



## DEVELOPMENT ASSESSMENT REPORT

<b>Planner:</b>	Jordan Davies
<b>Address / Property Description:</b>	Lot 2 DP 1008986 and Lot 1 DP 1205253 200 Forest Way BELROSE Use of part of premises as a café (restaurant) and car parking
<b>Development Application No:</b>	DA2020/0104
<b>Application Lodged:</b>	07/02/2020
<b>Plans Reference:</b>	Architectural Plans Sheets 1 – 6, dated 07/05/2019 prepared by Corona Projects Car Parking Layout Plans, 19083/1 – 19083/4, Rev A dated 22/06/2020
<b>Amended Plans:</b>	Amended Car Parking Layout Plans dated 22/06/2020
<b>Applicant:</b>	Corona Projects Pty Ltd
<b>Owner:</b>	G J Macri, R C Macri, A R Macri, T Gallo
<b>Locality:</b>	C8 Belrose North
<b>Category:</b>	Category 3 Development – Restaurant
<b>Variations to Controls (CI.20/CI.18(3)):</b>	Front Setback, Side Setback
<b>Referred to DDP:</b>	Not Applicable
<b>Referred to NBIAP:</b>	Yes – Category 3 Development requires Public Hearing
<b>Land and Environment Court Action:</b>	Nil.
<b>SUMMARY</b>	
<b>Submissions:</b>	No submission received.
<b>Submission Issues:</b>	Nil.

**Assessment Issues:** Desired Future Character, Traffic, Parking, Front and Side Setback

**Recommendation:** Approval subject to conditions

**LOCALITY PLAN** (not to scale)



**Subject Site:** Lot 2 DP 1008986 and Lot 1 DP 1205253, Commonly known as 200 Forest Way, Belrose.

**Public Exhibition:** The subject application has been publicly exhibited in accordance with the EPA Regulation 2000, Warringah Local Environment Plan 2000 and Northern Beaches Community Participation Plan.

The application was required to be advertised for 14 days in accordance with Clause 23 (1)(f) Warringah LEP 2000.

As a result, the application was notified to 14 adjoining landowners and occupiers for a period of 14 calendar days commencing on 1 March 2020 and being finalised on 14 March 2020. Furthermore, the application has been advertised within the Manly Daily commencing on 29 February 2020 and a notice was placed upon the website.

As a result of the public exhibition, no submissions were received.

## SITE DESCRIPTION

The subject site consists of two (2) allotments located on the western side of Forest Way. The allotments consist of Lot 2 DP1008986 and Lot 1 DP1205253 and combined they are known as 200 Forest Way, Belrose.

The site is irregular in shape with a total frontage of 100m along Forest Way and a depth of 240m. The site has a total area of 14,674m<sup>2</sup> (both lots combined).

The entire site currently operates as a retail plant nursery. The existing approved hours of the retail plant nursery are 8am – 6pm, seven days a week. The eastern portion of the site accommodates an existing concrete carpark and a two-storey building which consisted of a caretakers cottage, an office and shop (associated with the retail nursery). There are a number of greenhouses, plant display areas, storage sheds and storage areas located centrally and to the rear of the site.

The site currently has vehicular access from Forest Way which forms the main access point used by customers visiting the retail plant nursery. The site has a second vehicular access point at the rear of the site via Linden Avenue. This access point is used for deliveries and staff.

The site does not contain any significant canopy trees or native vegetated bushland.

### Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by a variety of land uses. To the north dual occupancy and to the south is a dwelling house. The site to the south has a development consent for the establishment of a 90 place childcare centre and a new dwelling house. Adjoining the site to the north-west is an area of bushland owned by the Metropolitan Local Aboriginal Land Council. Across the road to the east is a retirement village. A public road known as Linden Avenue adjoins the site at the rear (west).

Located 125m to the North of the site at 206 Forest Way is another Retail Plant Nursery, which consists of a restaurant with approval to seat 48 patrons.

## SITE HISTORY

The site has a history of development applications submitted to Council seeking consent for the establishment of a Restaurant in association with the existing retail plant nursery. Previous development applications for the establishment of a restaurant have been refused due to insufficient information, parking and access concerns, inconsistency with the Desired Future Character (DFC), size and scale of the proposed buildings, works on public land and issues raised in the public submissions.

The history of the site is as follows:

- **DA1985/319** – Retail plant nursery in conjunction of existing wholesale plant nursery, with associated access and parking. Approved by Warringah Council on 21 June 1985.

- **DA1994/197** – Erection of a building to be used for plant display, sales office and refreshment room within the existing retail plant nursery, approved by Warringah Council on 1 June 1994. Condition No.20 specified the hours of operation of the 'refreshment room' to operate during the hours of the retail plant nursery being 8am to 6pm daily.
- **DA2003/0497** – Construction of a new two storey building containing a new showroom/display area, café, kitchen, ancillary facilities, ancillary offices, loading dock and amenities. The Café proposed had a capacity of 56 patrons.

Council recommended the application for refusal and the recommendation was concurred with by the IHAP. The application was refused on 3 August 2005 for the following reasons:

- The application involved development on land identified as Public Open Space (land not owned by applicant)
  - The application was deficient and did not provide all the required information as required by the *EP&A Regulations*.
  - Council was not satisfied the proposal was consistent with the Desired Future Character.
- **DA2007/0010** – Alterations and additions to an existing structure for the provision of a new Café (Restaurant) and gift shop. The café component included 36 Seat café/restaurant (including alfresco dining on the balcony).

Council recommended the application for refusal and the recommendation concurred with by the IHAP. The application was refused on 27 November 2007 for the following reasons:

- Inconsistent with desired future character of the C8 – Belrose Locality.
  - The proposal constitutes an overdevelopment of the site and an unacceptable intensification and expansion of an existing Category 3 Use.
  - Inconsistent with Clause 75 – Design of Car parking areas.
  - Proposed development not considered suitable for the site, particularly in terms of vehicular access and safety, parking and loading arrangements, and an unacceptable intensification and expansion of an existing Category 3 use.
  - Not in the public interest.
- **DA2008/1307** – Alterations and additions to an existing retail plant nursery to include a restaurant, giftware shop and office area. The café component of the development included seating for 40 patrons.

