

DEVELOPMENT APPLICATION ASSESSMENT REPORT

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| Application Number: | DA2021/1207 |
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|---|---|
| Responsible Officer: | Gareth David |
| Land to be developed (Address): | Lot 4 SP 95443, 4 / 180 South Creek Road WHEELER HEIGHTS NSW 2097 |
| Proposed Development: | Extension of approved trading hours for a food and drink premises and outdoor seating |
| Zoning: | Warringah LEP2011 - Land zoned B1 Neighbourhood Centre |
| Development Permissible: | Yes |
| Existing Use Rights: | No |
| Consent Authority: | Northern Beaches Council |
| Land and Environment Court Action: | No |
| Owner: | Natalie Francesca Makowski Ilia Makowski |
| Applicant: | Toth Brothers Group Pty Ltd |

| | |
|----------------------------------|--------------------------|
| Application Lodged: | 30/07/2021 |
| Integrated Development: | No |
| Designated Development: | No |
| State Reporting Category: | Commercial/Retail/Office |
| Notified: | 11/08/2021 to 25/08/2021 |
| Advertised: | Not Advertised |
| Submissions Received: | 3 |
| Clause 4.6 Variation: | Nil |
| Recommendation: | Approval |

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| Estimated Cost of Works: | \$ 0.00 |
|---------------------------------|---------|

PROPOSED DEVELOPMENT IN DETAIL

The Development Application seeks consent for the extension to hours of operation of a approved Food and Drink Premises and the use of an external area as outdoor seating and dining.

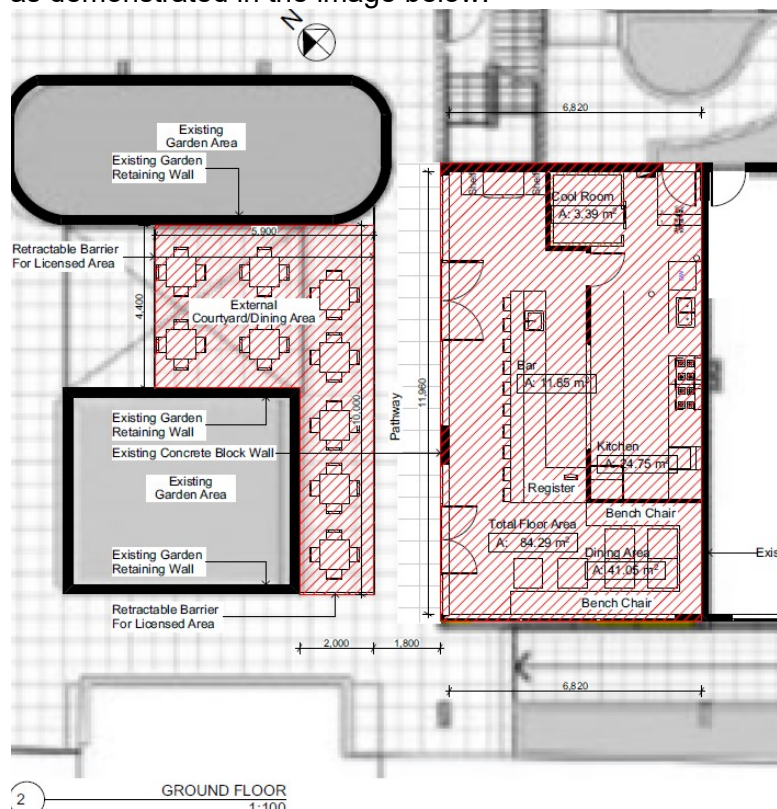
Specifically the proposal seeks consent for the extension of operational hours as follows:

- Monday: 6.00am – 10.00pm
- Tuesday: 6.00am – 10.00pm
- Wednesday: 6.00am – 10.00pm
- Thursday: 6.00am – 10.00pm

- Friday: 6.00am - 10.00pm
- Saturday: 6.00am - 10.00pm
- Sunday: 6.00am - 10.00pm

