

## Memo

Development Assessment

**To:** Local Planning Panel

**From:** David Auster  
Principal Planner

**Date:** 4 November 2020

**Subject:** DA2019/1478 – 1 and 1A Narrabeen Park Parade

**Record Number:** DA2019/1478

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The Panel raised some questions at the briefing for this application, which are commented on below. Additionally, Council has received five further submissions in response to the assessment report, which are also addressed below.

### Front Page of Report

The front page of the report identifies the application as being applicable only to 1 Narrabeen Park Parade. The application has been made with respect to both 1 and 1A Narrabeen Park Parade (1A being the Crown Land adjacent to number 1 to the south). The application was made and correctly notified with respect to both properties, and this is an error in the report only.

### Condition 13

The Panel was concerned that condition 13 was redundant (relating to Council assessing operating hours in relation to other venues), given the operating hours are being assessed under this application. This condition may be removed from the recommendation given the operating hours are dealt with under condition 31.

### Condition 29

The Panel was concerned with the wording of condition 29, with reference to condition 26 which calls for the Plan of Management to be amended prior to completion, and to inconsistency with Condition 1 with regard to the naming of the document. As such, Condition 29 is recommended to be altered to read the following:

#### ***29. Plan of management***

*The requirements of the One Narrabeen Park Parade North Narrabeen Plan of Management (as amended as required by this consent) is to be fully implemented in perpetuity from the issue of any interim / final occupation certificate.*

*Reason: To ensure the premises a maintained in an appropriate manner in perpetuity.*

### Condition 31

The Panel was concerned that the initial 12 month review in condition 31 was redundant, and that Council should be able to review the operating hours at any time. Further concerns were raised in relation to the way the condition was worded, and the operating hours that the use would revert to should a review be carried out and find that the operating hours were causing unreasonable impacts.

As such, an amended condition 31 is recommended as follows:

### **31. HOURS OF OPERATION**

*(a) Subject to 31(b), the permissible hours of operation are as follows.*

*Restaurant trading hours including take away meals service:*

- *Wednesday to Sunday midday - 3.00pm*
- *Wednesdays, Thursdays and Sundays 6.30pm-10pm*
- *Fridays and Saturdays 6.30pm-11.30pm*

*All staff are to vacate the premises by those closing times, and staff by 30 minutes thereafter*

*Playing of live or amplified music:*

*No live or amplified music is permitted*

*(b) It is a reviewable condition that the specified permissible hours of operation in 31(a) are extended as follows:*

*Restaurant trading hours including take away meals service:*

- *Fridays and Saturdays 6.30am-11.30pm*
- *Sunday to Thursday 6.30am-10.30pm*
- *New Years Eve until 12.30am*

*All customers are to vacate the restaurant premises by the abovementioned closing times, and staff by 30 minutes thereafter.*

*Playing of live or amplified music:*

*May be played only inside the building premises of 1 Narrabeen Parade on*

- *Thursdays between midday and 8.30pm*
- *Fridays and Saturdays between midday and 10.00pm*
- *New Years Eve between midday and midnight.*

*(c) Council may review the reviewable condition in 31(b) on 14 days notice at any time following the first three months of operation, where Council is in receipt of a complaint or complaints relating to hours of operation and amenity impacts. Such a review will involve a proper investigation. If upon such a review Council finds that changing the hours of operation is the most efficient and effective means of reducing amenity impacts, then it may change the hours of operation on 14 days notice provided that it does not change the hours to less than those specified in*

*31(a). Any such change to hours exceeding those specified in 31(a) shall become a reviewable condition which may be reviewed in the same way as the reviewable condition in 31(b).*

## **Submissions**

Council has received an additional five submissions in response to the assessment report. The issues raised are addressed below.

- Live music and operational hours

A request was made to limit live music on new years eve until 10:30pm. Further requests were made that the recommended special extended closing time for new years eve not be approved. Requests were also made to limit outdoor dining to 10.00pm in accordance with Council's Outside Dining Guide recommended hours.

