

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/0118
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Responsible Officer:	Nick Keeler
Land to be developed (Address):	Lot 23 DP 5342, 380 Pittwater Road NORTH MANLY NSW 2100
Proposed Development:	Use of premises as an Artisan food and drink premises (winery)
Zoning:	Warringah LEP2011 - Land zoned IN2 Light Industrial WLEP Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Kimmthel Pty Ltd
Applicant:	Susannah Margaret Mills

Application Lodged:	12/02/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Industrial
Notified:	10/06/2020 to 24/06/2020
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 43,900.00
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PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for the change of use and fit-out of a tenancy at the subject site for the purpose of an artisan food and drink industry. The proposal includes the following elements:

- Internal fit-out including equipment for wine and beer production, kitchen, toilets, retail bar and customer seating.
- External business identification signage, including an illuminated wall sign on the Pittwater Road frontage and illuminated top hamper sign on the Rowe Street frontage.
- New external mural finish to the Pittwater Road frontage of the existing building.
- New low-level deck in the front setback area.

- New front fence to enclose the front setback area, finished with a similar mural design to the finish of the building.

The business is proposed to operate during the following hours:

- Monday – Wednesday 6am – 10pm (outdoors until 9pm)
- Thursday – Saturday 6am – 11pm (outdoors until 10pm)
- Sunday 6am – 10pm (outdoors until 9pm)

The capacity of the tenancy is proposed to be the following:

- 8 staff, plus 1 security guard on Friday and Saturday nights.
- Patron capacity of 60, including 48 internal seats and 12 external seats.

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 Local Environmental Plan 2011 - 5.4 Controls relating to miscellaneous permissible uses
 Warringah Development Control Plan - B7 Front Boundary Setbacks
 Warringah Development Control Plan - C3 Parking Facilities
 Warringah Development Control Plan - C9 Waste Management
 Warringah Development Control Plan - D13 Front Fences and Front Walls

SITE DESCRIPTION

Property Description:	Lot 23 DP 5342 , 380 Pittwater Road NORTH MANLY NSW 2100

Detailed Site Description:

The subject site consists of two (2) allotments located on the northern side of Pittwater Road, eastern side of Girard Road and western side of Rowe Street.

The site is irregular in shape with a primary frontage of 32.235m along Pittwater Road and secondary frontages of 68.44m along Rowe Street and 18.9m along Girard Road. The site has a surveyed area of 2,167m². The area of the tenancy where the proposal applies is 245m².

The site is located within the IN2 Light Industrial zone and accommodates part one, part two storey mixed commercial/industrial building with rooftop parking.

The site is generally flat and has a strip of grassed area along the Pittwater Road frontage.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by light industrial buildings and low density residential dwellings.

Map:



SITE HISTORY

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

Pre-lodgement Meeting **PLM2019/0211** was held on 29/10/2019 for Use of Premises as a winery.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 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 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to an amendment to the submitted Operational Management Plan.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 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>

Section 4.15 Matters for Consideration'	Comments
	<p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</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) Environmental Impact 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) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATIONS

Clause 4 of the Environmental Planning and Assessment Regulation 2000, prescribes that 'designated development' is defined as 'development described in Part 1 of Schedule 3 (of the Environmental Planning and Assessment Regulation 2000).

Part 1, Schedule 3 – 6 Breweries and distilleries, are defined as being designated development having consideration of the following:

Breweries or distilleries producing alcohol or alcoholic products:

(a) that have an intended production capacity of more than 30 tonnes per day or 10,000 tonnes per year, or

Comment:

The proposed general industry use as a brewery is a relatively small scale operation which is not proposed to generate alcoholic products above 30 tonnes a day or 10,000 tonnes per year.

(b) that are located within 500 metres of a residential zone and are likely, in the opinion of the consent authority, to significantly affect the amenity of the neighbourhood by reason of odour, traffic or waste, or

Comment:

The subject site is located approximately 30 metres from the nearest adjoining residential dwelling at the southern side of Pittwater Road, and is therefore less than the required 500 metres to the neighbouring residential zone. In considering Part 1, Schedule 3 of the Environmental Planning and Assessment Regulation 2000 the consent authority must consider any adverse amenity impacts to the surrounding residential neighbourhood in respect to odour, traffic or waste.

Odour: No Odour Assessment Report has been prepared for the application as required by the Northern Beaches Council as part of any prospective development application. However, conditions are applied to ensure that the proposed development will not give rise to any adverse odour impacts to the neighbouring dwellings or result in odour impacts that are unlikely to extend beyond the property boundaries. Council's Environmental Health section has not raised any objection to the proposal in this regard.

