

DEVELOPMENT APPLICATION ASSESSMENT REPORT

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| Application Number: | DA2021/1541 |
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| Responsible Officer: | Clare Costanzo |
| Land to be developed (Address): | Lot 21 DP 226287, 20 Albert Street FRESHWATER NSW 2096 |
| Proposed Development: | Use of premises as a restaurant |
| Zoning: | Warringah LEP2011 - Land zoned B2 Local Centre |
| Development Permissible: | Yes |
| Existing Use Rights: | No |
| Consent Authority: | Northern Beaches Council |
| Delegation Level: | NBLPP |
| Land and Environment Court Action: | No |
| Owner: | Dominic Seeto Rose Seeto |
| Applicant: | David Moody |

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| Application Lodged: | 30/08/2021 |
| Integrated Development: | No |
| Designated Development: | No |
| State Reporting Category: | Commercial/Retail/Office |
| Notified: | 09/09/2021 to 23/09/2021 |
| Advertised: | Not Advertised |
| Submissions Received: | 56 |
| Clause 4.6 Variation: | Nil |
| Recommendation: | Approval |

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| Estimated Cost of Works: | \$ 730,000.00 |
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EXECUTIVE SUMMARY

The proposal relates to a change of use from a takeaway food and drinks premises with 8 patrons and internal alterations previously approved under CDC2021/0324 to use as a restaurant, with increased operating hours and patrons to 71. Some internal and external alterations and additions are also proposed as part of the development application.

Following preliminary assessment the applicant was requested to provide additional information including amendments to the architectural plans to remove the outdoor seating area, provide information and architectural plans to detail the exhaust system, provide additional bathrooms in compliance with the BCA standards and update the plan of management to reflect reduced patronage and hours of operation and further operational management of the premise.

During public notification 56 submissions were received. Of these submissions 32 were received in support and 24 in objection to the proposal. Most submissions objected to the proposal on the grounds of noise, amenity impacts and traffic and parking. Due to the number of submissions received, the application is referred to the Northern Beaches Local Planning Panel for determination.

PROPOSED DEVELOPMENT IN DETAIL

The proposal comprises of the change of use from a take away food and drinks premise to a restaurant with increased number of patrons and change in hours of operation. The proposal comprises of some minor alterations and additions to the internal and external walls of the building.

Following preliminary assessment of the application Council requested amendments to the development application. The applicant provided the amendments as required. Further detailed operation of the restaurant is outlined below:

Operating Hours

Monday to Wednesday/Sunday: 12 noon - 10pm

Thursday to Saturday: 12 noon - 12 Midnight

Patron Capacity

71 seated patrons and 10 staff on duty at any one time.

Parking and Loading/Unloading

The two existing car parking spaces on site will be retained to be used for staff/customer parking and deliveries. The applicant has also provided bicycle car parking within the hardstand car parking area adjoining the building. All deliveries will be made between 8am to 12 noon to ensure car parking will be available during the business operating hours.

Operational Waste Management

Operational waste will be stored within a bin room within the tenancy in an enclosed space to ensure all offensive smells are minimised. These bins will be placed out in the mornings on Tuesdays and Thursdays after 8am within the outdoor area to be picked up.

Signage

There is no signage proposed as part of this development application.

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral

to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;

- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - Zone B2 Local Centre

Warringah Development Control Plan - C3 Parking Facilities

Warringah Development Control Plan - D3 Noise

Warringah Development Control Plan - G5 Freshwater Village

Warringah Development Control Plan - 3. Street activation

Warringah Development Control Plan - 4. Street facades and shopfront design

Warringah Development Control Plan - 5. Access and loading

Warringah Development Control Plan - 6. Lighting

Warringah Development Control Plan - 7. Safety and security

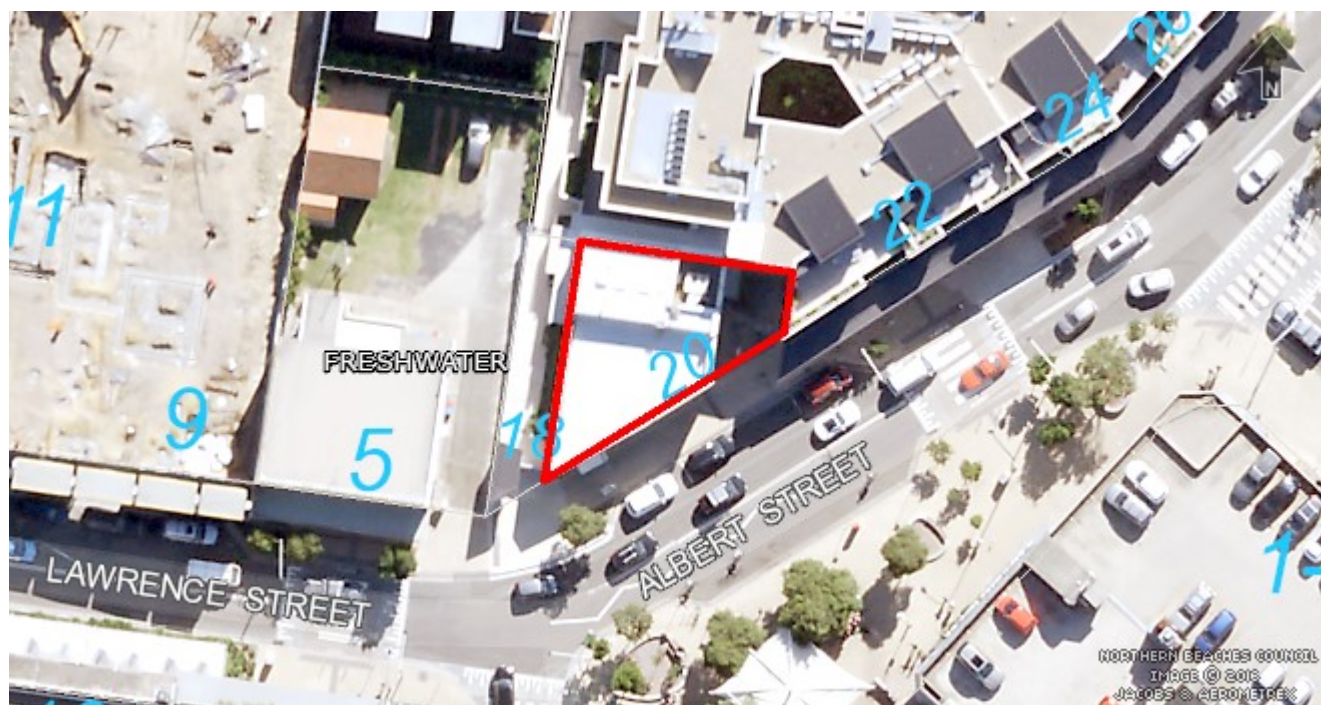
Warringah Development Control Plan - 8. Signage

Warringah Development Control Plan - 13. Roofs and building form

SITE DESCRIPTION

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| Property Description: | Lot 21 DP 226287 , 20 Albert Street FRESHWATER NSW 2096 |
| Detailed Site Description: | <p>The subject site consists of one (1) allotment located on the north eastern side of Albert Street, Freshwater.</p> <p>The site is irregular in shape and has a surveyed area of 260m².</p> <p>The site is located within the B2 Local Centre zone and accommodates a two storey brick building with two on site car parking spaces. The site has been previously cleared and there is no vegetation or significant environmental features on the site.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by low and medium density development providing for a range of commercial and residential uses.</p> |

Map:



SITE HISTORY

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

- Application CDC2021/0324 for Change of use from a business premises to a take-away food premise with maximum seating capacity of 8 patrons, including internal alterations - 200341/01 was issued on the on 14 April 2021.
- Application BLD2021/02223 was lodged to investigate building works. This has been investigated by Council and no further action was required.

A site visit was conducted on the 19 October 2021.

Additional information was requested by Council in relation to the following:

- Amended Plans to remove outdoor seating area
- Revised Plan of Management
- Further clarification on issues raised by Environmental Health in regard to noise, sanitary facilities, food premise design, smoke and odour
- Amended Traffic Report

The applicant responded to Council's request providing the amended information.

