

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/0399
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Responsible Officer:	Penny Wood
Land to be developed (Address):	Lot 2 DP 1134156, 197 - 215 Condamine Street BALGOWLAH NSW 2093
Proposed Development:	Alterations and additions to an existing food and drink premises (Shop 066) including new signage
Zoning:	Manly LEP2013 - Land zoned B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	The Trust Company Ltd
Applicant:	Platinum Planning Solutions

Application Lodged:	15/04/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	26/04/2021 to 10/05/2021
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 89,300.00
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PROPOSED DEVELOPMENT IN DETAIL

Proposed works

The subject development application seeks consent for external works and signage for Shop 66.

The proposed external facade works include new finishes to the external walls of the tenancy. Proposed finishes include brick tiles, black-framed windows (both fixed and openable) and new entry doors; existing door and window placement is to remain unchanged.

Works associated with the outdoor dining areas include new 900mm-high planters, which are to be topped by 700mm-high fixed glass screens. Two (2) fixed umbrellas are to be placed above the outdoor dining area on the western side of Shop 66.

Ten (10) external signs (excluding branding on top of the proposed outdoor umbrellas) are proposed on both the external facades of the tenancy and the aforementioned planters. Signs of the building facade are to consist of flush-fitted signs and a double-fronted under-awning sign by the main western entrance to the tenancy; four (4) of these are proposed to be illuminated. The remaining signs will consist of 450mm wide single-sided and non-illuminated dome signs that are to be fitted to the planters.

Details regarding use/other works

The internal fitout of the tenancy will be subject to a separate complying development consent.

The application does not seek consent for any use of the site, including the outdoor area. The subject premises proposes to operate under the existing consent DA345/2009.

While works are proposed which relate to the outdoor dining area, consent for outdoor seating (and associated operational requirements such as number of seats, hours of operation, etc.) was obtained as part of Development Consent no. DA345/2009.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - Zone B2 Local Centre
 Manly Local Environmental Plan 2013 - 5.10 Heritage conservation
 Manly Local Environmental Plan 2013 - 6.21 Noise impacts—licensed premises
 Manly Development Control Plan - 4.4.3 Signage

SITE DESCRIPTION

Property Description:	Lot 2 DP 1134156 , 197 - 215 Condamine Street BALGOWLAH NSW 2093
Detailed Site Description:	The subject site is identified as Shop 66, 197-215 Condamine Street Balgowlah (Lot 2, DP 1134156). The subject tenancy is a commercial tenancy located on Level 1

(a podium level) within a mixed-use premises that consists of:

- A large shopping mall (Stocklands Balgowlah) and associated parking that is located on lower levels, and
- Residential dwellings within the buildings above the aforementioned mall.

The site contains three road frontages, being Condamine Street, Sydney Road and Totem Lane; vehicular access is obtained from the main roads. The overall site is irregularly-shaped, has an area of approximately 77,540m², with a moderate south-to-north fall.

The site is located within the B2 Local Centre zone under MLEP 2013. The site is mapped as being affected by a class 5 acid sulphate soils and within an area which forms part of Manly Active Street frontages. The site does not contain a heritage item and is not within a heritage conservation area; the site however adjoins a mapped local heritage item (Item no. 18, 'street trees', under schedule 5 of MLEP 2013).

Development on the site consists of mixed-use development, which includes numerous commercial tenancies on the lower levels containing Stockland Mall, common facilities, and dwellings within the residential levels above. The site also contains multiple basement carpark levels.

The subject tenancy is located on the east/northeast side of the site and has a three frontages; the eastern of these addresses Condamine Street, while the other two address publicly-accessible areas within the Stocklands Mall. The subject tenancy has an internal area of 141m² and is currently vacant (having previously contained a sushi restaurant).

