

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/2056
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Responsible Officer:	Tony Collier
Land to be developed (Address):	Lot A DP 413126, 26 Orchard Road BROOKVALE NSW 2100
Proposed Development:	Temporary use of land for five (5) events per year in association with an artisan food and drink industry
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:	G & A Bland Holdings Pty Ltd
Applicant:	Bucketty's Brewery Pty Ltd

Application Lodged:	05/12/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	09/12/2022 to 16/01/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 5,000.00
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PROPOSED DEVELOPMENT IN DETAIL

Background

The proposal relates to DA2018/0571 which approved the use of the premise as an artisan food and drink industry, DA2020/0160 (and subsequent modifications) which approved the use of the premises as an artisan food and drink industry and associated signage, and DA2022/1100 which approved the temporary use of land for the purposes of a fundraiser event with a capacity of 500 people on Saturday, 27 August 2022.

Relevantly, DA2020/0160 included conditions which regulated operating hours, patron capacity, and parking provision:

31. Deliveries and Waste Collection

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

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

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.

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.

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.

Condition 35 was modified under MOD2021/0439 to read:

35. Hours of Operation and Maximum Capacity

The hours of operation and maximum capacity of the premises is to be restricted to:

Hours of Operation	Maximum Capacity
Industrial Operations for Brewery & Distillery	
6.00am to 4.00pm Monday to Friday	
Taproom/Cellar Door Hours	
<u>Weekday Lunch</u>	
Thursday to Friday (12.00pm to 4.00pm)	20 Patrons
<u>Weekday Dinner & Evenings</u>	
Monday to Friday (4.00pm to 7.00pm)	130 Patrons
Monday to Friday (7.00pm to 12.00am)	200 Patrons
<u>Weekend Lunch & Dinner</u>	
Saturday to Sunday (12.00pm to 4.00pm)	130 Patrons
Saturday (4.00pm to 12.00am)	200 Patrons
Sunday (4.00pm to 10.00pm)	200 Patrons
Public Holidays (12.00pm to 4.00pm)	130 Patrons
Public Holidays (4.00pm to 12.00am)	200 Patrons
Takeaway Sales	
Monday to Saturday (12.00pm to 11.00pm)	
Sunday (11.00am to 10.00pm)	

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

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

Due to the above amendment of Condition 35, Condition 40 was deleted under MOD2021/0439.

Subject Application

In a similar manner to the approved DA2022/1100, this application seeks consent to expand the temporary use of the premises from one (1) x one-off event to five (5) single events per annum as an additional feature of the already approved artisan food and drink premises. It is noted that specific dates for the events are not requested and, instead are intended to occur in any period of 12 months.

The Statement of Environmental Effects notes the following aspects of the proposal:

- *Preparation of the event / temporary use area from 9am on the day of the event.*
- *The event will include serving of an expanded range food and beverage along with entertainment, and sale of merchandise.*
- *The area includes all existing patron spaces (front, inside, and rear) as well as use of the access way to Mitchell Road (additional). The internal space comprises approximately 250m² and external space approximately 440m².*
- *Temporary use closing time to patrons: 11:30 pm. Close-down by staff from 11.30pm to 12.00am.*
- *The event will be for up to 500 patrons.*
- *The site secured with existing fencing to provide two-entry points, one each on the northern (Orchard Road) and eastern sides, as marked on the event plans (Mitchell Road).*
- *Commissioned security to ensure a safe and orderly operating environment.*
- *Food will be provided on-site via 3 x movable food vans as marked on the event plans.*
- *Live music inside the venue, as marked on the event plans.*
- *Temporary amenities (Portaloos) to be provided on site for the event.*
- *Decommissioning of the event site by 12pm on the day following the event (if it's a weekend or public holiday) or by 9am on the day following the event (if the following day is a weekday/non public holiday).*

Noting the proposed patron numbers (500), the proposed five (5) temporary uses involve an intensification of the approved artisan food and drink premises and comprise an expanded patron area, including an outside area comprising the car park. The SEE also notes that *"the temporary use will be undertaken at a time during the weekends/ public holidays when most other businesses within the industrial area are not operating"*.

