

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/0959
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Responsible Officer:	Kye Miles
Land to be developed (Address):	Lot 44 SP 38006, 44 / 54 Wattle Road BROOKVALE NSW 2100
Proposed Development:	Use of Premises as an artisan food and drink industry
Zoning:	Warringah LEP2011 - Land zoned E4 General Industrial
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Applicant:	Melissa Neighbour

Application Lodged:	09/08/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Other
Notified:	19/08/2024 to 02/09/2024
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 4,550.00
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PROPOSED DEVELOPMENT IN DETAIL

This development application is for the use of the premises as an artisan food and drink establishment. The business will specialise on the preparation, manufacturing, and serving of Italian cuisine, and will also include a retail component for the sale of goods produced on-site.

The proposed development includes internal fit-out works and the addition of new tables in the designated outdoor seating area. No structural changes are proposed to the existing building.

Operational Details

The operational details are listed within the submitted Plan of Management, however a brief overview is provided below.

Hours of Operation

The proposed hours of operation are as follows:

- Monday to Saturday: 9am - 12.00am
- Sunday: 9am - 11:00pm

Staff

A maximum of ten (10) staff members will be working at the site per day, spread across the day

Patrons

A maximum of 100 patrons/customers will be able to be seated at the premises, both inside and outside within the designated and established outdoor seating area

Traffic Management

One parking space is to be reserved on-site for staff use. Customer parking will continue to be available on the street and in the vacant shared parking spaces on-site, which are not utilised after business hours.

Additional information

Following a preliminary assessment of the application, Council wrote to the applicant on 4 November 2024, outlining concerns with the application.

The concerns related to traffic engineering matters and insufficient parking.

The applicant lodged additional information to address the concerns on 25 November 2024, which included agreements from surrounding businesses regarding the use of business parking spaces both during and after normal business hours for restaurant patrons.

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 - 5.4 Controls relating to miscellaneous permissible uses
Warringah Development Control Plan - C3 Parking Facilities
Warringah Development Control Plan - D3 Noise

SITE DESCRIPTION

Property Description:	Lot 44 SP 38006 , 44 / 54 Wattle Road BROOKVALE NSW 2100
Detailed Site Description:	<p>The subject site consists of Lots 51, 52, 56, 57, 58 and 59 in SP 50167 known as 54 Wattle Road, Brookvale. The site is set between Wattle Street and Powells Road and has vehicular access from both street frontages.</p> <p>The subject tenancy is located on the northern side of the industrial complex at ground level facing Powells Road adjacent to the ramp off Powells Road to the first floor industrial units.</p> <p>The site is located within the E4 General Industrial zone and accommodates an existing industrial complex containing 46 tenancies, the subject application is within Unit 44.</p> <p>The site contains boundary planting at the Powells Road and Wattle Road frontages.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by one and two storey industrial/business premises to the north, industrial premises to the east and the Sydney Buses Brookvale Depot to the west. To the south, on the opposite side of Wattle Road are low density residential premises which have a physical separation of approximately 115m from the subject tenancy.</p>

Map:



SITE HISTORY

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

DA2018/0571

Development Application at the adjoining industrial unit (Unit 14) for the use of a premises as a brewery and industrial retail outlet was approved by Council on the 17/07/2018.

DA2021/1375

Development Application at the adjoining industrial unit (Unit 14) for the use of premises as an artisan food and drink industry with outdoor seating, increased patron numbers and hours of operation for the outdoor seating area was approved by Council on the 23/12/2021.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development	Warringah Development Control Plan applies to this proposal.

