

Memo

Development Assessment

To: Northern Beaches Local Planning Panel

Cc: Peter Robertson
Executive Manager Development Assessment

From: Louise Kerr
Director Planning and Place

Date: 1 April 2021

Subject: Item 3.3 - DA2020/1027 (Stuart Street, Manly) - Additional information submitted in relation to biodiversity and conditions of consent as recommended by independent planning consultant

Record Number: 2021/237332

Dear LPP members,

I refer to Item 3.3 listed on the agenda of the LPP meeting to be held on 7 April 2021. The land on which the development relates is owned by Northern Beaches Council, accordingly an independent planning consultant (Geoff Goodyer of Symons Goodyer Pty Ltd) was engaged to conduct an independent assessment report for the DA. The recommendation of the independent planning consultant following their assessment is approval of the application as a deferred commencement consent.

The purpose of this memo is to advise the panel of information submitted to Council following the completion of the assessment report, and to provide the panel with advice on proposed condition 49 and 53 (as recommended by the independent planning consultant).

Additional information received regarding Biodiversity

The applicant has provided additional information being:

- 'Response to DA2020/1027 Natural Environment Referral Response dated 10 February 2021' prepared by GIS Environmental Consultants (undated)
- Copy of emails relating to vandalism of the café and amenities building
- Response letter prepared by BJB Architects (undated).

This additional documentation was submitted to Council on Monday 29 March 2021. The timing of the lodgement of the submission did not provide enough time for Council's Biodiversity Team to review the information and prepare a response for inclusion in the independent assessment report.

Council's Biodiversity Team have reviewed the information additional information and the following response has been provided:

'The Biodiversity referral body have considered the additional information provided 29 March 2021. The additional ecological statement (GIS Environmental Consultants, provided 29 March 2021) states:

The proposed change from the operation hours is not likely to significantly impact penguins for two reasons:

- 1. as there is no records of penguin activity in the immediate vicinity of the Kiosk and the nearest activity is at the very western end of the beach near the boat ramp.*
- 2. The large flood lights that are attached to the poles would be far more distracting and confusing for penguins.*

The proposed change from the operation hours being sort and the recommended operating hours is not likely to reduce the bandicoot road mortality as the change is:

- 1. A small intensification of use during the pre dawn or dusk/evening hours when bandicoots are active*

The Biodiversity referral body are not satisfied that the increased capacity will not result in an intensification of use (including increased traffic, noise and human presence on the beach) that will result in impacts to Little Penguin nesting habitat within 200m of the subject site. As such, support for the proposal remains contingent upon a condition or other mechanism to limit the café's operating hours such that trading during dusk and evening hours is minimised, thereby mitigating potential impacts to penguins associated with the intensification of use. Alternatively, the Biodiversity referral body would raise no objections to the new proposed operating hours should there be no change in existing capacity.

The presence of the flood lights is not considered to be relevant to assessment of development impacts, as the applicant has submitted no evidence that these structures are "far more distracting and confusing for penguins" than expansion of the cafe. Furthermore, even if this were the case, it would not justify approval of a further increase in traffic, noise and human activity.'

Council's biodiversity team maintain their advice provided in the assessment report and the recommendation from Council's Biodiversity Team remains unchanged following consideration of the additional information. It is noted that the independent assessment report recommends that patron capacity be limited to a maximum of 20 seated persons to address the biodiversity teams concerns regarding intensification of the land use.

Recommended Conditions No.49 and No.53

The report prepared by Symonds Goodyer Planning contains two recommended conditions that are not consistent with the way Northern Beaches Council would ordinarily deal with such matters, being patron capacity and sale of alcohol.

Condition 49 as recommended in the consultant's report states the following:

49. Maximum number of seated patrons

A maximum of twenty (20) seated patrons are permitted on the premises. The patrons are to be seated within the premises in accordance with the seating as

shown on the approved plans. The external seating area and umbrellas are not approved.

Reason: to limit the capacity of the café in recognition of traffic and parking impacts associated with the land use and to mitigate potential impacts on local fauna including the Little Penguin and the Long-nosed Bandicoot.

Council staff agree with the consultants proposed condition in so far as it restricts patron numbers to 20, as a way of addressing traffic/parking and biodiversity issues raised in the assessment of the application.

However, Council staff raise concerns regarding that part of condition 49 that prohibits the use of the external area for seating. It is understood that the planning consultant has recommended that the 20 seats be located indoors to address biodiversity issues and noise impacts arising from patrons seated outdoors.

The issues that Council's Biodiversity Team have raised are addressed by a restriction to the overall capacity to 20 patrons, and no issues have been raised in relation to acoustic impacts arising from the proposed 32 patrons and external seating in the referral response from Council's Environmental Health team. Therefore, it is the view of Council staff that it would be onerous to impose a condition to restrict the use of the external seating area for reasons associated with biodiversity and noise impacts

It would be usual practice in circumstances where restrictions on patron capacity are proposed to address issues that have arisen in the assessment of applications to impose a condition to restrict patron numbers and require the applicant to submit an amended seating plan (reflecting the reduced seating layout) prior to the issue of a Construction Certificate or Occupation Certificate. This would allow the operator of the business to determine the split of tables and chairs to be located indoors and outdoors and provide flexibility on the use of the venue but still restrict the overall number of patrons allowed.

The external dining area forms part of the development application and is leased by the tenant from Council. It is also understood that the external area has been used historically for outdoor seating associated with the use of the kiosk/café.

Accordingly, an alternate condition 49 is provided to the panel for their consideration:

49. Maximum number of seated patrons

A maximum of twenty (20) seated patrons are permitted on the premises. Plans are to be submitted to the Executive Manager Development Assessment and the PCA prior to the issue of a Construction Certificate showing the revised table and seating plan to reflect the maximum of 20 patrons. ~~The patrons are to be seated within the premises in accordance with the seating as shown on the approved plans. The external seating area and umbrellas are not approved.~~

Reason: to limit the capacity of the café in recognition of traffic and parking impacts associated with the land use and to mitigate potential impacts on local fauna including the Little Penguin and the Long-nosed Bandicoot.

Condition 53 as recommended in the consultant's report is as follows:

53. Consumption of alcohol not permitted

The consumption of alcohol on the premises is not permitted.

Reason: To confirm the details of the application and to maintain the amenity of the surrounding area.

The Statement of Environmental Effects submitted with the DA states that 'the venue is not proposed to be licenced', accordingly, it is the opinion of Council staff that proposed condition 53 should be amended to state that the sale of alcohol from the premises is not permitted, rather than stating that consumption of alcohol (including BYO) is not permitted.

Liquor licences are issued by the NSW Office of Liquor and Gaming, and if in the future the operator of the venue wants to sell alcohol from the venue, a separate approval will be required for the liquor licence. Council would be provided an opportunity to provide comments on the appropriateness of the sale of alcohol at the site at that time. In addition, the applicant would be required to modify condition 53 under section 4.55 of the Environmental Planning and Assessment Act if the sale of alcohol was to be proposed from the site. The impacts of the sale of alcohol would be considered in the assessment of the modification application.

Accordingly, an alternate condition 53 is provided to the panel for their consideration:

53. ~~Sale Consumption of alcohol not permitted~~

The ~~sale consumption~~ of alcohol on the premises is not permitted.

Reason: To confirm the details of the application and to maintain the amenity of the surrounding area.



Louise Kerr

Director Planning and Place