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 - 2.8 Temporary use of land
Warringah Development Control Plan - C3 Parking Facilities

SITE DESCRIPTION

Property Description:	Lot A DP 413126 , 26 Orchard Road BROOKVALE NSW 2100
Detailed Site Description:	<p>The subject site consists of one (1) battle-axe shaped allotment located on the southern side of Orchard Road and western side of Mitchell Road.</p> <p>The site is regular in shape with a frontage of 20.008m along Orchard Road and a depth of 50.078m. The site has a surveyed area of 1,159m².</p> <p>The site is located within the IN1 General Industrial zone and accommodates single storey building fronting Orchard Road, with an ancillary storage structure in the south-west corner of the site.</p> <p>The site is generally flat and does not contains any vegetarian characteristics.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by other industrial land uses varying in age, scale, and character.</p>

Map:



SITE HISTORY

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

DA2004/0668

Development Application for Alterations to Existing Car Repair, Car Dealer and Hire of Motor Vehicles (reconstruct Roof Over Existing Workshop & Vehicle Wash Bay).

Approved on 23 September 2004.

DA2020/0160

Development Application for To use the premises as an artisan food and drink industry and associated signage.

Approved on 7 August 2020.

MOD2020/0408

Modification of Development Consent DA2020/0160 granted for to use the premises as an artisan food and drink industry and associated signage.

Approved on 11 September 2020.

CC2020/1180

Construction Certificate for Fit-out of 26 Orchard Road as Bucketty's Brewing.

Approved on 24 September 2020.

NOC2020/1315

Notice of Commencement of Building Work for Fit-out of 26 Orchard Road as Bucketty's Brewing.

Dated 2 November 2020.

FOC2021/0126

Occupation Certificate for Fit-out of 26 Orchard Road as Bucketty's Brewing.

Approved on 5 February 2021.

MOD2021/0439

Modification of Development Consent DA2020/0160 granted for use the premises as an artisan food and drink industry and associated signage.

Approved on 8 October 2021.

DA2022/1100

Temporary use of land for the purposes of a fundraiser event with a capacity of 500 people on Saturday, 27 August 2022.

Approved on 8 August 2022.

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	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 applies to this proposal.
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 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 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 29</u> of the EP&A Regulation 2021 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 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 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 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 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 69</u> of the EP&A Regulation 2021 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>
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 2011 section in this report.</p> <p>(ii) Social Impact</p>

Section 4.15 Matters for Consideration	Comments
	<p>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>
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 09/12/2022 to 16/01/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation 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	<p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department.</p> <p>There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p>
Environmental Health (Industrial)	<p>Development consent is sought for temporary use of the land for five (5), single events per annum which involves utilisation of the existing approved artisan food and drink industry, albeit with an increased development footprint, increased patron numbers, and installations of a temporary nature (minor physical works).</p> <p>The applicant has not provided an acoustic report however, it is</p>

