

MEMORANDUM

DATE: 14 February 2024

TO: Northern Beaches Local Planning Panel

CC: Peter Robinson, Executive Manager

FROM: Nic England, Planner

SUBJECT: Item 4.1, DA2023/0368 – 1&CP 9-15 Central Avenue, Manly, Fit out and use of the courtyard for the seating of 100 patrons, operating from 8.00am to 10.00pm (same as existing).

REFERENCE: Applicants response to the NBLPP deferral of application 13 December 2024

TRIM: 2024/067044

The purpose of this memo is to provide a review of the Applicant's response to the Panels request for further information.

OVERVIEW

The application was referred to the NBLPP on 13 December 2023, where staff had recommended refusal of the application. In summary, the recommendation for refusal was a result of:

- inconsistent / incomplete plans as to the extent of proposed works and its implicit relationship with the existing premises; and the
- inadequacy of the clarity of supporting documentation (ie. the acoustic report) be consistent with the proposed works and in turn determine the potential level of impact.

The applicant sought a deferral to enable it to address matters raised in Council's assessment report.

The Panel subsequently deferred determination of the as follows to give the applicant an opportunity to submit additional information.

The Panel considers that they would be in a position to determine whether to approve the proposed works and 100 seats in the courtyard if the applicant provides a supplementary acoustic report addressing the acoustic issues raised in Council's assessment report and provides a further report from a qualified BCA consultant providing details of the ability of the proposal to satisfy the access (including but not limited to toilets) requirements of the BCA and the Disability (Access to Premises) Standards 2010, and if necessary additional or amended plans are to be submitted. The applicant is to lodge any further reports, amended plans and further information with Council by 24 January 2024.

The applicant provided information in response to the Panel's deferral received via the NSW Planning Portal on 29 January 2024. The following documentation was provided:

- Plan of "Proposed Insitu Capacity" showing total number of internal and external seating;
- Plan of sanitary facilities;

- Assessment of compliance with the Building Code of Australia / National Construction Code 2022, Volume 1 in relation to the provision of adequate Sanitary Facilities, *undertaken by Private Certifiers Australia*, dated 23 January 2024; and
- Acoustic Impact Assessment (memo), prepared by *WSP Australia Pty Ltd* (WSP), dated 24 March 2023*

*Whilst the submission from WSP references a date that predates the Panel meeting of 13 December 2023, Page 1 states that: "This revision of the report has been updated to also addresses the comments made to the by Northern Beaches Council in the Development Application Assessment Report DA2023/0368 in Section 2." It is accepted that this report is a revision in response to the assessment report of the Panel meeting of 13 December 2023.

The additional information was uploaded to the Planning Portal and Council's website on 29 January 2024 and therefore was available to the public, however no formal re-exhibition was requested or considered necessary. No further resident submissions have been received since the receipt of the additional information.

The amended plans illustrate the following, which was not present in the previous plans / information:

- 100 patrons inside the restaurant;
- 100 patrons in the associated courtyard; and
- A proposed re-configuration of the sanitary facilities, to accommodate the proposed number of patrons.

A total of 200 patrons are indicated within both Lot 1 and Lot CP of SP 61679. A further 48 patrons are shown on the road reserve of Sydney Road, these are subject to a separate lease under the Roads Act and would not form part of this approval. The applicant has a current lease from Council for an area 16 x 2.5 metres within the road reserve of Sydney Road (pedestrian mall). Adequate sanitary facilities are provided which can cater for up to 400 patrons.