Comment:

Concerns regarding operating hours and noise impacts have generally been addressed in the report. A reviewable condition is recommended that does allow for later operating times (both hours and music) on new years eve. However, this condition may be reviewed and altered by Council should the operation be found to be causing unreasonable disturbance.

- New unauthorised works and impacts on Pines

It is stated that new works have been undertaken on the site over the last week, including damage to the roots of the Norfolk Island Pines adjacent. Concerns are also raised with respect to the risk of further damage to the trees.

Comment:

Council's Rangers have attended the site, and have issued a Stop Works Order (dated 3/11/20). Council's investigation did not find that new damage to the tree works had taken place.

In light of new unauthorised works taking place, Council's Landscape Officer and Manager or Tree Services have requested that conditions 10 and 11 be moved in the consent from Operational Conditions in the consent (should approval be granted) to Conditions That Must Be Addressed Prior To Any Commencement, and that these two conditions, and condition 17, be amended as shown in Appendix 1 of this memo.

These amendments require Council's Arborist to be in attendance when works are taking place, and to provide approval at each stage.

Subject to the alteration of these conditions the concerns are considered to be reasonably addressed.

- Pergola and other permanent structures

Concerns were raised with the construction of the pergola and hard surface area in the Crown Land area and close to the Norfolk Island Pines. Concerns were also raised with regard to retrospective approval of works already

completed.

Comment:

These concerns have generally been addressed in the report. The proposed structures are considered to be relatively easily removed should it become necessary in the future, and as discussed in the report, are recommended for approval. As discussed above, conditions relating to protection of the Norfolk pines are recommended for amendment.

Subject to these amendments, the concerns are considered to be reasonably addressed.

- Privatisation of public land and parking

Concerns were raised with respect to the private use of the Crown Land area, and that it would rely on the public parking area.

Comment:

These concerns have been addressed in the assessment report. In summary, the Plan of Management relating to the site permits this use of the Crown Lands. The additional 10 patrons over what has been previously approved will not have significant impacts on parking rates (noting that the proposal to allow for up to 180 patrons for 'stand up cocktail functions' has not been recommended for approval).

- Existing Use Rights

Concerns were raised that existing use rights do not apply to the site.

Comment:

Existing use rights have been discussed in the assessment report. In summary, the use is considered to benefit from existing use rights, and the proposal is therefore permissible with consent.

## **Appendix 1**

Council's Landscape Officer and Manager of Tree Services have recommended the following alterations to Conditions 10, 11 and 17 (Amendments shown in blue).

### **CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**

#### **10. Tree Root Investigation**

A non-destructive root investigation shall be conducted complying with clause 3.3.4 (TPZ encroachment considerations) of AS 4970-2009 Protection of Trees on Development Sites within the tree protection zone of existing tree T3 (Norfolk Island Pine) as recommended in the Arboricultural Impact Assessment by RainTree Consulting dated 5 May 2020, to determine the location of pier footings for the proposed pergola.

The root investigation shall locate existing tree roots to be protected during excavation works for the proposed pier footings, and assist with structural engineering and construction design.

**Council's Arborist shall be in attendance during tree root investigation and provide written authorisation to proceed.**

Reason: to investigate the location of existing tree roots as a basis for pier footing location, and protect the existing tree identified for retention.

#### **11. Root Mapping Plan and Pier Footing Plan**

The findings of the tree root investigation shall be documented in a Root Mapping Plan that documents 'no-go' areas that can't be excavated without supervision and guidance of a AQF Level 5 Arborist, and shall be the basis for determining the location of all pier footings for the proposed pergola.

The Root Mapping Plan shall be issued to the Certifying Authority and to the Structural Engineer as the basis for preparation of ~~Construction Certificate~~ structural design. The Root Mapping Plan shall provide pier footing layout recommendations.