Traffic: A Parking Demand Report has been prepared by AusWide Consulting which provides a assessment of the proposed traffic generating demand of the proposed development. While the proposal is deficient in onsite parking, the parking demand report indicates the site is easily accessible by walking and public transport. Existing onsite parking and nearby onstreet parking is able to withstand additional parking demand caused by the proposed development.

Waste: A Waste Management Plan has been prepared by Matthew Tice and Susie Mills which notes that the operation intends to reuse and recycle the majority of waste products. It is expected the operation will produce 20 tonnes of waste per year. Spent grain, grape waste, yeast waste and fermentation solids are to be donated to farms for use as animal feed. Other general waste will be removed from private waste contractors for waste collection removal. On balance, the proposed operation is not considered to result in any significant impact on the neighbourhood due to waste.

(c) that release effluent or sludge:

(i) in or within 100 metres of a natural waterbody or wetland, or

(ii) in an area of high watertable, highly permeable soils or acid sulphate, sodic or saline soils.

Comment:

The subject site is not located within 100 metres of a waterway; however it is identified as being within the 1 in 100 year Flood Hazard Map and is located within a Class 4 Acid Sulfate Soil Zone. The proposal has been assessed as compliant with Council's LEP and DCP requirements in terms of flooding and no objection has been received in relation to Acid Sulfate Soils.

Accordingly, the proposed application does not activate any of the criteria outlined within Schedule 3 and is therefore not considered designated development.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

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

REFERRALS

Internal Referral Body	Comments
Environmental Health (Contaminated Lands)	<p>General Comments</p> <p>The proposal is for basically internal alterations to an existing factory building with a concrete floor.</p> <p>There is no open yard or storage area.</p> <p>There does not appear to have been a previous use which would indicate potentially contaminated land.</p> <p>Therefore we have no objections in this regard to the proposal.</p> <p>Recommendation</p> <p>APPROVAL - no conditions</p>
Environmental Health (Industrial)	<p>General Comments</p> <p>Environmental Health have examined this application with regards to specifically Noise and Odour implications.</p> <p>The location of the development is appropriate with regards to the potential impact on the general community.</p> <p>Proposed Operational hours:</p> <ul style="list-style-type: none"> – Sunday to Wednesday <ul style="list-style-type: none"> 6:00 am to 10:00 pm Premises to be used as a café between 6:00 am to 12:00 pm Premises to be used as a wine bar between 12:00 pm to 10:00 pm Outdoor area fronting Pittwater Road used between 6:00 am to 10:00 pm – Thursday to Saturday <ul style="list-style-type: none"> 6:00 am to 11:00 pm Premises to be used as a café between 6:00 am to 12:00 pm Premises to be used as a wine bar between 12:00 pm to 11:00 pm Outdoor area fronting Pittwater Road used between 6:00 am to 10:00 pm <p>Experience with similar developments indicates that noise and odour are not likely to be an issue if adequately managed. It is noted that an acoustic assessment has been carried out by GHD February 2020(no details of qualifications to carry out the assessment , or what GHD stands for or if its a company or sole trader etc although a postal</p>

