

DEVELOPMENT APPLICATION ASSESSMENT REPORT

| | |
|----------------------------|-------------|
| Application Number: | DA2020/0160 |
|----------------------------|-------------|

| | |
|---|--|
| Responsible Officer: | Gareth David |
| Land to be developed (Address): | Lot A DP 413126, 26 Orchard Road BROOKVALE NSW 2100 |
| Proposed Development: | To use the premises as an artisan food and drink industry and associated signage |
| Zoning: | Warringah LEP2011 - Land zoned IN1 General Industrial |
| Development Permissible: | Yes |
| Existing Use Rights: | No |
| Consent Authority: | Northern Beaches Council |
| Land and Environment Court Action: | No |
| Owner: | Christian Eugen Boller Bruno Frischknecht |
| Applicant: | Symons Goodyer Pty Ltd |

| | |
|----------------------------------|--------------------------|
| Application Lodged: | 24/02/2020 |
| Integrated Development: | No |
| Designated Development: | No |
| State Reporting Category: | Other |
| Notified: | 03/03/2020 to 17/03/2020 |
| Advertised: | Not Advertised |
| Submissions Received: | 0 |
| Clause 4.6 Variation: | Nil |
| Recommendation: | Approval |

| | |
|---------------------------------|---------------|
| Estimated Cost of Works: | \$ 100,000.00 |
|---------------------------------|---------------|

PROPOSED DEVELOPMENT IN DETAIL

The proposed development is for the use as the premises as an 'Artisan Food and Drink industry' in association with a micro-brewery, signage and associated fit out. Specifically the development involves:

- Use of a portion of the premises as an artisan food and drink premises;
- Associated internal fit out;
- External business identification signage;

The operational details as follows:

- Employment of five (5) staff;
- Space to accommodate up to 100 patrons;

Proposed Hours of Operation

Industrial operations for Brewery & Distillery

- 6:00 AM to 4:00 PM Monday to Friday

Taproom/Cellar Door Hours

- 5:00 PM to 12:00 AM Monday to Friday
- 1.00PM to 12.00 AM Saturday
- 11:00 AM to 10.00 PM Sunday

Takeaway Sales

- 5:00 PM to 11:00 PM Monday to Friday
- 1.00PM to 11.00 PM Saturday
- 11:00 AM to 10.00 PM Sunday

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 - B6 Merit Assessment of Side Boundary Setbacks

Warringah Development Control Plan - C3 Parking Facilities

Warringah Development Control Plan - D3 Noise

Warringah Development Control Plan - D23 Signs

SITE DESCRIPTION

| | |
|-----------------------------------|---|
| Property Description: | Lot A DP 413126 , 26 Orchard Road BROOKVALE NSW 2100 |
| Detailed Site Description: | The subject site consists of one (1) allotment located on the |

southern side of Orchard Road.

The site is regular in shape (excluding the access handle) with a frontage of 20.117m along Orchard Road and a depth of 50.29m. The site has a access handle at the rear which services Mitchell Road which is 20.1m in length. The site has a area of approximately 1159.0m².

The site is located within the IN1 General Industrial zone and accommodates two warehouse buildings with concrete car parking area at the rear which is accessed via Mitchell Road. The the main, larger warehouse building located on the Orchard Road frontage contains an internal mezzanine level.

The site is relatively level with no vegetation upon the site.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by warehouse units with various industrial and business uses. To the east of the subject site is a car park servicing two adjoining businesses. To the north east of the site at (23 Orchard Road) there is a motor works shop with what appears to be a residential unit above, however, Council records show no planning history confirming this residential use.

Map:



SITE HISTORY

The land has been used for industrial purposes for an extended period of time. A search of Council's

records has revealed the following relevant history:

- Development consent 70/135 issued by Warringah Council on 13 July 1970 for 'Installation of Underground tank for Mineral Turps & Bowser '.
- DA2004/0668 - Alterations to Existing Car Repair, Car Dealer and Hire of Motor Vehicles (reconstruct Roof Over Existing Workshop & Vehicle Wash Bay) - Approved 23 September 2004

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 | <p>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. In response to the above requirements of the SEPP, the applicant has submitted a Preliminary Environmental Site Investigation dated 31 July 2020 and prepared by Metech Consulting. In its conclusion, the investigation states:</p> <p><i>"Based on the results of the soil vapour investigation, it is concluded that there are no unacceptable risks to occupants of the Site under a commercial/industrial land use setting. As only minor changes to the internal layout of the offices are proposed for the change of use to a micro-brewery, the risks will remain low and acceptable, and it is determined that the Site is suitable for the proposed development and intended use."</i></p> <p>Based on the recommendations of this report, Council is satisfied that the land is suitable for the purpose for which the development is proposed to be carried out and the recommendations included in the investigation are included as conditions in the Recommendation of this report.</p> |
| 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</p> |

| Section 4.15 Matters for Consideration' | Comments |
|---|--|
| | <p>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 updated operational management plan, amended plans and land contamination report.</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 matter has been addressed via a condition of consent.</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> <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> |
| <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> | <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> |
| <p>Section 4.15 (1) (c) – the suitability of the site for the development</p> | <p>The site is considered suitable for the proposed development.</p> |
| <p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p> | <p>See discussion on “Notification & Submissions Received” in this report.</p> |

| Section 4.15 Matters for Consideration' | Comments |
|--|---|
| Section 4.15 (1) (e) – the public interest | No matters have arisen in this assessment that would justify the refusal of the application in the public interest. |