In the amended information, the revised acoustic report prepared by WSP outlines a series of recommendations in Part 5 of the report, which includes options for the installation of roofing over the proposed pergolas in the courtyard, which would be of either a solid or "operable" construction. These are summarised as follows:

Option 1: Operable Roof

This roof would extend over the entire area of Lot CP SP 61679, separated in two equal sections. The roof would be comprised of aluminium louvres with interconnecting blades, with each louvre module filled with 50mm thick acoustic infill and weather seals between each louvre. A concept plan is provided below:



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Figure 5.1 Extent of operable roof sections above courtyard (Option 1)

The report recommends that the operation of the roof be subject to the number of patrons on the premises, as follows:

- Up to 40 patrons: Entire operable roof open;
- 41 to 80 patrons: Minimum left half roof section closed; and
- 81 to 100 patrons: Entire operable roof (left + right section) closed.

Option 2: Awning Extension

This option involves the construction of solid awning/roof on the western and southern sides of the courtyard, approximately 2.5m in width. A concept plan is provided below:



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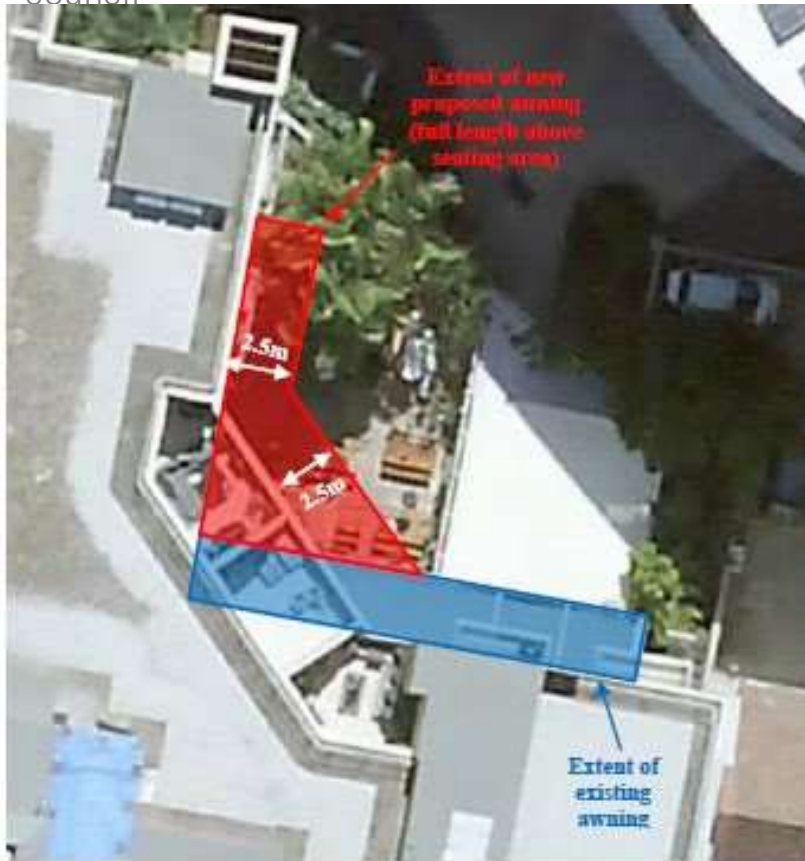


Figure 5.2 Extent of awning extension above courtyard (Option 2)

The merits of these options are discussed further in this memo.

Building Compliance

Advice was sought from Council's Building Compliance officers on the amended plans / additional information in regard to the proposed re-configuration of the sanitary facilities.

Building Compliance has confirmed that the advice from *Private Certifiers Australia* (dated 23 January 2024) is correct. In accordance with the relevant NCC BCA 2022 standards, the facilities will accommodate 400 people.

In this regard, there is sufficient evidence to determine that the proposed development will service the proposed development and in turn meet the relevant requirements of the Building Code of Australia / National Construction Code.



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Environmental Health

The additional information was referred to Council's Environmental Health Officer and the following response was received:

The proposal seeks Council approval to refurbish the existing communal outdoor dining space to improve the amenity and functionality of the space.

The use of the communal commercial courtyard is to remain unchanged, with the capacity restricted to 100 patrons and operation limited to between 8.00 am and 10.00 pm only.