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 |
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| Section 4.15 Matters for Consideration' | Comments |
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| 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 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 | Warringah Development Control Plan applies to this proposal. |
| Section 4.15 (1) (a)(iiia) – 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. Additional information was requested in relation to amended plans, traffic and parking, operational information and the proposed exhaust system.</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 clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</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> |

| Section 4.15 Matters for Consideration' | Comments |
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| | Clause 143A 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. |
| Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality | <p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p> |
| Section 4.15 (1) (c) – the suitability of the site for the development | The site is considered suitable for the proposed development. |
| Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs | See discussion on “Notification & Submissions Received” in this report. |
| Section 4.15 (1) (e) – the public interest | No matters have arisen in this assessment that would justify the refusal of the application in the public interest. |

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 09/09/2021 to 23/09/2021 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 56 submission/s from:

| Name: | Address: |
|-------------------------|---|
| Miss Qingliang Zhong | 3 / 18 Albert Street FRESHWATER NSW 2096 |
| Mrs Alicia Colette Ryan | 29 Woorarra Avenue NORTH NARRABEEN NSW 2101 |
| Miss Maree Portanger | 22 Undercliff Road FRESHWATER NSW 2096 |
| Daniel James Kitt | 9 / 22 - 26 Albert Street FRESHWATER NSW 2096 |

| Name: | Address: |
|---|---|
| Edmond Jung-Min Park | 64 Waragal Avenue ROZELLE NSW 2039 |
| Mr Frank Minnici | 17 Bennett Street CURL CURL NSW 2096 |
| Ms Danielle Anne Adlam | 112 / 22 Albert Street FRESHWATER NSW 2096 |
| Silvino Alves Farinha Angela Conceicao Farinha | 106 / 22 - 26 Albert Street FRESHWATER NSW 2096 |
| Christopher John Vlahos | 22 / 18 Albert Street FRESHWATER NSW 2096 |
| Mr Ross Malcolm Locket | 406 / 2 Sylvan Avenue BALGOWLAH NSW 2093 |
| Mr Sonny Tunganemaru Ryan | 29 Woorarra Avenue NORTH NARRABEEN NSW 2101 |
| Mr Daniel Thomas Cape | 2 / 8 Lawrence Street FRESHWATER NSW 2096 |
| Vitor Reprowski Garcia Rodrigues | 1 / 85 Lawrence Street FRESHWATER NSW 2096 |
| Fiona Wise | Address Unknown |
| Brett Wise | Address Unknown |
| J Hudsson | Address Unknown |
| David Cain | 2 / 104 Soldiers Avenue FRESHWATER NSW 2096 |
| Ms Anne Louise Shillington | 12 B Charles Street FRESHWATER NSW 2096 |
| Mrs Virginia Paige Mounsey | 8 Glen Street FRESHWATER NSW 2096 |
| Elaine O'Brien | Address Unknown |
| Jason Langendam | Address Unknown |
| Mr Norman David Thomson | 1 / 18 Albert Street FRESHWATER NSW 2096 |
| Ms Georgia Frances Shillington | 17 / 28 Cavill Street FRESHWATER NSW 2096 |
| Katherine Bullock | 9 Evans Street FRESHWATER NSW 2096 |
| Mrs Narelle Louise Urquhart | 36 Carlton Street FRESHWATER NSW 2096 |
| Mrs Janice Irene Waters | 21 / 18 Albert Street FRESHWATER NSW 2096 |
| Mr Francis Gerald Smith | 17 / 28 Cavill Street FRESHWATER NSW 2096 |
| Mrs Katrina Barbara Parlevliet | 21 Brighton Street CURL CURL NSW 2096 |
| Mr Jonathan Robert Morton | 5 / 129 Queenscliff Road QUEENSCLIFF NSW 2096 |
| Belle Tomasetti | 10 / 105 Queenscliff Road QUEENSCLIFF NSW 2096 |
| Mr Maxwell John Parker | 10 / 105 Queenscliff Road QUEENSCLIFF NSW 2096 |
| Mr James Hunt | 20 / 128 Lawrence Street FRESHWATER NSW 2096 |
| Mr Ross Theodore George Capsanis | 9 / 21 Cavill Street QUEENSCLIFF NSW 2096 |
| Thomas Henley | Address Unknown |
| Mr John Gerald Parker | 33 Carlton Street FRESHWATER NSW 2096 |
| Peter Portanger | 22 Undercliff Road FRESHWATER NSW 2096 |
| Ella Mary Shillington | 6 / 42 Waine Street FRESHWATER NSW 2096 |
| Toya Lazarevic | 7 / 157 Queenscliff Road QUEENSCLIFF NSW 2096 |
| Geoff Bullock | 9 Evans Street FRESHWATER NSW 2096 |
| David Matthew Hundt | 12 / 104 Soldiers Avenue FRESHWATER NSW 2096 |