Internal Referral Body	Comments
	<p>address in Sydney is supplied) which finds in conclusion " that noise emission from the use and operation of the site is predicted to comply with the relevant noise emission criteria" (Further noted that reference to Warringah Council is assumed to mean Northern Beaches Council)</p> <p>Critically this is a site to be properly managed and conditions will be placed accordingly.</p> <p>Our only concern is the proposed general 6 am to 11 pm trading and and delivery hours with implications on surrounding residential premises for :</p> <ol style="list-style-type: none"> 1. Trucks waiting for access ,turning around and reversing 2. Staff and customers parking and returning to vehicles post 11pm which exceeds previous expected use of the site however this is more likely Fridays and Saturday nights where the community is more accepting of activity.. <p>Hours should be restricted to :</p> <p>Deliveries not to be carried out prior to 6.30 am any day or after 9pm any day.</p> <p>Reason; To minimise to noise impact on neighbouring residential premises.</p> <p>Recommendation</p> <p>APPROVAL - subject to conditions</p>
Environmental Health (Food Premises, Skin Pen.)	<p>General Comments</p> <p>Environmental Health have no objections to the food premises part of this application.</p> <p>The kitchen will require a dedicated hand wash basin not shown on plan (and also for the bar).</p> <p>Appropriate conditions will be added.</p> <p>Recommendation</p> <p>APPROVAL - subject to conditions</p>
NECC (Coast and Catchments)	<p>The proposed development has been assessed to comply with clauses 13 and 15 of SEPP Coastal Management and is supported without condition. It is not likely to alter coastal processes to the detriment of the environment or other land and is not likely to reduce public amenity or existing access to and use of the foreshore.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>The proposed development is for the fit-out of an existing commercial premises. The applicant has provided a Flood Risk Management report which demonstrates that subject to conditions, the development can comply with Council's LEP and DCP requirements for development on flood prone land.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.
NSW Police – Licensing (Clubs, Hotels, Pubs)	<p>The application was referred to the NSW Police Northern Beaches Local Area Command for comment. While a number of concerns were raised, a number of conditions have been recommended if consent is granted. The recommended conditions relate to the following:</p> <ul style="list-style-type: none"> • Installation of CCTV • Neighbourhood amenity • Smoking • Crime Scene Preservation • Outdoor seating • Music <p>All conditions recommended by NSW Police are included in the development consent.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP 64 - Advertising and Signage

Clauses 8 and 13 of SEPP 64 require Council to determine consistency with the objectives stipulated under Clause 3(1)(a) of the aforementioned SEPP and to assess the proposal against the assessment criteria of Schedule 1.

The objectives of the policy aim to ensure that the proposed signage is compatible with the desired amenity and visual character of the locality, provides effective communication and is of high quality having regards to both design and finishes.

In accordance with the provisions stipulated under Schedule 1 of SEPP 64, the following assessment is provided:

Matters for Consideration	Comment	Complies
1. Character of the area	The proposed signage is consistent and	YES

Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	complimentary to the existing and desired future character of the industrial area.	
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	The proposed signage is consistent with business identification signage within this particular industrial estate and the broader industrial area.	YES
2. Special areas Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	There are no environmentally sensitive areas, heritage, natural, conservation, open space areas, waterways, rural landscapes or residential areas impacted by the proposed development.	YES
3. Views and vistas Does the proposal obscure or compromise important views?	There are no views affected by the proposed development.	YES
Does the proposal dominate the skyline and reduce the quality of vistas?	The outcome for the signage is not of a scale to cause unreasonable impacts upon the existing views of the skyline and vistas.	YES
Does the proposal respect the viewing rights of other advertisers?	The proposed signage does not impact on any other advertising.	YES
4. Streetscape, setting or landscape Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	The quantity and scale of the signage is consistent with expectation of the land use within the Industrial zone. The signage complies with the size, height and area of part D3 Signs of the Warringah DCP, and is in scale with the existing building. The location of the signage is orientated towards Pittwater Road and Rowe Street and are considered appropriate and compatible with the scale, proportion and characteristics of the site for which the proposed signage is to be located.	YES
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	The proposed signage provides visual branding for Sundial Urban Winery and will provide visual interest within the industrial setting.	YES
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	The signage is considered minor in nature and will not create a proliferation of signage.	YES
Does the proposal screen unsightliness?	There is no unsightliness screened by the proposal.	YES
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	No, the signage is consistent with the with the surrounding height and scale of built form and existing signage.	YES
5. Site and building Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	The proposed signage is considered compatible with the character of the industrial estate.	YES

Does the proposal respect important features of the site or building, or both?	The signage will not conceal the appearance of the building within the streetscape.	YES
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	The proposed signage is complimentary to the building and will not dominate the appearance of the building.	YES
6. Associated devices and logos with advertisements and advertising structures Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	No associated devices are proposed to be integrated into the signage. Some proposed signs are to be illuminated.	YES
7. Illumination Would illumination result in unacceptable glare, affect safety for pedestrians, vehicles or aircraft, detract from the amenity of any residence or other form of accommodation?	Subject to condition, the proposed lighting is not expected to cause unreasonable amenity impact to road users, pedestrians and residential dwellings.	YES
Can the intensity of the illumination be adjusted, if necessary?	Low watt lighting is proposed.	YES
Is the illumination subject to a curfew?	The lighting is proposed to operate during all night hours. Due to the proximity of the site to residential dwellings, a condition is imposed to require all external lighting be off during non-operational hours.	YES
8. Safety Would the proposal reduce the safety for any public road, pedestrians or bicyclists?	The new signage will not compromise safety within the adjoining public road being Pittwater Road and Rowe Street.	YES
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	The proposed signage does not conceal or obscure sightlines for vehicles or pedestrians entering or leaving the site.	YES

Accordingly, the proposed signage is considered to be of a scale and design suitable for the locality. The proposal is therefore deemed to be consistent with the provisions of the SEPP and its underlying objectives.