An acoustic report prepared by WSP Australia Pty Ltd dated 24 March 2023 has addressed a number of noise concerns raised by Council. The report has stated:

The proposed project is predicted to comply with the relevant noise requirements for the proposed hours of operation with the recommendations presented in Section 5

The acoustic report has addressed Council's concerns in relation to potential noise from the outdoor server area, inside patrons accessing and congregating in the courtyard, addition of serving staff in courtyard and noise after 10:00pm due to clean up of the outdoor area.

Two noise attenuation methods have been suggested for the courtyard (operable roof and awning extension). The use of the operable roof relies on staff to count the number of patrons in the outdoor courtyard in order to determine how much of the roof is to be utilised to reduce noise.

The existing awning however is fixed and its extension inoperable once in place. This is Council's preferred option.

Environmental recommends approval subject to conditions."

Planner Comment:

The commentary from Environmental Health, and the recommended conditions of consent, are generally agreed with.

Page 12 of the acoustic report states in respect to "Option 1" that the operable roof is to be operated within the following parameters:

"The operable roof must be closed as follows depending on the number of patrons in the outdoor courtyard. Please refer to Figure 5.1 for a mark-up of the left and right roof section extent.

- Up to 40 patrons: Entire operable roof (left + right section) can be open*
- 41 to 80 patrons: Minimum left half roof section closed*
- 81 to 100 patrons: Entire operable roof (left + right section) closed"*



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The Environmental Health Officer comments state a preference for Option 2, where a permanently solid roof awning is to be provided. This recommendation is a desirable outcome and forms part of the recommended conditions of approval.

Option 1, where an operable roof is proposed, is not supported. The concern with relying on patronage numbers to enact sound mitigation is both: difficult to enforce; and an unreliable way to limit sound impact, as it relies on a behavioural, rather than a more reliable design method, to ensure the impact is acceptable.

It is the opinion of this assessment that Option 1 would only be only acceptable if a time limit option could replace the patronage method suggested by the applicant. This could involve closing the roof at 8.00pm, which is considered a reasonable time to properly mitigate the impact on adjoining residences.

Hence, a condition to enforce the preferred Option 2 of the acoustic report is recommended.

It is noted that the architectural plans provided in the application do not reflect the roof options presented in the acoustic report. However, the conceptual recommendations in this report are not dissimilar to any degree that be both: inconsistent with what is proposed; and / or result in any additional impact on adjoining properties. To this end, recommended condition of consent will require that the addition of the roof will result in no structure higher than that proposed in the architectural plans (ie.4.2m above existing ground level).

Previous Reasons of Refusal:

A consideration of how the amended / additional information has addressed the previous reasons for refusal is provided below:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause Zone E1 Local Centre of the Manly Local Environmental Plan 2013.

Particulars: *There is insufficient information to determine that the proposal will serve to minimise conflict between the residential and non-residential land use and ensure no adverse amenity impact on adjoining residents with respect to generation of noise.*

Comment: The amended / additional information has served to present a true representation of both the proposed works and the existing premises and they relate to each other. Revised acoustic reporting has considered the entire impact of the premises in conjunction with the proposed works. The outcome of this assessment is that the proposal can demonstrate that no unreasonable impact to adjoining premises is likely to occur. Conditions of consent to further mitigate this impact are also recommended. Hence, the proposal as amended is considered to demonstrate consistency with the E1 Local Centre zone objectives and this is no longer a recommended reason for refusal of the application.

2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 6.21 Noise Impacts - Licensed Premises of the Manly Local Environmental Plan 2013.



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Particulars: *The application has failed to provide sufficient information to determine if the proposed works / seats will not have an adverse impact on the amenity of residential accommodation in the vicinity of the proposed development.*

Comment: As stated above, adequate information has been provided to demonstrate that no adverse or unreasonable acoustic impact will occur in the context of the surrounding area. Hence, Clause 6.21 Noise Impacts - Licensed Premises of the Manly Local Environmental Plan 2013 is considered to be adequately satisfied. This is considered no longer a recommended reason for the refusal of the application.

