

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0439
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Responsible Officer:	Rebecca Englund
Land to be developed (Address):	Lot A DP 413126, 26 Orchard Road BROOKVALE NSW 2100
Proposed Development:	Modification of Development Consent DA2020/0160 granted for use the premises as an artisan food and drink industry and associated signage
Zoning:	Warringah LEP2011 - Land zoned IN1 General Industrial
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Christian Eugen Boller Bruno Frischknecht G & A Bland Holdings Pty Ltd
Applicant:	Bucketty's Brewery Pty Ltd

Application Lodged:	28/06/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Industrial
Notified:	07/07/2021 to 21/07/2021
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The modification application seeks to amend development consent DA2020/0160, which approved the use of the site for the purpose of 'artisan food and drink premises', including internal fit out and signage, in the following ways:

- Extension to trading hours**
 The applicant seeks to extend the trading hours of the Taproom/Cellar Door and Takeaway Sales, to allow for these uses to commence earlier in the day. Condition 35 'Hours of Operation' currently limits the trading hours of the premises, as follows:

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

- 6:00 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.

- **Increase to Capacity**

The current capacity of the premises is limited to 100 patrons, as stipulated in Condition 40 'Maximum patron capacity', which reads as follows:

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

Reason: To minimise traffic and parking impact.

The applicant proposes to increase the capacity of the premises to a maximum of 200 patrons, with different capacities throughout the day. To address both the extension of trading hours and the increase in patronage, the applicant proposes to delete Condition 40 and amend Condition 35, as follows:

The hours of operation are to be restricted to:

Industrial operations for Brewery & Distillery

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

Taproom/Cellar Door Hours

Weekday Lunch

- Thursday - Friday (12:00 PM - 4:00 PM) = 20 patrons max

Weekday Dinner & Evenings

- Monday to Friday (4:00 PM to 7:00 PM) = 130 patrons max
- Monday to Friday (7:00 PM to 12:00 AM) = 200 patrons max

Weekday Lunch & Dinner

- Saturday - Sunday (12:00 PM - 4:00 PM) = 130 patrons max

- **Saturday (4:00 PM - 12:00 AM) = 200 patrons max**
- **Sunday (4:00 PM - 10:00 PM) = 200 patrons max**
- **Public Holidays (12:00 PM - 4:00 PM) = 130 patrons max and (4:00 PM - 12:00 AM) = 200 patrons max**

Takeaway Sales

- **12:00 PM** to 11:00 PM Monday to Friday
- **12:00 PM** to 11:00 PM Saturday
- 11:00 AM to 10:00 PM Sunday

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

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

The changes to the hours of operation and patronage numbers also necessitated the preparation of supporting documentation including an amended Plan of Management and Acoustic Report. If approved, the consent will also require amendment to make reference to these documents.

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 - Zone IN1 General Industrial
Warringah Local Environmental Plan 2011 - 5.4 Controls relating to miscellaneous permissible uses
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 site is battle-axe shaped lot, with frontages to both Orchard Road (north) and Mitchell Road (east) and a total area of 1159m².</p> <p>The site contains a single storey building (with a small mezzanine level) fronting Orchard Road, with an ancillary storage structure in the south-west corner of the site. The site is currently used for the purpose of an artisan food and drinks industry, called Bucketty's Brewing Co., approved pursuant to DA2020/0160. Car parking is available at the rear of the site, accessible from Mitchell Road.</p> <p>The site is located within the IN1 General Industrial zone and is surrounded by other industrial land uses of varying age, scale and character.</p>

Map:



SITE HISTORY

On 7 August 2020, development consent DA2020/0160 was issued by Council.

On 11 September 2021, Mod2020/0408 was issued by Council, to correct minor errors within the conditions of development consent DA2020/0160.

On 28 June 2021, the subject modification application was lodged with Council.

On 4 August 2021, a response from NSW Police was received, raising concerns with regard to the proposed seating plan.

On 17 August 2021, additional information was requested to further demonstrate:

- That all patrons can be comfortably seated at the premises,
- That noise levels can be appropriately managed between 10pm and 12am (midnight),
- That the development is substantially the same as that which was originally approved, and
- The the use maintains consistency with the definition of an artisan food and drinks industry.

On 30 August 2021, additional information was presented to Council.