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject 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 |
|--|--|
| Building Assessment - Fire and Disability upgrades | No objections subject to conditions. |
| Environmental Health (Contaminated Lands) | <p>General Comments</p> <p>Environmental Health has been requested to comment on the proposed development for the potential of contamination.</p> <p>As part of this referral Environmental Health have considered the potential for contamination as a result of previous uses of the subject site including, but not limited to:</p> <ul style="list-style-type: none"> • The installation of underground tank for mineral turps and bowser • The manufacture of accessories for concrete formwork • The use as a factory, office accommodation, manufacturing and storage. • The use for the purposes of manufacturing (adapting and dyeing flowers and the making of bouquets) • The use as a vehicle showroom repair facility including a vehicle wash down area with an approved trade waste oil and solids separator. <p>As the application is seeking approval for the serving of food to the public there are concerns for the potential for contamination as the result of these previous property uses.</p> <p>It is noted that no contamination report has been supplied with the application documentation.</p> |

| Internal Referral Body | Comments |
|-----------------------------------|--|
| | <p>4 August 2020</p> <p>Contamination Assessment report provided by Metech Consulting on 31 July 2020. Report concludes that contaminants contained in soil vapour, being the only risk of contact given no soil to be exposed, is lower than the adopted screening criteria:</p> <ul style="list-style-type: none"> • National Environment Protection (Assessment of Site Contamination) Measure – NEPM (2013) – Soil Vapour HSLs for vapour intrusion (HSL D commercial / industrial) 0-1m depth in sand (most conservative geology); and • NEPM 2013 – Interim Soil Vapour Health Investigation Levels (HILs) for volatile organic chlorinated compounds. <p>Therefore, soil vapour is consider negligible risk in the buildings current state. Council has no objections to these findings.</p> <p>Note: Any exposure of soil or modifications to slab will require further assessment.</p> <p>Recommendation</p> <p>APPROVAL - subject to conditions</p> |
| Environmental Health (Industrial) | <p>General Comments</p> <p>The Environmental Health Team has considered the merits of this application in relation to a new use at these premises and considers the proposal to be acceptable subject to compliance with relevant conditions relating to waste management and noise emissions. Prior to making this determination, further information was sought from the acoustic consultant who advised that the relevant criteria of the Noise Policy For Industry was applied in relation to low frequency noise levels which are known to travel over longer distances. This is considered important as the nearest residential receiver for noise is approximately 200 metres from the site of the development which proposes music as part of the entertainment at the premises. The consultant has also used typical data from similar establishments (breweries with live music) as well as noise measurements from other controlled environments which allows to calculation of typical patron noise. Accordingly it is considered the development is appropriate for the site based on the provision that noise levels nominated in the acoustic report are not exceeded. Appropriate conditions are also recommended to control noise emissions from any external or rooftop plant and equipment.</p> <p>Recommendation</p> <p>APPROVAL - subject to conditions</p> |

| Internal Referral Body | Comments |
|---|---|
| Environmental Health (Food Premises, Skin Pen.) | <p>General Comments</p> <p>The Environmental Health team has considered this application which involves a first use of "food and drink" premises at the subject site. Amended architectural plans and Operational Management Plan have been received. The site is considered acceptable for such a use pending compliance with the relevant conditions that have been recommended which relate to the fit out of the food truck and compliance with Food Standards Code</p> <p>Recommendation</p> <p>APPROVAL - subject to conditions</p> |
| Traffic Engineer | <p>Proposed Development:</p> <ul style="list-style-type: none"> -The proposal is change of use to Artisan Food and Drink with the maximum capacity of 100 patrons. -The maximum staff number attending at any one time will be 5. -The operation hours of the Artisan Food and Drink use will be 5pm to 12am Monday to Friday. 1pm to 12am Saturday and 11am to 10pm Sunday. Take away sales will be open within the same duration as the taproom. -Staff parking will be accommodated within the car parking area at the rear of the site containing 5 car spaces. The existing loading bay accessed from Orchard Road will be used as an additional internal staff car space (creating a total of 6) after 4pm once the industrial component of the brewery closes each day. <p>Parking and access assessment:</p> <p>Given the operational hours of the taproom/takeaway being after 5pm on the weekdays and after 1pm on Saturdays, and also the availability of sufficient on-street parking spaces within the surrounding area during the hours of operation as demonstrated in the traffic report, the proposed parking provision is considered acceptable. The applicant has also obtained a consent from the adjoining site, No.28-30 Orchard Rd, to use 12 parking spaces of the parking spaces within the adjoining lot's car parking area for the customers use, which is satisfactory.</p> <p>The parking spaces within the site including the 5 spaces within the rear car park and the one space accessing via Orchard Road is to be allocated to staff, with appropriate measures at the driveway off</p> |