Note: The hours of operational hours were approved from 7.00am - 7.00pm - Monday - Sunday within the original development consent (DA2016/0792) for the shoptop housing development. This consent specifies that "*Modification to these operating hours is to be made through a separate development application.*"

The proposal also seeks consent for the use of exclusive outdoor seating on private strata owned land as demonstrated in the image below:



Note: The original development consent (DA2016/0792) for the shoptop housing development approved this area for the use of outdoor seating.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;

- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Development Control Plan - C3 Parking Facilities

Warringah Development Control Plan - D3 Noise

Warringah Development Control Plan - D18 Accessibility and Adaptability

Warringah Development Control Plan - D20 Safety and Security

SITE DESCRIPTION

| | |
|-----------------------------------|---|
| Property Description: | Lot 4 SP 95443 , 4 / 180 South Creek Road WHEELER HEIGHTS NSW 2097 |
| Detailed Site Description: | <p>The site is located at Shop 4, 180 South Creek Road, Wheeler Heights and is legally described Lot 4 in SP 95443. The site is located on the north-eastern side of South Creek Road and is a ground floor tenancy located within a recently constructed shop top housing development.</p> <p>The entire site of 180 South Creek Road, Wheeler Heights is generally rectangular with a total area of approximately 2660 square metres by survey with a 70.34 metre street frontage to South Creek Road. The site currently contains a recently constructed, multi-storey shop top housing development. The land is zoned B1 Neighbourhood Centre under the provisions of Warringah Local Environmental Plan 2011 (WLEP2011).</p> <p>Shop 4 is currently under construction for the internal fitout as a food and drink premises as approved within Complying Development Certificate (CDC2021/0463). Shop 4 is located centrally within the development, directly facing South Creek Road and a communal public courtyard comprising of landscaping and seating with toilet facilities and pedestrian access to Penrith Avenue.</p> <p>Surrounding development consists mainly of single detached dwellings. Another shop top housing development is located across Penrith Avenue to the south east. St Matthews Farm Reserve is located approximately 100m to the south.</p> |

Map:



SITE HISTORY

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

- **DA2016/0792** - Development Application for demolition works, construction of a shop top housing development, comprising retail premises, residential apartments, basement carparking and strata subdivision - Approved 14/12/2016
- **CDC2021/0463** - Complying Development Certificate for the fitout of shop 4 of a food and drink premises - Approved 25/05/2021
- **DA2020/1110** - Use of Lot 1 as a cafe including fitout and signage - Approved 04/01/2021

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

| Section 4.15 Matters for Consideration' | Comments |
|--|--|
| Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument | See discussion on "Environmental Planning Instruments" in this report. |
| Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument | Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The proposal relates to a change of hours of a new shop that has been recently constructed. No excavation or building works are proposed. |
| Section 4.15 (1) (a)(iii) – Provisions | Warringah Development Control Plan applies to this proposal. |

| Section 4.15 Matters for Consideration' | Comments |
|--|---|
| of any development control plan | |
| Section 4.15 (1) (a)(iia) – Provisions of any planning agreement | None applicable. |
| Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000) | <p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to a Operational Plan of Management.</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 clause is not relevant to this application.</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 clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p> |
| Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality | <p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact</p> |

| Section 4.15 Matters for Consideration' | Comments |
|--|--|
| | The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use. |
| Section 4.15 (1) (c) – the suitability of the site for the development | The site is considered suitable for the proposed development. |
| Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs | See discussion on “Notification & Submissions Received” in this report. |
| Section 4.15 (1) (e) – the public interest | No matters have arisen in this assessment that would justify the refusal of the application in the public interest. |

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 11/08/2021 to 25/08/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 3 submission/s from:

| Name: | Address: |
|---------------------------|---|
| Ms Elizabeth Jane Forsyth | 205 South Creek Road WHEELER HEIGHTS NSW 2097 |
| Mr Stephen John Inglis | PO Box 5095 WHEELER HEIGHTS NSW 2097 |
| Mrs Jan Inelis | 193 South Creek Road DEE WHY NSW 2099 |