Detailed Description of Adjoining/Surrounding Development

Development on surrounding sites is highly diversified. As indicated above, other buildings and development on the subject site contains high-density residential development consisting of residential flat buildings with commercial development beneath. Development within the broader area (particularly to the east, west and north on the northern side of Sydney Road) consists predominately of low-to-medium density residential development.

Map:



SITE HISTORY

The land has been used for mixed residential and commercial purposes for an extended period of time. Given the number of dwellings/tenancies on the site, the site has a lengthy consent history; a condensed history of the site (referencing only relevant applications) is as follows:

- 31 May 2007: Development Application no. DA101/2006 approved for the excavation and erection of buildings comprising of a supermarket, specialist shops, dwellings, parking and landscaping. This consent has been modified by numerous Section 4.55 (formerly Section 96) Modification Applications.
- 12 January 2010: Development Application no. DA345/2009 approved for the fit out and establishment of use of Shop 66 as a Refreshment Room (Sushi Restaurant). The approval included signage and an outdoor dining area.
- 15 April 2021: Subject Development Application lodged.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains

Section 4.15 Matters for Consideration'	Comments
	the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts	<p>(i) Environmental Impact</p> <p>The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p>

Section 4.15 Matters for Consideration'	Comments
in the locality	<p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered un/suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 26/04/2021 to 10/05/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Mrs Susan Thaylee Wyatt	305 / 9 Sylvan Avenue BALGOWLAH NSW 2093

The following issues were raised in the submissions and each have been addressed below:

- There is to be a nominated period of full disclosure and public exhibition of the development in accordance with the application framework. There is concern that the nature of the application is such that it may not require notification. It does not appear that the exhibition timing does not adequately consider responses from members of the public.
- There is no acknowledgement or action for adverse effects associated with noise transfer.
- The increased patronage will inevitably result in increase ambient noise. Is this addressed by increasing soft furnishings, surface areas and screens, so that the proposal is in line with residential noise requirements within the DCP?
- Increased external dining patrons will become another strata costs to many less subservient patrons and management of children. How is this to be addressed?

- Operational hours have not been proposed. Can assurance be provided regarding opening and closing times? Has there been further consideration for music (ambient or entertainment) and what are the guiding principles?
- The submitted site description fails to highlight the fact that The Village Residential Complex overlooks the plaza where the restaurant will operate. There are 234 apartments within The Village Complex, approximately 50 of which have balconies facing onto the plaza. This hardly represents a mixed usage.
- The previous restaurant did not operate with a capacity of 76 patrons in the outdoor area. The current proposal represents a significant increase in patrons, noise and children who will frequent the restaurant.
- The clientele for this business may be more varied; the previous restaurant did not include a bar area.
- The outdoor area is to incorporate planters that will increase the footprint of the usable outdoor area. The potential changes to this area will have a major effect on the quiet and peaceful enjoyment of living.
- The number of signs are excessive and all seem to be facing residential areas.
- Illumination of the signage will have an undesirable visual impact on residents facing the plaza. Light spill should be assessed in relation to the units directly facing apartments.
- It is disagreed with the SEE's comments regarding special areas under the assessment of Schedule 1 within SEPP 65.
- Comments with the submitted SEE regarding zoning and permissibility are questioned as residents will be impacted by a significant increase of people, noise and music.
- What action will the owner/Stocklands take to minimise the noise issue.
- There is no recognition of crowd management.
- It is requested that a study be undertaken to ensure that glare and noise will not affect apartments overlooking the plaza. Will lighting be in accordance with AS 4282.
- There has been no consultation.

It is noted that the use of the subject premises falls under consent DA345/2009. The subject development application does not propose to alter the approved use. The proposed works are external with the internal fitout subject to a CDC. The operation of the premises falls under the terms of the current consent for the use.

The matters raised within the submissions are addressed as follows:

- There is to be a nominated period of full disclosure and public exhibition of the development in accordance with the application framework. There is concern that the nature of the application is such that it may not require notification. It does not appear that the exhibition timing does not adequately consider responses from members of the public.