| Internal Referral Body | Comments |
|------------------------|--|
| | <p>Mitchell Road to ensure the vehicular access is only utilised for staff parking only. The customers must use the pedestrian access off Orchard Rd to minimise any safety risk resulting from conflict between customers and vehicles with the driveway. The driveway should be adequately lit.</p> <p>The applicant is to provide Council with the information on any proposed measures to satisfy the above and to include it in the Operational Management plan .</p> <p>Loading area:</p> <p>All loading/unloading activities are to be undertaken wholly within the site using the car parking area to the rear of the site outside taproom/takeaway hours to enable it to leave in a forward direction. This should be included in the operational Management Plan.</p> <p>Traffic The anticipated traffic volumes are deemed to be minor and will not significantly impact the local road.</p> <p>Conclusion: The proposal can be supported on traffic grounds subject to conditions.</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>As the proposed development involves a new land use which would result in a new licenced premises, the application was referred to the NSW Police for comment in accordance with Council's referral procedure. Overall, the NSW police were supportive of the proposed development subject to recommended changes and conditions. The full details of the NSW police response is available as an attachment to this report.</p> <p>The NSW police provided an initial response which raised concern regarding:</p> <ul style="list-style-type: none"> • The proposed operating hours • Insufficient detail of intended use and plan of management • Patron capacity • Parking and safety • Location of the proposed food truck |

| External Referral Body | Comments |
|------------------------|--|
| | <ul style="list-style-type: none"> • Security • Number of outdoor tables <p>In response to the initial NSW Police submission, the applicant submitted amended plans and an amended plan of management addressing many of these initial concerns. These amendments were sent back to NSW Police for further comment. NSW Police replied that they were satisfied with the amendments and supportive of the application subject to an additional condition to ensure licensed security onsite. This is to be conditioned on any 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 55 - Remediation of Land

Clause 7(1)(a) of SEPP 55 requires the consent authority to consider whether land is contaminated.

In response to the above requirements of the SEPP, the applicant has submitted a Preliminary Environmental Site Investigation dated 31 July 2020 and prepared by Metech Consulting. In its conclusion, the investigation states:

"Based on the results of the soil vapour investigation, it is concluded that there are no unacceptable risks to occupants of the Site under a commercial/industrial land use setting. As only minor changes to the internal layout of the offices are proposed for the change of use to a micro-brewery, the risks will remain low and acceptable, and it is determined that the Site is suitable for the proposed development and intended use."

Therefore, as the Investigation indicates that there is a potential for contaminants to exist on the site, Clauses 7(1)(b) and 7(1)(c) of the SEPP must be considered.

Clause 7(1)(b) stipulates that *"if the land is contaminated, it [Council] is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out"*.

Given the claimed potential of contamination on the site as noted in the Phase 1 Investigation, a Phase 2 Environmental Site Assessment should be provided to confirm whether contamination is actually

present, at what levels and at what locations. A Phase 2 Environmental Site Assessment has been provided which confirms the location and type of contaminants on the site and determined that there are no unacceptable levels of risk at property associated with contamination under the proposed commercial/industrial land use setting.

In this regard, Council is satisfied that the land can be made suitable for the purpose for which the development is proposed to be carried out and the recommendations included in the investigation are included as conditions in the Recommendation of this report.

Clause 7(1)(c) stipulates that *"if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose"*.

Based on the recommendations of the report, Council is satisfied that the land is suitable for the purpose for which the development is proposed to be carried out and the recommendations included in the investigation are included as conditions in the Recommendation of this report.

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 |
|--|--|------------|
| <p>1. Character of the area Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?</p> | <p>The signage is for identification of the proposed business and is compatible with the site in which it is proposed. The proposed signage is compatible with the existing and desired future character of the area considering the industrial nature of the area and the multitude of signs in the immediate vicinity.</p> | <p>YES</p> |
| <p>Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?</p> | <p>The signage identifies the business use and is consistent with other signage within this established industrial area.</p> | <p>YES</p> |
| <p>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?</p> | <p>The signage will not detract from any environmentally sensitive areas, natural or other conservation areas, open space, rural landscapes or residential areas.</p> | <p>YES</p> |

| | | |
|--|--|------------|
| <p>3. Views and vistas Does the proposal obscure or compromise important views?</p> | <p>The proposed signs will not obscure or hinder any views or vistas.</p> | <p>YES</p> |
| <p>Does the proposal dominate the skyline and reduce the quality of vistas?</p> | <p>The proposed signage will not dominate the skyline or protrude higher than the roofline of the existing building.</p> | <p>YES</p> |
| <p>Does the proposal respect the viewing rights of other advertisers?</p> | <p>The signage is solely intended to represent and advertise the approved land use of the building only ie. Bucketty's Brewery.</p> | <p>YES</p> |
| <p>4. Streetscape, setting or landscape Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?</p> | <p>The scale, proportion and form of the signage is appropriate for its location within industrial streetscape and the wider commercial and industrial setting and landscape of this area of Brookvale.</p> | <p>YES</p> |
| <p>Does the proposal contribute to the visual interest of the streetscape, setting or landscape?</p> | <p>The signs contributes to visual interest.</p> | <p>YES</p> |
| <p>Does the proposal reduce clutter by rationalising and simplifying existing advertising?</p> | <p>The proposal increases the amount of signage in the area. However the amount of signage is not considered excessive.</p> | <p>YES</p> |
| <p>Does the proposal screen unsightliness?</p> | <p>There is no unsightliness to be screened.</p> | <p>YES</p> |
| <p>Does the proposal protrude above buildings, structures or tree canopies in the area or locality?</p> | <p>The proposed signage does not protrude above the building to which it is associated.</p> | <p>YES</p> |
| <p>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?</p> | <p>The signs are of scale and proportion which is consistent with that of the existing building and other signs in the immediate vicinity.</p> | <p>YES</p> |
| <p>Does the proposal respect important features of the site or building, or both?</p> | <p>There are no significant features of the site impacted by the signage.</p> | <p>YES</p> |
| <p>Does the proposal show innovation and imagination in its relationship to the site or building, or both?</p> | <p>The signage is to be a contemporary in design to enhance the function of the business and movement of visitors onsite. It is considered to demonstrate sufficient creativity and imagination in relation to the site.</p> | <p>YES</p> |
| <p>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?</p> | <p>No safety devices have been designed as an integral part of the signage or structure. The proposed signage does not include any logos.</p> | <p>YES</p> |
| <p>7. Illumination Would illumination result in unacceptable glare, affect safety for</p> | <p>Illumination is proposed on the lettering of the proposed signage. The proposed level of illumination would not</p> | <p>YES</p> |