The following issues were raised in the submissions and each have been addressed below:

- Inadequate parking
- Use and proposed hours is not suitable for the character of the area
- Anti-social behavior associated with liquor license
- Noise impacts from proposed hours and outdoor seating

The matters raised within the submissions are addressed as follows:

- **Inadequate parking**

Comment:

Concern has been raised that the proposal does not provide sufficient parking. This matter has been addressed within clause *C3 Parking Facilities* of this report. In summary, the use and seating is a existing approved use and proposed extension to the operation hours is outside of

peak traffic periods and is not considered to unreasonably impact the traffic/parking conditions. Given this, and subject to conditions which limit patron capacity, the proposal is deemed acceptable in this instance.

- **Use and proposed hours is not suitable for the character of the area**

Comment:

Concern has been raised that the proposed use is not suitable for the character of the area.

The subject application is not for the change of use of the site. The proposed use for a food and drink premises of the subject site was approved via a Complying Development Certificate. This use is permitted within B1 Neighbourhood Centre zone.

With regards to the proposed operating hours, it is considered the proposed hours of 6.00am – 10.00pm is considered reasonable for the approved use. The application is supported by a Operational Plan of Management (OPM) which details the business operation. This OPM details operational procedures to mitigate noise impacts including appropriate training of staff, limitation of patron numbers, maintenance of an incident register. This OPM also specifies that while the application is seeking the proposed hours of 6.00am – 10.00pm, the actual opening hours will only be until 10pm Thursday to Saturday and 9pm on Sunday.

Furthermore, similar uses and operating times have recently been approved on adjoining premises.

The proposal and submitted Operational Plan of Management has also been reviewed by NSW Police who have raised no objection to the proposal subject to conditions to limit outdoor patron numbers to 36 and to implement a trial period of 12 months.

- **Anti-social behavior associated with liquor license**

Comment:

The application is supported by a Operational Plan of Management which details the business operation and measures to ensure the business is operated safely. Such measures include the maintenance a incident register, the appropriate training of staff and business practices to mitigate the excessive consumption of alcohol. The proposal and submitted Operational Plan of Management has been reviewed by NSW Police who have raised no objection to the proposal subject to conditions to limit outdoor patron numbers and to implement a trial period of 12 months.

- **Noise impacts from proposed hours and outdoor seating**

Comment:

This matter has been addressed within clause *D3 Noise* of this report. In summary, subject to the responsible management outlined within the Operational Plan of Management and adherence to conditions imposed by NSW Police and Northern Beach Council, the proposal is considered not to have an unreasonable impact with regard to noise.

REFERRALS

| Internal Referral Body | Comments |
|----------------------------|--|
| Building Assessment - Fire | The application has been investigated with respect to aspects relevant |

| Internal Referral Body | Comments |
|---|--|
| and Disability upgrades | <p>to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p> |
| Environmental Health (Industrial) | <p>General Comments</p> <p>Environmental Health has reviewed the application to extend operating hours to to 10:00pm. Environmental Health supports extending hours to 10:00pm inside the food business but does not support outdoor dining until 10:00pm. With residential receivers in close proximity outdoor dining must cease at 9:00pm. Under the Industrial Noise Policy the 'night time' period starts at 10:00pm therefore noise (people talking/operational noise) associated with outdoor dining may impact negatively on residential receivers if permitted to 10:00pm. Appropriate condition to be applied.</p> <p>Recommendation</p> <p>APPROVAL - subject to conditions</p> |
| Environmental Health (Food Premises, Skin Pen.) | <p>General Comments</p> <p>Environmental Health has reviewed the application for extended operating hours and outdoor dining only. Food business must notify council prior to occupation.</p> <p>Recommendation</p> <p>APPROVAL - subject to conditions</p> |
| Traffic Engineer | <p>The proposed development application is for the extension of operation hours of the shops, and the use of exclusive outdoor seating on private strata-owned land by shop No.4. The information provided in the application indicates that the subject seating area has been approved in the original DA and adequate parking spaces have been provided accordingly.</p> <p>Reviewing the proposal, the proposed extension to the operation hours is outside of peak traffic periods and will not impact the traffic network conditions. Also, the proposed use of the strata-owned land by shop 4 will not have an adverse impact on traffic and parking. Therefore, the Transport Network team can support the proposal.</p> |