3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.4.2 Privacy and Security of the Manly Development Control Plan 2013.

Particulars: *The application has failed to provide sufficient information that incorporates the full operational scope of the existing restaurant, in conjunction with the proposed works, in order to demonstrate that the proposal will give adequate protection of acoustical privacy to adjoining residents.*

Comment: Adequate plans have been provided to resolve this issue and this is no longer a recommended reason for the refusal of the application.

4. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.

Particulars: *The applicant has not provided adequate and consistent information to identify the exact impact of the proposal and in turn properly manage conflicts between different land uses in the zone in which the proposal is located.*

Comment: Through the applicant providing additional / amended information, an accurate representation of the proposed development has been provided. This in turn allows a thorough and proper assessment of the application to be made. It is considered that there are no longer any likely adverse impacts as a result of the proposal and the amended application and that it is considered to be not adverse to the public interest.

Analysis of Amended / Additional Information

Note the description of the proposed development (as offered by the applicant) being:

"Fit out and use of the courtyard for the seating of 100 patrons, operating from 8.00am to 10.00pm (same as existing)":

is still consistent with the amended application as recommended to be approved. Whilst the amended plans demonstrates that the maximum number of patrons on the premises will be a maximum of 200, this number is considered to reflect the existing approved situation.

As outlined in the previous assessment report, the maximum number of existing patrons on the premises, was not definitive due to insufficiencies in Council's records. Despite the existence of an existing condition of



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consent which limited the maximum number of patrons to 100, the operational and physical reality of the premises was that patron numbers in the premises could be (existing and proposed) significantly higher than 100.

The maximum patronage specified under the existing consent (100) was applied for the reason of mitigating impact on adjoining residences. However, no specific rationale is evident in the Council reporting as to how, or why, this number was selected as an acceptable benchmark. Hence, a critical review of this condition is entirely reasonable within the assessment of this application, as the parameters of the current proposal will in effect supersede the current operational conditions of the premises.

The previous assessment report detailed both the existing and likely increase in patronage numbers on the premises. With the additional information provided, the following key patronage numbers are estimated, based on the previous assessment:

- an additional 68 patrons in the courtyard; and
- up to 100 additional patrons on the entire premises, based on the existing condition of consent under Consent No.684/99.

Whilst in effect this will result in a doubling of the existing approved patronage, the number of patrons proposed is considered acceptable, based on:

- The outcome of the acoustic report which demonstrates consistency with both Clause 6.21 Noise Impacts
- Licensed Premises of MLEP 2013 and Clause 3.4.2 Privacy and Security of MDCP 2013;
- The favourable comments received from Council's Environmental Health Officer; and
- The recommended conditions of consent to ensure consistent and appropriate parameters of operation. These conditions are considered be consistent with the "Newbury" test and are required to ensure no adverse impact on adjoining residences.

SUMMARY AND RECOMMENDATION

The additional information generally addresses the omissions and inconsistencies with the information that was provided to the Panel at its meeting of 13 December 2023. In this regard, the recommendation is that the application be approved.

Recommendation

That the Northern Beaches Local Planning Panel, on behalf of the Northern Beaches Council as the consent authority grant Development Consent to DA2023/0368 for the fitout and use of the courtyard for the seating of 100 patrons, operating from 8.00am to 10.00pm on land at Lot CP SP 61679, 9 - 15 Central Avenue MANLY, NSW 2095 and Lot 1 SP 61679, 1 / 9 - 15 Central Avenue MANLY NSW 2095 subject to the conditions printed below:

CONDITIONS OF APPROVAL

Application Number:	DA2023/0368
Land to be developed (Address):	Lot CP SP 61679, 9 - 15 Central Avenue MANLY NSW 2095 Lot 1 SP 61679, 1 / 9 - 15 Central Avenue MANLY NSW 2095
Proposed Development:	Fit out and use of the courtyard for the seating of 100 patrons, operating from 8.00am to 10.00pm (same as existing)