| | | |
|---|---|-----|
| pedestrians, vehicles or aircraft, detract from the amenity of any residence or other form of accommodation? | detract from the amenity of any surrounding industrial or commercial sites. Appropriate conditions will be imposed to ensure the level of illumination does not result in unacceptable impacts. | |
| Can the intensity of the illumination be adjusted, if necessary? | A condition of consent will require the illumination to be adjustable. | YES |
| Is the illumination subject to a curfew? | A condition of consent will require the that the proposed signage not be illuminated between 12.00 midnight and 6.00am. | YES |
| 8. Safety Would the proposal reduce the safety for any public road, pedestrians or bicyclists? | The proposed signage is not considered to impact on the safety of pedestrians, bicyclists or anyone travelling on a public road. | YES |
| Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas? | The proposal does not obscure sightlines from public areas. | 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 (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.

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 |
|-----------------------------|-----|

Compliance Assessment

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

Detailed Assessment

5.4 Controls relating to miscellaneous permissible uses

The WLEP 2011 contains for following provision for Artisan Food and Drink Premises:

(10) Artisan food and drink industry exclusion

If development for the purposes of an artisan food and drink industry is permitted under this Plan in an industrial or rural zone, the floor area used for retail sales (not including any cafe or restaurant area) must not exceed:

- (a) 33% of the gross floor area of the industry, or
- (b) 400 square metres, whichever is the lesser.

The micro brewery (industry component of the development) consists of 471.0sqm of GFA (ground floor plus first floor mezzanine). The area designated to retail and tastings is 155sqm, or 33% of the gross floor area of the industry use. The applicant has provided a plan demonstrating compliance with this requirement.

Therefore, the proposal complies with the development standard contained until Clause 5.4(10) of the WLEP 2011.

Warringah Development Control Plan

Built Form Controls

| Built Form Control | Requirement | Proposed | % Variation* | Complies |
|----------------------------|--------------|------------------------------|--------------|----------|
| B5 Side Boundary Setbacks | Merit (West) | Unchaged | N/A | Yes |
| B5 Side Boundary Setbacks | Merit (East) | Nil (parking and food truck) | N/A | No |
| B7 Front Boundary Setbacks | 4.5m | Nil (outdoor seating) | N/A | Yes |
| B9 Rear Boundary Setbacks | Merit | 6.6m (Parking) | N/A | Yes |

***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 |
|--------|------------------------------|-----------------------------|
| | | |

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|--|------------------------------|-----------------------------|
| A.5 Objectives | Yes | Yes |
| B6 Merit Assessment of Side Boundary Setbacks | No | Yes |
| B8 Merit assessment of front boundary setbacks | Yes | Yes |
| B10 Merit assessment of rear boundary setbacks | Yes | Yes |
| C2 Traffic, Access and Safety | Yes | Yes |
| C3 Parking Facilities | No | Yes |
| C9 Waste Management | Yes | Yes |
| D3 Noise | Yes | Yes |
| D8 Privacy | Yes | Yes |
| D10 Building Colours and Materials | Yes | Yes |
| D14 Site Facilities | Yes | Yes |
| D18 Accessibility and Adaptability | Yes | Yes |
| D20 Safety and Security | Yes | Yes |
| D23 Signs | Yes | Yes |

Detailed Assessment

B6 Merit Assessment of Side Boundary Setbacks

The application proposes car parking and a food truck directly adjacent to the eastern side boundary. Given that this parking area would continue an existing arrangement and would be directly adjoining the car parking area at 28-30 Orchard Road, this is considered acceptable in this instance. Furthermore, the food truck would only be operational during taproom hours, therefore, the predominant use of this food truck is expected to be outside the operational hours of the adjoining businesses.

C3 Parking Facilities

The proposed development provides six (6) off-street, staff parking spaces located within the subject site. The applicant has also obtained a consent from the adjoining site, No.28-30 Orchard Rd, to use 12 (twelve) of the parking spaces within this adjoining lot's car parking area for patron use during taproom/takeaway hours.

A car parking rate for the use 'Artisan Food and Drink Industry' is not specified within Appendix 1 of the Warringah DCP. The control states that the minimum number of off-street parking required for development not included in the table must be in accordance with Roads and Maritime Services Guide to Traffic Generating Development or analysis drawn from surveyed data for similar development uses. The Roads and Maritime Services Guide to Traffic Generating Development does not specifically outline parking requirements for Industry such as that proposed.

The applicant has provided an operational management plan, outlining the details of the proposed use. The applicant has also provided a traffic and parking assessment report to demonstrate that the proposed use will not have an adverse impact on the surrounding locality with regards to parking and traffic generation.