Internal Referral Body	Comments
	<p>deemed unnecessary due to the following considerations:</p> <ul style="list-style-type: none"> • Proposal being located in an industrial zone; • The nearest residential receiver being located approximately 250m north east of the proposed site; • The proposal is located at an existing artisan food and drink industry where live music is played; and • The frequency and temporary nature of the proposal.
Environmental Health (Food Premises, Skin Pen.)	<p>Supported - Subject to conditions being imposed</p> <p>Development consent is sought for temporary use of the land for five (5), single events per annum which involves utilisation of the existing approved artisan food and drink industry, albeit with an increased development footprint, increased patron numbers, and installations of a temporary nature (minor physical works), including 2 additional food vending vehicles (in addition to the existing approved food vending vehicle), and additional temporary beverage vending stations.</p> <p>Environmental Health has limited concern for food safety for these events as mobile and temporary food stalls have fit out requirements specified by the NSW Food authority that must be met and are temporary in nature.</p> <p>The inclusion of a condition requiring registration ensure that Council can inspect and regulate temporary vendors.</p>
Traffic Engineer	<p>The applicant seeks approval for up to 5 events catering for up to 500 patrons at the Buckety's Brewing development at 26 Orchard Road. Previous approval for a similar one-off charity event was granted under DA2022/1100 with the traffic referral requiring that a Traffic Management Plan be prepared for the event. No such plan has, to date, been sighted by Council however the lodgement of such a plan for Council's Transport Network team to review and approve is considered necessary if the events are to occur on an ongoing basis.</p> <p>It is noted that the events are proposed to take place between 2pm and 12am on a Saturday, Sunday or Public Holiday when traffic and parking impacts of the events are more likely to be manageable. It is however noted that the events will occupy the full site including the 5 off-street parking spaces that would otherwise be available customer or staff parking. The size of the events and the lack of any off-street parking at the site will therefore result in a significant increase in the level of reliance upon on-street parking albeit at a time when background parking demands are likely to be low. There will also be large numbers of pedestrians entering and exiting the site, particularly at the start and end times for the events. Some of these patrons are likely to be intoxicated. The traffic management plan will therefore need to outline arrangements for temporary drop off and pick zones on street and for pedestrian management measures to prevent pedestrians spilling out onto the road pavement at the sites pedestrian</p>

Internal Referral Body	Comments
	<p>access points.</p> <p>The lodgement of a Traffic and Pedestrian Management Plan for Council's consideration and approval in advance on every event will ensure that the traffic and parking impacts of the event are appropriate and do not impact upon other approved activities on the road network. This will be conditioned.</p>
Waste Officer	<p>Supported with conditions:</p> <ul style="list-style-type: none"> Events must be carried out in accordance with the requirements of the Plastics and Circular Economy Act to phase out single use plastics including bags, straws, plates, bowls, and cutlery. The event organiser is to supply waste bins and associated servicing and removal of waste.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid. Ausgrid provided their response on 14 December 2022 advising that a decision is not required.
NSW Police - Licensing (Clubs, Hotels, Pubs)	<p>NSW Police have reviewed the application and raise no objection to the proposal subject to conditions related to public safety.</p> <p>The conditions are included in the consent.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs 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 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 (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 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. Ausgrid provided their response on 14 December 2022 advising that a decision is not required.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	11.0m	No change	N/A	No change

Compliance Assessment

Clause	Compliance with Requirements
2.8 Temporary use of land	Yes
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	N/A
5.8 Conversion of fire alarms	Yes
6.1 Acid sulfate soils	Yes

Detailed Assessment

2.8 Temporary use of land

Clause 2.8 permits the use of land on a temporary basis. Specifically, Clause 2.8(2) states:

"Despite any other provision of this Plan, development consent may be granted for development on land in any zone for a temporary use for a maximum period of 52 days (whether or not consecutive days) in any period of 12 months".

The application acknowledges the limitations of the clause and appropriate conditions have been

included in the consent to ensure that the limits of Clause 2.8 are regulated.

The objective of Clause 2.8(1) is:

"To provide for the temporary use of land if the use does not compromise future development of the land, or have detrimental economic, social, amenity or environmental effects on the land".

Specifically, Clause 2.8(3) identifies the criteria under which consent for the temporary use of land must not be granted:

- *"The temporary use will not prejudice the subsequent carrying out of development on the land in accordance with this Plan and any other applicable environmental planning instrument, and*
- *the temporary use will not adversely impact on any adjoining land or the amenity of the neighbourhood, and*
- *the temporary use and location of any structures related to the use will not adversely impact on environmental attributes or features of the land, or increase the risk of natural hazards that may affect the land, and*
- *at the end of the temporary use period the land will, as far as is practicable, be restored to the condition in which it was before the commencement of the use".*

This assessment has considered the potential impacts on the future development of land (economic, social, amenity or environmental) and has not identified any issues which are likely to compromise the ongoing development potential and/or use of the land and its surrounding area.