| External Referral Body | Comments |
|------------------------|--|
| NSW Police – Licensing | As the proposal involves an extension of hours and outdoor seating |

| External Referral Body | Comments |
|------------------------|---|
| (Clubs, Hotels, Pubs) | <p>associated with a of a licensed 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 proposal subject to recommended conditions. Such conditions include:</p> <ul style="list-style-type: none"> • A trial period of 12 months be implemented to allow the venue to operate on a trial basis to ensure no undue disturbance. • No amplified music within the outdoor dining area • Outdoor area to be limited to 36 patrons • Implementation of an incident register • Ensure the premises is operated in accordance with the plan of Management <p>The full details of the NSW police response is available as an attachment to this report.</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. The shop top housing development recently constructed on site was considered at the time of approval with regard to SEPP 55. The current application will not include any excavation, external building works, or any other work likely to have any impacts or be impacted by any contamination. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the proposed land use.

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

| Standard | Requirement | Proposed | % Variation | Complies |
|----------------------|-------------|--------------------------------|-------------|----------|
| Height of Buildings: | 8.5m | No change to existing building | N/A | Yes |

Compliance Assessment

| Clause | Compliance with Requirements |
|--------------------------------------|------------------------------|
| 4.3 Height of buildings | Yes |
| 5.3 Development near zone boundaries | Yes |
| 6.4 Development on sloping land | Yes |

Warringah Development Control Plan

Built Form Controls

No changes are proposed to the built form of the building.

Compliance Assessment

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|--|------------------------------|-----------------------------|
| A.5 Objectives | Yes | Yes |
| B6 Merit Assessment of Side Boundary Setbacks | Yes | Yes |
| B7 Front Boundary Setbacks | Yes | Yes |
| B10 Merit assessment of rear boundary setbacks | Yes | Yes |
| | | |

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|---|------------------------------|-----------------------------|
| C2 Traffic, Access and Safety | Yes | Yes |
| C3 Parking Facilities | No | Yes |
| C4 Stormwater | Yes | Yes |
| C9 Waste Management | Yes | Yes |
| D3 Noise | Yes | Yes |
| D8 Privacy | Yes | Yes |
| D14 Site Facilities | Yes | Yes |
| D18 Accessibility and Adaptability | Yes | Yes |
| D20 Safety and Security | Yes | Yes |
| D21 Provision and Location of Utility Services | Yes | Yes |
| D22 Conservation of Energy and Water | Yes | Yes |
| D23 Signs | N/A | N/A |
| E1 Preservation of Trees or Bushland Vegetation | Yes | Yes |
| E2 Prescribed Vegetation | Yes | Yes |
| E6 Retaining unique environmental features | Yes | Yes |
| E10 Landslip Risk | Yes | Yes |
| F1 Local and Neighbourhood Centres | Yes | Yes |

Detailed Assessment

C3 Parking Facilities

The proposal would not comply with the stipulated parking requirements which require 1 space per 3 seats. The site has two designated parking spaces and the shop top housing development has 16 public parking spaces directly adjacent. It should be noted that the use of the site and the concept of outdoor seating has already been approved within previous applications.

Councils traffic Engineer has reviewed the proposal and has raised no objection to the proposal. Please refer to Traffic Engineer referral comments below.

The proposed development application is for the extension of operation hours of the shops, and the use of exclusive outdoor seating on private strata-owned land by shop No.4. The information provided in the application indicates that the subject seating area has been approved in the original DA and adequate parking spaces have been provided accordingly. Reviewing the proposal, the proposed extension to the operation hours is outside of peak traffic periods and will not impact the traffic network conditions. Also, the proposed use of the strata-owned land by shop 4 will not have an adverse impact on traffic and parking. Therefore, the Transport Network team can support the proposal.