Comment:

The subject application was notified for fourteen (14) days in accordance with Council's Community Participation Plan (CPP).

- There is no acknowledgement or action for adverse effects associated with noise transfer.

Comment:

The subject application is for external works only, and use of the tenancy is subject to separate consent (DA345/2009). A Plan of Management (PoM) was approved as part of consent DA345/2009 (Condition ANS09). Noise considerations (other than those associated with demolition/construction works) falls within consent DA345/2009.

- The increased patronage will inevitably result in increase ambient noise. Is this addressed by increasing soft furnishings, surface areas and screens, so that the proposal is in line with

residential noise requirements within the DCP?

Comment:

The subject application is for external works only, and use of the tenancy is subject to separate consent (DA345/2009). The subject application does not propose to increase the number of patrons as originally approved for the premises and therefore any noise associated with the use of the restaurant is subject to the conditions imposed in the current consent for the use. Noise considerations (other than those associated with demolition/construction works) and materials for furnishings is therefore outside the scope of this planning assessment.

- Increased external dining patrons will become another strata costs to many less subservient patrons and management of children. How is this to be addressed?

Comment:

The subject application is for external works only, and use of the tenancy is subject to separate consent (DA345/2009). Noise considerations (other than those associated with demolition/construction works which is) is to be managed under the current consent which incorporates relevant conditions for the operation and management of noise for the premises.

- Operational hours have not been proposed. Can assurance be provided regarding opening and closing times? Has there been further consideration for music (ambient or entertainment) and what are the guiding principles?

Comment:

The subject application is for external works only, and use of the tenancy is subject to separate consent (DA345/2009). The approved hours of operation fall under the current for use and are not amended as part of the subject development application and therefore not applicable to this planning assessment. It is noted that consent condition ANS07 within Development Consent no. DA345/2009 did not permit any external speakers, live music or live bands at the site.

- The previous restaurant did not operate with a capacity of 76 patrons in the outdoor area. The current proposal represents a significant increase in patrons, noise and children who will frequent the restaurant.

Comment:

The use of the site is subject to separate consent (DA345/2009). It is noted that consent condition ANS08 of Development Consent no. DA345/09 approved a maximum 146 customers, with a maximum seventy-six (76) customers seated outside. The subject development application does not propose to amend the approved number of patrons approved under the current consent.

- The clientele for this business may be more varied; the previous restaurant did not include a bar area.

Comment:

The type of clientele for the previous use is not relevant to the planning assessment. Whilst the use of the site is subject to separate consent, it is noted that an On-premises Liquor Licence for the premises has been issued (Liquor Licence no. LIQO660036013) on 22 April 2021. Council raised no objection to the application of an On-premises Licence for the premises subject to compliance with Development Consent 345/09 which required the following; outdoor dining areas to cease operation at 10pm Thursday to Saturday and at 9.00pm Sunday to Wednesday as per Consent 345/09, Condition ANS06, and at all times the operators of the premises are to comply with Development Consent Conditions applying to the land. The internal fitout of the premises is subject to a CDC.