On 28 September 2021, NSW Police confirmed that they were satisfied with the additional information.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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 and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2020/0160, in full, with amendments detailed and assessed as follows:

Section 4.55(2) Assessment

The relevant matters for consideration under Section 4.55 (2) of the EP&A Act are:

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2020/0160 for the following reasons:</p> <ul style="list-style-type: none"> • The use of the premises remains for the purpose of an artisan food and drink premises (see further discussion with regards to permissibility, below). • The extension to trading hours associated with retail sales and the increase to the maximum capacity of the venue does not radically alter the use of the premises, and the making and manufacture of beer remains the principal function of the site. • The additional capacity can be accommodated within the

Section 4.55 (2) - Other Modifications	Comments
	<p>premises as approved by DA2020/0160, with only minor works required to accommodate the additional capacity proposed.</p> <ul style="list-style-type: none"> • The modifications do not give rise to any unreasonable environmental impacts upon the surrounding locality. • The proposed modifications will positively contribute to the nighttime economy of the Brookvale Industrial Area. <p>In consideration of the circumstances in which the original consent was granted, it is apparent that the condition limiting the maximum capacity of the premises to 100 patrons was imposed to "minimise traffic and parking impact" in the locality. The premises has been operating since February 2021, with no concerns received from nearby businesses or members of the public in relation to parking or traffic associated with the approved use. Further, the applicant has had the opportunity to undertake a comprehensive survey to ascertain how patrons travel to and from the premises, confirming that the proportion of patrons driving to the premises is comparably low. This information has been reviewed by Council's Traffic Engineer, who has raised no objection with regard to the proposed extension of trading hours and increase to the maximum patronage.</p> <p>Whilst the proposed increase in capacity is not insignificant, such a change within a modification application it is not without precedent. In <i>Tappouras v Lake Macquarie City Council [2014] NSWLEC 1408</i>, Commissioner Pearson found an increase in student numbers at a school from 100 to 200 was substantially the same as that which was originally approved. Furthermore, whilst there are examples of modification applications to increase capacity that were not supported by the NSW LEC (<i>Council of Trinity Grammar School v Ashfield Council [2015] NSWLEC 1086</i> and <i>Nara Lounge Pty Ltd v Hurstville City Council [2015] NSWLEC 1167</i>), the numerical change of itself was not the determining factor, but rather the negative environmental impacts associated with such change. In such circumstances where the environmental impacts of the proposal are acceptable, Council can be satisfied that the proposal can be reasonably considered to be essentially and materially the same as that which was originally approved.</p>
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval	Development Application DA2020/0160 did not require concurrence from the relevant Minister, public authority or approval body.

Section 4.55 (2) - Other Modifications	Comments
body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Regulation 2000 and Council's Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	No submissions were received in relation to this application.

Section 4.15 Assessment

In accordance with Section 4.55(3) of the EP&A Act, in determining a modification application made under Section 4.55(2), the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the EP&A Act 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 draft instrument was considered as part of the assessment of DA2020/0160, with no changes proposed in the subject modification application that would alter that assessment. The modification application does not propose any earthworks or excavation, or changes to the use of the development as already

Section 4.15 'Matters for Consideration'	Comments
	approved.
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)(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 in the original consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original 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 in the original 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	No submissions were received in relation to this application.
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 07/07/2021 to 21/07/2021 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 of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Industrial)	<p>No objection, amended conditions.</p> <p><u>Original Comments:</u></p> <p><i>Applicant seeks to modify number conditions of consent for DA2020/0160 including number of patrons.</i></p> <p><i>The applicant has supplied an updated Acoustic Assessment by Acoustic Dynamics, dated 10 May 2021 (reference: 4806R001.JM.210505).</i></p> <p><i>The acoustic report concludes:</i></p> <p>Acoustic Dynamics analysis and prediction calculations indicate the subject brewery achieves compliance with the relevant noise emission criteria, however, Acoustic Dynamics recommends the incorporation of the following management plan to protect the acoustic amenity of the surrounding area.</p> <p><i>The Applicant has provided an updated Operational management Plan that incorporates recommendations within the acoustic report.</i></p> <p><i>The Operational Management Plan advises the following regarding music:</i></p> <p>Noise is primarily be produced through acoustic un-amplified bands and a provision for amplified music on Saturdays, Sundays, and Friday nights.</p> <p><i>While the premises is located well away from residential receptors due to topography and given the right weather conditions the noise may be able to travel on certain days and impact on residents in Freshwater/Brookvale area if the noise is not managed appropriately.</i></p> <p><i>Environmental Health have no objections subject to adding conditions regarding the following:</i></p> <ul style="list-style-type: none"> <i>• A condition regarding ongoing compliance with the Operational Management Plan; and</i> <i>• Restricting the times of live music until 10pm and adding noise conditions to reinforce noise levels.</i>