Council recommended the application for refusal and the recommendation concurred with by the IHAP. The application was refused on 21 July 2009 for the following reasons:

- Pursuant to Section 79(C)(1)(a)(i) of the Environmental Planning and Assessment Act 1979 and Clause 12(3)(b) of Warringah Local Environmental Plan 2000, the proposed development is inconsistent with the Desired Future Character of the C8 - Belrose North Locality. In this regard, the proposal does not enhance the natural landscape and is not a “low intensity/low impact” use as required, having regard to the additional traffic and parking generated by the new uses, the current high intensity development of the site and significant non-compliances with landscaping and building setbacks which do not contribute to a bushland setting for the development.
- **DA2010/1140** – Alterations and additions to caretakers residence (dwelling house) and construction of a shop and office. The application was approved by Warringah Council on 13 January 2011. As the proposal involved alterations and additions to an existing Category 3 use, the application was not required to be considered by the IHAP in accordance with Clause 16 WLEP 2000. The proposed development can be summarised as follows:
  - *The application relates to an existing retail plant nursery, whereby the applicant seeks approval to carry out alterations and additions to the existing two storey caretakers residence near the south-eastern (front) corner of the site. The internal and external changes to the building are intended to renovate and upgrade the dwelling-house and modernise the shop and office space within the under-croft area of the house. Part of the retail facilities in the nursery shed nearby can thus be relocated and consolidated with the modernised shop space.*

#### Assessment against DFC for DA2010/1140

The proposal was considered to be low intensity and low impact as the proposal involved alterations to an existing dwelling. The upgrades to the office and shop were proposed to augment the existing facilities on site and will essentially continue to be ancillary to the main nursery. The upgrading these facilities were not considered to create any increase in intensity with regard to traffic, noise, water management, streetscape and impacts on landscaping. The proposal was therefore consistent with the DFC.

- **Road Closure** - A road closure, including Crown subdivision was completed in 2016 for the unnamed Crown road reserve along the southern boundary of the site, creating Lot 1 DP1205253. This unformed road now under the ownership of the 200 Forest Way and part of the subject land.
- **DA2019/0581** – Use of premises as a restaurant and construction of a car park – Application was withdrawn on 11 September 2019 as the following information was required for Council to undertake a full assessment:
  - Wastewater Report to account for the new café use;
  - Traffic report to certify the design of the car parking area a turning paths to satisfy RMS requirements;

- Swept path diagrams;
- Clarification of site access arrangements.

## **PROPOSED DEVELOPMENT**

The proposed development is for the establishment of a café (defined as a restaurant under the WLEP 2000) on the first floor of the existing building and car parking. Specifically, the proposed development consists of:

- Establishment of a restaurant within the confines of the existing first floor of the building;
- Consent sought for associated restaurant fitout including kitchen and toilet facilities;
- Restaurant to have a capacity of 50 patrons;
- Hours of operation Monday – Saturday 8am to 4pm.
- 2 full time staff and 5 part time staff;
- Establishment of 30 new car parking spaces, making a total of 56 car spaces;

It is noted that the internal fit out for the restaurant is partially completed which includes the kitchen facilities, amenities and restaurant floor area. Council's building control team are investigating this matter. This does affect the assessment of the use of the building as a restaurant.

## **AMENDMENTS TO THE SUBJECT APPLICATION**

The application originally proposed a total of 61 car parking spaces, 17 of which were to be provided along the southern edge of the site. At the request of Council's traffic engineers and comments received from Transport for NSW, the applicant was requested to amend the car parking layout along the southern edge to allow for sufficient vehicle manoeuvring space to allow cars to exist in a forward direction. To achieve this five (5) car spaces were removed along the southern edge.

This amended car parking layout was submitted to Council in an amended plan DWG No 19083/01, Rev A, dated 22 June 2020 prepared by TEF Consulting.

A condition of consent has been recommended for the architectural plans to be updated prior to the issue of a construction certificate for the car parking layout to reflect the latest issue of plans prepared by TEF Consulting.

## **STATUTORY CONTROLS**

- a) Environmental Planning and Assessment Act 1979 (EPA Act 1979); and
- b) Environmental Planning and Assessment Regulations 2000.

## **PUBLIC EXHIBITION**

The subject application has been publicly exhibited in accordance with the EPA Regulation 2000, Warringah Local Environment Plan 2000 and Northern Beaches Community Participation Plan.

The application was required to be advertised for 14 days in accordance with Clause 23 (1)(f) Warringah LEP 2000.

As a result, the application was notified to 14 adjoining landowners and occupiers for a period of 14 calendar days commencing on 1 March 2020 and being finalised on 14 March 2020, furthermore, the application has been advertised within the Manly Daily on 29 February 2020 and a notice was placed upon the site.

No submissions were received during the notification period.

## **REFERRALS**

### **External Referrals**

#### Transport for NSW (Formally Roads and Maritime Services)

*The application was referred Transport for NSW (TfNSW) for comment as the site requires access from a Classified Road, Forest Way. TfNSW reviewed the submitted information and provided concurrence under Section 138 of the Roads Act 1993 subject to the conditions listed in the response dated 21 July 2020.*

#### AusGrid

*The application was referred to AusGrid pursuant to Clause 45(2) of State Environmental Planning Policy (Infrastructure) 2007. AusGrid provided a response advising that there is no objection to the development application, subject to the design submission complying with relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice for construction works near existing electrical assets.*

### **Internal Referrals**

#### **Traffic Engineer**

*The proposal is for the development of a café on the first floor of the business premise as an ancillary development to the existing retail plant nursery, a new car parking spaces and rearrangement of the existing car parking spaces.*

#### Traffic

*The café is expected to attract most of the customers from the existing nursery visitors and any additional traffic generation is acceptable will have negligible impact on the existing road network.*

#### Parking

*According to SEPP/DCP parking requirements,*

- *Plant Nurseries: 0.5 space/ 100m<sup>2</sup>*

*Therefore, the proposed nursery should have 29 Spaces for 5,800 m<sup>2</sup>*

- *Café/ Restaurants: 15 spaces per 100m<sup>2</sup>*

*Therefore, the proposed café should have 38 spaces (37.2)*

*A total of 67 spaces is required for the site (Nursery and Cafe).*

*The applicant has proposed a total of 56 Spaces (14 staff +12 parallel + 30 Angle). There is a shortfall of 11 spaces. The applicant initially proposed a total of 61 spaces. Due to the limited manoeuvrability opportunities some of the parking spaces had to be rearranged. The applicant had to reduce the number parking to 56 spaces. The café is expected to be used primarily by plant nursery visitors and have a peak parking at lunch time. A few shortfall of parking spaces is accepted. However, the applicant should try to accommodate 2 to 3 more spaces on the redundant driveway at the south-east corner in order to reduce the shortfall of parking spaces. This will be conditioned.*

*Pedestrian:*  
*No concerns*

#### *Access*

*The site has dual access. A driveway with separate entry and exit for customers and staff off Forest Way. Another driveway for service vehicles through Linden Avenue. All vehicles should enter and leave the site in a forward direction. The proposed turning area (DWG No. 19083/01 dated 22/06/2020) for the southern parallel parking should be clearly marked with contrasting line marking to prevent parking or being blocked by cars.*

*The site should be clearly sign posted in accordance with Australian Standard to guide customers of parking. There should be signs at both access at Forest Way and Linden Avenue to guide customers, staffs and service vehicles.*

*The driveway off Linden Avenue should be widened to 10m for simultaneous ingress/ egress of service vehicles. An application to construct driveway has to be submitted and approved by Council's Development Engineer prior to construction certificate. The redundant driveway on Lot 1 (DP 1205253) off Forest Way should be removed and replaced with materials to match the existing shoulder. The design and construction shall be in accordance with TfNSW and Council's requirement. Council and TfNSW do not support the proposal of a boom gate at this location.*