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
A02	p3	Demolition Plan	SARM Architects	Aug 2021
A03	p6	Proposed Plan	SARM Architects	Aug 2021
A05	p2	Roof Plan	SARM Architects	Aug 2021
A06	p2	Sections	SARM Architects	Aug 2021
-	-	Proposed Instu Capacity	-	-
-	-	Toilet Usage	-	-

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Letter of Support - Adequate Sanitary Facilities	190195	PCA Services	23 January 2024

Acoustic Impact Assessment	PS131027-101	WSP	24 March 2023
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In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency with 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
Ausgrid	Ausgrid Referral Response	24 April 2023

(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. 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.

4. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
 - 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 8.00 am to 1.00 pm inclusive on Saturday,
 - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be

maintained in a safe and clean state until such time as new construction works commence.

- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the 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.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), 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.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork

NSW Codes of Practice.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

FEES / CHARGES / CONTRIBUTIONS

5. **Policy Controls**

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$2,420.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$242,000.00.

The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council's website at Northern Beaches Council - Development Contributions.

Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.

6. **Security Bond**

A bond (determined from cost of works) of \$2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, and details demonstrating payment are to be submitted to the Certifier prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at www.northernbeaches.nsw.gov.au).

Reason: To ensure adequate protection of Council's infrastructure.

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

7. **Adequacy of Sanitary Facilities**

Prior to issue of the Construction Certificate the Principal Certifier is to be provided with details of sanitary facilities for patrons and staff as required by the National Construction Code (BCA) for the Classification of the building under its approved use. Where a sanitary facility is shared by

another occupancy on the same site the total number of potential users shall be taken into consideration in calculations for compliance with this condition.

Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of the Construction Certificate.

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

8. Amendments to the approved plans

The following amendments are to be made to the approved plans:

- a) Construction of awning roof / extension as conceptually detailed in Part 5.2 Option 2 – Awning extension in the Acoustic Impact Assessment No. PS131027-101 WSP 24 March 2023, referenced on Condition No.1 of this consent.
- b) the maximum height of the awning extension is to be no higher 4.2m above the existing ground level of the courtyard on Lot CP SP 61679.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development.

9. Building Code of Australia Fire Safety Requirements

The Building Code of Australia fire safety requirements for the building as detailed and recommended in the BCA Compliance Assessment Report prepared by Murrow Consulting, dated 18/5/2023, Report. No. 3250, Rev A, is to be considered as part of the assessment for any Construction Certificate.

Details demonstrating compliance are to be provided to the Certifying Authority, prior to the issue of a Construction Certificate.

Reason: To ensure adequate provision is made for Health, Amenity, access and Fire safety for building occupant health and safety.

10. Access and Facilities for Persons with Disabilities

Access and facilities to and within the building are to be provided as required for Persons with a Disability in accordance with the Building Code of Australia and AS1428.

Details are to be provided to the Certifying Authority prior to the issue of the Construction Certificate and be implemented prior to occupation of the building.

Reason: To ensure adequate provision is made for access to and within the building for Persons with a disability.

11. 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

12. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

- (a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.
- (b) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier.

Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

13. **Acoustic Design Recommendations**

The external loudspeaker is to be installed on the façade adjacent to the rear doors under the awning and will be limited to low background noise music.

Noise limiters are to be provided to the external and internal speakers so that the overall combined sound pressure level (dBA) does not exceed 60 dBA.

The limiters shall be set by a suitably qualified acoustic person so that noise emissions comply with the noise criteria specified in Table 4.1 (loudspeaker music noise) of the acoustic Report prepared by WSP dated 24 March 2023, reference PS131027-101 (Rev01).

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

14. **External Doors**

All external doors to the rear courtyard are to have a self-closing mechanism fitted to the doors to ensure external doors automatically close.