SEPP (Coastal Management) 2018

Refer to Coast & Catchments referral comments for assessment of CM SEPP.

Warringah Local Environmental Plan 2011

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes

zone objectives of the LEP?	Yes
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Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	9.0m	No change to existing building height	N/A	Yes
		Front Fence - 1.8m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
5.4 Controls relating to miscellaneous permissible uses	Yes
6.1 Acid sulfate soils	Yes
6.3 Flood planning	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

5.4 Controls relating to miscellaneous permissible uses

(10) Artisan food and drink industry exclusion

The total gross floor space is 205m². Accordingly, the maximum floor area permitted for an industrial retail outlet is 33% or 67.65m². The proposed gross floor area for the industrial retail outlet is 63.1m² which is approximately 30.8% and therefore less than the maximum floor area requirement and acceptable.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B5 Side Boundary Setbacks	West - Nil	Deck - Nil	N/A	Yes
B7 Front Boundary Setbacks	4.0m	Deck - Nil	100%	No

***Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example: 38/40 x 100 = 95 then 100 - 95 = 5% variation)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	No	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	No	Yes
D3 Noise	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D13 Front Fences and Front Walls	No	Yes
D14 Site Facilities	Yes	Yes
D18 Accessibility and Adaptability	Yes	Yes
D20 Safety and Security	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
D23 Signs	Yes	Yes
E11 Flood Prone Land	Yes	Yes

Detailed Assessment

B7 Front Boundary Setbacks

Description of non-compliance

The control requires development to be setback a minimum of 4.0m from the front boundary.

The proposal is to incorporate a deck that has a nil setback to the front boundary.

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To create a sense of openness.*

Comment:

The proposed deck is to be 180mm above the existing ground level. There is not expected to be an impact to the sense of openness in the front setback area.

- *To maintain the visual continuity and pattern of buildings and landscape elements.*

Comment:

The existing setback of the building is to remain. No change to the visual continuity and building pattern is expected.

- *To protect and enhance the visual quality of streetscapes and public spaces.*

Comment:

The proposed deck will not unreasonably impact upon the visual quality of the streetscape.

- *To achieve reasonable view sharing.*

Comment:

The proposed deck will not impact upon view sharing.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

C3 Parking Facilities

Merit consideration

The development is considered against the underlying Objectives of the Control as follows:

- *To provide adequate off street carparking.*

Comment:

The development provides the following on-site car parking:

Use	Appendix 1 Calculation	Required	Provided	Difference (+/-)
Restaurant	1 space per 3 seats	60 patron capacity: 20 spaces	2 spaces	Shortfall of 18 spaces

While there is a significant shortfall of onsite parking spaces, the parking demand caused by the proposed use is not expected to outstrip the supply of onstreet spaces in the vicinity around the site. Due to the type of business operation, it is unlikely the primary demand time of the site will overlap with the primary demand time of the nearby industrial and commercial land uses. Primary demand for the site is expected during the evening and night, after majority of the surrounding businesses have closed.

The submitted Parking Demand Report indicates the site is rated a "Very Walkable", meaning the site is located within a 15 minute walk from many nearby residential areas. Three bus stops located within 60 metres of the site with a large number of services operating during the off-peak. The easy access to public transport services is expected to lower the parking demand for the site.

- *To site and design parking facilities (including garages) to have minimal visual impact on the street frontage or other public place.*

Comment:

No change to the existing parking provision and location is proposed.

- *To ensure that parking facilities (including garages) are designed so as not to dominate the street frontage or other public spaces.*

Comment:

No change to the existing parking provision and location is proposed.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

C9 Waste Management

A detailed construction waste management plan has not been submitted with the application. To ensure proper disposal of demolition and builders' wastes, a condition has been included in the consent requiring details prior to the issue of a construction certificate.

D13 Front Fences and Front Walls

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To ensure that fencing, terracing and retaining walls are compatible with the existing streetscape character while creating visual interest in the public domain.*

Comment:

The proposed front fence is to be built on top of an existing low-level brick retaining wall. The height of the fence is to be 1.8m above the existing ground level. The fence is to be finished with a mural to match the mural proposed to be painted on the Pittwater Road building frontage. The proposed fence finish is expected to reduce the visual impact of the fence on the front setback area. The fence will also better define the public and private land near the adjacent bus stop and reduce the amenity impact of the business operation on users of the public footpath and bus stop.