#### *Servicing:*

*The delivery trucks servicing the site will access from Linden Avenue. An application to construct driveway has to be submitted and approved by Council's Development Engineer prior to construction certificate. The driveway has to be widened in accordance with Australian Standard and Council's requirement to allow simultaneous entry and exit of Heavy Rigid Vehicles. In order to avoid conflict between entering and exiting service vehicles.*

*This will be conditioned.*

#### **Building Assessment Referral**

*The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.*



*Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.*

**Environmental Health (Unsewered Lands)**

*General Comments*

*Proposal to connect a kitchen to a commercial waste water system.*

*The applicants provided an onsite waste water management report that details disposal of effluent into existing Wisconsin Sand Mounds. No site modifications are required, the existing system is able to cope with the increased load (also a change of chemical content).*

*Recommendation - Approval subject to conditions*

**Environmental Health (Commercial Food Use)**

*General Comments*

*Environmental Health has reviewed the proposal in relation to food safety.*

*Recommendation*

*APPROVAL - subject to conditions*

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)**

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

<b>Section 4.15 'Matters for Consideration'</b>	<b>Comments</b>
<b>Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument</b>	See discussion on “Environmental Planning Instruments” in this report.
<b>Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument</b>	See discussion on “Draft Environmental Planning Instruments” in this report.
<b>Section 4.15 (1) (a)(iii) – Provisions of any development control plan</b>	Warringah Development Control Plan applies to this proposal.
<b>Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement</b>	None applicable.
<b>Section 4.15 (1) (a)(iv) – Provisions of the regulations</b>	The EPA Regulations 2000 requires the consent authority to consider the provisions of the Building Code of Australia. This matter has been address via a condition of consent.  Clause 92 of the EPA Regulations 2000 requires the consent authority to consider AS

Section 4.15 'Matters for Consideration'	Comments
	<p>2601 - 1991: <i>The Demolition of Structures</i>. This matter has been address via a condition of consent.</p> <p>Clause 93 of the EPA Regulation 2000 requires the consent authority to consider the fire safety upgrade of development. This matter has been address via a condition of consent.</p> <p>Clause 50(1A) of the EPA Regulations 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted.</p> <p>Clause 54 and 109 of the EPA Regulations 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this Clause within the Regulations.</p> <p>Clause 143A of the EPA Regulations 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a CC. Accordingly, appropriate conditions of consent are recommended for imposition should this application be considered worthy of approval.</p>
<p><b>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</b></p>	<p>(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the General Principles of Development Control in this report.</p> <p>(ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
<p><b>Section 4.15 (1) (c) – the suitability of the site for the development</b></p>	<p>The site is considered suitable for the proposed development.</p>
<p><b>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</b></p>	<p>See discussion on “Public Exhibition” in this report.</p>

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (e) – the public interest	No matters have arisen that would justify the refusal of the application in the public interest.

The proposal has been considered against the relevant matters for consideration under Section 4.15 of the EP&A Act 1979. 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 any conditions contained within the Recommendation.

## **DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS:**

### **Draft State Environmental Planning Policy (Remediation of Land)**

Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for a retail plant nursery for an extended period of time. The proposed development consisting of a restaurant use within an existing building is not considered to present a contamination risk.

## **ENVIRONMENTAL PLANNING INSTRUMENTS (EPI's)**

### **State Environmental Planning Policies (SEPPs)**

#### **State Environmental Planning Policy No 55 – Remediation of Land**

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for been a commercial business (retail plant nursery) for an extended period of time. The proposed development consisting of a restaurant use within an existing building is not considered to present a contamination risk. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the land use.

#### **State Environmental Planning Policy - Infrastructure**

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

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists),
- immediately adjacent to an electricity substation,
- within 5m of an overhead power line

- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5m of an overhead electricity power line

The application was referred to AusGrid who provided a response advising that there were no concerns with the subject development subject to standard conditions including compliance with WorkCover requirements.

## **Regional Environment Plans (REPs)**

### **Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005**

The subject property is located within the Sydney Harbour Catchment therefore the provisions of this plan apply to this development.

An assessment of the proposal against Clause 2(1) (aims of the SREP), Clause 13 (nominated planning principles) and Clause 21 (relating to biodiversity, ecology and environmental protection) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

## **Local Environment Plans (LEPs)**

### **Warringah Local Environment Plan 2000 (WLEP 2000)**

#### **1 Desired Future Character (DFC)**

The subject site is located in the C8 Belrose North Locality under Warringah Local Environmental Plan 2000.

The Desired Future Character Statement for this locality is as follows:

*“The present character of the Belrose North locality will remain unchanged except in circumstances specifically addressed as follows.*

*The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be grouped in areas that will result in the minimum amount of disturbance of vegetation and landforms and buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.*

*Development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses. A dense bushland buffer will be retained or established along Forest Way. Fencing is not to detract from the landscaped vista of the streetscape.*

*Development in the locality will not create siltation or pollution of Middle Harbour.”*

The proposed development is defined as “restaurant” under the WLEP 2000 dictionary. “Restaurants” are identified as Category 3 development in this locality.

Clause 12(3)(a) of WLEP 2000 requires the consent authority to be satisfied that the proposed development is consistent with the Locality’s DFC statement.

Accordingly, an assessment of consistency of the proposed development against the locality’s DFC is provided hereunder:

*Requirement: “The present character of the Belrose North locality will remain unchanged except in circumstances specifically addressed as follows.”*

Comment: The proposal will involve minor alterations to the existing building on the site and some additional line marking with an existing concrete hard stand carpark and decommissioned access road. The site will be visually unchanged and therefore, will not change the visual character of the Belrose North Locality.

The proposal is consistent with the existing character of the locality with regard to the land use with a similar development 125m to the north of the site consisting of a Retail Plant Nursery and Restaurant. Directly to the south of the site is an approval for a 90 place child care centre. In regards to the character of the land uses in the locality, the proposal is consistent with various Category Three development approvals granted in recent years.

*Requirement: “The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be grouped in areas that will result in the minimum amount of disturbance of vegetation and landforms and buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.”*

Comment: The proposed development consists of internal alterations to the existing building and no additional landscaped area or bushland is impacted as result of the proposal. The proposal utilises the existing car parking facilities and hard stand surfaces to provide additional car parking. The proposal does not alter the present character of the area with regard to the landscape setting.

No new buildings are proposed which would require consideration of colours or grouping of new buildings.

The proposal does not diminish the operation of the site as a retail plant nursery which in itself provides an enhanced landscape setting by virtue of the storage and growing of plants for the business use.

*Requirement: “Development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses.”*

Comment: The proposal is for a restaurant, and therefore must qualify as a low intensity, low impact use.

The definition of low intensity, low impact uses was used in the Land and Environment

Judgement “*Vigor Master Pty Ltd v Warringah Shire Council (2008) NSWLEC 1128*”. The following definition was provided in the judgement:

***Intensity*** is commonly used to identify the nature of the proposal in terms of its size and scale and the extent of the activities associated with the proposal. Therefore “*low intensity*” would constitute a development which has a low level of activities associated with it.