| Name: | Address: |
|----------------------------------|--|
| Rachel Joan Said Pullicino | 37 Grover Avenue CROMER NSW 2099 |
| Ms Lydia Park | Address Unknown |
| Adrian Denis O'Hagan | 586 A Pittwater Road NORTH MANLY NSW 2100 |
| Alexandra Jane Cordukes | 45 Charles Street FRESHWATER NSW 2096 |
| Ms Margot Danielle Hazard | 11 A Oceanview Road FRESHWATER NSW 2096 |
| Mr Mosese Tea | 2 Oceanview Road FRESHWATER NSW 2096 |
| Dr Caroline Padget | 33 Oceanview Road FRESHWATER NSW 2096 |
| Miss Courtney Leanne Hurst | 2 Fuller Street COLLAROY PLATEAU NSW 2097 |
| Ms Nicole Cassidy | 169 Willandra Road CROMER NSW 2099 |
| Mr Adam Hill | 46 Martin Street FRESHWATER NSW 2096 |
| Alecia Grace De Angelis | 5 Bolta Place CROMER NSW 2099 |
| Mauricio Franceschi | Address Unknown |
| William Anslow Clarke Tompson | 104 Wyuna Avenue FRESHWATER NSW 2096 |
| Brooke Cavallaro | Address Unknown |
| Mrs Anne Elizabeth Foster | 104 / 11 Lawrence Street FRESHWATER NSW 2096 |
| Chris Thomas | Address Unknown |

From these 56 submissions, 32 were of support and 24 raised objections to the proposed development.

The matters raised within the submissions are addressed as follows:

- **Noise**

Comment:

Concern has been raised by neighbouring residential receivers that the proposed use of the site as a restaurant with outdoor seating will result in unreasonable noise impacts late into the night.

Following assessment of the application Council requested the that the application provide amended information. This information included the removal of the outdoor seating area, detailed exhaust system and reduction in overall patrons and operating hours.

Subject to the removal of the outdoor seating area, exhaust control and reduction in overall patrons and operating hours it is considered there will not be any unreasonable impacts on the nearby residential receivers. Conditions have been recommended should the application be approved.

- **Exhaust pollution**

Comment:

The applicant has provided amended plans and information to detail the proposed exhaust system to ensure noise and odour pollution is mitigated. This has been reviewed by Council's Environmental Health officer.

- **Parking**

Comment:

Council received multiple submissions raising concern over the removal of the existing on site car parking spaces and the intensification of the use of the site resulting in an increased demand for car parking within the Freshwater Village. The outdoor seating area has been deleted from the proposal and therefore the two on site car parking spaces will be reinstated.

The proposal is seeking use of the existing site as a restaurant and some internal works. Given the location of the site within the Freshwater Village Centre and close proximity to residential areas it is not expected that the proposed use as a restaurant requires any additional on site car parking above existing. It would be unreasonable for small commercial zoned sites to require additional on site car parking spaces that would ultimately result in an unreasonable level of bulk and scale on site.

The site presents a deficit of on site car parking spaces required in accordance with the Car Parking Requirements within the Warringah Local Environmental Plan 2011. It is considered the deficit of on site car parking spaces will not result in any unreasonable impacts given the availability of public transport options within Freshwater. Additionally, the operation of the restaurant as a licensed premise will encourage car pooling and public transport thereby reducing the demand on car parking.