Notwithstanding, a condition has been included in the consent which limits the operation of the temporary use for a maximum of two (2) years from the date of the consent (i.e. 2025) to ensure that the longer-term amenity of the local area is maintained.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B5 Side Boundary Setbacks	Merit Assessment	No change	N/A	No change
B7 Front Boundary Setbacks	4.5m	No change	N/A	No change
B9 Rear Boundary Setbacks	Merit Assessment	No change	N/A	No change

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	N/A	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
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	No	Yes
C9 Waste Management	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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

Detailed Assessment

C3 Parking Facilities

As approved under DA2020/0160 (Condition 41) , the approved development provides six (6) off-street, staff parking spaces located within the subject site. It is noted that the plans indicate 5 parking spaces, however DA2020/0160 included the loading dock as staff parking also.

A car parking rate for the use 'Artisan Food and Drink Industry' is not specified within Appendix 1 of the WDCP 2011. 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. However, the Roads and Maritime Services *Guide to Traffic Generating Development* does not specifically outline parking requirements for Industry such as that proposed.

The Statement of Environmental Effects (page 8) notes that the "*the events involve the outdoor use of the car parking area (that has provision of 5 car spaces) and the resulting reduction in on-site car parking for the time of the event. In support of this deficiency the following key points are noted:*

- *The temporary use will be undertaken at a time during the weekends/ public holidays when most other businesses within the industrial area are not operating.*
- *The close proximity of the site to the various bus routes operating along Pittwater Road.*
- *Operation of the event outside of regular business hours being 9 to 5 Monday to Friday.*
- *The availability of on street parking during this time of the week being after 2 pm on Saturday when it is reasonable to expect that businesses within the industrial area are closed or at reduced operating capacity.*
- *Being a licensed event, attendees will be encouraged to carpool or catch other forms of public transport rather than utilising private vehicles. This message will be communicated on promotional material for the events".*

The Operational Plan of Management (page 1) submitted with the application notes that the events will run between 2.00pm to Midnight on Saturdays or public holidays, and between 2.00pm and 10.00pm on Sundays (up to 5 times per 12 month period).

Council's Traffic Engineer has reviewed the application and is supportive of the proposal, subject to recommended conditions including the submission of a Traffic Management Plan. Traffic management procedures and systems must be in place and practiced during the course of the event to ensure safety

and minimise the effect on adjoining pedestrian and vehicular traffic systems.

In summary, the events are supportable that the events will take place on weekends and/or public holidays commencing at 2.00pm thereby being outside regular trading hours (being 9am to 5pm Monday to Friday). Therefore, it is considered that there will be availability for off and on-street parking as required.

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 2022

S7.12 levies are not applicable to this application as they were subject to the original development application relating to the whole site.

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 2021;
- 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 DA2022/2056 for Temporary use of land for five (5) events per year in association with an artisan food and drink industry 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 with the endorsed stamped plans and documentation listed below, except as amended by any other condition of consent:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Event Floor Plan	Not provided	Not provided

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Operational Plan of Management	14 November 2022	Bucketty's Brewery Pty Ltd

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. **Temporary Use of Land**

The temporary use of land may be carried out (subject to other conditions in this consent) up to a maximum of 5 times per calendar year and only on a Saturday, Sunday or Public holidays.

Each event date must be forwarded to Council for record keeping purposes to confirm no more than 5 events are held per calendar year.

Reason: To regulate the proper use of land.

3. **Limitations of this consent**

This consent approves the temporary use of the land for a period of no more than two (2) consecutive calendar years. This consent will therefore expire in 2025.

At the cessation of two (2) calendar years, a new Development Application for the temporary use of land may be lodged with Council for its consideration.

Reason: To ensure that the long-term amenity of the local area is maintained.