Internal Referral Body	Comments
	<p><u>New Information - Additional Review 16 September 2021</u></p> <p><i>The applicant has provided a response regarding a condition proposed by Environmental Health within a referral response on 2 August 2021 that there be no Live Music after 10pm. The response from the applicant is as follows:</i></p> <p>The updated acoustic assessment from Acoustic Dynamics concluded that the proposed modification, which included the provision for live music, achieves compliance with the relevant noise emission criteria.</p> <p>Further to this point, prior to the recent lock-down, we had hosted 50+ different bands (on different occasions) regularly playing amplified music up until 12am without a single complaint being registered. No objections were raised by the 20+ neighbours notified and our acoustic report supports the continued hosting of live musical artists. We respectfully submit that it would be arbitrary and unjustified if we were restricted to play recorded music at 90dB after 10pm.</p> <p>We submit that such matters can be appropriately dealt with by conditions of consent and provisions within the operational plan of management. Such provisions put the onus on us (and any potential future operators of the property) to continue to operate in a respectful manner. It also provides council with the appropriate recourse.</p> <p>As a compromise we have adjusted the management plan to ensure the southern roller shutter door is closed prior to 10pm on evenings where live amplified music is played.</p> <p><i>Environmental Health have no major concerns permitting live amplified music after 10pm if the southern roller shutter door is closed prior to 10pm. However, Environmental Health considers it appropriate in order to protect amenity that live music after 10pm is restricted to Fridays, Saturdays and public holidays.</i></p> <p><i>The applicant has also slightly increased the outdoor seating. Based on minimal increase in number of seating and adequacy of supplied acoustic report, Environmental Health have no concerns regarding the increase in outdoor seating.</i></p>
Environmental Health (Food Premises, Skin Pen.)	<p><i>The brewery provides food by means of a Food Truck. Food Trucks can be regarded as exempt development under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, as long as the provisions of exempt development are met. Based on the information provided the food truck is likely to be exempt development, as such no assessment of the fit-out is required by Environmental Health. Environmental Health recommends that confirmation is sought that the Food Truck meets the provisions of exempt development.</i></p> <p><i>Please note however, that any food business on the premises must</i></p>

Internal Referral Body	Comments
	<p><i>notify Council according to the Food Act 2003, and comply with the the Food Act 2003 and the Food Authority's guideline to mobile food.</i></p> <p><u>Planner Comment:</u> The modification application does not seek any changes to the function or use of the food truck at the subject site, and notes that the inclusion of a food truck formed part of the original consent.</p>
Traffic Engineer	<p>No objection, with conditions.</p> <p><i>The proposed increase in the number of patrons can be supported after the normal operating hours of the adjoining business.</i></p> <p><i>The applicant is to apply under section 138 of the roads act for approval via the Northern Beaches Council Local Traffic Committee for a dedicated ride share pick up and drop off zone along the site frontage in Orchard Road, to address the parking deficiency created by the increase in patrons.</i></p>

External Referral Body	Comments
NSW Police – Licensing (Clubs, Hotels, Pubs)	No objection, amendments to existing conditions required.

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)

Nil

Warringah Local Environmental Plan 2011

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

Compliance Assessment

Clause	Compliance with Requirements
5.4 Controls relating to miscellaneous permissible uses	Yes

Detailed Assessment

Zone IN1 General Industrial

Development consent DA2020/0160 approved the use of the premises for the purpose of an artisan food and drinks industry, which is defined by WLEP 2011 as follows:

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

- (a) a retail area for the sale of the products,
- (b) a restaurant or cafe,
- (c) facilities for holding tasting, tours or workshops.

Despite the proposed increase to the capacity of the premises, the principal purpose of the premises remains the production of beer. The applicant has provided written confirmation in this regard:

Our brewing capacity has increased in line with the demand for retail sales. Since opening in February 2021, we have begun supplying bottle shops and bars across Sydney with our packaged beer, and as of the date of this letter, we are supplying 32 wholesale customers that continue to purchase our beer (despite COVID).

Additionally, our online store is gaining traction with hundreds of cans being sold and shipped directly to customers across Australia each month. To meet this increase in demand we have expanded our brewing capacity from 8,000L of fermentation space, to 12,000L, with a further 4,000L of stainless steel tanks currently on order, due for delivery in October. Our yearly capacity has increased from 150,000L to 250,000L per year as a result of this expansion.

We are also growing our manufacturing team team, which now includes two trainee brewers who are undertaking accredited education through TAFE NSW. Our manufacturing process operates 24hrs per day with beer continually moving through the fermentation and filtration process (some of which is outside of regular hours and unstaffed).

