

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2020/1083
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<b>Responsible Officer:</b>	Penny Wood
<b>Land to be developed (Address):</b>	Lot 6 DP 12600, 1421 Pittwater Road NARRABEEN NSW 2101
<b>Proposed Development:</b>	Use of premises as a cafe and extended hours of operation
<b>Zoning:</b>	Warringah LEP2011 - Land zoned B2 Local Centre
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Roger Edward Leys James Lawrence Leys William Rando Leys Bonnie Patricia Rando Leys
<b>Applicant:</b>	Sesyk Holdings

<b>Application Lodged:</b>	14/09/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Commercial/Retail/Office
<b>Notified:</b>	22/09/2020 to 06/10/2020
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 0.00
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### PROPOSED DEVELOPMENT IN DETAIL

The application proposes to extend the operating hours of the existing food and drink premises from 12 midday -3.00pm and 6.00pm - 12.00 Midnight Monday to Sunday to the following hours.

- Monday to Sunday 6.00am to 10.00pm.

The Statement of Environmental Effects states a 2.4m x 2.4m wall sign is located along the southern

wall of the subject site fronting Berry Reserve and Pittwater Road. A visit to the site on 5 November 2020 revealed that a sign for the premises has been constructed on the southern wall of the building. The signage therefore does not form part of this assessment.

At the time of writing the report it is noted that a Development application (DA2020/1282) was lodged with Council and has not yet been determined for a server window along the southern side of the site fronting Berry Reserve. Any physical works to the subject cafe do not form part of this assessment.

### Waste Management

Waste collection is managed by a private waste contractor and collected on Thursdays.

### No. of Staff

2 - 4 staff members on site at one time.

### Deliveries

Deliveries to the premises three (3) times a week.

## **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 - C3 Parking Facilities

### **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 6 DP 12600 , 1421 Pittwater Road NARRABEEN NSW 2101
<b>Detailed Site Description:</b>	The subject site consists of one (1) allotment located on the western side of Pittwater Road.

The site is irregular in shape with a frontage of 4.5m along Pittwater Road and a depth of 15.m. The site has a surveyed area of 771.4m<sup>2</sup>.

The site is located within the B2 Local Centre zone from WLEP 2011 and accommodates a two (2) storey building located at the southern end of a row of commercial properties. The unit is directly north of a heritage item I97 Bus Shelter (former tram shelter) under the WLEP 2011 and adjoins Berry Reserve. Development within the vicinity is predominantly commercial.

The site adjoins Berry Reserve and the Council carpark to the west and south west which fronts Narrabeen Lagoon.

The site is flood affected and is located in a wildlife corridor.

#### **Detailed Description of Adjoining/Surrounding Development**

Adjoining and surrounding development is characterised by commercial premises to the north and along the eastern side of Pittwater Road. A visit to the site revealed that a single storey residential dwelling is located to the west of the subject building fronting Narrabeen Lagoon. The site is located adjacent to Berry Reserve and Narrabeen Lagoon.

Map:



#### **SITE HISTORY**

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

- CDC2016/0521 - Change of use of an existing restaurant to a food and drink premises (fish and chip shop) (no building works). Approved 11 August 2016.
- PLM2018/0287 - Alterations and additions to an existing building to create a servery window located along the southern side of the building.
- DA2020/1282 - Alterations and additions to business premises to include a servery window. Currently under assessment.

## 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 commercial 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&amp;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&amp;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&amp;A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the</p>

Section 4.15 Matters for Consideration'	Comments
	<p>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&amp;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. / This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;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&amp;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) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah/Manly/Pittwater 21 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 (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 development application has been publicly exhibited from 22/09/2020 to 06/10/2020 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 (Industrial)	<p><b>General Comments</b></p> <p>The proposed change of use of operating hours to become 6 am to 10 pm every day is supported without conditions from Environmental Health. The food premises is on an arterial road next to a bus station, and thus, likely to have no detrimental impacts on residential amenity with regard to noise, light and odour.</p> <p>The internal fit-out has not changed from the previous food business - mechanical exhaust, appropriate hand washing and waste facilities provided.</p> <p><b>Recommendation</b></p> <p>APPROVAL - no conditions</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 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential commercial 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 Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the commercial land use.

## SEPP (Infrastructure) 2007

### Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

### Comment:

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.

## SEPP (Coastal Management) 2018

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

### 13 Development on land within the coastal environment area

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
  - (b) *coastal environmental values and natural coastal processes,*
  - (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
  - (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
  - (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
  - (f) *Aboriginal cultural heritage, practices and places,*
  - (g) *the use of the surf zone.*

### Comment:

Given the application proposes no physical works to the subject site, the development will have no impact on the coastal environmental values and natural coastal processes of the land.