The proposal has reduced its overall patron capacity and is considered to reduce the intensification of the development to a level that is acceptable within the Freshwater Village Centre.

- **Loading and Unloading**

Comment:

Concern has been raised over no unloading/loading facilities available on site. The existing on site car parking spaces have been reinstated and will be used for unloading/loading during approved delivery hours as detailed in the conditions of consent. The use of the on site spaces will also reduce demand on existing loading zones available within the Freshwater Village.

- **Sanitary Facilities**

Comment:

Concern has been raised that the proposal only provides for one on site bathroom. The proposal has been reviewed by Council's Environmental Health Officer who provided comments requesting further clarification. The applicant provided additional information which has been reviewed by Council's Environmental Health Officer.

- **Hours of Operation**

Comment:

Multiple submissions were received raising concern over the proposed operating hours of 11:30am to 12:00am Monday to Sunday. The proposed hours of operation are not suitable for the proposed development and its location within the vicinity of nearby residential receivers. A condition has been recommended to reduce the proposed hours of operation to be in accordance with the recommendations by NSW Police. The recommendations will limit the proposed hours of opening from 11:30am to 10:00pm Monday to Sunday.

- **Waste Management**

Comment:

A concern was raised in regard to operational waste management of the proposed restaurant. The two existing on site car parking spaces have been reinstated and will provide for the loading of operational waste during approved hours detailed in the development consent. Additionally further information including operational waste management has been detailed in the plan of management and will be done in accordance with Council requirements.

- **Diversity of restaurants**

Comment:

The proposal comprises of the use of the site as a restaurant. Council is supportive of an additional indoor restaurant to provide additional services for the residents and visitors of the Freshwater Village.

Amended Plans and Information

Amended Plans and information was received to resolve concerns raised by Council during the preliminary assessment of the application. Renotification was not required as per the Northern Beaches Community Participation Plan, however courtesy was extended to the general public who previously made submissions advising of the changes and the Northern Beaches Local Planning Panel meeting date. The amended plans and information, along with this assessment report will also be made available online prior to the Northern Beaches Local Planning Panel.

REFERRALS

| Internal Referral Body | Comments |
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| Environmental Health (Food Premises, Skin Pen.) | <p>General Comments</p> <p>New Information – Additional Review 2 November 2021</p> <p>The applicant has made some amendments and provided further information in relation to concerns raised in Environmental Health's Referral Response on 14 September 2021.</p> <p>Some of the amendments/further information includes:</p> <ul style="list-style-type: none"> • Removing the outdoor seating area and therefore reducing noise concerns on surrounding receptors. • Altering the proposed hours of operation to the following: <ul style="list-style-type: none"> ○ Monday: 12 Noon - 10pm ○ Tuesday: 12 Noon – 10pm ○ Wednesday: 12 Noon – 10pm ○ Thursday: 12 Noon – 12 Midnight ○ Friday: 12 Noon – 12 Midnight ○ Saturday: 12 Noon – 12 Midnight ○ Sunday: 12 Noon – 10pm • Amended plans indicate additional sanitary facilities located upstairs. • The applicant has provided details on odour control from the mechanical ventilation. This includes a system is designed with a single ESP (Electrostatic Precipitator) to help control odours and particulates from cooking. <p>The acoustic report and the plan of management provide a number of different maximum music levels based on the time of day. Providing different music levels based on time of day and scenario will be difficult to effectively manage during operations. In order to maintain</p> |