Section 4.15 Matters for Consideration	Comments
control plan	
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 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>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to suitable parking measures.</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 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 application has been publicly exhibited from 19/08/2024 to 02/09/2024 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 respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>
Environmental Health (Industrial)	<p>General Comments</p> <p>Environmental Health have reviewed this upgrade of a food premises in an industrial area.</p> <p>Recommendation</p> <p>APPROVAL - subject to conditions</p>
Environmental Health (Food Premises, Skin Pen.)	<p>General Comments</p> <p>Environmental Health have reviewed and it appears a existing fixed food premises will receive an upgrade</p> <p>recommending standard conditions</p> <p>Recommendation</p> <p>APPROVAL - subject to conditions</p>
NECC (Flooding)	<p>The proposal seeks consent to change the use of the existing premises at Unit 44 of No. 9 Powells Road, Brookvale to an artisan food and drink premises.</p> <p>The premises is located outside of the identified flood planning area (Medium Flood Risk Precinct).</p> <p>There are no flood related objections to the proposed development.</p>
Traffic Engineer	<p>Additional Comments - 29 November 2024</p> <p>Update: The development has provided signed agreements from surrounding businesses regarding the use of business parking</p>

Internal Referral Body	Comments
	<p>spaces both during and after normal business hours for restaurant patrons. The agreements are included in the amended Statement of Environmental Effects by Sky Planning dated November 2024. Although the agreements do not specify the exact locations of the shared spaces and whether they would be occupied at any time for other business purposes, the total number of 34 spaces have satisfied the DCP requirement and it can be expected that customers would be able to find available parking to some degree.</p> <p>Conclusion: The Traffic team is supportive of the development subject to the following conditions:</p> <ul style="list-style-type: none"> • The patronage limit should remain as 75 seats (currently operating) before 5:00pm on weekdays. The expanded limit of 100 seats only applies after 5:00pm on weekdays and applies on weekends. This is due to concerns that the extended hours of operation might increase traffic movements and create localised congestion near the site access point (ramp to the rooftop parking) as workers try to leave this area. The shared business parking spaces are also not reliable customer parking spaces during business hours, especially with concurrent operations in the vicinity. Therefore, the patronage limit should remain at its current level before 5:00pm to accommodate the parking demand. • The development should provide wayfinding signs for customers to navigate between the available parking spaces and the restaurant. Clear signposting is required to efficiently utilise the parking spaces to accommodate the increased patronage number / extended hours. • If the only pedestrian access route between the rooftop carpark and the restaurant is via the main ramp, customer wayfinding should also include appropriate traffic measures such as carpark linemarking or protection devices to improve the current pedestrian safety conditions in an industrial environment. • Considering the proposed development operates late into the night and patrons may rely on foot traffic to and from the site to access public transport facilities, or to access the rooftop carpark as passengers. The lighting condition at the carpark then must meet the requirements of AS/NZS1158.3 for carparks. The development must also ensure the lights remain on until at least the end of the approved operations hours (i.e., midnight). The lighting requirement will be conditioned. <p>Original Comments - 1 November 2024</p> <p>Proposal description: Use of Premises as an artisan food and drink industry</p> <p>The proposed development seeks to increase the number of maximum patronage from 75 (including 50 sit-in seatings per the</p>

Internal Referral Body	Comments
	<p>previous No. 92/281 approval) to 100. The additional capacity is proposed to be allocated in the outdoor table area. The proposed development also seeks to set the hours of operation to be from 9am to midnight (Monday to Saturday) and from 9am to 11pm (Sunday).</p> <p>The traffic team has reviewed the following documents:</p> <ul style="list-style-type: none"> Plans (Master Set) - Revision C, designed by Drafter, dated 17/04/2024. Traffic Impact Assessment (TIA) - Revision 2.1, prepared by AusWide Consulting, dated March 2024 The <i>Statement of Environmental Effects</i> prepared by Sky Planning, dated April 2024 <p>Parking</p> <p>It is anticipated that the proposed increase in patronage and broad range of operational hours has the potential to intensify parking pressures in surrounding streets particularly during business hours. Further evidence should be provided to validate adequate parking capacity, especially to account for combined demand from the area.</p> <ul style="list-style-type: none"> <u>Parking Requirement</u>: As noted in the TIA report, the Warringah DCP specifies a requirement of 33 parking spaces for a restaurant with 100 seats. Currently, there is only 1 space dedicated to staff parking with a maximum of 10 staff to be employed. The parking data provided demonstrates high levels of parking occupancy during business hours and the extended operating hours and increased patron capacity are considered unlikely to be able to be supported by relying upon on-street parking. Although the TIA believes the business carpark adjacent to the site can provide the remaining capacity based on parking survey results as of 12 & 14 October 2023, this data shows high levels of occupancy during business hours at the 9 Powells Road and it is unclear if other premises benefitting from that parking are willing to allow the subject development to utilise that parking during business hours. Although it has been stated that adjacent premises are happy for their parking to be used afterhours documentation verifying to above has not been provided, neither has information on the number of such spaces available to those premises. Further data and analysis is needed to demonstrate that the proposed expanded operations are able to be supported by the available parking. <u>Carpark Occupancy Survey</u>: More specifically on the previous point, the critical parking shortage as demonstrated by times with parking occupancy greater than 85% was identified to be from 11:00am to 3:00pm on Thursday 12 October 2023, coinciding with the business hours in the area. During this period, almost all vacant spaces were at the rooftop carpark of 9 Powells Road that is accessed through the ramp directly above the site. The parking survey needs to clarify whether