Council's Traffic Engineers have reviewed the details of the proposed development with regards to off-street parking and traffic generation. Based on the details provided with the application, Council's Traffic

Engineers are satisfied that the development will not have an adverse impact based on the proposed use, hours of operation and operational details of the development. Full comments can be found earlier within this report from Council's traffic team.

Whilst Council's Traffic Engineers raise no objection to the proposal, further consideration will be given in accordance with the outcomes of the control, as below:

An adequate number of parking and service spaces that meets the demands generated by the development.

Comment:

The proposed change of use would facilitate a maximum of five (5) staff will be on site any one time. The staff car parking located off Mitchell Road would accommodate this demand. Since the original submission of the application, the patronage has been reduced to a maximum of 100 persons and the hours of operation of the taproom/takeaway have been amended to be after 5pm on the weekdays and after 1pm on Saturdays (and to not coincide with the brewery industrial use). This reduced patronage and amended operational hours means that there will be sufficient on-street parking spaces available within the surrounding area during the hours of operation as demonstrated in the traffic report. Furthermore, the applicant has also obtained a consent from the adjoining site, No.28-30 Orchard Rd, to use 12 parking spaces of this lot's car parking area for patron use.

Functional parking that minimises rainwater runoff and adverse visual or environmental impacts while maximising pedestrian and vehicle safety.

Comment:

The proposed development provides six (6) off-street parking spaces within the subject site. As these parking areas are existing and no additional works are required to facilitate these parking areas, there will be no change to the existing amount of rainwater run-off on the site, or any increase to the visual or environmental impacts from the parking spaces. The amended operational plan of management has provided measures to facilitate vehicle and pedestrian safety by:

- Ensuring driveway and parking area will be illuminated at night via a spotlight mounted on the rear building, pointing down the driveway towards Mitchell Road.
- Ensuring the parking area off Mitchell Road is used by staff only and that pedestrians enter or leave the site via the Orchard Road entry point. This will be facilitated by a gate on the driveway and signage indicating patrons are free to park at 28-30 Mitchell Road and must leave and enter via the Orchard Road entry point.
- Ensuring all loading/unloading activities are undertaken wholly within the site using the car parking area to the rear of the site outside taproom/takeaway hours (during brewery hours) when only 2 staff members are working.

Safe and convenient parking.

Comment:

The use of the six (6) off-street parking spaces located within the subject site provides both safe and convenient parking for staff. The use of No.28-30 Orchard Rd, off street parking spaces directly adjacent to the site provides safe and convenient parking for patrons. As above, the operational plan of management indicates safety measures to discourage patrons from using parking area/driveway off Mitchell Road (for parking and pedestrian access) and entering via the Orchard Road entry point. Sufficient on street parking is available along Orchard Road and Mitchell Road during the taproom hours to provide safe and convenient parking to patrons.

Based on the above, the proposed development is consistent with the outcomes of the control, subject to recommended conditions.

D3 Noise

An acoustic report has been submitted with the development application to address the potential noise impacts of the development. The development is not located in close proximity to residential zoned land. Council's environmental health officer has reviewed the submitted acoustic report and is satisfied the development will not have an unreasonable impact with regard to noise.

It is of note that to the north east of the site at (23 Orchard Road) there is a motor works shop with what appears to be a residential unit above, however, Council records show no planning history confirming this residential use. Furthermore, the owners of this property were notified about the proposal and no submissions were received regarding the proposed use. It should be noted that the subject site is located within an industrial zone where residential development is prohibited. Despite this, the operational plan of management specifies that a noise complaints register will be kept by Bucketty's Brewery and all complaints will be recorded and acted upon appropriately. Furthermore, the operational plan of management specifies that the business will advise patrons when leaving the premises to keep noise to a minimum. Similar neighborhood amenity safeguards are also specified within the NSW Police conditions (which will form any consent) which require the business owners to operate in a manner which reduces impact on noise.

Subject to the responsible management outlined within the operational plan of management and specified within the NSW Police conditions, the proposal is considered not to have an unreasonable impact with regard to noise.

D23 Signs

Description of non-compliance and/or inconsistency

The application proposes two (2) pieces of signage. The proposal includes the installation of a wall sign facing Orchard Road reading "Bucketty's Brewery" measuring 12.308m x 0.9m and another wall sign on the eastern elevation of the storage warehouse to the rear reading "Bucketty's Brewery" measuring 9.958m x 0.75m. The signs will be illuminated during taproom operating hours.

| Sign | Requirement | Width | Height | M ² | Complies |
|---|---|---------|--------|----------------------|----------|
| Sign 1 - Wall sign (painted onto a wall of a building or attached to the wall of a building, not being a sign elsewhere listed in this table) | <p>Shall not extend within 200mm of the top and sides of the wall.</p> <p>Shall not cover any window or architectural projections;</p> <p>Must be of a size and shape that relates to the architectural design of the building to which it is attached;</p> <p>Where illuminated, shall not be less than 2.7 metres above the existing natural ground level ground; and</p> <p>Shall not project more than 300mm from the wall.</p> | 12.308m | 0.9m | 11.08 m ² | Yes |
| | | | | | |

| | | | | | |
|---|---|---------------|--------------|--------------------------|------------|
| <p>Sign 2- Wall sign (painted onto a wall of a building or attached to the wall of a building, not being a sign elsewhere listed in this table)</p> | <p>Shall not extend within 200mm of the top and sides of the wall. Shall not cover any window or architectural projections; Must be of a size and shape that relates to the architectural design of the building to which it is attached; Where illuminated, shall not be less than 2.7 metres above the existing natural ground level ground; and Shall not project more than 300mm from the wall.</p> | <p>9.958m</p> | <p>0.75m</p> | <p>7.47m²</p> | <p>Yes</p> |
|---|---|---------------|--------------|--------------------------|------------|

Merit consideration

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

- *To encourage well designed and suitably located signs that allow for the identification of a land use, business or activity to which the sign relates.*

Comment:

The proposed signage relates to the proposed use of the building as a brewery and is considered to be suitably sited.