- The submitted site description fails to highlight the fact that The Village Residential Complex overlooks the plaza where the restaurant will operate. There are 234 apartments within The Village Complex, approximately 50 of which have balconies facing onto the plaza. This hardly represents a mixed usage.
Comment:
The proposed works are within a commercial tenancy and are of a nature that are likely to facilitate a commercial use. While use of the tenancy will operate under the existing consent (DA345/2009), the overall mixed use of the site (i.e. commercial tenancies at lower levels with residences above) is unlikely to change as a result of the works proposed as part of the subject development application.
- The outdoor area is to incorporate planters that will increase the footprint of the usable outdoor area. The potential changes to this area will have a major effect on the quiet and peaceful enjoyment of living.
Comment:
The use of the site and consideration of associated issues such as noise are subject to separate consent (DA345/2009). The subject development application does not propose to alter the number of patrons, and are outside the scope of this planning assessment.
- The number of signs are excessive and all seem to be facing residential areas.
Comment:
The proposed number of signs have been assessed and are considered to be acceptable, given their small sizes and consistency with former and existing signage regimes on the site.
- The outdoor area is to incorporate planters that will increase the footprint of the usable outdoor area. The potential changes to this area will have a major effect on the quiet and peaceful enjoyment of living.
Comment:
The dimensions of the proposed outdoor dining areas are generally consistent with those shown by the 'licenced seating area' as shown on the 2009 plans (which show licenced outdoor seating areas) submitted with this application. Any changes associated with use of the site are outside the scope of this planning assessment, as use is subject to separate consent (DA345/2009).
- Illumination of the signage will have an undesirable visual impact on residents facing the plaza. Light spill should be assessed in relation to the units directly facing apartments.
Comment:
The design and illumination of signs will be subject to conditions. An additional condition is also recommended that will require illuminated signs be turned off outside of approved hours of operation. While the signs are located on elevations that address surrounding apartments, most illuminated signs are to be recessed below existing building overhangs and proposed outdoor umbrellas; in addition to conditions governing illumination, this should prevent any foreseeable impacts on surrounding residences.
- Disagree with the SEE's comments regarding special areas under the assessment of Schedule 1 within SEPP 65.
Comment:
Whilst the applicant's comments regarding SEPP 65 were considered, a separate assessment (contained within this planning report) found that the proposed signs will satisfy the relevant

requirements of Schedule 1 within SEPP 65.

- Comments with the submitted SEE regarding zoning and permissibility are questioned as residents will be impacted by a significant increase of people, noise and music.

Comment:

This planning assessment found that the proposal will satisfy the objectives of the B2 zone, noting that the use is subject to the current approval for the premises (DA345/2009). All issues relating to patron numbers, noise and music were addressed under DA345/2009.

- What action will the owner/Stocklands take to minimise the noise issue.

Comment:

The subject application is for external works only, and use of the tenancy is subject to separate consent (DA345/2009). Noise considerations (other than those associated with demolition/construction works) is managed under the PoM approved as part of DA345/2009.

- There is no recognition of crowd management.

Comment:

The subject application is for external works only. Operational considerations (such as any crowd management) falls under the approved use for the site (DA345/2009) with the approved PoM for the premises addressing the management of patrons during opening hours.

- It is requested that a study be undertaken to ensure that glare and noise will not affect apartments overlooking the plaza. Will lighting be in accordance with AS 4282?

Comment:

Conditions of consent are recommended that would require any works to be in adherence with any relevant Australian Standard, which would include AS 4282 (Control of the obtrusive effects of outdoor lighting) if applicable.

- There has been no consultation.

Comment:

Council has fulfilled its consultative requirements in accordance with the Northern Beaches CPP. Should the submission be referring to consultation with local residents prior to the DA, then there is no requirement for such consultation to be undertaken prior to lodgement of a DA. Any lack of consultation prior to DA lodgement is therefore not a matter for consideration under Section 4.15 of the Act.

REFERRALS

Internal Referral Body	Comments
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	The proposal has been referred to Heritage as the subject tenancy within the property adjoins a heritage item.
	18 Street Trees - Condamine Street, Balgowlah

Internal Referral Body	Comments																																																						
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Internal Referral Body	Comments
	DATE: 17 May 2021

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP 64 - Advertising and Signage

Clauses 8 and 13 of SEPP 64 require Council to determine consistency with the objectives stipulated under Clause 3(1)(a) of the aforementioned SEPP and to assess the proposal against the assessment criteria of Schedule 1.

The objectives of the policy aim to ensure that the proposed signage is compatible with the desired amenity and visual character of the locality, provides effective communication and is of high quality having regards to both design and finishes.