Internal Referral Body	Comments
	<p>the restaurant was open at the time of survey because currently the restaurant opens at 5:00pm on weekdays. This means the parking analysis has failed to capture the parking demand generated from the restaurant, although the remaining capacity should still satisfy the required 33 spaces. It is also unclear whether use of those spaces would be permitted by other premises at 9 Powells Road. The above needs clarification.</p> <ul style="list-style-type: none"> • <u>Use of Business Carpark:</u> It is mentioned that permission has been granted for patrons to use the business carpark "at weekends and out of hours". A copy of the written agreement should be provided as evidence of carpark use. If the use is restricted to after business hours (i.e., 5:00pm), the parking requirement would not be satisfied at other times. • <u>Concurrent Parking Demand:</u> It should be noted that the adjacent food and drink premise (7th Day Brewery) has also sought to extend business hours and increase the number of seating. Since both sites have adjoining outdoor areas, and intend to share the available customer parking spaces, the combined parking demand should be considered in the report. Notably, both developments referred to the same parking survey results by AusWide Consulting, that reflects limited parking spaces even without both businesses operating during those hours on the survey date. The impacts of the combined operations of both premises needs to be reviewed. • <u>Staff Parking:</u> Although it is not reported that any additional staff would be recruited to help serve the additional seating, potentially it may lead to the loss of more parking spaces for many hours given that staff will require parking for the whole of their shift. Details on the anticipated staff numbers at various times the day/week should be provided rather than simply stating a maximum of 10 staff will be employed. Information outlining where it is intended that staff will park and/or outlining their current modes of transport would assist in better understanding the potential impacts of the proposal. <p>Public Transport and Ride-share</p> <ul style="list-style-type: none"> • The site has relatively good access to public transport. Although there is no direct bus route or bus stop on nearby local streets, the site is within a walkable distance of roughly 680m from Brookvale B-Line bus stop on Pittwater Road. This bus stop, and several other stands around Warringah Mall, provide frequent bus services throughout the day past midnight. It is noted that the TIA report states that the site is 290m from the B-Line stop however this does not reflect the need for pedestrian to have to walk around the Brookvale Bus Depot to access Pittwater Road. • There is a dedicated ride-share parking space on the ground floor of the site, providing an alternative travel option for