The following provides an assessment of “low intensity” as it relates to the proposed development.

- The amount of traffic movements (cars, delivery and service vehicles),
- The number of pedestrian movements (internal and external),
- The physical size of the business (floor space, height, scale, building footprint, amount of landscaping),
- The hours of operation of a business,
- The noise generation of the business,
- The light emitted by the business (internal, floodlighting and signage).

The development is considered to be low intensity for the following reasons:

- The proposed restaurant use will remain associated with and ancillary to the existing retail plant nursery. The proposed hours of operation (8am-4pm) are within the existing approved hours of the retail plant nursery (8am – 6pm). In this regard, the restaurant is not considered to form a destination in its own right and will be used to enhance the existing experience for customers visiting the retail plant nursery.
- The proposed development does not physically increase the size of the existing buildings on the site and uses the existing floor area to provide the restaurant use.
- The number of car spaces provided on the site is accepted by Council’s traffic engineer with regard to servicing the retail plant nursery and restaurant uses.
- The proposed use will generate a minor amount of additional deliveries and will not require deliveries outside of hours (this will be a condition of consent). The delivery arrangements for the retail plant nursery can be utilised and will be insignificant when considering the existing operation of the retail plant nursery.
- The application has been referred to Transport for NSW who support the proposal with regard to traffic impacts for the surrounding road network.
- No signage is proposed for the application (any signage subject to a separate application or the requirements of SEPP (Exempt and Complying Development Codes) 2008).
- The proposal is not considered to result in excessive noise impacts given the hours of operation align with the retail plant nursery and the restaurant is contained within the existing building with adequate physical separation to existing residential properties. It is noted that the adjoining site to the south has an approval for a 90 place child care centre and any noise generated as result of the restaurant will be minor in comparison. A condition will be recommended to control noise impacts and prohibit the use of amplified music. Similar conditions were used for the approved restaurant 125m to the North.

- The use is during the daytime only with no need for additional lighting.

**Impact** is commonly used in planning assessment to identify the likely future consequences of proposed development in terms of its surroundings and can relate to visual, noise, traffic, vegetation, streetscape privacy, solar access etc. Therefore 'low impact' would constitute a magnitude of impacts such that was minimal, minor or negligible level and unlikely to significantly change the amenity of the locality.

The development is considered to be of low impact for the following reasons:

- Visual – The proposed development involves the change of the building use and internal alterations only, with no additional visual impact upon the locality as a result. The existing car parking is used with new line marking and this does not change the visual appearance of the site.
- Noise – The proposed hours of operation are within the existing hours of operation for the retail plant nursery and are not considered to give rise noise impacts. As discussed previously, the use is considered to compliment and is ancillary to the existing retail plant nursery to enhance the existing customer experience for those visiting the site. Notwithstanding this, conditions are recommended to ensure that noise generated by the use will not exceed 5dBa above background noise levels at the nearest residential boundary.
- Traffic – The proposal is supported by Council's traffic engineer and 56 car spaces are proposed for the combined retail plant nursery and restaurant. Council's traffic engineer has recommended a condition of consent requiring a minimum of two (2) additional spaces be provided as there is sufficient room within the site, resulting in a total of 58 spaces. The proposal has also been referred to Transport for NSW given access is provided off a classified road Forest Way. TfNSW support the proposal subject to conditions of consent. Overall, the proposal is not considered to result in an unreasonable impact upon traffic and the site access arrangements are satisfactory.
- Vegetation – No vegetation is proposed to be impacted as a result of the proposal.
- Privacy – No proposed changes to the windows or floor levels of the existing building and the physical separation from the existing building and southern property is sufficient to mitigate any direct visual overlooking.
- Solar Access – No additional impact with regards to solar access.

*Requirement: "A dense bushland buffer will be retained or established along Forest Way. Fencing is not to detract from the landscaped vista of the streetscape."*

Comment: No new fencing is proposed and the internal use does not impact any bushland on the site or along Forest Way.

*Requirement: "Development in the locality will not create siltation or pollution of Middle Harbour."*

Comment: The proposed development does not involve ground disturbance which would create siltation or pollution of Middle Harbour. The application is accompanied by a wastewater management report which demonstrates the site can adequately handle the

additional wastewater generation through the restaurant use. Council's environmental health officer has reviewed the report and is satisfied in this regard.

As detailed above the proposed development is considered to be consistent with the Locality's DFC statement.

### **Comparison to Surrounding Category 3 Developments**

The use of the site for the purpose of a restaurant has previously been considered by Council with regard to the consistency with the Desired Future Character (DFC). The outcomes of each application is detailed earlier within this assessment report under Site History. The previous applications submitted for the use as a restaurant had not demonstrated to the satisfaction of Council that the proposal was consistent with the DFC statement for various reasons including parking, traffic, site access, landscaping, built form and not being considered a low intensity/low impact use.

As part of considering the current development application, a review of more recent development consents issued for nearby Category 3 Developments have been taken into consideration in drawing a comparison for what is considered to be a low intensity and low impact use. The matters in relation to parking, traffic and access have been addressed to the satisfaction of Council in the current development application. Similarly, as the development involves a change of building use with internal works only, the outcome with regard to the visual impact, built form and landscaping are unchanged. Therefore, the principle consideration is if the use is low impact/low intensity in the context of the North Belrose area. It is therefore relevant to draw comparisons from surrounding recent approvals for Category 3 Development.

#### **206 Forest Way, Belrose**

The site 206 Forest Way Belrose operates as a retail plant nursery and restaurant and is located 125m to the North of the proposed development. The use as a restaurant was approved under DA2009/1420 and then subsequently modified under MOD2013/0033 to seek an increased capacity of 48 patrons. The details of the approved use are as follows:

- Capacity of 48 patrons;
- Hours of operation 9am-5pm Monday to Friday and 8:30am – 5pm Saturday and Sunday;
- 43 parking spaces to service the combined retail plant nursery and restaurant;
- Retail plant nursery component of the site 7,914sqm.
- Total site area 10,126sqm.

The proposed restaurant at 206 Forest Way was supported by Council and considered to be a low intensity/low impact use. The following comments were made by the IHAP in considering MOD2013/0033 at the public hearing:

- *This application seeks to increase the number of patrons in the restaurant from the approved 20 to 48. The Panel notes that the addition to the approved Restaurant Café with ancillary facilities to the proposed nursery remains an*



*ancillary use and will assist in beautifying the appearance of the nursery and will provide greater amenity for the nursery use already approved.*

*The Panel agrees with the changes to the plans and the increase in patron numbers and believes that such a use can be well accommodated on this site. For the reasons given in the Council Assessment Report, and because the application is consistent with the Desired Future Character as outlined in the locality statement for the area, the Panel recommends to the General Manager that the application be approved subject to the conditions suggested in the recommendation in the Council Assessment Report.*

The details of the proposed development at 200 Forest Way are as follows:

- Capacity of 50 patrons
- Hours of operation 8am – 4pm Monday to Saturday;
- 56 parking spaces (plus addition two (2) as a recommended condition) to service the combined retail plant nursery and restaurant;
- Retail plant nursery component of the site 5,800sqm;
- Total site area 12,800sqm.