Reason: To prevent noise from internal sources emanating into the courtyard

15. **Construction Material**

Certification shall be provided from a suitably qualified professional that the northern boundary fence to the residential courtyard has been built with solid construction at greater than or equal to 2.7 meters high as shown in Figure 3.1 of the Acoustic Report dated 24 March 2023 prepared WSP Australia Pty Ltd. New access door on the northern boundary fence to be built of solid construction within minimal gaps between the door leaf and frame and no gaps between the door frame and fence.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure effective noise mitigation construction.

16. **Installation/Operation of LPG Facility**

The outdoor servery and small storage structures are to be built greater or equal to 3 m high from solid construction in the locations shown in Figure 4.1 of the Acoustic Report prepared by WSP dated 24 March 2023 reference PS131027-101 (Rev01).

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To reduce potential noise impacts

17. Lighting compliance

Prior to the issue of Occupation Certificate, the Certifying Authority must be satisfied that all outdoor lighting is designed and positioned to minimise any detrimental impact upon the amenity of other premises and adjacent dwellings and that the outdoor lighting complies with the relevant provisions of Australian Standard 1158.3:2020 Pedestrian area (Category P) lighting – Performance and design requirements and Australian Standard 4282:2019 Control of the obtrusive effects of outdoor lighting.

Reason: To protect public health and amenity

18. Certification of Sanitary Facilities - prior to occupation certificate

Sanitary Facilities shall comply with BCA requirements when any food business is operating.

Reason: To ensure shared Sanitary Facilities will be adequate.

19. Awning Roof Construction

The proposed awning extension is to be constructed above the courtyard area according to specifications within Section 5.2 of the Acoustic Report prepared by WSP dated 24 March 2023 reference PS131027-101,

Details demonstrating compliance are to be submitted to the Principal Certifier. Reason:

To reduce negative noise impacts from within the courtyard.

20. 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 the design, construction and fit out of the servery, wash and store area within the courtyard is compliant with the requirements of AS 4674 Design, construction and fit out of food premises.

Reason: To ensure that food service areas comply with Australian Standard design requirements.

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

21. Noise Management

Capacity of the outdoor courtyard is limited to 100 patrons. Outdoor courtyard to only operate and be occupied until 10:00pm.

All external doors must be closed when live music or amplified music is played inside. No access to the outdoor courtyard area after 10:00pm every night.

Reason: To ensure acoustic compliance in an operational situation.

22. Maximum number of patrons

The maximum number of patrons on the land subject to this consent is to not exceed 200.

The number of patrons within the premises are to not exceed a maximum of:

- a) 100 for the courtyard located on land Lot CP SP 61679.
- b) 100 for the restaurant / bar located on land Lot 1 SP 61679.

This condition does not approve, or apply to any lease/licence under the Roads Act for outdoor

dining.

Reason: To ensure the premises are operated within the parameters of the consent and ensure the adequate ongoing management of amenity impacts on the surrounding area.

23. **Food Safety**

No food (except beverages) is to be prepared within the courtyard area, servery area or wash and store area.

Reason: To comply with fit out of servery/wash/store area

24. **Hours of Operation**

The hours of operation are to be restricted to:

- Monday to Friday – 8.00am to 10.00pm
- Saturday – 8.00am to 10.00pm
- Sunday and Public Holidays – 8.00am to 10.00pm

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

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

25. **Commercial Waste Collection**

Waste and recyclable material, generated by this premises, must not be collected between the hours of 10pm and 8am on any day.

Reason: To protect the acoustic amenity of surrounding properties.

26. **Emission of Noise**

The La10* noise level emitted from the licensed premises must not exceed the background of noise level in any Octave Band Centre Frequency (31.5Hz to 8kHz inclusive) by more than 5dB between 8.00am and 10.00pm at the boundary of any affected residence.

Reason: To ensure reasonable levels of amenity for adjoining residents in the surrounding area.