Internal Referral Body	Comments
	<p>patrons who have consumed alcohol and are inebriated.</p> <p>Traffic Generation</p> <ul style="list-style-type: none"> It is not anticipated that the development will generate significant volumes of traffic however the traffic and parking impact report should provide information on the anticipated traffic generation of the development and the timing for those peaks, particularly afternoon peak when workers in the area leave after work. <p>Deliveries</p> <ul style="list-style-type: none"> The Warringah DCP requires the provision of off-street parking to take into account of the need for parking facilities for courier vehicles, delivery/service vehicles and bicycles. Since the proposed development is a food and drink premise that includes take-away services, it is expected that both supply delivery trucks, food delivery vehicles (cars, motorbikes, and bicycles) and waste collection vehicles would frequently visit the site. Information outlining how deliveries and servicing will be accommodated is required and separated from customer parking/dining areas. <p>Patronage Limit Prior to 5pm</p> <ul style="list-style-type: none"> As highlighted in a previous point, customer parking demand is anticipated to place undue pressure upon the existing capacity available to support other premises within the area, especially if the business carpark cannot be accessed during business hours or when the combined parking demand from similar food and drink businesses in the area are taken into account. It is noted that currently, the restaurant opens between 5pm and 9pm on Monday, Wednesday, and Thursday with closure on Tuesday. The proposed expanded operations are therefore viewed as appreciable intensification of use and patronage limits during business hours are likely to be applied to any approval. <p>Pedestrian Access</p> <ul style="list-style-type: none"> Footpath is present on both sides of the road at the site frontage. Footpath along the southern side terminates at the 90-degree parking area behind the Bus Depot and switches to the northern side that connects to Orchard Road and eventually to Pittwater Road. Pedestrian access is satisfactory as patrons on foot may travel along the footpath to reach the main road with 2 crossings over local roads.

Internal Referral Body	Comments
	<p>Lighting</p> <ul style="list-style-type: none"> There are streetlights along both site frontages, with one of them directly next to the site driveway on Powells Road which is presumably the main entrance for visitors. However, there are no existing streetlights on the section of Mitchell Road between Orchard Road and Powells Road. If the ambient light level is insufficient at late night hours, it may not be a safe environment for such late business hours and a review of streetlighting levels is likely to be requested in conjunction with any approval. <p>Conclusion</p> <p>The current materials have not satisfactorily addressed the potential parking demand increase as a result of the increased number of outdoor seatings or extended business hours. The developer should confirm the agreement of carpark usage in a written format, and give more consideration to the hours of operation (especially if they are concurrent with other businesses in the area).</p>

External Referral Body	Comments
NSW Police - Licensing (Clubs, Hotels, Pubs)	As the proposed development involves a new land use which would result in a new licenced premises, the application was referred to the NSW Police for comment in accordance with Council's referral procedure. Overall, the NSW police were supportive of the proposed development subject to recommended changes and conditions. The full details of the NSW police response is available as an attachment to this report.

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 (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether 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. The ground floor (the subject of this proposal, has been used for a food and drink premise).

The development occurs at the ground level (within the existing car park) and does not require any works to be conducted at ground level which would otherwise disturb the existing concrete pad. Council's Environmental Health Officer has reviewed the report and does not raise any objection to the proposal nor impose any conditions.

In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter 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

The development does not propose any changes to the built form. Therefore the development standards are not pertinent to this assessment.

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	N/A
5.4 Controls relating to miscellaneous permissible uses	Yes
5.21 Flood planning	Yes

Detailed Assessment

5.4 Controls relating to miscellaneous permissible uses

The WLEP 2011 contains for following provision for Artisan Food and Drink Premises:

(10) Artisan food and drink industry exclusion

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

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

The pizza/pasta manufacturing, preparation and storage (industry component of the development) consists of 78.4m² of gross floor area. The area designated to retail sales is 7m², or 8.9% of the gross floor area of the industry use.

The applicants measurement is inconsistent with Councils as it includes all floor area proposed for dining as industry area. It should be noted that the proposed development is still compliant with the control with this considered.

Therefore, the proposal complies with Clause 5.4(10) of the WLEP 2011.

Warringah Development Control Plan

Built Form Controls

The development does not propose any changes to the built form. Therefore the built form controls are not pertinent to this assessment.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
B6 Merit Assessment of Side Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D3 Noise	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D14 Site Facilities	Yes	Yes
D18 Accessibility and Adaptability	Yes	Yes
D20 Safety and Security	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E11 Flood Prone Land	Yes	Yes

Detailed Assessment

C3 Parking Facilities

The proposed development provides one (1) off-street, staff parking spaces located within the subject site. The applicant has also obtained a consent from the adjoining tenancies within the industrial complex, to use 33 of the parking spaces both during and after normal business hours for the proposal's patrons.