In accordance with the provisions stipulated under Schedule 1 of SEPP 64, the following assessment is provided:

Matters for Consideration	Comment	Complies
<p>1. Character of the area Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?</p>	The proposed signs are consistent with existing streetscape character and the desired future character of the area, noting that a relatively high level of compliance is attained with regard to development controls related to signs.	YES
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	The proposal is consistent with existing outdoor advertising themes (noting that the colours will be consistent with signage associated with both the approved use of the tenancy and the existing gym within the adjoining tenancy).	YES
<p>2. Special areas Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas,</p>	The site is not within a special area. The signs will have no impact on adjacent heritage items (street trees).	YES

waterways, rural landscapes or residential areas?		
3. Views and vistas Does the proposal obscure or compromise important views?	Views will not be affected by the proposal.	YES
Does the proposal dominate the skyline and reduce the quality of vistas?	The proposal will not dominate the skyline.	YES
Does the proposal respect the viewing rights of other advertisers?	The proposal will not obscure viewlines and the viewing rights of surrounding businesses.	YES
4. Streetscape, setting or landscape Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	The scale, proportion of the signs are appropriate both for the site and streetscape more generally.	YES
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	The proposal will add visual interest to both the site and adjacent streetscape, by occupying otherwise vacant parts of the facade on both public-facing frontages.	YES
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	The varying placement and modest sizes of proposed signs will not promote visual clutter.	YES
Does the proposal screen unsightliness?	Not applicable.	N/A
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	The signs will not protrude above buildings, structures and treelines.	YES
5. Site and building Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	The scale and proportion of signage is consistent with the affected building and site more generally (noting that the scale of the signage is consistent with/smaller than signage on surrounding tenancies and which was installed as part of the previous occupation of the site).	YES
Does the proposal respect important features of the site or building, or both?	Not applicable.	N/A
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	The proposal shows innovation in terms of utilising the external works to appropriately locate signage on the building and associated works (such as the planters).	YES
6. Associated devices and logos with advertisements and advertising structures Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	Not applicable.	N/A
7. Illumination Would illumination result in unacceptable glare, affect safety for pedestrians, vehicles or aircraft, detract	Subject to conditions, the illumination of signage would not be of a brightness not glare that will affect vehicular/pedestrian safety.	YES

from the amenity of any residence or other form of accommodation?		
Can the intensity of the illumination be adjusted, if necessary?	Not assessed (however brightness of any illumination will be in accordance with standards).	YES
Is the illumination subject to a curfew?	There are no curfews, however a condition is recommended to require that illumination be shut off outside of approved business hours.	YES
8. Safety Would the proposal reduce the safety for any public road, pedestrians or bicyclists?	The proposal will not create a distraction nor obscure sightlines, therefore becoming a potential safety risk.	YES
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	The placement and designs of proposed signs will not obscure sightlines and become a potential issue.	YES

Accordingly, the proposed signage is considered to be of a scale and design suitable for the locality. The proposal is therefore deemed to be consistent with the provisions of the SEPP and its underlying objectives.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m / 26m	2.7m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
3.1 Exempt development	N/A
4.3 Height of buildings	Yes
4.4 Floor space ratio	N/A
4.5 Calculation of floor space ratio and site area	N/A
4.6 Exceptions to development standards	N/A
5.8 Conversion of fire alarms	N/A
5.10 Heritage conservation	Yes
6.1 Acid sulfate soils	N/A
6.2 Earthworks	N/A

Clause	Compliance with Requirements
6.4 Stormwater management	N/A
6.8 Landslide risk	N/A
6.11 Active street frontages	Yes
6.12 Essential services	Yes
6.13 Design excellence	Yes
6.16 Gross floor area in Zone B2	N/A
6.21 Noise impacts—licensed premises	N/A

Detailed Assessment

Zone B2 Local Centre

The subject Development Application does not seek consent for the use of the tenancy.