Subject to conditions which restrict patron numbers of the outdoor seating area to 36, and the total patronage to 56, the proposal is considered acceptable.

D3 Noise

The proposal seeks to extend operating hours to 6.00am – 10.00pm. The proposal also seeks the utilisation of outdoor seating which is located beneath and across the road from residential premises.

With regards to the proposed use of outdoor seating, within the original Development Application for the shop top housing development (DA2016/0792), this area was considered and approved for outdoor seating. Within the assessment of this application (DA2016/0792), noise from this outdoor courtyard area was considered and a acoustic report was submitted which deemed the noise from the “worst case” scenario (i.e. a full courtyard) was acceptable (subject to imposed conditions which required upgrading to the glazing to bedrooms and living areas of the apartments facing the courtyard).

With regards to the proposed operating hours, it is considered the proposed hours of 6.00am – 10.00pm is considered reasonable for the approved use. The application is supported by a Operational Plan of Management (OPM) which details the business operation. This OPM details operational procedures to mitigate noise impacts including appropriate training of staff, limitation of patron numbers, maintenance of an incident register. This OPM also specifies that while the application is seeking the proposed hours of 6.00am – 10.00pm, the actual opening hours will only be until 10pm Thursday to Saturday and 9pm on Sunday.

Council's Environmental Health Team have assessed the proposed use in relation to the documentation submitted with the subject development application and are satisfied the development will not have an unreasonable impact with regard to noise subject to conditions to ensure that outdoor dining must cease at 9:00pm.

The proposal and submitted Operational Plan of Management has also been reviewed by NSW Police who have raised no objection to the proposal subject to conditions to limit outdoor patron numbers to 36 and to implement a trial period of 12 months. In line with NSW Police referral comments, a condition of consent recommending a trial period of 12 months for the hours of operation is to be imposed on any consent. During this trial period, it must be demonstrated that the proposal does not result in unreasonable noise impacts.

In order to further mitigate noise impacts associated with the proposal, conditions will be imposed which restrict patron numbers, and ensure that amplified music and live music is prohibited at any time.

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

D18 Accessibility and Adaptability

The proposal does not propose any works and would utilise an existing approved outdoor seating area (as approved within DA2016/0792). The application has been reviewed by Council's Building Control Officer in relation to BCA and Accessibility compliance who has raised no objection to the proposal.

D20 Safety and Security

The application is supported by a Operational Plan of Management which details the business operation and measures to ensure the business is operated safely. Such measures include the maintenance a incident register, the appropriate training of staff and business practices to mitigate the excessive consumption of alcohol. The proposal and submitted Operational Plan of Management has been reviewed by NSW Police who have raised no objection to the proposal subject to conditions to limit outdoor patron numbers and to implement a trial period of 12 months. Subject to conditions, it is considered that the proposal would comply with he requirements of this control.

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 2021

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 DA2021/1207 for Extension of approved trading hours for a food and drink premises and outdoor seating on land at Lot 4 SP 95443, 4 / 180 South Creek Road, WHEELER HEIGHTS, 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 |
| DA2001 - Plan of Premises | 03/07/2021 | Designs By Leksi |

| Reports / Documentation – All recommendations and requirements contained within: | | |
|--|------------|-----------------|
| Report No. / Page No. / Section No. | Dated | Prepared By |
| Plan of Management - Tothy Brothers Deli & Company | 30/08/2021 | Lara Ferrazzano |

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

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

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

2. 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 | NSW Police Referral Response (DA2021/1207) | 23/09/2021 |

(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. Outdoor Dining Hours of Operation

Outdoor dining associated with the food business is not to occur after 21:00pm Monday to Sunday.

Reason: To protect the noise amenity of the residential receivers

4. No Approval for any Signage

No approval is granted under this Development Consent for signs (as defined under Warringah Local Environment Plan 2011 and State Environmental Planning Policy No. 64). A separate Development Application for any signs (other than exempt and signs permitted under Complying Development) must be submitted for the approval prior to the erection or display of any such signs.