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

The applicant has provided an operational management plan, outlining the details of the proposed use. The applicant has also provided a traffic and parking assessment report to demonstrate that the proposed use will not have an adverse impact on the surrounding locality with regards to parking and traffic generation.

Council's Traffic Engineers have reviewed the amended details of the proposed development with regards to off-street parking and traffic generation. Based on the details provided with the application, Council's Traffic Engineers are satisfied that the development will not have an adverse impact based on the proposed use, hours of operation and operational details of the development. Full comments can be found earlier within this report from Council's traffic team.

D3 Noise

An acoustic report has been submitted with the development application to address the potential noise impacts of the development. The development is not located in close proximity to residential zoned land. Council's environmental health officer has reviewed the submitted acoustic report and is satisfied the development will not have an unreasonable impact with regard to noise.

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

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 2024

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 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 DA2024/0959 for Use of Premises as an artisan food and drink industry on land at Lot 44 SP 38006, 44 / 54 Wattle Road, BROOKVALE, subject to the conditions printed below:

Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
AR-00	C	Indicative Site Plan	Drafter	17 April 2024
AR-01	C	Floor Plan	Drafter	20 February 2024
AR-03	C	Seating Plan	Drafter	20 February 2024
AR-04	D	Elevation	Drafter	17 April 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Acoustic Report	1	PKA Acoustic Consultants	15 July 2024
Plan of Management	-	Listed Applicant	-
Traffic Impact and Parking Demand Assessment	2.1	AusWide Consulting	March 2024
Waste Management Plan	-	Jasmin Blazevic	17 April 2024

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

2. Compliance with Other Department, Authority or Service Requirements

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
NSW Police	NSW Police Referral Response	16 September 2024

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website www.northernbeaches.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

3. Approved Land Use

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of an Artisan Food and Drink Premises.

An Artisan Food and Drink Premises is defined as:

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) the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, take away meals and drinks or entertainment are also provided,*

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

(development is defined by the Warringah Local Environment Plan 2011 (as amended) Dictionary)

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

Reason: To ensure compliance with the terms of this consent.

4. **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.

5. 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) Construction certificate plans are to be in accordance with all finished levels identified on approved plans. Notes attached to plans indicating tolerances to levels are not approved.
- (c) 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.
- (d) At all times after the submission of 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.
- (e) 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.
- (f) 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.
- (g) Prior to the release of the Construction Certificate, payment of the following is required:

- i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% 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.
 - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
 - iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.
- (h) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (i) 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.
- (j) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (k) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (l) 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.
- (m) 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.
- (n) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

- (o) Should any construction cranes be utilised on site, they are to be fitted with bird deterrents along the counterweight to discourage raptor (bird) nesting activity. Deterrents are to remain in place until cranes are dismantled. Selection of deterrent methods is to be undertaken in accordance with the recommendations of a suitably qualified ecologist.
- (p) 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.

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

6. **Plans of Kitchen Design, construction and fit out**

Prior to any Construction Certificate (CC) being issued, detailed plans that demonstrate compliance with Standard 3.2.3 of the Australian and New Zealand Food Standards Code, the Food Act 2003 and Australian Standard AS 4674 'Design, construction and fit out of food premises', must be submitted to and approved by the Principle certifier. These plans are to be prepared by a suitably qualified person.

The plans must detail adequate provision for storage including separate storage of food, equipment, chemicals and personal belongings.

Reason: To ensure that the food premises complies with the design construction and fit-out requirements.

7. **Mechanical ventilation Plans**

Where Mechanical ventilation is required to be installed in the food premises ,prior to any Construction Certificate (CC) being issued, detailed plans must be submitted to and approved by the Principle certifier that demonstrate compliance with the following:

- Australian Standard (AS) 1668.2 “The use of ventilation and air-conditioning in buildings - Mechanical ventilation in buildings”; and
- Any external exhaust discharge must be above the roofline and discharged in a manner that is not likely to cause an amenity impact.