The proposed restaurant is considered a comparable development to the approved restaurant at 206 Forest Way with regards to patron numbers, hours of operation and car parking. As detailed earlier within this report, the proposed development is considered to be consistent with the DFC statement and represents a low impact/low intensity use. This conclusion is substantiated by the approval of a comparable development at 206 Forest Way and is consistent with a restaurant use within the C8 North Belrose Locality.

#### 198 Forest Way, Belrose

The site immediately to the south known as 198 Forest Way has recently had development consent granted for a 90 place Childcare Centre and Dwelling under DA2017/0087. The NBIAP considered the proposed Child Care Centre consistent with the DFC at the meeting on 14 February 2018. The panel considered the use to be a 'low impact and low intensity' use.

The proposed development is not considered to result in a level of activity or 'intensity' that would be greater than a 90 place childcare centre with regards to noise, traffic and visual impacts when considering the restaurant will be used largely by those customers visiting the plant nursery and is ancillary to the existing plant nursery. Therefore, when comparing the proposed restaurant use to the adjoining child care centre it is considered a 'low intensity/low impact' use and consistent with the DFC statement.

### Built Form Controls (Development Standards)

The following table outlines compliance with the Built form Control of the above locality statement:

Built Form Standard	Required	Proposed	Compliance
Housing Density	1 dwelling per 20 ha	The proposal involves a change of use to a restaurant with no additional dwellings.	Yes
Building Height	8.5m	The proposal is within an existing building (below 8.5m) and no further changes to the building are proposed.	Yes
Front Setback	20m setback to be free of building structures and car parking	0m to car park.  Utilisation of the existing car parking area within the front setback.	No – See detailed comments below.
Rear and side setback	10m setback to rear and side and to be free of structures and car parking	0m to car park  The proposal involves the use of the southern extent of the site to provide car parking	No – See detailed comments below.
Bushland Setting	50% of the site area to be kept as natural bushland or landscaped with local species	The proposed development does not further reduce the site landscaping and existing hard surfaces are utilised.	Yes

The proposed development fails to comply with the C8 Belrose North Locality Built Form Controls with regard to front and side setback. Accordingly, further assessment is provided against the provisions of Clause 20(1) hereunder.

#### **Clause 20(1) stipulates:**

*“Notwithstanding clause 12 (2) (b), consent may be granted to proposed development even if the development does not comply with one or more development standards, provided the resulting development is consistent with the general principles of development control, the desired future character of the locality and any relevant State environmental planning policy.”*

In determining whether the proposal qualifies for a variation under Clause 20(1) of WLEP 2000, consideration must be given to the following:

#### **(i) General Principles of Development Control**

The proposal is generally consistent with all Clauses of the General Principles of Development Control and accordingly, qualifies to be considered for a variation to the development standards, under the provisions of Clause 20(1) (See discussion on “General Principles of Development Control” in this report for a detailed assessment of consistency).

#### **(ii) Desired Future Character of the Locality**

The proposal is consistent with the Locality's Desired Future Character Statement and accordingly, qualifies to be considered for a variation to the development standards, under the provisions of Clause 20(1) (See discussion on "Desired Future Character" in this report for a detailed assessment of consistency).

### **(iii) Relevant State Environmental Planning Policies**

The proposal has been considered consistent with all applicable State Environmental Planning Policies. (Refer to earlier discussion under 'State Environmental Planning Policies'). Accordingly, the proposal qualifies to be considered for a variation to the development standards, under the provisions of Clause 20(1).

#### **Description of variations sought and reasons provided:**

##### **1. Built Form Control – Front Setback**

*Required: 20m and free of built structures and car parking*

*Proposed: 0m to car park*

*Response: The proposal involves additional line marking to reconfigure the car park within the existing car park. The car park is an existing non-compliant situation and no additional hard stand areas generated via the development.*

In assessing this non-compliant element of the proposal, it is necessary to consider the objectives of the front setback Built Form Control. Accordingly, compliance with the objectives are addressed below:

*Objective: To create a sense of openness*

Comment: The proposed development consists of reconfiguration of the existing carpark through line marking, with no additional new structures within the front setback area. The existing parking area is at-grade and this is not altered via the development, leaving the area 'open' and free of above ground built structures.

*Objective: To provide opportunities for landscaping*

Comment: The proposal makes use of the existing car park and will not reduce the landscaping for the site or landscaping within the front setback area. The car parking area is used in conjunction with the existing retail plant nursery and is an approved car parking area.

*Objective: To minimise the impact of development on the streetscape*

Comment: The reconfiguration and line marking of the car park will not further impact upon the streetscape given the carpark is an existing situation.

*Objective: To maintain the visual continuity and pattern of buildings, front gardens and landscape elements*

Comment: The proposal maintains the existing visual outcome for the site and no further buildings are proposed within the front setback area.

*Objective: The provision for corner allotments relates to street corners.*

Comment: The site is not a corner allotment.

As detailed above the proposed development is considered to satisfy the requirements to qualify for consideration under Clause 20(1), in addition the proposal is considered to be consistent with the underlying objectives of the Front Setback Built Form Control. It is for these reasons that the variation to the Front Setback Built Form Control (Development Standard) pursuant to Clause 20(1) is supported.

## **2. Built Form Control – Side Setback**

*Required: 10m and free of built structures and car parking*

*Proposed: 0m to car park*

*Response: The proposal involves the use of the southern extent of the site (former road) to provide car parking for the development. The car parking is setback 0m from the property boundary. The area is an existing hard surface which was formally a road which is now in the same ownership as 200 Forest Way.*

In assessing this non-compliant element of the proposal, it is necessary to consider the objectives of the side setback Built Form Control. Accordingly, compliance with the objectives are addressed below:

*Objective: To ensure that development does not become visually dominant by virtue of its height and bulk.*

Comment: The parking area is an existing at grade concrete surface, which does not have any height or bulk that would be visually dominant. The presence of cars parked along this portion of the site is not considered to give rise to a visual impact.

*Objective: To preserve the amenity of surrounding land.*

Comment: The reduced setback does not result in an impact with regard to visual privacy, views or overshadowing. The amenity of the surrounding land is maintained.

*Objective: To ensure that development responds to site topography.*

Comment: No fill or cut is proposed which would be contrary to the site topography and the existing hard surface is at-grade.

*Objective: To provide separation between buildings.*

Comment: The proposal does not involve any new buildings. The area will be free of above ground structures maintains an existing visual separation between the building and southern boundary.

*Objective: To provide opportunities for landscaping.*

Comment: The area consists of a former road that was not landscaped. The proposal does not take away landscaped area within the site.

*Objective: To create a sense of openness.*

Comment: The carpark is at-grade and maintains a sense of openness between the existing building and the southern boundary.

