

24 June 2021

The Chief Executive Officer
Northern Beaches Council

Dear Sir / Madam,

STATEMENT OF ENVIRONMENTAL EFFECTS
26 Orchard Road, Brookvale. Bucketts Brewing Co.
Request for modification under Section 4.55(2) to Consent DA2020/0160

1 Introduction & Overview

This modification seeks to change the operating hours of the approved artisan food and drink premises and increase its approved patron numbers.

Operating hours are proposed to be extended to include lunchtime trading on Thursdays and Fridays with patron numbers to be increased relative to demand and the day/time of the week.

The proposed seeks to modify conditions (35) hours of operation, (40) maximum number of patrons, and (33) 'compliance with the acoustic report'. It is assessed that the proposal involves appropriate changes to the original development consent, noting that:

- The proposed patron increase is limited to Friday and Saturday evenings when patron demand and car parking availability is at its highest.
- The proposed modifications are within the environmental capacity established by the accompanying acoustic and transport assessment reports.
- There are appropriate operational management measures in place to ensure that the use can operate within acceptable (and established) environmental limits.

2 Environmental Assessment

2.1 Site description

The existing development for the approved artisan food and drink premises is located at 26 Orchard Road, Brookvale. The land is legally described as Lot A in Deposited Plan 413126 and has an approximate area of 1,160m².

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 an access handle at the rear which services Mitchell Road and is 20.1m in length.

The 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.

The nearest residential development is located approximately 200m to the south of the subject site on Wattle Road.

2.2 Background - recent planning approval and operation

Development Application DA2020/0160 was approved by Council on 10 August 2020 for:

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

Key aspects of the approval including its operating hours are as follows:

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

The approved development provides six (6) off-street, staff parking spaces located within the subject site. The land use has also obtained a consent from the adjoining site at 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.

An **'artisan food and drink industry'** is defined in the LEP dictionary as:

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

(a) a retail area for the sale of the products,

(b) a restaurant or cafe,

(c) facilities for holding tastings, tours or workshops.

Note—

See clause 5.4 for controls in industrial or rural zones relating to the retail floor area of an artisan food and drink industry'.

LEP clause 5.4(10) limits such land uses in the following manner-

(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 (light industry component of the development) consists of 471.0sqm of GFA (ground floor plus first floor mezzanine). The area designated to an artisan food and drink premise is 155sqm, or 33% of the gross floor area of the micro-brewery. No change is proposed to this aspect of the approval and compliance is maintained with clause 5.4(10) of the WLEP 2011.

Since commencing, the business has been operated responsibly. There have been no incidents or complaints from neighbouring properties in relation to impacts on amenity or disturbance. The business is popular during afternoon and evening times but is not a late-night trading venue, which is consistent with the nature of Tap Houses associated with micro-breweries being generally well-managed, with lower rates of incidents, and fewer compliance issues than other late trading venues.

2.3 Brookvale location and property features

Key features of the site, its Brookvale location, and its development include:

- It is located 250m west of Pittwater Road which is one of three major road corridors serving the region and is serviced by a range of regular bus routes, some of which are of high frequency (e.g. the B1 and 199 bus routes.)
- It is centrally located within Brookvale which is a major industrial and retail services and employment centre that services the Northern Beaches region.
- The site is appropriately distanced from residential zoned areas; the closest of which is 200m to the south of the site.



Figure 1 – Aerial view of 26 Orchard Road, Brookvale (Northern Beaches Council)