| Internal Referral Body | Comments |
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| | <p>acoustic amenity, Environmental Health recommend that amplified music does not exceed a maximum output 65dB(A) when measured at any point inside the premises and that an electronic limiter be fitted. The limiter is to be installed in a tamper proof enclosure (or in the case of a DSP based limiter) with no access to the limiter controls by staff.</p> <p>Furthermore, in a referral response from NSW Police they have recommended that due to the location and licence type, trading hours be restricted to 11:30am to 10:00pm Monday to Sunday. If this hours are adopted this will further reduce acoustic concerns.</p> <p>Recommendation</p> <p>Supported - subject to conditions</p> <p><u>Planner Comment:</u></p> <p>The proposed operating hours have been conditioned in accordance with the recommendations from NSW Police to ensure a high level of residential amenity is maintained. Any proposed changes to the operating hours should the development application be determined as approved will be subject to a separate modification application.</p> |
| Traffic Engineer | <p>Proposal description: Proposed change of use from takeaway food premises to a restaurant with an increased number of patrons, change in hours of operation and conversion of 2 car spaces to outdoor seating.</p> <p>A complying Development Application No 20034/01 for change of use from the current business premises to takeaway food premises with a maximum seating capacity of 8 patrons was approved on 14/4/2021.</p> <p>Under the new proposed modification DA, the approved floor plan with eight (8) seats will be changed to a floor plan accommodating 58 internal seats and 28 external seats in the undercover courtyard where the current car park is located.</p> <p>The gross floor area (GFA) of the development, as outlined in the <i>Traffic and Parking Assessment</i> prepared by Lyle Marshall & Partners Pty Ltd dated July 2021, is 217.33sqm excluding outdoor/stair and circulation areas. The hours of operation are Monday to Saturday: 11am to 12:00am, and Sunday: 11am to 10:00pm.</p> <p>The site is zoned B2 Local Centre according to Warringah LEP.</p> |

| Internal Referral Body | Comments |
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| | <p>The Warringah DCP applies to the subject site. Under the DCP, 15 parking space per 100sqm of GFA or 1 space per 3 seats is required for restaurants although consideration can be given to a reduced rate if there is available parking in the vicinity at the restaurants hours of operation.</p> <p>Bicycle parking stands are also required at a minimum rate of one stand for every three car parking spaces, with a minimum provision of one stand for each premise.</p> <p>The <i>Traffic and Parking Assessment</i> prepared by Lyle Marshall & Partners Pty Ltd dated July 2021, the plans designed by FiveFootOne dated 24/05/2021 and the <i>Plan of Management</i> prepared by Jack Leary of Alma have been reviewed by the Traffic team.</p> <p><u>Parking requirement</u></p> <p>The DCP outlines that for restaurant uses the parking requirement is either 15 spaces per 100sqm of GFA or 1 space per 3 seats. This equates to either 34.5 spaces or 28.7 spaces. The development proposes to remove the two parking spaces provided to serving the existing take away food premises to allow for the creation of an external seating area for 28 people. The developer seeks to justify the absence of any offstreet parking to support the use on the basis of available parking in nearby on and offstreet locations.</p> <ul style="list-style-type: none"> • The consultant undertook the parking accumulation surveys on 25/6/2021, and the results were described in Section 2.4 of the traffic report. Based on the survey results, it was estimated that 21 to 22 parking spaces (on-street and off-street car parks) within 2 to 3 minutes walk would be available at peak accumulation time (7:00pm) on Friday night (busiest night of the week) with the following breakdown: <ul style="list-style-type: none"> ○ Public car park: 6 to 7 vacant spaces ○ Vacant spaces on the street: 3 ○ Vacant spaces on off-street car parks: 12 plus 6 to 7 (18 to 19) <p>The parking surveys were undertaken in the middle of the Pandemic just prior to Sydney entering a lockdown when it would be expected that few people would be visiting</p> |