As detailed above the proposed development is considered to satisfy the requirements to qualify for consideration under Clause 20(1), in addition the proposal is considered to be consistent with the underlying objectives of the Side Setback Built Form Control. It is for these reasons that the variation to the Side Setback Built Form Control (Development Standard) pursuant to Clause 20(1) is supported.

## 2 General Principles of Development Control

The following General Principles of Development Control as contained in Part 4 of Warringah Local Environmental Plan 2000 are applicable to the proposed development:

General Principles	Applies	Comments	Complies
CL38 Glare & reflections	N/A	No new roof forms or windows proposed	N/A
CL39 Local retail centres	N/A	Not within a local retail centre	N/A
CL40 Housing for Older People and People with Disabilities	N/A	N/A	N/A
CL41 Brothels	N/A	N/A	N/A
CL42 Construction Sites	Yes	There is sufficient room within the site to accommodate any construction vehicles necessary to carry out works associated with the internal fit out, without having an unreasonable impact on the surrounding locality.	Yes
CL43 Noise	Yes	The proposed use is considered to result in minimal additional noise being within the confines of the existing building. The hours of operation are consistent with the retail plant nurse and the restaurant is not proposed to operate during the evening.  In addition, conditions of development consent have	Yes

<b>General Principles</b>	<b>Applies</b>	<b>Comments</b>	<b>Complies</b>
		been recommended regarding delivery hours, hours of operation and prohibiting use of amplified music.	
<b>CL44 Pollutants</b>	<b>Yes</b>	The application is accompanied by a wastewater report to demonstrate that the sewer management system on the site can accommodate the new restaurant use, whilst not impacting the locality in terms of water quality, odour and pollutants.  The use of the site as a restaurant will be required to comply with all relevant food standards as conditions of consent.	<b>Yes</b>
<b>CL45 Hazardous Uses</b>	<b>N/A</b>	The proposed use as a restaurant is not hazardous.	<b>N/A</b>
<b>CL46 Radiation Emission Levels</b>	<b>N/A</b>	N/A	<b>N/A</b>
<b>CL47 Flood Affected Land</b>	<b>N/A</b>	The site is not flood affected.	<b>N/A</b>
<b>CL48 Potentially Contaminated Land</b>	<b>N/A</b>	As discussed earlier within this report under the SEPP No.55 requirements, the site is considered suitable for the intended use with regards to contamination.	<b>Yes</b>
<b>CL49 Remediation of Contaminated Land</b>	<b>N/A</b>	No remediation is required to make the site suitable.	<b>N/A</b>
<b>CL49a Acid Sulfate Soils</b>	<b>N/A</b>	No ground disturbance is proposed which would require an assessment of Acid Sulfate Soils.	<b>N/A</b>
<b>CL50 Safety &amp; Security</b>	<b>Yes</b>	The building has existing windows which are orientated towards the street to provide casual surveillance. The proposed development will retain the windows and the use as a restaurant will not impact safety and security.	<b>Yes</b>
<b>CL51 Front Fences and Walls</b>	<b>N/A</b>	No fencing proposed.	<b>N/A</b>
<b>CL52 Development Near Parks, Bushland Reserves &amp; other public Open Spaces</b>	<b>Yes</b>	There is an area of bushland that adjoins the site at the north-western corner (rear). The proposed internal change of use will not impact the existing bushland adjoining the site.	<b>Yes</b>
<b>CL53 Signs</b>	<b>N/A</b>	No signage is proposed.	<b>Yes</b>
<b>CL54 Provision and Location of Utility Services</b>	<b>Yes</b>	The site benefits from existing services including the supply of water, gas, telecommunications and electricity. A wastewater report has been submitted demonstrating the site is capable of disposing of wastewater associated with the proposed use as a restaurant.	<b>Yes</b>
<b>CL55 Site Consolidation in 'Medium Density Areas'</b>	<b>N/A</b>	N/A	<b>N/A</b>

<b>General Principles</b>	<b>Applies</b>	<b>Comments</b>	<b>Complies</b>
<b>CL56 Retaining Unique Environmental Features on Site</b>	<i>N/A</i>	No works are proposed which would impact natural site features.	<b>N/A</b>
<b>CL57 Development on Sloping Land</b>	<i>N/A</i>	No new building works are proposed which would require a geotechnical report, no fill is introduced onto the site as a result of the development.	<b>Yes</b>
<b>CL58 Protection of Existing Flora</b>	<b>Yes</b>	No tree removal is proposed.	<b>Yes</b>
<b>CL59 Koala Habitat Protection</b>	<b>Yes</b>	The proposal does not involve the disturbance of bushland which would be potential Koala Habitat.	<b>Yes</b>
<b>CL60 Watercourses &amp; Aquatic Habitats</b>	<i>N/A</i>	No watercourses exist of the site which could be impacts by the proposed development.	<b>Yes</b>
<b>CL61 Views</b>	<b>Yes</b>	No new buildings are proposed which would result in a view impact.	<b>Yes</b>
<b>CL62 Access to sunlight</b>	<b>Yes</b>	No new buildings or structures proposed which would result in overshadowing.	<b>Yes</b>
<b>CL63 Landscaped Open Space</b>	<b>Yes</b>	The proposed development does not reduce the landscaped open space for the site. The car parking is provided on existing hard surfaces and the former road along the southern extent of the site.	<b>Yes</b>
<b>CL63A Rear Building Setback</b>	<i>N/A</i>	No proposed buildings.	<b>Yes</b>
<b>CL64 Private open space</b>	<i>N/A</i>	No dwellings proposed which would require POS.	<b>Yes</b>
<b>CL65 Privacy</b>	<b>Yes</b>	There is sufficient spatial separation to the dwelling to the south of the site (40m) to mitigate any direct overlooking. No new windows openings are proposed for the building in which the restaurant is located. The building as existing is orientated towards the north and east, overlooking the plant nursery. The proposal will not have a privacy impact in this regard.	<b>Yes</b>
<b>CL66 Building bulk</b>	<i>N/A</i>	No new buildings proposed.	<b>Yes</b>
<b>CL67 Roofs</b>	<i>N/A</i>	No new buildings proposed.	<b>Yes</b>
<b>CL68 Conservation of Energy and Water</b>	<i>N/A</i>	No site works are proposed which would require the implementation of water or energy conservation techniques.	<b>Yes</b>
<b>CL69 Accessibility – Public and Semi-Public Buildings</b>	<i>N/A</i>	The building benefits from an existing access ramp which provides at-grade access to the southern extent of the building.	<b>Yes</b>
<b>CL70 Site facilities</b>	<b>Yes</b>	There is ample room for waste storage at the rear of the existing building, screened from public view.	<b>Yes</b>
<b>CL71 Parking facilities (visual impact)</b>	<b>Yes</b>	The proposed development makes use of the existing car parking area at the front, rear and central of the site. New parking spaces are introduced along the southern extent of the site on an existing concrete surface. The presence of parking along the southern	<b>Yes</b>