- *To achieve well designed and coordinated signage that uses high quality materials.*

Comment:

Adequate signage design and construction materials are demonstrated.

- *To ensure that signs do not result in an adverse visual impact on the streetscape or the surrounding locality.*

Comment:

The proposed signage is consistent with the land use and the streetscape character of the surrounding locality.

- *To ensure the provision of signs does not adversely impact on the amenity of residential properties.*

Comment:

The signage is not in the vicinity of any residential zone.
It is of note that to the north east of the site at (23 Orchard Road) there is a motor works shop with what appears to be a residential unit above, however, Council records show no planning history confirming this residential use. Furthermore, the owners of this property were notified about the proposal and no submissions were received regarding the proposed signage. It should be noted that the subject site is located within an industrial zone where residential

development is prohibited. However, despite this, suitable conditions have been imposed which ensure the illumination of signage ceases between the hours of 12.00 midnight and 6.00 am daily, that the signs must not flash, move or be constructed of neon materials and that the level of illumination be designed to ensure that excessive light spill or nuisance is not caused to any nearby premises. Furthermore, conditions have been imposed to ensure the intensity of the illumination can be adjusted so that in the event of any complaints the illumination can be reduced accordingly. Subject to these conditions, the signage is not considered to create unacceptable impacts to neighboring properties.

- *To protect open space areas and heritage items or conservation areas from the adverse impacts of inappropriate signage.*

Comment:

No public open space, heritage items or heritage conservation areas are located in the vicinity of the site.

An assessment of the application has also found the development to be consistent with the requirements of *State Environmental Planning Policy No. 64 - Advertising and Signage*.

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 DA2020/0160 for To use the premises as an artisan food and drink industry and associated signage on land at Lot A DP 413126, 26 Orchard Road, BROOKVALE, 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 |
| DA201 Rev.D (Demolition Ground Floor Plan) | 28/05/2020 | JF |
| DA202 Rev.D (Proposed Ground Floor Plan) | 28/05/2020 | JF |
| DA301 Rev.D (Elevations - Proposed) | 28/05/2020 | JF |
| DA302 Rev.D (Elevations and Sections) | 28/05/2020 | JF |
| DA400 Rev.D (Compliance Diagrams) | 28/05/2020 | JF |

| Reports / Documentation – All recommendations and requirements contained within: | | |
|---|--------------|--------------------|
| Report No. / Page No. / Section No. | Dated | Prepared By |
| BCA Compliance Audit Report | 14/02/2020 | PCA Services |
| Fire Safety Statement | 25/01/2020 | - |
| | | |

| | | |
|--|--------------|------------------|
| Waste Water Treatment Plan | - | Bucketty's Brew |
| Carpark and Driveway Certification | May 2020 | ML Traffic Engin |
| Traffic and Parking Impact Assessment (A1916314N (1a)) | May 2020 | ML Traffic Engin |
| Contamination Assessment Report (EP143-RP01) | 31 July 2020 | Metech Consulti |
| Operational Management Plan - Amended 3.8.20 | 03/08/2020 | Bucketty's Brew |
| Operational Noise Emission Assessment Rev.2 | 10/02/2020 | acoustic dynamic |

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 | 10/02/2020 | Bucketty's Brewery Pty Ltd |

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. 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 | 2020/180780 | 19/03/2020 |
| NSW Police | 2020/417324 | 16/07/2020 |

(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.

3. Approved Land Use

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of an Artisan Food and Drink Premises.

An Artisan Food and Drink Premises is defined as:

means 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.

4. **Adjustment of Illumination levels**

The signage shall be designed so that the intensity of the illumination can be adjusted.

Reason: To ensure traffic safety and maintain amenity.

5. **Prescribed conditions (Demolition):**

(a) 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 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
- (ii) 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.

(b) 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.

(c) 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.

Reason: Legislative Requirement.

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 (Demolition):**

(a) Unless authorised by Council:

Demolition and excavation works are restricted to:

- o 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) At all times after the submission a Notice of Commencement to Council, a copy of the Development Consent is to remain onsite at all times until completion of demolition works. The consent shall be available for perusal of any Authorised Officer.

(c) 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.

(d) 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.

(e) The applicant shall bear the cost of all works that occur on Council's property.

(f) No building, demolition, excavation or material of any nature shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(g) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(h) All sound producing plant, equipment, machinery or fittings will not exceed more than 5dB(A) above the background level when measured from any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy.)

(i) 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.

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

8. 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.

9. **Security Bond**

A bond (determined from cost of works) of \$1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security are required 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, and 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

10. **Amendments to the approved plans**

The following amendments are to be made to the approved plans:

- The proposed loading area off Orchard Road is to be used solely for staff parking. Loading is to occur using the car parking area to the rear of the site outside taproom/takeaway hours to enable it to leave in a forward direction.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure safety.