The subject tenancy is currently vacant. The applicant proposes to operate under the current consent applicable to the site (DA345/2009). The proposed works are external and will not alter the approved use for the site and are appropriately defined as alterations and additions to a 'commercial premises' (as defined by the LEP). The proposed works are therefore permissible with consent within the B2 zone and are considered to be consistent with the relevant objectives of the zone.

5.10 Heritage conservation

The site adjoins a mapped local heritage item (Item 18, 'Street trees'); Refer to the referral comments from Council's heritage officer for further information.

6.21 Noise impacts—licensed premises

The use of the outdoor dining area is subject to separate consent (noting that consent for the outdoor dining area was formerly granted to the tenancy under Development Consent no. DA345/2009). As the subject development application does not seek consent for the use of the associated outdoor dining area, clause 6.21 of the LEP is not relevant to this planning assessment.

Manly Development Control Plan

Built Form Controls

Built Form Controls	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	N/A	No change	N/A	N/A
4.1.2.2 Number of Storeys	N/A	No change	N/A	N/A
4.1.2.3 Roof Height	Height: 2.5m	No change	N/A	N/A
	Parapet Height: 0.6m	No change	N/A	N/A
	Pitch: maximum 35 degrees	No change	N/A	N/A

4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	No change	N/A	N/A
4.1.4.2 Side Setbacks and Secondary Street Frontages	N/A	No change	N/A	N/A
	Windows: 3m	No change	N/A	N/A
4.1.4.4 Rear Setbacks	8m	No change	N/A	N/A

***Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example: $38/40 \times 100 = 95$ then $100 - 95 = 5\%$ variation)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.3 Townscape (Local and Neighbourhood Centres)	Yes	Yes
3.3.1 Landscaping Design	N/A	N/A
3.3.2 Preservation of Trees or Bushland Vegetation	N/A	N/A
3.3.3 Footpath Tree Planting	N/A	N/A
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	N/A	N/A
3.4.3 Maintenance of Views	N/A	N/A
3.4.4 Other Nuisance (Odour, Fumes etc.)	N/A	N/A
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	N/A	N/A
3.5.1 Solar Access	N/A	N/A
3.5.3 Ventilation	N/A	N/A
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	N/A	N/A
3.5.5 Landscaping	N/A	N/A
3.5.6 Energy efficiency/conservation requirements for non-residential developments	N/A	N/A
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	N/A	N/A
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	N/A	N/A
3.10 Safety and Security	Yes	Yes
4.2 Development in Business Centres (LEP Zones B1 Neighbourhood Centres and B2 Local Centres)	Yes	Yes
4.2.1 FSR (Consideration of Exceptions including Arcades)	N/A	N/A

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2)	N/A	N/A
4.2.3 Setbacks Controls in LEP Zones B1 and B2	N/A	N/A
4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor	N/A	N/A
4.2.6 Balgowlah Local Centre	Yes	Yes
4.2.6.1 Wall Height on the Street Frontage	N/A	N/A
4.2.6.2 Exceptions to LEP Building Height	N/A	N/A
4.2.6.3 Setbacks	N/A	N/A
4.2.6.4 Design Excellence in the Design of Street Facades and Onsite Carparking	N/A	N/A
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.3 Signage	No	Yes
4.4.4 Awnings	N/A	N/A
4.4.4.1 Awnings in LEP B1 and B2 Business Zones	N/A	N/A
4.4.4.2 Awning supported from the ground	N/A	N/A
4.4.5 Earthworks (Excavation and Filling)	N/A	N/A
5 Special Character Areas and Sites	N/A	N/A
5.5 Road Widening and Realignment	N/A	N/A

Detailed Assessment

4.4.3 Signage

An assessment of applicable development controls is as follows:

4.4.3.1 Controls for all Development Types

The proposal will breach controls that limits signage to a maximum of two (2) signs on each frontage (the eastern elevation is compliant in this regard). Including signs attached to planters, the western and southern frontages would each contain four signs. Except for the signs above the southern entrance (1.025m x 727mm) and adjacent to the western entrance (1.499 x 1.064m), all other signs on the affected frontages are relatively small (i.e. maximum widths of between 450mm and 550mm); despite containing an excessive number of signs, given the design, size and placement of such signage will not result in visual clutter and pollution.