Reason: Control of signage. (DACPLB06)

5. 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.

6. 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) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) 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 2018
 - (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.

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

7. **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.

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

8. **Hours of Operation (Trial Period of 12 Months)**

The hours of operation are to be restricted to:

- 6.00am – 10.00pm - Monday - Sunday (7 days a week)

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.

These approved hours are limited to a trial period of 12 months from the date of this consent. A modification application will be required to be submitted to Council prior to the expiration of the 12 month trial period detailing noise issues, noise monitoring methods and any complaints raised from nearby properties. A statements of certification must be obtained from a suitably qualified acoustic consultant and provided to Council. This statement is to certify that noise and vibration from the development (including all plant and equipment and general operation noise sources) satisfies the relevant provision of the Protection of the Environment Operations Act 1997 and NSW Noise Policy for Industry. During the trial period, acoustic monitoring from 8pm to 10pm is to be undertaken for 1 period of 3 consecutive nights (Thursday to Saturday).

The operational period is required to demonstrate compliance and satisfactory performance should the applicant seek to have the operating hours retained.

Note: A modification application may be submitted to Council, to be lodged not more than 3 months prior to the expiration of the 12 month trial period, seeking the continuation of the extended hours of operation. If such an application is lodged, the extended hours of operation will continue to apply until such time as the application is determined by Council.

It should be demonstrated that the extended hours of operation have been in effect for a continuous period of at least 6 months prior to the lodgement of any modification application to

extend or conclude the trial period.

The modification application is to be accompanied by a complaints and incident register, addressing noise associated with late night/early morning trading and any complaints received and how those complaints have been addressed.

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

9. **No Illumination**

No consent is given or implied for any form of illumination or floodlighting to any sign or building or other external areas other than that approved.

Reason: To ensure appropriate forms of illumination that are consistent with Council's controls, and do not interfere with amenity of nearby properties. (DACPLG13)

10. **Outdoor Seating Patron Numbers**

The outdoor seating area shall be limited to a maximum of 36 patrons.

Suitable signage to be displayed at the front of the premises indicating the capacity within the premises and outdoor areas.

Reason: Neighboring amenity and requirements of NSW Police

11. **Maximum patron capacity**

The number of patrons to be on the premises at any one time is to be limited to a maximum of 56. This is inclusive of patrons within the approved outdoor seating area.

Suitable signage to be displayed at the front of the premises indicating the capacity within the premises and outdoor areas.

Reason: To minimise parking requirements generated by the use.

12. **Noise**

Amplified music and live music is prohibited at any time. Any noise from the premise shall not exceed more than 5dB(A) above the background level when measured from within any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy and any appropriate guidelines to prevent offensive noise.

Reason: To ensure that noise generated from the premise does not create offensive noise

13. **Amenity**

The implementation of this development shall not adversely affect the amenity of the neighbourhood or interfere unreasonably with the comfort or repose of a person who is outside the premises by reason of the emission or discharge of noise, fumes, vapour, odour, steam, soot, ash, dust, waste water, waste products, grit, oil or other harmful products.

Reason: To ensure the surrounding area and people within the neighbourhood are not affected adversely and to ensure compliance with the Protection of the Environment Operations Act 1997.

14. **Commercial Waste Collection**

Waste and recyclable material, generated by this premises, must not be collected between the hours of 6pm and 8am on any day.

Reason: To ensure the acoustic amenity of surrounding properties.

15. **Delivery Hours**

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

Reason: To protect ensure the acoustic amenity of surrounding properties.

16. **Compliance with the Operational Management Plan**

The Plan of Management referenced within condition 1 of this consent is to be complied with at all times.

Reason: To ensure that the development operates with minimal disruption to the surrounding area.

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

Signed



Gareth David, Planner

The application is determined on 06/10/2021, under the delegated authority of:



Lashta Haidari, Acting Development Assessment Manager