The need to limit the area for retail sales to ensure that the manufacturing remains the principal purpose is enforced by clause 5.4 of WLEP 2014, which limits the size of the retail proportion of the development to 33% of the GFA of the premises or 400m², whichever is the lesser. The proposed increase in capacity is maintained within is consistent with the 33% limitation on the floor space of the premises, with the majority of the space used for the purpose of manufacturing and storing beer.

5.4 Controls relating to miscellaneous permissible uses

Clause 5.4(10) of WLEP 2011 states the following:

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

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

The subject premises are located within the IN2 General Industrial zone and as such, the provisions of this clause are applicable to the development. The provisions of clause 5.4 cannot be varied under the provisions of clause 4.6 of WLEP 2011, and as such, strict compliance is required in this regard.

The gross floor area of the industry as a whole is 641m². As such, the floor area used for retail sales must not exceed 213.6m², being 33% of the gross floor area and less than 400m². It is noted that there is no definition of 'floor area' in WLEP 2011, and as such, Council relies upon the gross floor area definition in this regard.

The proposed retail component of the development, inclusive of the public bathrooms and access thereto, is 213.5m², compliant with this clause.

Warringah Development Control Plan

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	No	Yes
D3 Noise	Yes	Yes
D20 Safety and Security	Yes	Yes

Detailed Assessment

C3 Parking Facilities

The proposed development provides 6 off-street parking spaces. In accordance with Condition 41 of the development consent, these spaces must be maintained for the exclusive use of staff at all times. The application seeks to increase the maximum capacity of the venue from 100 patrons to 200 patrons, yet no additional parking is provided on site.

Development for the purpose of an artisan food and drinks industry does not have a specific parking requirement under the provisions of WDCP 2011. Rather, analysis should be drawn from surveyed data for similar development uses in order to determine the demand generated by the proposed development. In this instance, the applicant has been able to undertake a survey of their own customers, to determine the average proportion of people travelling to the premises by car. Based on the surveys undertaken on various days throughout March and April 2021, it was determined that 18.24% of patrons and a maximum of 75 patrons on any one day, drove to the premises. Council Traffic Engineer has reviewed these findings, and raises no objection to the proposed increase in capacity or extension to trading hours, endorsing the position that there is adequate capacity in the surrounding streets to meet demand.

The applicant seeks to stagger the maximum patronage of the venue to align with typical business hours of surrounding industries and traffic movement through the industrial area, with three distinct groupings. These groupings are considered individually, as follows:

- **Maximum 20 patrons (Midday - 4:00pm on Thursday & Friday)**

The applicant seeks to extend the hours of the taproom and cellar door to allow for lunch time and early afternoon tastings on Thursdays and Fridays. It is highly likely that this capacity will be met from people already within the vicinity of the site, and at worst, the demand for parking associated with 20 patrons is unlikely to result in excessive demand upon parking within the vicinity of the site.

- **Maximum 130 patrons (4:00pm - 7:00pm on weekdays and 12:00pm - 4:00pm on Saturdays and Public Holidays)**

The applicant seeks to bring the primary trading hours forward from 6:00pm to 4:00pm from Monday to Friday, with an increase of 30 patrons. Once again, it is highly likely that afternoon trading will service the surrounding workforce, who will walk to the site from their place of employment. Those coming to the premises for dinner will most likely arrive later in the evening, once the peak parking demand in the industrial area has cleared.

The application also seeks to increase patronage at lunchtime on Saturday and Public Holidays. The applicant has demonstrated that there is capacity in the street network to accommodate the additional demand associated with the additional capacity proposed.

- **Maximum 200 patrons (7:00pm - Midnight on weekdays, 4:00pm - Midnight on Saturdays and Public Holidays and 4:00pm - 10:00pm on Sundays)**

The applicant seeks to increase the capacity of the venue from 100 to 200 patrons from 7:00pm until midnight on weeknights, and from 4:00pm until close on weekends and public holidays. These times are when the surrounding businesses within the industrial area closed, with ample on-street parking within the vicinity of the site.

Whilst the subject site does not provide any off-street parking for patrons of the premises, the modified development will remain consistent with the objectives of this control, as follows:

- *To provide adequate off street car parking.*

Comment: The proposed development provides adequate off-street parking to accommodate the majority of their staff. Parking for patrons is dependant upon the availability of on-street parking, which remains consistent with the circumstances of the original consent. Reliance on on-street parking can be self-regulating, and if people cannot get a park, they will inevitably go elsewhere. However, based on the parking assessment provided to support the application, ample on-street parking is available in the vicinity of the site, with high clearance rates during the peak times proposed.

- *To site and design parking facilities (including garages) to have minimal visual impact on the street frontage or other public place.*

Comment: Not applicable - The modification does not involve any changes to the siting and design of parking facilities.