- *To encourage innovative design solutions to improve the urban environment.*

Comment:

The proposed finish to the fence is considered to provide an innovative solution to limit the visual impact of the structure on the surrounding urban environment.

- *To avoid a 'walled in' streetscape.*

Comment:

The proposed finish to the fence is expected to reduce the visual impact of the structure and limit the sense of a walled in streetscape.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this application.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2020/0118 for Use of premises as an Artisan food and drink premises (winery) on land at Lot 23 DP 5342, 380 Pittwater Road, NORTH MANLY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Odour**

Odour from manufacturing activity and kitchen cooking shall be controlled (odour control equipment being installed if considered necessary) and managed to ensure offensive odour is not created at any time.

Reason: To ensure odour does not impact on neighbouring businesses and residents.

2. **Noise**

Noise associated with any entertainment within the premises including but not limited to live music, amplified music, background acoustic music, recording, comedy, dance, artistic expression or otherwise must not be audible in any residential habitable room at any time.

Reason: To maintain amenity in neighbouring residential premises

3. **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:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Sheet No. 00	January 2020	Corona Projects
Furniture Plan	27 April 2020	Sundial Urban Winery
Elevations & Sections	27 April 2020	Sundial Urban Winery

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Plan of Management	March 2020 (updated May 2020)	Susie Mills
BCA Assessment (Ref: P19230)	10 February 2020	BCA Vision
Acoustic Assessment (Ref: 12522372)	5 February 2020	GHD
Flood Assessment and Risk Management Report (Ref: 191208)	23 January 2020	RTS Civil Consulting Engineers

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

c) The development is to be undertaken generally in accordance with the following:

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	January 2020	Matthew Tice & Susie Mills

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

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

4. **Compliance with Other Department, Authority or Service Requirements**

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	Dated
NSW Police	Referral - NSW Police	30 April 2020

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website 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.

5. **Approved Land Use**

Nothing in this consent shall authorise the use of the tenancy as detailed on the approved plans for any land use of the site beyond the definition of an *artisan food and drink industry*.

An artisan food and drink industry is defined as:

"a building or place the principal purpose of which is the making or manufacture of boutique, artisan or craft food or drink products only. It must also include at least one of the following—

- (a) a retail area for the sale of the products,
- (b) a restaurant or cafe,
- (c) facilities for holding tastings, tours or workshops."

(development is defined by the Warringah Local Environment Plan 2011 (as amended) Dictionary)

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

Reason: To ensure compliance with the terms of this consent.

6. **Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) 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.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) 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.
 - (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.

7. 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) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) 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.
- (d) 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.
- (e) 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.
- (f) 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.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the

erection of any fences, hoardings or other temporary works.

(k) Prior to the commencement of any development onsite for:

- i) Building/s that are to be erected
- ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
- iii) Building/s that are to be demolished
- iv) For any work/s that is to be carried out
- v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

(l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

(m) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2008
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
 - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
 - (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

8. **Security Bond**

A bond (determined from cost of works) of \$1,000 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at www.northernbeaches.nsw.gov.au).

Reason: To ensure adequate protection of Council's infrastructure.

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

9. **Boundary Identification Survey**

A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of any Construction Certificate.

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

10. **Plans of Kitchen Design, construction and fit out**

Prior to any Construction Certificate (CC) being issued, detailed plans that demonstrate compliance with Standard 3.2.3 of the Australian and New Zealand Food Standards Code, the Food Act 2003 and Australian Standard AS 4674 'Design, construction and fit out of food premises', must be submitted to and approved by the Certifying Authority. These plans are to be prepared by a suitably qualified person.

The plans must detail adequate provision for storage including separate storage of food, equipment, chemicals and personal belongings.

A dedicated hand wash basin is required for the kitchen and bar.

Reason: To ensure that the Food premise complies with the design construction and fit-out requirements.

11. **Kitchen Design, construction and fit out of food premises**

The construction fit-out and finishes of the food premises must comply with Standard 3.2.3 of the Australian and New Zealand Food Standards Code, the Food Act 2003 and Australian Standard AS 4674 'Design, construction and fit out of food premises'. Prior to any Occupation Certificate (OC) being issued certification is to be provided by a suitably qualified person that the fit-out complies with the above requirement.

