor extension of the hours of operation as noted in the proposal as it relates to Tasting and Cellar door hours on Thursday and Friday as follows:</p> <p>Current approved Hours - 4:00 pm to 12:00 am Thursday and Friday</p> <p>Proposed hours - 4:00 pm to 12:00 am Thursday and Friday</p> <p>Additionally, an increase patron numbers to accommodate a total maximum patron capacity of 25 persons between 12pm and 4pm on weekdays.</p> <p>The minor amendment is supported and does not require further conditions as they may relate to the food premises or food safety compliance matters.</p> <p><b>Recommendation</b></p> <p>APPROVAL - without conditions</p>
Traffic Engineer	<p>The proposed modifications conditions 30 &amp; 36 to amend hours of operation and patron capacity are minor and will not have a significant impact upon parking or traffic conditions and are not opposed on traffic engineering grounds. There are no additional conditions imposed</p>

External Referral Body	Comments
NSW Police - Licensing (Clubs, Hotels, Pubs)	<p>The application was referred to the Licensing Unit of Northern Beaches Local Area Command. NSW Police do not object to the proposed application subject to conditions for public safety and mitigation of alcohol-related risks. This is included as a condition of consent.</p>

### ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

All, Environmental Planning Instruments (SEPPs 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 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)

## SEPP (Resilience and Hazards) 2021

### Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for industrial purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the industrial land use.

### 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

### Warringah Development Control Plan

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
D3 Noise	Yes	Yes
D8 Privacy	Yes	Yes

#### Detailed Assessment

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

Council's Traffic Engineer has assessed the application in this context and raised no objection to approval.

#### **D3 Noise**

The proposal will retain the use of the site as an artisan food and drink premises, which has the potential to create noise impacts on surrounding premises. As the premises is proposed to be in an industrial area where the nearest residential receiver is over 200m away, the impacts on residential receivers is likely to be low. Council's Environmental Health Officer has reviewed the proposal and considered the proposed extended trading hours and found that, subject to conditions of consent, the development will not have an unreasonable impact on surrounding properties with regard to noise.

### **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 2024**

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 2021;
- 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. Mod2025/0283 for Modification of Development Consent DA2020/0182 granted for Use of premises as an artisan food and drink premises and construction of signage on land at Lot 6 DP 30579,45 Mitchell Road, BROOKVALE, subject to the conditions printed below:

## Modification Summary

The development consent is modified as follows:

### MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
PAN-537483 Mod2025/0283	The date of this notice of determination	Modification of Development Consent DA2020/0182 granted for Use of premises as an artisan food and drink premises and construction of signage  Add Condition No.1B - Modification of Consent - Approved Plans and supporting documentation Add Condition 2A. Compliance with Other Department, Authority or Service Requirements Modify Condition 30. Hours of Operation Modify Condition No.36 - Maximum Patron Capacity
PAN-269487 Mod2022/0568	13/04/2023	Modification of Development Consent DA2020/0182 granted for Use of premises as an artisan food and drink premises and construction of signage  Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation Add Condition No.18A - Acoustic Report Recommendations Add Condition No.19A - Acoustic Report Certification Add Condition No.36 - Maximum Patron Capacity Modify Condition No.30 - Hours of Operation

### Modified conditions

#### **A. Add Condition No.1B - Modification of Consent - Approved Plans and supporting documentation, to read as follows:**

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Operational Management Plan	-	Dad and Dave's Brewing	24/03/2025

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

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

**B. Add Condition 2A. Compliance with Other Department, Authority or Service Requirements to read as follows:**

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference
NSW Police	Referral - NSW Police

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au))

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

**C. Modify Condition 30. Hours of Operation to read as follows:**

The hours of operation are to be restricted to:

Industrial operations for Brewery & Distillery

- 6:00am to 4:00pm Monday to Friday
- 8:00am to 12:00pm Saturday
- Closed Sunday

Tasting and Cellar Door

- 4:00pm to 10:00pm Monday to Wednesday
- 12:00pm to 12:00am Thursday and Friday
- 12:00pm to 12:00am Saturdays
- 12:00pm to 10:00pm Sunday and Public Holidays

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons 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.

**D. Modify Condition No.36 - Maximum Patron Capacity to read as follows:**

The capacity of the premises for the tasting/cellar door shall be restricted to:

- Total maximum patron capacity of 25 persons between 12pm and 4pm on Thursday and Friday

- Total maximum patron capacity of 100 persons between 4pm and 6pm on weekdays and between 12pm and 4pm on weekends
- Total maximum patron capacity of 140 persons after 6pm and on weekdays and after 4pm on weekends

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

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

**Signed**



**Dean Pattalis, Planner**

The application is determined on 26/06/2025, under the delegated authority of:



**Steven Findlay, Manager Development Assessments**