- *To ensure that parking facilities (including garages) are designed so as not to dominate the street frontage or other public spaces.*

Comment: Not applicable - The modification does not involve any changes to the design of parking facilities.

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

Section 7.12 contributions were levied on the Development 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 approval to Modification Application No. Mod2021/0439 for Modification of Development Consent DA2020/0160 granted for use the premises as an artisan food and drink industry and associated signage on land at Lot A DP 413126, 26 Orchard Road, BROOKVALE, subject to the conditions printed below:

A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA2 - Proposed Ground Floor, revision B	25 August 2021	[unknown]

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Operational Management Plan	8 May 2021	[unknown]
Operational Noise Emission Assessment	10 May 2021	Acoustic Dynamics

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

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

B. Modify Condition 2 'Compliance with Other Department, Authority or Service Requirements' to read as follows:

The development must be carried out in compliance with all recommendations and requirements of the NSW Police contained within the following:

Correspondence	EDMS Reference	Dated
NSW Police	2020/180780	19 March 2020
NSW Police	2020/417324	16 July 2020
NSW Police	2021/584598	4 August 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.

C. New Condition 2A 'Amended Operational Management Plan' to read as follows:

The Operational Management Plan referenced in Condition 1A is to be amended to reflect strict consistency with the conditions of this modified consent, including those requirements of the NSW Police. The Amended Operational Management Plan is to be provided to and endorsed by Council prior

before the activation of this modified consent, and before any extension of trading hours and/or increase to capacity is acted upon.

Reason: To ensure the appropriate management of the premises.

D. New Condition 2B 'Dedicated ride share pick up and drop off zone' to read as follows:

Prior to the activation of this modified consent, the applicant is to apply under section 138 of the Roads Act for approval via the Northern Beaches Council Local Traffic Committee for a dedicated ride share pick up and drop off zone along the frontage of the site in Orchard Road.

Reason: To address the parking deficiency created by the increase in patrons.

E. Delete Condition 33 'Compliance with Acoustic Report'.

F. New Condition 33A 'Ongoing Noise Management' to read as follows:

The Premises shall comply with the following:

- a. No live amplified music after 10pm Sunday to Thursday (except for public holidays).
- b. Southern roller door is to be closed prior to 10pm on evenings where live amplified music is permitted after 10pm.
- c. Amplified music (including live music) shall not exceed a maximum reverberant noise level of 90 dB(A) within the bar service area.
- d. Notwithstanding compliance with the above, The LA10* noise level emitted from the premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz–8kHz inclusive) by more than 5dB between 7:00 am and 12:00 midnight at the boundary of any affected residence.

For the purpose of this condition, the LA10 can be taken as the average maximum deflection of the noise emission from the premises. This is a minimum standard.

Reason: To protect the amenity of the surrounding area.

G. Modify Condition 35. 'Hours of Operation and Maximum Capacity' to read as follows:

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

Hours of Operation		Maximum Capacity
<u>Industrial Operations for Brewery & Distillery</u>		
-	6:00 AM to 4:00 PM Monday to Friday	
<u>Taproom/Cellar Door Hours</u>		
Weekday Lunch		
-	Thursday to Friday (12:00 PM - 4:00 PM)	20 Patrons
Weekday Dinner & Evenings		
-	Monday to Friday (4:00 PM to 7:00 PM)	130 Patrons
-	Monday to Friday (7:00 PM to 12:00 AM)	200 Patrons
Weekend Lunch & Dinner		

-	Saturday to Sunday (12:00 PM - 4:00 PM)	130 Patrons
-	Saturday (4:00 PM - 12:00 AM)	200 Patrons
-	Sunday (4:00 PM - 10:00 PM)	200 Patrons
-	Public Holidays (12:00 PM - 4:00 PM)	130 Patrons
-	Public Holidays (4:00 PM - 12:00 AM)	200 Patrons
<u>Takeaway Sales</u>		
-	Monday to Saturday (12:00 PM to 11:00 PM)	
-	Sunday (11:00 AM to 10:00 PM)	

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.

H. Delete Condition 40 'Maximum Patron Capacity'.

I. New Condition 47 'Adherence with Operational Management Plan' to read as follows:

The premises shall be managed in accordance with the Operational Management Plan referenced in Condition 1, as amended by any conditions of this consent. No changes are to be made to the Amended Operational Management Plan without the consent of Council.

Reason: To ensure the appropriate management of the premises.

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

Signed



Rebecca Englund, Planner

The application is determined on 08/10/2021, under the delegated authority of:



Lashta Haidari, Manager Development Assessments