11. **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.

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

12. **Compliance with Standards**

The development is required to be carried out in accordance with all relevant Australian Standards.

(Note: At the time of determination the following (but not limited to) Australian Standards applied:

- (a) AS2601.2001 - Demolition of Structures**
- (b) AS4361.2 - Guide to lead paint management - Residential and commercial buildings**
- (c) AS4282:1997 Control of the Obtrusive Effects of Outdoor Lighting**
- (d) AS 4373 - 2007 'Pruning of amenity trees' (Note: if approval is granted) **
- (e) AS 4970 - 2009 'Protection of trees on development sites'***
- (f) AS/NZS 2890.1:2004 Parking facilities - Off-street car parking**
- (g) AS 2890.2 - 2002 Parking facilities - Off-street commercial vehicle facilities**
- (h) AS 2890.3 - 1993 Parking facilities - Bicycle parking facilities**
- (i) AS 2890.5 - 1993 Parking facilities - On-street parking**
- (j) AS/NZS 2890.6 - 2009 Parking facilities - Off-street parking for people with disabilities**
- (k) AS 1742 Set - 2010 Manual of uniform traffic control devices Set**
- (l) AS 1428.1 – 2009* Design for access and mobility - General requirements for access – New building work**
- (m) AS 1428.2 – 1992*, Design for access and mobility - Enhanced and additional requirements - Buildings and facilities**

*Note: The Australian Human Rights Commission provides useful information and a guide relating to building accessibility entitled "the good the bad and the ugly: Design and construction for access". This information is available on the Australian Human Rights Commission website [www.hreoc.gov.au/disability rights /buildings/good.htm](http://www.hreoc.gov.au/disability%20rights%20/buildings/good.htm). <www.hreoc.gov.au/disability%20rights%20/buildings/good.htm.>

**Note: the listed Australian Standards is not exhaustive and it is the responsibility of the applicant and the Certifying Authority to ensure compliance with this condition and that the relevant Australian Standards are adhered to.)

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. (DACPLC02)

13. **Compliance with standards (Demolition):**

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 Council prior to the commencement of demolition works.

Reason: To ensure the development is constructed in accordance with appropriate standards.

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.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

15. **Removing, Handling and Disposing of Asbestos**

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998)];
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

16. **Demolition Works - Asbestos**

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifying Authority, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

17. **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.

18. **Requirement to Notify about New Contamination Evidence**

Any new information revealed during works that has the potential to alter previous conclusions about site contamination or hazardous materials shall be immediately notified to the Council and the Principal Certifying Authority.

Reason: To protect human health and the environment.

19. **Road Reserve**

The applicant shall ensure the public footways and roadways adjacent to the site are maintained in a safe condition at all times during the course of the work.

Reason: Public safety.

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

20. **Removal of Redundant Driveways**

All redundant driveways shall be removed and reinstated to Council standard kerb and gutter. Suitably prepared plans shall be submitted to approved by Council. All costs associated with the works shall be borne by the applicant.

A plan checking fee (amount to be advised) and lodgement of a performance bond may be required from the applicant prior to the release of the approval.

Reason: To maximise on street car parking by removing driveways that are no longer needed in accordance with Council policy

21. **Fire Safety Upgrade**

The fire upgrading measures and works to upgrade the building as detailed and recommended in the Fire Safety and Building Code of Australia Report prepared by Private Certifiers Australia dated 14/02/2020 are to be fully implements to ensure a BCA compliant building.

Details demonstrating implementation are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To ensure adequate provision is made for fire safety in the premises for building occupant safety.

22. **Change of Use**

A person must not commence occupation or use (or change of use where an existing building) of the whole or any part of a building (within the meaning of section 109H (4) of the Act) unless an Interim Occupation Certificate or Final Occupation Certificate has been issued in relation to the building or part.

The Principal Certifying Authority is required to be satisfied, amongst other things, that the building complies (or will, when completed, comply) with such of the Category 1 fire safety provisions as are applicable to the building's proposed use.

Note: The obligation to comply with the category 1 fire safety provisions may require building work to be carried out even though none is proposed or required in relation to the relevant development consent.

Reason: Statutory requirement under S109N of the Environmental Planning & Assessment Act 1979.

23. **Trade Waste Agreement**

Before an Occupation Certificate is issued, the applicant must provide evidence to the Principal Certifying Authority of an appropriate Trade Waste agreement with Sydney Water.

Reason: To comply with legislation.

24. **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.

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

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.

26. **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.

27. **Sydney Water**

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au <<http://www.sydneywater.com.au>> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure compliance with the statutory requirements of Sydney Water.

28. **Fire Safety Matters**

At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and, Fire and Rescue NSW.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Interim / Final Occupation Certificate.

Each year the Owners must send to the Council and Fire and Rescue NSW, an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement under Part 9 Division 4 & 5 of the Environmental Planning and Assessment Regulation 2000.

29. **Loading Management Plan**

A loading area management plan will be required identifying the following;

- The loading / unloading to be managed wholly within the site.
- The loading and unloading to be restricted to outside of the Artisan Food and Drink Taproom/Cellar Door hours operational hours.

The plan must be submitted to and approved by the Certifying Authority prior to the release of any Occupation Certificate.