General Principles	Applies	Comments	Complies
		extent of the site is not considered to result in an unreasonable visual impact from the public domain.	
<b>CL72 Traffic access &amp; safety</b>	<b>Yes</b>	The application has been referred to Transport for NSW who have provided concurrence with regard to the site access from Forest Way. The application is supported by a traffic and parking report which demonstrates the carpark configuration is in accordance with AS 2890.1:2004. Council's traffic engineer has reviewed the proposed car parking, delivery arrangements and access to the site and is satisfied subject to conditions of development consent.	<b>Yes</b>
<b>CL73 On-site Loading and Unloading</b>	<b>Yes</b>	The existing delivery arrangements for the retail plant nursery can be utilised to service the proposed restaurant. The secondary access off Linden Avenue is able to be used for larger delivery vehicles and Council's traffic engineer is satisfied with the access arrangements for the site.	<b>Yes</b>
<b>CL74 Provision of Carparking</b>	<b>Yes</b>	<p>In accordance with the requirements of Schedule 17 Car Parking Provisions, the existing Retail Plant Nursery requires 29 spaces (5,800sqm of Retail Plant Nursery) based on a rate of 0.5 spaces/100sqm.</p> <p>The proposed restaurant requires 38 spaces (248sqm of restaurant floor area) based on a rate of 15 spaces/100sqm. The proposal requires a total of 67 spaces in accordance with the parking rates in Schedule 17.</p> <p>The application proposes 56 spaces. In addition, Council's Traffic Engineer has recommended 2 to 3 additional spaces can be provided and will be conditioned to be placed at the redundant driveway entrance on the southern side of the property, resulting in minimum of 58 spaces and a shortfall of 9 spaces in accordance with the DCP.</p> <p>The applicant has provided a traffic and parking assessment report to justify the shortfall in spaces. The report argues that the restaurant is an ancillary use to the existing retail plant nursery whereby people visiting the retail plant nursery will generate at least 50% of the patronage of the restaurant. The argument regarding cross utilisation of the on-site carparking is accepted by Council's Traffic Engineer and based on this the actual parking demand for the restaurant is around 19 spaces. Therefore, Council's traffic engineer is satisfied that the site will have adequate car parking for the proposed use notwithstanding the numerical non-compliance with the Schedule 17 car parking rates.</p> <p>See detailed comments by Council's traffic engineer earlier within this report.</p>	<b>No – See comment</b>
<b>CL75 Design of Carparking Areas</b>	<b>Yes</b>	The car park uses at-grade car spaces to provide practical and safe parking for patrons visiting the site. Vehicles are able to enter and leave the site in	<b>Yes</b>



General Principles	Applies	Comments	Complies
		a forward direction. The car park has been designed to comply with AS 2890.1:2004.	
<b>CL76 Management of Stormwater</b>	<b>Yes</b>	Car parking is provided within the existing car park and hard stand areas within the site. No additional hard surfaces are proposed as part of the application.	<b>Yes</b>
<b>CL77 Landfill</b>	<b>N/A</b>	No fill is proposed or earthworks.	<b>N/A</b>
<b>CL78 Erosion &amp; Sedimentation</b>	<b>N/A</b>	No site works are proposed which would generate erosion or require sedimentation control measures.	<b>N/A</b>
<b>CL79 Heritage Control</b>	<b>N/A</b>	The site is not identified as a heritage item or adjacent to a heritage item.	<b>N/A</b>
<b>CL80 Notice to Metropolitan Aboriginal Land Council and the National Parks and Wildlife Service</b>	<b>N/A</b>	No known aboriginal sites are within the site and no ground disturbance is proposed that would impact potential aboriginal heritage items.	<b>N/A</b>
<b>CL81 Notice to Heritage Council</b>	<b>N/A</b>	Clause is repealed.	<b>N/A</b>
<b>CL82 Development in the Vicinity of Heritage Items</b>	<b>N/A</b>	There are no heritage items in the vicinity of the site.	<b>N/A</b>
<b>CL83 Development of Known or Potential Archaeological Sites</b>	<b>N/A</b>	There are no known archaeological sites and there is no ground disturbance proposed which would impact unknown archaeological sites.	<b>N/A</b>

## Other Relevant WLEP 2000 Clauses

## SCHEDULES

### Schedule 5 - State Policies

<b>Bushland In Urban Areas</b>	N/A
<b>Caravan Parks</b>	N/A
<b>Extractive Industries</b>	N/A
<b>Group Homes</b>	N/A
<b>Hazardous and Offensive Development</b>	N/A
<b>Housing for Older People or People with a Disability</b>	N/A

Koala Habitat Protection	N/A
Maintenance Dredging of Tidal Waterways	N/A
Permissibility of Mining	N/A
Surplus Public Land	N/A

### Schedule 6 - Preservation of Bushland

Preservation of Bushland	N/A
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### Schedule 10 - Traffic Generating Development

<b>Traffic Generating Development</b>	<p>Pursuant to Schedule 10 (4) the development involves 'The enlargement or extension of a parking area, where the enlargement or extension includes accommodation for 50 or more motor vehicles' and therefore is 'Traffic Generating Development'. The development also adjoins a classified road being Forest Way.</p> <p>The application has been referred to Transport for NSW for comment. Transport for NSW have provided a response and granted concurrence to the proposal subject to consent conditions.</p>
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### Schedule 15 - Statement of Environmental Effects

Clause 15(1) of Warringah Local Environmental Plan 2000 requires that the consent authority must consider a Statement of Environmental Effects prepared in accordance with the criteria listed in Schedule 15. In addition, Clause 15(2) requires the consent authority to consider the findings of an independent public hearing prior to the determination of the application.

**The applicant has submitted a Statement of Environmental Effects, prepared by Corona Projects, which addresses Schedule 15 of WLEP 2000. The following is provided having regard to these provisions:**

Consideration	Proposed
(1) Summary of the Statement of Environmental Effects (SEE)	<p>With regard to Point 1 of Schedule 15 the applicant has provided the following:</p> <p>"This report contains a Statement of Environmental Effects for establishment of café on first floor of the garden centre, and 31 new car spaces to support the proposed development at 200 Forest Way, Belrose. Section 4 of this report specifically assesses the potential environmental impacts of the proposed development."</p> <p><b>Comment:</b> This satisfies the requirement.</p>