- (2) *Development consent must not be granted to development on land to which this clause applies*

*unless the consent authority is satisfied that:*

- (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or
- (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

The subject site is located upon land within the coastal environment area. The proposed change of use to a food premises and change of hours will have a negligible impact on the adjoining coastal environment. Access to the cafe is from Pittwater Road and will have a minimal impact on the existing public space and safe access to Narrabeen Lagoon.

#### **14 Development on land within the coastal use area**

(1)

- (a) has considered whether the proposed development is likely to cause an adverse impact on the following:
  - (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
  - (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
  - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
  - (iv) Aboriginal cultural heritage, practices and places,
  - (v) cultural and built environment heritage, and
- (b) is satisfied that:
  - (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
  - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
  - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The development does not propose any physical works and therefore have a negligible impact on the amenity and scenic qualities of the coast or existing access to the foreshore of Narrabeen Lagoon.

#### **15 Development in coastal zone generally—development not to increase risk of coastal hazards**

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

The proposed use and change of hours is considered to have a negligible impact on the surrounding environment and is unlikely to cause an increased risk of coastal hazards on the subject land or other land.

As such, it is considered that the application does/does not comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

### 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

### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	11.0m	Unchanged	N/A	N/A

### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.3 Flood planning	Yes
6.4 Development on sloping land	Yes

### Warringah Development Control Plan

#### Built Form Controls

There are no development controls under Warringah DCP to consider as part of this assessment.

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	No	Yes
C9 Waste Management	Yes	Yes
D3 Noise	Yes	Yes
D20 Safety and Security	Yes	Yes
E11 Flood Prone Land	Yes	Yes
F1 Local and Neighbourhood Centres	Yes	Yes

### Detailed Assessment

### 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 does not provide a compliant number of car parking spaces. This is discussed below.

The development provides the following on-site car parking:

Use	Appendix 1 Calculation	Required	Provided	Difference (+/-)
Food and Drink Premises	<p>Whichever is greater of:</p> <p>15 spaces per 100sqm or</p> <p>1 space per 3 seats</p> <p>The above rate may be reduced if there is, in the consent authority's opinion, suitable available parking in the vicinity during the operating hours of the proposed development</p>	<p>Total GFA = 72.7sqm requires a total of 11 spaces</p> <p>20 seats = 6.6 spaces</p>	0	-11
<b>Total</b>		11	0	-11

The site does not currently provide a compliant level of car parking, which is common for such developments in this section of Pittwas Road where restaurants are situated. The site is well places in terms of public transport with frequent bus routes servicing the site. The site is also immediately adjacent to a public parking area. It is considered that the site is well located to service this area and whilst providing having access to a high level of available parking spaces. It is unreasonable given the nature of the site and it's location to upgrade the parking to a compliant standard with the parking controls.

IN balancing the proposed use and the limited parking against the provision of public transport, timed on street parking, the public carpark and the reliance on passing trade, it is considered that the non-compliant level of parking provided is acceptable in these circumstances.

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

Comment:

The proposed development does not provide any additional car parking spaces as part of the application.

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

Comment:

As mentioned above, the development does not propose any physical works.

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 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 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 DA2020/1083 for Use of premises as a cafe and extended hours of operation on land at Lot 6 DP 12600, 1421 Pittwater Road, NARRABEEN, subject to the conditions printed below:

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **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
Proposed Floor Plan - Drawing No: 001	15 August 2020	Sesyk Holdings

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

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.

2. **Change of Use**

This consent is limited to the use of the premises. No consent is given for any physical works proposed under this development application.

Reason: To ensure no approval is granted for existing unauthorised works.

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

### 3. Hours of Operation

The hours of operation are to be restricted to:

- Monday to Friday – 6.00am - 10.00pm
- Saturday – 6.00am - 10.00pm
- Sunday and Public Holidays – 6.00am - 10.00pm

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.

### 4. Noise

The use of the premises must be controlled so that any emitted noise is at a level so as not to create an "offensive noise" as defined in the Protection of the Environment Operations Act 1997 to any affected receiver.

Reason: To comply with Noise Legislation.

### 5. Amenity

The implementation of this development shall not adversely affect the amenity of the neighbourhood or interfere unreasonably with the comfort or repose of a person who is outside the premises by reason of the emission or discharge of noise, fumes, vapour, odour, waste water, waste products or other harmful products. Any music played not being audible outside the premises. Hours of operation being restricted "normal business" hours as approved by Council.

Reason: To ensure the surrounding area and people within the neighbourhood are not affected adversely and to ensure compliance with the Protection of the Environment Operations Act 1979.

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

**Signed**



**Penny Wood, Planner**

The application is determined on 10/11/2020, under the delegated authority of:



**Anna Williams, Manager Development Assessments**