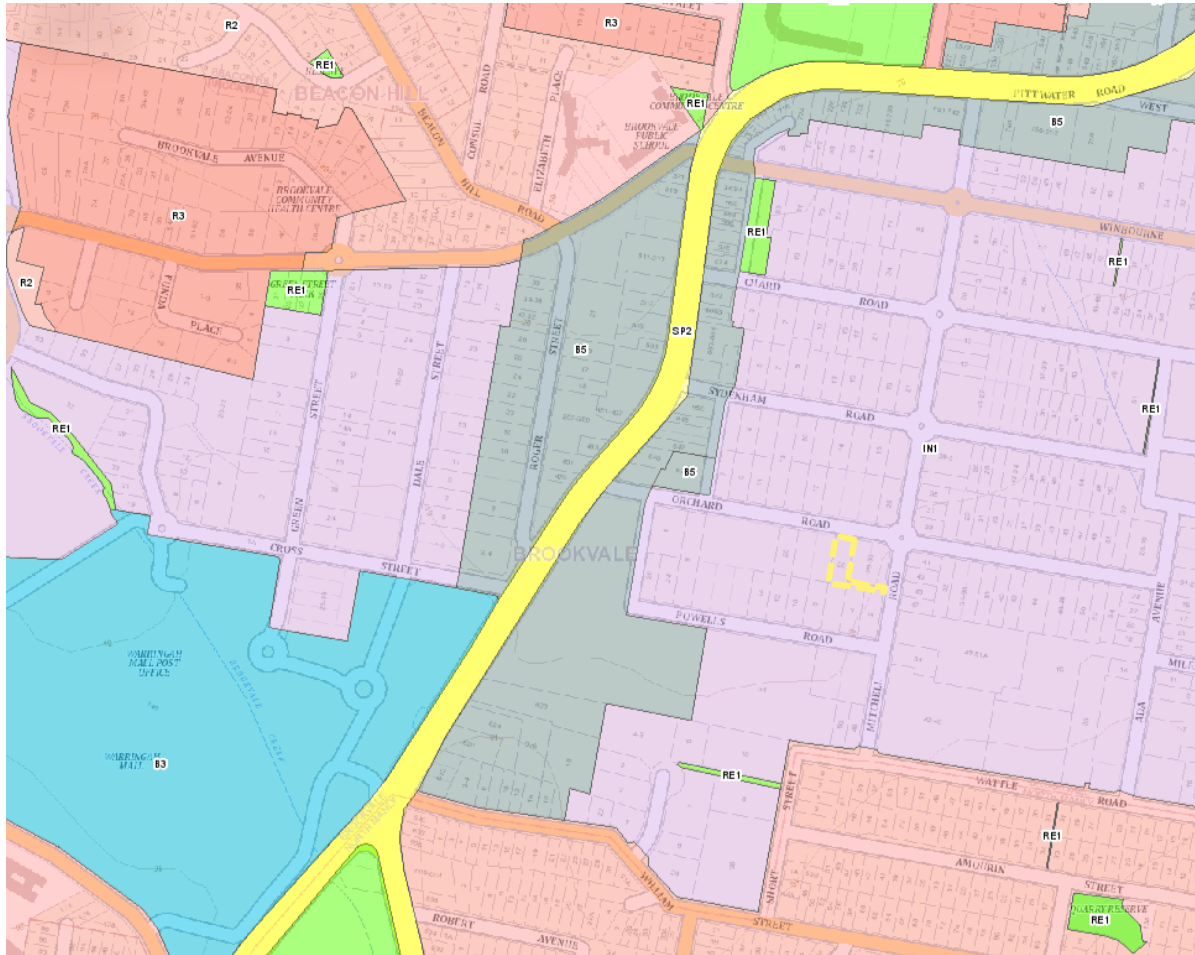


Figure 2 – the location of the site within the Brookvale centre, its zoning context and proximity to Pittwater Road

3 Proposed Modifications

This proposal seeks to modify Conditions 33, 35, and 40 of the development consent. The conditions are repeated below along with the proposed modifications:

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

The condition is sought to be modified to read as follows (emphasis added to highlight the proposed changes):

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

Weekday lunch

- **Thursday – Friday (12:00pm – 4:00pm) = 20 patrons max**

Weekday dinner & evenings

- Monday – Friday **(4:00pm – 7:00pm) = 130 patrons max**
- Monday – Friday **(7:00pm – 12:00am) = 200 patrons max**

Weekend lunch and dinner

- Saturday – Sunday **(12:00pm – 4:00pm) = 130 patrons max**
- Saturday – **(4:00pm – 12:00am) = 200 patrons max**
- Sunday **(4:00pm – 10:00pm) = 200 patrons max**
- **Public Holidays - (12:00pm – 4:00pm) = 130 patrons max and (4:00pm – 12:00am) = 200 patrons max**

Takeaway Sales

- **12:00 PM** to 11:00 PM Monday to Friday
- **12.00 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

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Condition 40 – Maximum patron capacity Number of patrons currently states:

*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)*

The condition is sought to be modified to read as follows (emphasis added to highlight the proposed changes):

Condition 40 – Maximum patron capacity Number of patrons currently states:

*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)*

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Condition 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.

The condition is sought to be modified to read as follows (emphasis added to highlight the proposed changes):

Condition 33 – Compliance with Acoustic Report

Full compliance with acoustic report by titled "Operational Noise Emission Assessment" dated 10 May 2021 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.