The Arborist shall provide certification to the Certifying Authority that the Root Mapping Plan and clear distances recommended will ensure the long term survival of the existing tree T3 Norfolk Island Pine. The Certifying Authority **and Council's Arborist** shall approve ~~Construction Certificate~~ design that satisfies the recommendations of the Root Mapping Plan.

A Pier Footing Plan shall be developed in co-ordination with a AQF minimum Level 5 Arborist and a qualified Structural Engineer, and shall be issued to the Certifying Authority identifying suitable locations for all pier footing locations for the proposed pergola.

The Pier Footing Plan shall be issued to the Certifying Authority identifying a suitable locations for each pier footing. The Certifying Authority shall approve ~~Construction Certificate~~ design that satisfies the recommendations of the Pier Footing Plan.

Reason: to ensure protection of the existing trees identified for management and retention.

### **CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**

#### **17. Tree Protection Measures**

A Project Arborist with AQF minimum Level 5 qualification in arboriculture/horticulture is to be appointed to supervise and certify tree protection measures for existing trees to be retained and protected, requiring site attendance during excavation and construction works, in accordance with AS4970- 2009 Protection of Trees on Development Sites, with particular reference to Section 4, and the recommendations of the Arboricultural Impact Assessment prepared by RainTree Consulting dated 5 May 2020, including the following: viii) Prior to works commencement, the trunk of trees are to be protected with timber beam trunk protection as detailed within Item 3 of Appendix-C. Timber beams should be no less than 2m in height and installed without causing injury to the tree,

- i) There is to be no excavation within SRZ radius' without prior root mapping or investigation works to determine impact on critical underlying tree roots, refer SRZ & TPZ distance column Appendix-C. The SRZ should be considered a development exclusion zone with no works occurring within the SRZ without prior arborist advice and certification,
- ii) All root investigation works are to be conducted by a minimum suitably qualified AQF Level 4 certified arborist with root mapping plan and/or certification report provided prior to obtaining a Construction Certificate (CC),

- iii) iii) In specific detailed root mapping or exploratory root investigations should occur for pergola pier footing locations adjacent T3,
- iv) Stone cage wall proposal: construction methodology for the stone cage wall proposal should be more clearly detailed within construction drawings. In specific there should be no excavation or compaction to accommodate the wall proposal within the SRZ. Where the wall is proposed on natural ground level within the SRZ root mapping should occur to provide more information on the location, distribution and effect of works on critical underlying tree roots. Tree sensitive design such as placing the wall directly on top of or spanning the wall above ground level over the SRZ may be achievable pending the results of exploratory root investigations,
- v) All tree roots at or >25mm(Ø) are to be retained. Should such roots require pruning all works are to be conducted by the site arborist, clean cutting and/or protecting encountered roots in accordance with AS4970-2009 – section 4.5.4 Root protection during works within the TPZ. Should there be any uncertainty with root management requirements a minimum AQF Level 5 project arborist is to be consulted,
- vi) There is to be no compaction or additional excavation i.e. SW / hydraulics or electrical service trenching within the TPZ radius without prior arborist advice,
- vii) Arborist certification: final certification is to consist of photographic evidence of excavation activities, root management (pruned & covered / protected roots from contamination), time of works and summary of activities conducted to manage tree roots within the tree protection zone.

The Project Arborist shall submit certification that the works and activities described in the above sections, **including written approval of the works from Council's Arborist**, have been correctly installed and adhered to during the construction period. The tree protection measures specified in this clause must: viii) be in place before work commences on the site, and ix) be maintained in good condition during the construction period, and x) remain in place for the duration of the construction works.

The Certifying Authority or the Project Arborist AQF Level 5 must ensure that: xi) the activities listed in section 4.2 of AS4970- 2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and xii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

A separate permit or development consent may be required if the branches or roots of a protected tree on the site or on an adjoining site are required to be pruned or removed.

Reason: to retain and protect significant planting on development and adjoining sites.