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 (Industry and Employment) 2021). 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.

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 Certifier 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 Certifier 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 Certifier 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 an 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 TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

7. 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 Certifier prior to the issue of the Construction Certificate.

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

8. Waste Management Plan

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan.

Details demonstrating compliance must be provided to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

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

9. 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.

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

10. **Population Numbers**

The Total number of patrons must not exceed 500 persons. In this regard the applicant is to provide suitable measures to ensure that the numbers of persons within the building is restricted to no more than 500.

Details of how this is to be achieved must be provided to Council prior to the event occurring.

Reason: To ensure adequate provision is made for fire safety and for building occupant safety.

11. **Traffic and Pedestrian Management**

Traffic management procedures and systems must be in place and practised during the course of the events to ensure safety and minimise the effect on adjoining pedestrian and vehicular traffic systems. These procedures and systems must be in accordance with AS 1742.3 2009 Manual of Uniform Traffic Control Devices and Council's Development Control Plans and include details for a temporary on-street drop off and pick zone and for pedestrian management measures around the site's pedestrian access points particularly before and after the events.

Note: A plan of traffic management is to be submitted to and approved by Council's traffic team in advance of every event.

Reason: To ensure traffic and pedestrian safety and parking is effectively managed.

12. **Adequate sanitary facilities**

Additional toilet facilities are required where the total population of patrons does not exceed 500. The total number of sanitary facilities required including permanent and temporary are :

1. 250 Male patrons – (3) WCs; (5) Urinals; (3) Washbasins
2. 250 Female patrons – (6) WCs; (3) Washbasins

Reason: To ensure the provision of adequate sanitary and associated facilities for the premises.

13. **Compliance with Plastics and Circular Economy Act**

1. Events must be carried out in accordance with the requirements of the Plastics and Circular Economy Act to phase out single use plastics including bags, straws, plates, bowls, and cutlery.
2. The event organiser is to supply waste bins and associated servicing and removal of waste.

Reason: To ensure compliance with relevant legislation and to ensure waste is correctly stored and disposed.

14. **Event Operation - Plan of Management**

The event is to operate in accordance with the approved Plan of Management and any other conditions which are included in this consent.

Reason: To ensure consistency with the consent.

15. **Ongoing prevention of offensive noise**

The noise level emanating from amplified music or public address system installed on the premises must not exceed a level of 5dB(A) above background level when measured within a habitable room at any affected residential zoned premises for an LAeq 15 minute period during

the evening or night.

Reason: To reduce the noise nuisance to residents, and to assist in compliance with the Protection of the Environment Operations Act 1997 and Regulations.

16. Council Registration of Mobile Food Vehicle or temporary event stalls

All mobile food vending vehicles or temporary event stalls are to have a current mobile food approval or current temporary food stall approval from Council's Environmental Health team prior to commencing trade on the site.

Reason: Mobile and Temporary Food premises are required to be approved under Section 68 of the Local Government Act 1993.

17. Hours of Operation

The hours of operation are to be restricted to:

- Saturday - 2.00pm to Midnight.
- Sunday - 2.00pm to 10.00pm.
- Public Holidays - 2.00pm to Midnight.

On each event occasion, the set up, close down, and decommissioning of each event will be as follows on and after the day of each event:

Set Up of Event:

- 9.00am on the day of the event.

Close Down of Event:

- 11.30pm - closing time to patrons on the day of the event.
- 11.30pm to Midnight - Close Down by staff on the day of the event.

Decommissioning of Event:

- 9.00am on the the day following the event (if the following day is a weekday/non public holiday).
- Noon on the day following the event (if it's a weekend or public holiday).

At the decommissioning of the event, the land owner and applicant will ensure that the site is restored to the condition in which it was before the commencement of the event.

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.

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

Signed



Tony Collier, Principal Planner

The application is determined on 17/01/2023, under the delegated authority of:



Rodney Piggott, Manager Development Assessments