3.1.1 Modifications to the Operational Plan of Management

The above modifications are reflected in updates to the approved Operational Plan of Management which accompanies the application.

STATEMENT OF ENVIRONMENTAL EFFECTS

4 Section 4.55(2) and environmental assessment considerations

The following is a Statement of Environmental Effects made under the provisions of Section 4.55(2). Having regard to Section 4.55(2) a consent authority may modify the consent if:

‘(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all)’

In this regard, it is noted that the nature of the proposed modifications are modest and within the scope of Section 4.55 (2) being modifications involving substantially the same development for which consent was originally approved on the land.

5 Matters for consideration

The following Statement of Environmental Effects considers the nature of the proposed modification and the potential impact of the change on environmental planning grounds.

The following matters for consideration are relevant to the consideration of the proposal as set-out in 4.15 Evaluation (1) –general of the Environmental Planning and Assessment Act 1979.

6 Warringah LEP 2011

Planning considerations from the Warringah LEP relevant to the proposed modifications are noted and addressed as follows.

6.1 Zoning and key environmental affectations

The property is zoned IN1 General Industrial under the Warringah Local Environmental Plan 2011 as is most of the surrounding land. The site is affected by flooding risk which is addressed below.

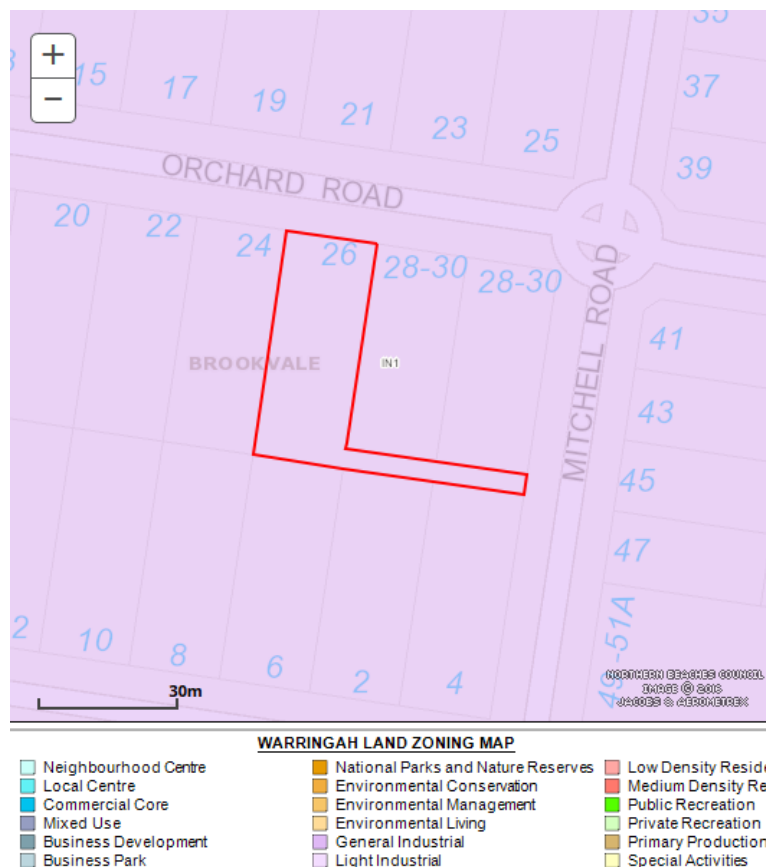


Figure 3 – zoning map extract

Clause 2.3(2) of the LEP requires the consent authority to 'have regard to the objectives for development in a zone' in relation to the proposal. The objectives of the zone are stated as follows:

- To provide a wide range of industrial and warehouse land uses.
- To encourage employment opportunities.
- To minimise any adverse effect of industry on other land uses.
- To support and protect industrial land for industrial uses.
- To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.
- To enable a range of compatible community and leisure uses.

- *To maintain the industrial character of the land in landscaped settings*

In response -

- The modest proposed extension to operating hours to provide lunchtime food and beverage on Thursdays and Fridays will assist in providing services to meet the day-to-day needs of workers in the area.
- As demonstrated by the acoustic assessment and its recommendations, the proposed modifications will not result in any unreasonable or inappropriate amenity impacts upon the adjoining and nearby properties.
- As demonstrated by the traffic and parking assessment report, the proposed modifications will not result in any unreasonable or inappropriate traffic generation or car parking demand impacts on the adjoining and nearby properties and will not have any significant or inappropriate adverse effect on other land uses.
- The proposal will provide employment opportunities and support the ongoing approved land use.