Consideration	Proposed
<p>(2) Consistency of the proposal with the desired future character statement and general principles of development control established by the plan.</p>	<p>With regard to Point 2 of Schedule 15 the applicant has provided the following:</p> <p>“Section 4 of this report outlines how the proposed café and car parking is consistent with Desired Future Character Statement of C8 Belrose.</p> <p>An assessment of the proposal against the Desired Future Character Statement is provided below:  <i>The proposed development will not change the character of Belrose North locality. The establishment of is proposed within an existing structure that was approved by Council. No construction or demolition is proposed. The proposal therefore does not impact the natural landscape and does not disturb vegetation, landforms and buildings. The proposal will not create siltation or pollution of Middle Harbour. The proposed café is a low intensity, low impact use that will complement the existing garden centre and provide a place for the local residents and workers to gather. The development will have minimal acoustic impact upon neighbouring properties due to its small capacity and limited operating hours. 61 car spaces are provided on site (including 31 new spaces), and the surrounding road network can accommodate the proposed traffic generation. It is anticipated that the proposal will only generate minor traffic in addition to the existing retail nursery use of the premises.”</i></p> <p><b>Comment:</b> The applicant has provided a satisfactory assessment against the DFC and considered each of the statements.</p>
<p>(3) Objectives of the proposed development.</p>	<p>With regard to Point 3 of Schedule 15 the applicant has provided the following:</p> <p>“The objectives of the proposed development are:</p> <ul style="list-style-type: none"> <li>• Provide a café use to complement the retail plant nursery</li> <li>• Provide a place for local residents to gather</li> <li>• Provide sufficient car parking for both staff and customers”</li> </ul> <p><b>Comment:</b> The applicant has set out the objectives of the development as required.</p>
<p>(4) An analysis of feasible alternatives.</p> <p>(including Consequences of carrying out the development and Justification for the development)</p> <p>(a) not the (b) the</p>	<p>With regard to Point 4 of Schedule 15 the applicant has provided the following:</p> <p>“(a) the consequences of not carrying out the development, and  The property is maintained as a retail plant nursery and the restaurant is seen as an ancillary and complementary use supporting the principal use. The proposal meets the objectives of the purpose and no feasible alternatives have been</p>

Consideration	Proposed
	<p>identified.</p> <p><i>(b) the reasons justifying the carrying out of the development.</i> The site is capable of providing a café within the existing building of the retail plant nursery, with sufficient on-site car parking. The development achieves compliance with the desired future character of C8 Belrose North locality.</p> <p><b>Comment:</b> The applicant has identified justification for the development.</p>
(5) Development and context analysis.	<p>With regard to Point 5 of Schedule 15 the applicant has provided the following:</p> <p>“Section 3 of this Statement of Environmental Effects has outlined the development details. The establishment of restaurant is proposed within an existing structure that was approved by Council. No construction or demolition is proposed. The proposal therefore does not impact the natural landscape and does not disturb vegetation, landforms and buildings. The proposal will not create siltation or pollution of Middle Harbour.”</p> <p>The proposed café is a low intensity, low impact use that will complement the existing garden centre and provide a place for the local residents and workers to gather. The development will have minimal acoustic impact upon neighbouring properties due to its small capacity and limited operating hours. 61 car spaces are provided on site, and the surrounding road network can accommodate the proposed traffic generation. It is anticipated that the proposal will only generate minor traffic in addition to the existing retail nursery use of the premises.”</p> <p><b>Comment:</b> The applicant has provided a satisfactory analysis of the context.</p>
(6) Biophysical, economic and social considerations and the principles of ecologically sustainable development.	<p>With regard to Point 6 of Schedule 15 the applicant has provided the following:</p> <p>“The café is proposed within an existing building, thereby limiting the environmental impact of the development.”</p> <p><b>Comment:</b> The applicant has provided reason why the proposal will not be contrary to the ecologically sustainable development principles.</p>
(7) Measures to mitigate any adverse effects of the development on the environment	<p>With regard to Point 7 of Schedule 15 the applicant has provided the following:</p> <p>“The following measures are to be implemented upon the site to minimise adverse effects:</p>

Consideration	Proposed
	<ul style="list-style-type: none"> <li>• The café capacity and hours of operation are limited to a small scale to minimise acoustic, parking and traffic impact.</li> <li>• Parking is to be provided on site in excess of LEP requirements so as to minimise on-street parking</li> <li>• Avenue planting is proposed on southern boundary along the proposed car park.”</li> </ul> <p><b>Comment:</b> The applicant has identified ways impacts have been mitigated.</p>
(8) Other approvals required	<p>With regard to Point 7 of Schedule 15 the applicant has provided the following:</p> <p>“No other approval is required for the proposed development.”</p> <p><b>Comment:</b> The applicant has identified no other approvals are required. Notwithstanding this, the application was referred to Transport for NSW given it directly adjoins a classified road.</p>

It is considered that the submitted Statement of Environmental Effects prepared by Corona Projects dated January 2020 and in response to the provisions of Clause 15/Schedule 15 adequately addresses the compatibility of the of the development with the Locality and the DFC.

### Schedule 17 - Carparking Provision

Carparking Provision	<p>In accordance with the requirements of Schedule 17 Car Parking Provisions, the existing Retail Plant Nursery requires 29 spaces (5,800sqm of Retail Plant Nursery) based on a rate of 0.5 spaces/100sqm.</p> <p>The proposed restaurant requires 38 spaces (248sqm of restaurant floor area) based on a rate of 15 spaces/100sqm. The proposal requires a total of 67 spaces in accordance with the parking rates in Schedule 17.</p> <p>The application proposes 56 spaces. In addition, Council’s Traffic Engineer has recommended 2 to 3 additional spaces can be provided and will be conditioned to be placed at the redundant driveway entrance on the southern side of the property, resulting in minimum of 58 spaces and a shortfall of 9 spaces in accordance with the DCP.</p> <p>The applicant has provided a traffic and parking assessment report to justify the shortfall in spaces. The report argues that the restaurant is an ancillary use to the existing retail plant nursery whereby people visiting the retail plant nursery will generate at least 50% of the patronage of the restaurant. The argument regarding cross utilisation of the on-site carparking is accepted by Council’s Traffic Engineer and based on this the actual parking demand for the restaurant is around 19 spaces. Therefore, Council’s traffic engineer is satisfied that the site will have adequate car parking for the proposed use notwithstanding the numerical non-compliance with the Schedule 17 car parking rates.</p> <p>See detailed comments by Council’s traffic engineer earlier within this report.</p>
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### CONCLUSION

The proposal has been considered against the relevant matters for consideration under Section 4.15 of the EP&A Act 1979. This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions (no submissions received) and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to any conditions contained within the recommendation.

The site has been inspected and the application assessed having regard to the provisions of Section 4.15 of the Environmental Planning and Assessment Act, 1979, the provisions of relevant Environmental Planning Instruments including Warringah Local Environment Plan 2000 and the relevant codes and policies of Council.

The application seeks consent for an additional land use for a restaurant (a category 3 land use) within the existing building on the site. There are no external changes to the established building and the amendment to the car parking area is limited to reconfiguration via line marking. The assessment of the application has found that the proposal satisfies the requirements of the Desirable Future Character statement as the proposal is considered an ancillary use to the existing retail plant nursery on the site that will operate in conjunction with the existing use of the site.

As a direct result of the application and the consideration of the matters detailed within this report it is recommended that Development Consent be granted subject to the conditions attached to this report.

## **RECOMMENDATION**

That the Local Planning Panel recommend to the Chief Executive Officer of Northern Beaches Council that Development Application DA2020/0104 for the Use as a Café and car parking at 200 Forest Way, Belrose be approved subject to the attached draft conditions of consent.