| Internal Referral Body | Comments |
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| | <p>restaurants. The surveys unsurprisingly, indicated that there were plenty of available parking spaces in the vicinity of the development, particularly the nearby Freshwater Village Shopping complex car parking areas. In order to have reliable on-street and off-street carparks parking utilisation/availability, the surveys are suggested to be undertaken when most pandemic restrictions have been lifted and restaurants and other premises are again able to operate at full or near full capacity.</p> <p>Given the type of the proposed restaurant where duration of stay would be in the range of 1 to 3 hours, any 10minP and 1/2P should not be included in the on-street parking availability analysis.</p> <p>It is also noted that the subject development cannot rely on parking in the adjacent Freshwater Village Shopping complex rooftop and ground-level car park. Those parking spaces are to support the parking demand generated by that complex.</p> <p>Finally it is noted that no parking analysis was undertaken during the weekday or weekend midday periods when parking occupancy rates in the Freshwater Village are anticipated to be high. Given that the restaurant is proposed to operate during these periods such analysis is critical.</p> <ul style="list-style-type: none"> Patronage and travel mode surveys were conducted at a similar Alma Restaurant in Avalon managed by the same operator. Peak patronage was reported as 95.8% of seating capacity in the traffic report, and the car driver travel mode by patrons was 13.8% at the time of peak patronage. It is unclear how the travel mode of patrons was determined and this should be clarified. The seating capacity of the Alma Restaurant in Avalon is 68 seats (31 seats internally, 17 in a covered verandah and 20 with no cover). The reported peak patronage would therefore equate to 67.6%, which shows that around 30% of the restaurant was empty at the time of the travel mode survey. In order to have reliable patronage and travel mode, the surveys are suggested to be undertaken when most pandemic restrictions have been lifted and the restaurant operating at close to capacity. Apart from Alma Restaurant in Avalon, surveys of another similar site in a similar environment will also assist in making a better understanding of parking utilisation/availability and patronage travel mode of the similar developments. It is suggested that at least two (2) similar restaurant sites be surveyed, ideally including another site in Freshwater, and the average of the results be used for the subject development. In the traffic report, it is unclear how many staff are expected |

| Internal Referral Body | Comments |
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| | <p>to serve the proposed development, and the basis of travel mode assumptions for staff trips has not been explained. It is suggested that some information about the anticipated number of development staff and staff travel mode of the similar surveyed sites be included in the traffic report.</p> <ul style="list-style-type: none"> • Bicycle parking stands are also required with a minimum provision of one stand for each premise, i.e. one (1) bicycle stand for the proposed development. However, bicycle parking spaces are not presented in the architectural plans. This should be confirmed on the amended plans. • Some limited information about the deliveries/loading and waste management have been included in the <i>Plan of Management</i> prepared by Jack Leary of Alma. It is reported that <i>"All deliveries are being carried out in the morning prior to business hours in order to not impede pedestrians. Drivers will utilise the loading zones available on the street to ensure all deliveries are carried out safely."</i> The location of on-street loading zones that the proposed development will utilise, some analysis of their availability at the times required and details on the frequency of deliveries and size of delivery vehicles is required to demonstrate that the development can operate effectively without access to an offstreet loading bay. <p><u>Traffic Impact</u></p> <ul style="list-style-type: none"> • An indication of the traffic generation potential of the development proposal should be provided by reference to the <i>TfNSW Guide to Traffic Generating Developments, Section 3 - Land use Traffic Generation (October 2002)</i>. Restaurant Trip Generation and the travel mode Surveys (car driver, taxi, car passenger and share/uber trips) should also be used to determine potential trip generation attributed to the proposed development. <p><u>Conclusion</u></p> <p>The plans and the traffic report in their current form are unacceptable given the lack of relevant detail to base a traffic and parking impact assessment, as outlined above.</p> <p>The proposal is therefore unsupported.</p> <p><u>Second Referral</u></p> <p>The applicant has made some amendments and provided further information in relation to concerns raised in Traffic Referral Response</p> |

| Internal Referral Body | Comments |
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| | <p>dated 30 September 2021.</p> <p>The amendments/further information includes:</p> <ul style="list-style-type: none"> • Removing the outdoor seating area and reinstating the two onsite car parking spaces. (The restaurant's seating capacity has been reduced by 15 seats from 86 to 71 accordingly.) • Altering the proposed hours of operation (from Monday to Saturday: 11am to 12:00 midnight, and Sunday: 11am to 10:00pm) to the following: <ul style="list-style-type: none"> o Monday to Wednesday: 12 Noon - 10pm o Thursday to Saturday: 12 Noon – 12 Midnight o Sunday: 12 Noon – 10pm • 12 staff will be on duty on Fridays and Saturdays and 10 at other times <p>The Traffic team has reviewed the following documents:</p> <ul style="list-style-type: none"> • Amended traffic report prepared by Lyle Marshall & Partners Pty Ltd dated 1 November 2021, • Peer review of amended traffic report prepared by Traffic and Safety solutions Pty Ltd dated 1 November 2021, • Amended plans (version C) designed by FiveFootOne dated 22.10.2021 • Plan of Management, • NSW Police referral response dated 21 October 2021 (Council ref. 2021/772225). <p>Traffic team Notes:</p> <ul style="list-style-type: none"> • The amended proposal has reduced its overall patron capacity and hours of operation; therefore, it is considered to reduce the intensification of the development within the Freshwater Village Centre. • The site has a shortfall in terms of onsite car parking spaces required in accordance with the car parking requirements within the Warringah Local Environmental Plan 2011 and the DCP by 22 spaces (the rate is either 15 spaces per 100sqm of GFA or 1 space per 3 seats, whichever is greater. The 1 space per 3 seats rate would equate to a parking requirements of 24 spaces). The amended development proposal only provides two on site car parking spaces. • The consultant undertook further parking accumulation surveys on-street and in Council's public car park within 2-3 minutes walk of the proposed restaurant on Friday 15/10/21 and Saturday 16/10/21. The survey shows that while there is adequate parking to meet generated demands at most |