For these reasons, the proposal is assessed as being consistent with the IN1 zone objectives. Accordingly, the proposal has had sufficient regard to the zone objectives and there is no statutory impediment to the granting of consent.

7 Land and Environment Court planning principle

The Land and Environment Court of NSW in the authority of *Vinson v Randwick Council* [2005] NSWLEC 142 at 84-85 established principles (2 questions) for consideration relating to the extension of trading hours and an increase in patron numbers for a licensed premises where there may be an adverse impact on residential amenity.

The matters which arise for determination of the acceptability or otherwise of the application are the impacts on the amenity of the surrounding residential properties. The questions established by the judgement are:

What is the level of probable future impacts? and

Can the measures proposed by the applicant reduce them to an acceptable level?

Regard has been had to the planning principle in relation to the proposed modifications and the following responses are made:

- An Acoustic Assessment Report dated 10 February 2020 accompanied the DA DA2020/0160 and confirmed that the property/land use can satisfy acoustic requirements subject to the operational measures that were included in the approved Operational Plan of Management.
- The proposed modification is accompanied by an acoustic assessment report dated 10 May 2021 by Acoustic Dynamics (May 2021) consultants which assesses the noise emission levels of the proposed increase from 100 to 200 patrons. In summary the report finds that the proposed patron increase will have an acceptable impact. The scope and findings of the assessment are documented in section 3.2 of this report.
- Since commencing, the business has been operated responsibly, without incident. There have been no complaints from neighbouring properties in relation to the operation of the Tap room. The business is popular during afternoon and evening times and is not a late

trading venue. In this regard, the modification involves extending daytime use, not within the more sensitive night-time periods.

- As per condition 2 of the development consent, the land use is approved in accordance with the conditions by the NSW Police [Northern Beaches Area].
- As per condition 9 of the development consent, the land use is approved with an Operational Plan of Management which addresses the following key areas relating to maintaining appropriate amenity levels:
 - Management responsibilities
 - Staff training
 - Noise management/patron behavior / outdoor Seating
 - Management of occupancy numbers
 - Security measures & CCTV
 - Litter management
 - Liquor service/RSA
 - Complaints, incident reporting and management
 - Smoke free environment responsibilities
 - Parking & Loading Safe transport
- 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.
- The Operational Plan of Management specifies that the business will advise patrons when leaving the premises to keep noise to a minimum.
- Neighbourhood amenity safeguards are specified within the NSW Police conditions which require the business owners to operate in a manner which reduces impact on noise.
- The revised floor plan accompanying the proposed modification demonstrates that the additional patrons can be appropriately accommodated (see excerpt from architectural plan at Figure 4 below).
- The owners have demonstrated that they are responsible managers of the business that are diligent in implementing the provisions of the Operational Plan of Management.
- These measures have (to-date) proven to be adequate in maintaining the amenity of nearby residential properties at appropriate levels.

In summary, it is assessed that:

- A proposed increase in patrons is within the assessed environmental capacity of the acoustic and parking assessment reports relating to the site/land use.
- Extension of daytime use is proposed rather than, later, more sensitive night-time hours and residential zone land is appropriately separated approximately 200 metres to the south of the site.
- The proposed modifications do not correspond with the peak times of land use activity of nearby industries which are predominantly Monday to Friday during daylight hours.

- There are appropriate measures in place, both in terms of the physical characteristics of the premises and operational management provisions, to ensure that the use can operate within acceptable (and established) environmental limits.

Based on the above, the court's principles are assessed to be satisfied by the proposal.