Reason: To ensure loading services to not impact the public roads and the Artisan Food and Drink use (DACTRFPOC1)

30. **Restriction on pedestrian access via vehicle access to the car park**

Appropriate measures such as a physical gate to be installed at the driveway to the car park off Mitchell Road to ensure the customers will not access the premises via the driveway. The gate should be installed with the minimum of 6.0 metre setback from the site Boundary and shall be closed during the Artisan Food and Drink taproom/cellar door operational hours. The driveway shall be adequately lit.

Reason: To ensure pedestrian safety(DACTRFPOC2)

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

31. **Deliveries and Waste Collection**

Deliveries and waste collection services (including trade waste) must only occur during the following hours:

- Weekdays – 7:00am – 5:00pm
- Weekends and Public Holidays – 6:00am – 10:00pm

Deliveries and waste collection services (including trade waste) must not occur during Taproom/Cellar Door hours.

Reason: To minimise disruption to neighbouring properties and ensure pedestrian safety.

32. **External Sound equipment**

No sound equipment is to be used for the amplification of recorded or live music or any other purposes in the outdoor area of the premises. (DACHPGOG5)

External Sound equipment

33. **Compliance with Acoustic Report**

Full compliance with acoustic report by titled "Operational Noise Emission Assessment" dated 10 February 2020 by Acoustic Dynamics, including, but not limited to, maximum decibels levels for noise emissions from the site is required for the life of the development.

Reason: To comply with legislation and to preserve the amenity of the surrounding neighbourhood (DACHPGOG6)

34. **Visitors Sign**

A sign, legible from the street, shall be permanently displayed to indicate that no visitor parking is available on the subject site and that visitor parking is available on the adjoining site, No.28-30 Orchard Road and the visitor car parking spaces shall be clearly marked as such.

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

Reason: To ensure that visitors are aware that parking is available and to identify those spaces to visitors.

35. **Hours of Operation**

The hours of operation are to be restricted to:

Industrial operations for Brewery & Distillery

- 6:00 AM to 4:00 PM Monday to Friday

Taproom./Cellar Door Hours

- 5:00 PM to 12:00 AM (midnight) Monday to Friday
- 1.00 PM to 12.00 AM (midnight) Saturday
- 11:00 AM to 10.00 PM Sunday

Takeaway Sales

- 5:00 PM to 11:00 PM Monday to Friday
- 1.00 PM to 11.00 PM Saturday
- 11:00 AM to 10.00 PM Sunday

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

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

36. **Hours of Illumination**

Illumination of signage at the subject premises shall cease between the hours of 12.00 midnight and 6.00 am daily.

Signs must not flash, move or be constructed of neon materials.

Reason: To ensure residential premises are not affected by inappropriate or excessive illumination. (DACPLG11)

37. **Illumination Intensity and design**

The level of illumination and/or lighting intensity used to illuminate the signage is to be minimised and the design is to be such to ensure that excessive light spill or nuisance is not caused to any nearby premises.

Reason: To ensure appropriate forms of signage that are consistent with Council's controls and those that are desired for the locality, and do not interfere with amenity of nearby properties. (DACPLG12)

38. **Loading and Unloading**

All loading and unloading of vehicles and the delivery of goods must be carried out wholly within the site.

Reason: To ensure that deliveries can occur safely within the site and does not adversely affect traffic or pedestrian safety and amenity. (DACPLG20)

39. **Deliveries**

No deliveries, loading or unloading associated with the premises are to take place between the hours of 5:00pm and 6:00am on any day.

No deliveries, loading or unloading associated with the premises are to take place during the Artisan Food and Drink operational hours.

Reason: To protect ensure the acoustic amenity of surrounding properties and to ensure loading services to not impact the public roads and the Artisan Food and Drink use

40. **Maximum patron capacity**

The patrons in attendance at any one time is to be restricted to the maximum of 100.

Reason: To minimise traffic and parking impact(DACTRGOG1)

41. **Off-Street Parking Requirements**

A minimum of Six (6) off-street parking spaces must be maintained for the exclusive use of the staff of the premises at all times.

Reason: To ensure that the development does not cause adverse impacts to on-street parking.

42. **No encroachment on footpath/Road reserve**

The proposed outdoor seating area adjoining Orchard Road shall not encroach on Council owned land or public footpath at any time. The outdoor seating area is to be appropriately marked with a temporary fence around the entire boundary of the licensed area as specified within the submitted Operational Plan of Management.

Reason: To ensure public safety, prevent encroachment onto pedestrian facilities and to be in accordance with the determination other departments, authorities or bodies

43. **Security**

Uniformed licensed security are to be employed at the ratio of not less than one per one hundred (1:100) patrons or part thereof.

Reason: To ensure public safety and to be in accordance with the determination other departments, authorities or bodies.

44. **Pedestrian Entry**

Signage, legible from Mitchell Road, within the premises and within the rear outdoor seating area, shall be permanently displayed to indicate that pedestrian access is not available from the rear driveway off Mitchell Road. This signage shall also indicate that pedestrian entry is only available from the Orchard Road entry point, with appropriate arrows/directions indicating the location of this entry point

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

Reason: To ensure pedestrian safety.

45. **Odour**

Odour from any manufacturing or cooking process shall be managed so as to not adversely impact on any neighbouring commercial or residential occupier.

Reason: To maintain amenity of the area.

46. **Noise**

The use of the premise 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

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

Signed



Gareth David, Planner

The application is determined on 07/08/2020, under the delegated authority of:



Steven Findlay, Manager Development Assessments