

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1586
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Responsible Officer:	Lashta Haidari
Land to be developed (Address):	Lot 20 DP 1209801, Forest Way FRENCHS FOREST NSW 2086
Proposed Development:	Extension of trading hours of an existing food and drink premises (restaurant)
Zoning:	Warringah LEP2011 - Land zoned B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Are Chemin De La Foret Pty Ltd
Applicant:	Guzman Y Gomez Frenchs Forest

Application Lodged:	11/12/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	21/12/2020 to 25/01/2021
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 0.00
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PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks consent for the extension of trading hours. This development application seeks 7AM to 10PM 7 days a week as as a licensed food and drinks premises.

No physical change or increase in the seating capacity is proposed as part of this application.

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 - C2 Traffic, Access and Safety

Warringah Development Control Plan - D3 Noise

Warringah Development Control Plan - F1 Local and Neighbourhood Centres

SITE DESCRIPTION

Property Description:	Lot 20 DP 1209801 , Forest Way FRENCHS FOREST NSW 2086
Detailed Site Description:	<p>The subject site is known as Tenancy 29 & 30, located within the Forestway Shopping Centre, which is one (1) allotment located on the south-western side of Forest Way. The subject tenancy is closest to Grace Avenue.</p> <p>The site is irregular in shape, with frontages along Forest Way, Russell Avenue, Grace Avenue. The whole site has an area of 20,440m². The subject tenancy is located on the southwestern corner of the centre.</p> <p>The site is located within the B2 Local Centre zone from WLEP 2011 and accommodates the shopping centre building, parking facilities along the Forest Way frontage, and other associated buildings.</p> <p>The site is flat and does not contain any significant vegetation.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by low-density residential development. Frenchs Forest Public School adjoins the southern boundary of the shopping centre. A parking area on public land is located directly to the south of the subject tenancy.</p>

Map:



SITE HISTORY

The particular tenancy is currently occupied by Guzman y Gomez subject to a Complying Development Certificate for the fit-out (Complying Development Certificate No: CBS206501) and DA for the signage (DA2020/0736).

The hours of operation for the premises is stipulated within Condition 21 of the approved CDC for the site, which is 7am to 7pm Monday to Saturday and 9.00am to 6.00pm on a Sunday or a public holiday.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for commercial/retail purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning	None applicable.

Section 4.15 Matters for Consideration'	Comments
agreement	
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. No additional information was requested in this case.</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>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
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 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 21/12/2020 to 25/01/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Industrial)	<p>General Comments</p> <p>Environmental Health has reviewed the Statement of Environmental Effects dated 1 December 2020 prepared by Platinum Planning Solutions. The development has proposed to operate from 7am to 10pm seven days a week. It is noted that a food and drink premises located adjacent to this tenancy has approval for same hours.</p> <p>Recommendation</p> <p>APPROVAL - subject to conditions</p>
Traffic Engineer	<p>The proposal is extension of operating hours to 7AM to 10PM 7 days a week as a licensed food and drinks premises. There is no alternation proposed on the parking and access arrangements, also the proposal will not have adverse impact on the road network. Therefore, the proposal can be supported on traffic grounds.</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 the land is contaminated. Council records indicate that the subject site has been used for commercial purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the commercial land use.

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:	12m	No changes to building height	N/A	N/A

Compliance Assessment

Clause	Compliance with Requirements
4.6 Exceptions to development standards	N/A
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	N/A
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

The proposal relates to trading hours, therefore no changes are proposed to the compliance of the development with the built form controls.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B2 Number of Storeys	N/A	N/A
B6 Merit Assessment of Side Boundary Setbacks	N/A	N/A
B7 Front Boundary Setbacks	N/A	N/A
B8 Merit assessment of front boundary setbacks	N/A	N/A
B10 Merit assessment of rear boundary setbacks	N/A	N/A

Clause	Compliance with Requirements	Consistency Aims/Objectives
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	N/A	N/A
C6 Building over or adjacent to Constructed Council Drainage Easements	N/A	N/A
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	N/A	N/A
C9 Waste Management	N/A	N/A
D3 Noise	Yes	Yes
D6 Access to Sunlight	N/A	N/A
D7 Views	N/A	N/A
D8 Privacy	N/A	N/A
D9 Building Bulk	N/A	N/A
D10 Building Colours and Materials	N/A	N/A
D11 Roofs	N/A	N/A
D12 Glare and Reflection	N/A	N/A
D14 Site Facilities	N/A	N/A
D18 Accessibility and Adaptability	Yes	Yes
D20 Safety and Security	Yes	Yes
F1 Local and Neighbourhood Centres	Yes	Yes

Detailed Assessment

C2 Traffic, Access and Safety

Council's Traffic Engineer has reviewed the proposal and has raised no objection to the proposal on traffic generation grounds. The proposal seeks to extend the operating hours of the premises but does not include an increase of seating capacity.

There is adequate parking for staff and customers within the site. Accordingly, the proposal is satisfactory with regards to the requirement of this Clause.

D3 Noise

The proposal involves an extension to the existing hours of operation to permit 7am to 10pm /7 days per week. No physical changes to the premises is proposed or required. The premises is located at significant distance from the adjoining residential development and therefore no acoustic impact is anticipated as result of the proposed extension to trading hours.

Furthermore, the proposed hours of operation are consistent with the adjoining premises within the Forest way Shopping Centre, hence there is precedent for hours up 10pm for commercial uses within the centre.

F1 Local and Neighbourhood Centres

The development application seeks development consent for extended trading hours for the licensed Guzman y Gomez (GYG) food and drinks premises at Tenancy 29 & 30.

The subject tenancy is located a significant distance from the adjoining residential development, therefore no adverse impact is anticipated from the proposed extended hours of operation.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this application.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2020/1586 for Extension of trading hours of an existing food and drink premises (restaurant) on land at Lot 20 DP 1209801, Forest Way, FRENCHS FOREST, 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
A-100 and A-101	22/06/20	Morris Co Design
A103	21/08/20	Morris Co Design

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Statement OF Environmental Effects	1/12/2020	James Connolly

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

d) The development is to be undertaken generally in accordance with the following:

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. **No Approval for Land Use**

No approval is granted under this Development Consent for any increase in the seating capacity, fit out of the premises, or signage.

Reason: To ensure compliance with the relevant Local Environmental Plan.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

3. **Compliance with Standards**

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

Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

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

4. **Waste Collection**

Waste and recyclable material, generated by this premises, must not be collected between the hours of 10pm and 6am on any day. (DACHPGOG6)

5. **Hours of Operation**

The hours of operation are to be restricted to:

- 7am to 10pm /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.

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

6. **Commercial Waste Collection (DACPLG18)**

Waste and recyclable material, generated by this premises, must not be collected between the hours of 10pm and 6am on any day.

Reason: To protect the acoustic amenity of surrounding properties.(DACPLG18)

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

Signed



Lashta Haidari, Principal Planner

The application is determined on 02/02/2021, under the delegated authority of:



Matthew Edmonds, Manager Development Assessments