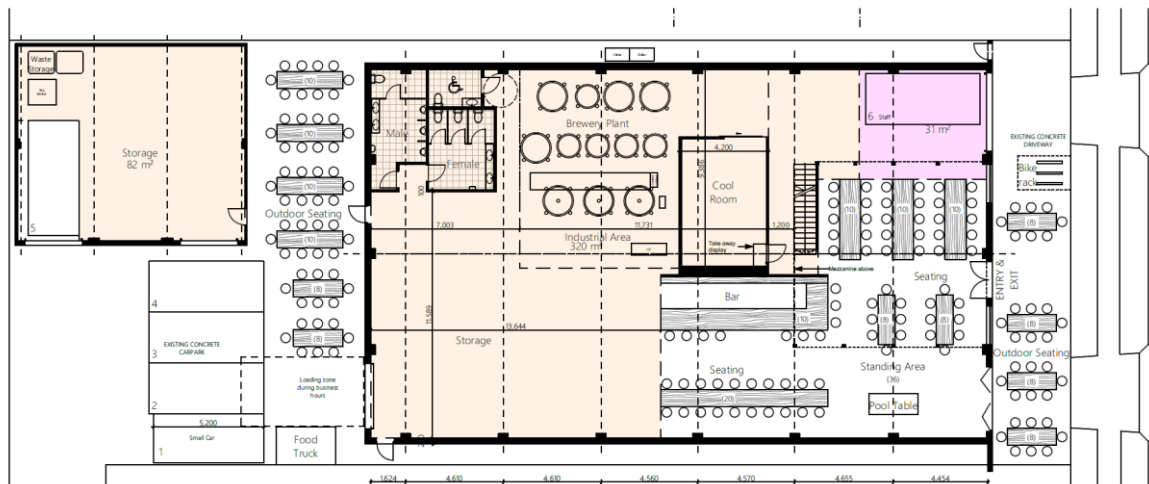


Figure 4 - the revised floor plan demonstrates that the proposed additional patrons can be appropriately accommodated (excerpt architectural plan)

8 Warringah DCP

Relevant planning controls from the Warringah DCP to the proposed modification are noted and addressed as follows.

8.1 DCP Part C3 - Car parking facilities

Part C3 car parking facilities is applicable to the proposal has been considered in relation to the proposed modifications.

The Warringah DCP 2011 establishes car parking requirements for Restaurants, being whichever is the greater of:

- 15 spaces per 100m² GFA, or
- 1 space per 3 seats.

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.

Other key / relevant provisions of the control are:

2. Off street parking is to be provided within the property demonstrating that the following matters have been taken into account:

- the land use;
- the hours of operation;

- the availability of public transport;
- the availability of alternative car parking; and
- the need for parking facilities for courier vehicles, delivery / service vehicles and bicycles.

In response, the proposed modification is accompanied by a parking demand assessment report by Auswide consulting (April 2021). The assessment states:

As a part of this study, parking utilization surveys were undertaken to determine the public parking occupancy on:

Thursday 15th April (12:00pm – 4:00pm)

Friday 16th April (5:00pm – 8:00pm)

Saturday 17th April (9:00pm – 12:00pm)

The survey area considered all the on-street parking spaces available within an approximately 250m radius of the site (generally regarded as the acceptable walking distance to the site). This area was carefully chosen to represent the areas where parents are most likely to park their vehicles in consideration of crossings and children. The survey area map and the full results of this survey are presented in Appendix: A – D. The following sections summarise and discuss these results.

The parking observations showed that there are approximately 302 on-street available parking spaces within 250m of the subject site. Generally, the occupancy for these spaces are between 75.8 – 79.5% on Thursday, 57.3 – 74.2% on Friday and 35.4– 48% on Saturday.

These percentages indicate medium-high occupancy throughout the day with the highest occupancy (79.5%) observed at 1:00pm on Thursday. The average occupancy for this area is 62.5% with demand rarely exceeding 75%.

A car parking demand survey was conducted to determine available parking within 100m of the subject site. Assessing the locality of the site, there are approximately 302 on-street car parking spaces available. The parking survey results indicated that there is a sufficient amount of car spaces available for staff and patrons to utilise despite the increase of patrons’.

The report states in relation to the DCP’s car parking rate

‘The car parking demand for the site is deemed unrealistic as the development has maintained functionality with the current patron capacity without exhausting the number of available on street car parking spaces. As the main change to the existing development is for an increase of patronage rather than an alteration of land use, the travel patterns of patrons are expected to remain the same post-change. As shown in Table 2, out of the 3,168 patrons surveyed more than 60% walk to the site with only 18% of patrons driving. Relating the number of patrons that drive with the maximum number of patrons permitted on-site, 36 patrons will be driving to the site and by applying the DCP parking rate, there will be a car parking requirement of 12 spaces. With 6 spaces available, there is a realistic shortfall of 6 spaces for the development.

In conclusion:

- The maximum proposed patronage increase (100 patrons) is limited to Friday and Saturday evenings when patron demand and car parking availability at its highest. This peak operating period does not coincide with higher level use of the local industrial area, there will be adequate public parking available within a short walk of the site. Furthermore, there is appropriate public transport provision within a short walk of the site.
- Proposed lunchtime operation is limited to 20 patrons and is within the car parking capacity of the area noting that a portion of patrons will be drawn from various local businesses within walking distance of the site.
- The parking assessment report has demonstrated that the parking generation of the proposed usage can be accommodated through a combined of parking onsite, within the adjacent property, and within the local street network (approx. 100m from the site).
- The proposed modifications to the approved operating times and patron numbers will not result in any significant or unreasonable additional traffic or on-street car parking demand.