Reason: To ensure that the kitchen complies with the design requirements.

12. **Plans of Mechanical ventilation**

Prior to any Construction Certificate (CC) being issued, detailed plans that demonstrate compliance with the Australian Standard (AS) 1668.2 "The use of ventilation and air-conditioning in buildings - Mechanical ventilation in buildings", must be approved by the Certifying Authority for any cooking equipment with an individual or combined power rating level that triggers the requirement for mechanical ventilation under AS1668.2 including any deep frying equipment.

Reason: To ensure that the design, construction and installation requirement for mechanical ventilation complies with the Australian Standard 1668.2.

13. **Flooding**

In order to protect property and occupants from flood risk the following is required:

Building Components and Structural Soundness – C1

All new development shall be designed and constructed as flood compatible buildings in accordance with Reducing Vulnerability of Buildings to Flood Damage: Guidance on Building in Flood Prone Areas, Hawkesbury-Nepean Floodplain Management Steering Committee (2006).

Building Components and Structural Soundness – C2

All new development must be designed and constructed to ensure structural integrity up to the Flood Planning Level of 3.66m AHD taking into account the forces of floodwater, wave action, flowing water with debris, buoyancy and immersion. Structural certification shall be provided confirming the above.

Building Components and Structural Soundness – C3

All new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed and/or located above the Flood Planning Level. All existing electrical equipment and power points located below the Flood Planning Level must have residual current devices installed cut electricity supply during flood events.

Storage of Goods – D1

Hazardous or potentially polluting materials shall not be stored below the Flood Planning Level unless adequately protected from floodwaters in accordance with industry standards.

Recommendations

The development must comply with the Flood Emergency Response Plan identified in the Flood Assessment and Risk Management Report prepared by RTS Civil dated 23

January 2020.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

14. **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.

15. **Construction Waste Management Plan**

A Construction Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Council's Waste Management Guidelines.

Details demonstrating compliance must be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

16. **Waste Management During Development**

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

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

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE

17. **Registration of Food Business**

The food business must be registered with the Appropriate Regulatory Authority, prior to Occupation Certificate being issued.

Reason: Food premises are required to be registered with the Appropriate Regulatory Authority.

18. **Mechanical ventilation**

Where Mechanical ventilation is required to be installed in the food premises it must comply with Australian Standard (AS) 1668.2 "The use of ventilation and air-conditioning in buildings -

Mechanical ventilation in buildings” Prior to any Occupation Certificate (OC) being issued, certification is to be provided by a suitably qualified person that the mechanical ventilation complies with the above requirements.

Reason: To ensure that the installed mechanical ventilation complies with the requirements of the Australian Standard 1668.2.

19. **Acoustic review**

Prior to any occupation certificate being issued, a review by a suitably qualified person is to be carried out to confirm predictions and recommendations based on the acoustic assessment carried out by GHD February 2020 to ensure the development does not cause offensive noise at any residential or commercial premises.

Reason: To ensure predicted compliant noise levels are not exceeded.

20. **Waste Management Confirmation**

Prior to the issue of a Final Occupation Certificate, evidence / documentation must be submitted to the Principal Certifying Authority that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

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

21. **Delivery Hours**

Deliveries to the premises shall not be carried out before 7 am or after 6 pm Monday to Saturday and not before 8 am or after 6 pm on Sundays and Public Holidays.

Reason: To maintain amenity to neighbouring residential premises.

22. **Hours of Operation**

The hours of operation are to be restricted to:

- Monday to Wednesday – 6am to 10pm (outdoors until 9pm)
- Thursday to Saturday – 6am to 11pm (outdoors until 10pm)
- Sunday and Public Holidays – 6am to 10pm (outdoors until 9pm)

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.

23. **Customer Capacity**

The tenancy shall not exceed a maximum of 60 customers at any one time. A maximum of 12 customers are permitted in the outdoor seating area at any one time.

Reason: To ensure a reasonable level of amenity for surrounding land uses is maintained.

24. **External Lighting**

All external lighting, including signage, is to be turned off within one (1) hour of the ceasing of trade.

Reason: To limit amenity impact to nearby residential dwellings.

25. **Loading Dock**

The loading dock must not be used as a pedestrian entrance while a delivery or waste vehicle is onsite.

Reason: Pedestrian safety.

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

Signed



Nick Keeler, Planner

The application is determined on 02/07/2020, under the delegated authority of:



Matthew Edmonds, Manager Development Assessments