These plans are to be prepared by a suitably qualified person.

Reason: To ensure that the installed mechanical ventilation complies with the requirements of the Australian Standard 1668.2 and to prevent amenity impacts.

8. **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.

DURING BUILDING WORK

9. **Waste Management During Development**

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

Details demonstrating compliance must be submitted to the Principal Certifier.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

10. **Acoustic Design Recommendations**

Prior to the issuing of any Construction Certificate, documentation is to be submitted to the satisfaction of the Principal Certifier that design recommendations within the acoustic report have been implemented / incorporated into the design of the premises.

Reason: To prevent noise nuisance by using mitigation measures in design.

11. **Signage and Linemarking - Internal**

A plan demonstrating appropriate linemarking/separation of a pedestrian pathway between the site and the rooftop carpark is to be submitted to the Principal Certifier and the related works completed prior to the issue of any Occupation Certificate.

Reason: to maintain pedestrian safety in an industrial environment.

12. **Kitchen Design, construction and fit out of food premises certification**

Prior to the issuing of any occupation certificate, certification is to be provided to the Principal Certifier by a suitably qualified person demonstrating that that the design, construction and fit

out of food premises kitchen is compliant with the requirements of AS 4674 Design, construction and fit out of food premises.

Reason: To ensure that the kitchen complies with Australian Standard design requirements.

13. Mechanical Ventilation certification

Where Mechanical ventilation is required to be installed in the food premises it must comply with the following:

- Australian Standard (AS) 1668.2 “The use of ventilation and air-conditioning in buildings - Mechanical ventilation in buildings”; and
- Any external exhaust discharge must be above the roofline and discharged in a manner that is not likely to cause an amenity impact.

Certification is to be provided to the Principal Certifier prepared by a suitably qualified person to demonstrate that the mechanical ventilation complies with the above requirements.

Reason: To ensure that the installed mechanical ventilation complies with the requirements of the Australian Standard 1668.2 and to prevent amenity impacts.

14. Waste Management Confirmation

Prior to the issue of an Occupation Certificate, evidence / documentation must be submitted to the Principal Certifier that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

15. Streetlighting Review

A streetlighting consultant is to be engaged to:

1. Review the level of carpark lighting at the rooftop carpark, along the carpark access ramp and on the local road network between the site and buses on Pittwater Road in terms of its compliance with AS/NZS1158.3 Pedestrian Area Lighting.
2. Ensure the operational capability of carpark lights until business closure hours at midnight.
3. Prepare designs for any required upgrades on the Council road network and submit these to Council for consideration and approval by Ausgrid.

The streetlighting review and any required internal streetlighting are to be completed at the applicant's cost prior to occupation with public road upgrades submitted to Council for future consideration for funding.

Reason: To ensure safe and well-lit paths of travel are available between the site and the rooftop carpark.

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

16. Acoustic Requirements - On-going

Compliance with the recommendations within the Acoustic Assessment by PKA Acoustic Consulting dated 15 July 2024 and any additional requirements at OC review stage.

Reason: To prevent a noise nuisance to any neighbouring residential receiver.

17. **Amenity**

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

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

18. **Site Occupancy & Hours of Operation**

That the number of (customers/visitors/patients/guests/patrons) on the site at any one time be limited to:

75 persons between the hours of 9am to 5pm weekdays.

100 persons between the hours of 5pm to 12pm (midnight) weekdays, 9am to 12pm (midnight) Saturdays, and 9am to 11pm Sundays.

Reason: To minimise the impact of parking and traffic generated by the site.

19. **Hours of Operation**

The hours of operation are to be restricted to:

- Monday to Saturday – 9am - 12.00am
- Sunday and Public Holidays – 9am - 11:00pm

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

20. **Commercial Waste Collection**

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.

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

Signed



Kye Miles, Planner

The application is determined on 08/12/2024, under the delegated authority of:



Steven Findlay, Manager Development Assessments