Further, the affected frontages and associated signage will largely not be visible from the streetscape, therefore the proposal is unlikely to affect the existing and desired character of the area and will not create a visual distraction that adversely affects safety within the public domain (the eastern streetscape elevation will contain a compliant number of signs and has therefore not been considered further) The objectives related to the control are therefore satisfied and the variation is therefore supportable on merit.

The proposal will satisfy other development controls within this section of the DCP.

4.4.3.2 Signage on Heritage listed items and in Conservation Areas

Not applicable.

4.4.3.3 Controls for Particular Development Types

The proposed signs are generally in accordance with applicable development controls within this section. Two technical noncompliances are however noted as follows:

- The under-awning sign on the western elevation is less than 2.6 metres above ground level, and
- The flush-wall signs are less than 2,6 metres above ground level.

Despite such issues, the signs are otherwise compliant with other applicable development controls within this section. The minimum 2.4m clearance of the under-awning sign will not create a foreseeable safety issue, and no issues are noted with the flush-wall signs, noting that their sizes are well within maximum area and separation requirements. The signs are not considered to be out of character with the building (noting that similar such signs were installed as part of the earlier occupation of the tenancy) and then site more generally. As such, the proposed variations are considered to be supportable on merit.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

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

CONCLUSION

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

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

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

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2021/0399 for Alterations and additions to an existing food and drink premises (Shop 066) including new signage on land at Lot 2 DP 1134156, 197 - 215 Condamine Street, BALGOWLAH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Shop 066 Floor Plan (Drawing A T E03.01, Issue 12)	21.10.2009	Allen Jack + Cottier
Drawing Register & Finishes Schedule (Job No. 21003, Drawing No. CS)	18.01.2021	Style
Proposed Demolition Plan (Job No. 21003, Drawing No. 107)	17.08.2018	Style
Signage Layout (Job No. 21003, Drawing No. 113)	18.01.2021	Style
Shopfront Elevation (Job No. 21003, Drawing No. 108)	18.01.2021	Style
External & Internal Elevations (Job No. 21003, Drawing No. 109)	18.01.2021	Style
External Seating Elevations (Job No. 21003, Drawing No. 114)	18.01.2021	Style
External Seating Elevations (Job No. 21003, Drawing No. 115)	18.01.2021	Style

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	---	---

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

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

2. **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 Certifying Authority 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 Certifying Authority 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 Certifying Authority 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.

3. 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 a final 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 Long Service Levy is

required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% 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.

- (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.) or on the land to be developed shall be removed or damaged during 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.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming

pools

- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

4. Security Bond

A bond (determined from cost of works) of \$1,500 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 Certifying Authority 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.

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

5. Compliance with Standards

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

6. **Installation and Maintenance of Sediment Control**

Prior to any works commencing on site, including demolition, sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site.

7. **Waste Management During Development**

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

Details demonstrating compliance must be submitted to the Principal Certifying Authority.

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

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

8. **Hours of Illumination**

Illumination of signage at the subject premises shall cease outside of consented hours of operation of the tenancy.

Signs must not flash, move or be constructed of neon materials.

Reason: To ensure residential premises are not affected by inappropriate or excessive illumination. (DACPLG11)

9. **Illumination Intensity and design**

The level of illumination and/or lighting intensity used to illuminate the signage is to be minimised and the design is to be such to ensure that excessive light spill or nuisance is not caused to any nearby premises.

Reason: To ensure appropriate forms of signage that are consistent with Council's controls and those that are desired for the locality, and do not interfere with amenity of nearby properties. (DACPLG12)

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

Signed



Penny Wood, Planner

The application is determined on 26/05/2021, under the delegated authority of:



Anna Williams, Manager Development Assessments