Based on the above, the proposal is assessed as satisfactory in addressing potential traffic and parking assessment impact considerations.

8.1.1 DCP Part D3 - Noise

In response to D3 the proposed modification is accompanied by an acoustic assessment report by Acoustic Dynamics consultants (May 2021) the scope of which included:

Review of criteria from Council, NSW EPA, OLG, and other relevant documents relating to acoustics;

Utilise recently collected unattended noise monitoring data to determine existing noise emission levels;

Establish relevant project specific noise emission criteria; and

Conduct modelling to determine noise emission levels from the proposed extension of trading hours.

Further to the noise monitoring and measurements conducted, our review of the relevant acoustic criteria, requirements and our calculations, the proposed operation is compliant with relevant noise emission criteria of the Northern Beaches Council, NSW EPA, the POEO Act 1997, and the OLG for the proposed hours of operation.

The assessment concludes:

Acoustic Dynamics' analysis and prediction calculations indicate the subject brewery achieves compliance with the relevant noise emission criteria, however, Acoustic Dynamics recommends the incorporation of the following management plan to protect the acoustic amenity of the surrounding area.

In terms of management plan measures, the assessment recommends:

The following management plan outlines procedures to ensure noise emission from activities associated with the proposed brewery are kept to a minimum, including:

- *Ensuring patrons leave the premises in a quiet manner to minimise any potential impacts on the surrounding amenity, including signage*

reminding patrons to be aware of their neighbours and to leave in a quiet manner, via Warringah Road if possible;

- *Noise generating activities such as placing empty glass bottles in bottles bins are conducted during the day time hours only;*
- *Amplified music (including live music) should not exceed a maximum reverberant noise level of 90 db(A) within the bar service area;*
- *Although not necessary for compliance, should the proponent wish to further improve the acoustic amenity of the area, the roller shutter at the south of the premises could be partially lowered during evening hours;*
- *Mechanical equipment should be regularly maintained and serviced to maintain low mechanical noise emission levels; and*
- *At the cessation of trade, staff and security should actively discourage loitering near the venue to minimise any potential impacts on the surrounding amenity.*

Based on the above, the proposed will not result in any significant or unreasonable additional acoustic impacts and the proposal is assessed as satisfactory in addressing potential acoustic impact considerations.

9 Section 4.15 Matters for Consideration and 4.55(2) Modifications

The proposal has been assessed having regard to the matters for consideration pursuant to S4.15(1) of the Act, and to that extent, Council can be satisfied that:

- The site is appropriately located in relation to residential zoned land for accommodating the proposed modifications. There will be no significant or unreasonable adverse environmental impacts arising from the proposal.
- The increase in patrons is proposed is within the capacity of the assessment reports relating to the site/land use.
- The extension of daytime use is proposed rather than, later, more sensitive night-time hours.
- The proposed patronage increase is limited to Friday and Saturday evenings when patron demand is highest and car parking availability at its highest.
- The proposal is compatible with the current and likely future land use character of development within the local context.
- There are appropriate measures in place, both in terms of the physical characteristics of the premises and operational management provisions to ensure that the use can operate within acceptable (and established) environmental limits.
- The proposal will not result in any significant unacceptable impacts that limit the use or enjoyment of nearby or adjoining land.
- The proposal is permissible and consistent with the objectives of the zone, pursuant to the LEP. The proposal satisfies the relevant planning provisions relating to the site.
- The site is suitable and capable of accommodating the proposed modification based on its environmental affectations which have been appropriately investigated and assessed.
- The proposed modifications to Development Consent 2020/0160 are appropriate changes to the development consent. The development as modified is substantially the same development as the development for which consent was originally granted.

10 Conclusion

The proposed modifications to Development Consent DA2020/0160, 26 Orchard Road, Brookvale, represent appropriate changes to the development consent.

The proposed development as modified is substantially the same development as the development for which consent was originally granted and within the scope of Section 4.55(2).

It is assessed that the proposed development, as modified, is satisfactory and the modification may be approved by Council.

Yours sincerely,



Michael Haynes
Director - BBF Town Planners