| Internal Referral Body | Comments |
|------------------------|--|
| | <p>surveyed times there is an undersupply (of six spaces) within close proximity to the restaurant for the parking demand at 1pm on Saturdays. It is also noted that the two days surveyed in mid-October were immediately after easing the of Covid lockdown restrictions when traffic and parking patterns may not have completely returned to "normal". The proposal still provides little offstreet parking to cater for generated parking demand and results in a significant increase in on-street parking demand in a location where there is an existing high demand for on-street parking.</p> <ul style="list-style-type: none"> • It is however acknowledged that: <ul style="list-style-type: none"> o the proposed restaurant is located within a local centre that is within close proximity to residential development and that many locals will walk to and from the restaurant and be less reliant on car parking. o The use of the premises as a restaurant will provide for activation of the Freshwater Village and additional dining options for the residents and visitors of Freshwater and will not lead to an unreasonable intensification of the site o the operation of the restaurant as a licensed premises will tend to result in many customers choosing to carpool, travel by ride share or public transport particularly for visits in the evening, thereby reducing the demand for car parking. It is noted that the area is well served by Public transport so use of public transport is a viable alternative to private motor vehicle travel. o During daytime hours many of those visiting the restaurant would also be visiting the Freshwater Village for other purposes such as shopping, appointments etc. This would tend to reduce restaurant parking demands at those times. • It is noted that patronage and travel mode surveys conducted at the Alma Restaurant in Avalon have demonstrated high degrees of travel by modes other than private motor vehicle for both customers and staff. • It is noted that many time restricted parking restrictions in the Freshwater Village cease operation after 6pm and that there is greater on-street parking availability for restaurant patrons and lower parking demand in the evening. • It is noted that patronage survey outputs for the below sites were also included in the amended traffic report: <ul style="list-style-type: none"> o Patronage survey of Crooked Tailor Licensed Bar and Restaurant at Castle Hill on Thursday 28/4/2016 from 7pm to 10:00pm. Peak patronage in the 100 seat facility was 53 (53%) from 8:15pm to 8:30pm. o A patronage survey was conducted at the About Life café at Miller Street Cammeray on Friday 15/4/2016, from 12 noon to 4pm. Peak patronage in the 50 seat café was 18 (36%) patrons from 12:45 to 1:00pm. |

| Internal Referral Body | Comments |
|------------------------|---|
| | <p data-bbox="520 320 1358 387">o The above surveys demonstrate that seating capacity was not reached at those establishments</p> <p data-bbox="520 421 1406 488">Given the above factor the undersupply of parking is, in this location and for this type of use, considered acceptable.</p> <ul data-bbox="552 566 1422 1014" style="list-style-type: none"> <li data-bbox="552 566 1422 667">• The proposed parking spaces have not been labelled and are considered most appropriately designated as customer/delivery parking. This will be conditioned. <li data-bbox="552 667 1422 846">• Two (2) bicycle parking stands are included on the amended plans behind one of the proposed parking spaces. The car parking spaces are wider than normal at 2.7m in width which should ensure there is sufficient space to access the bicycle parking spaces. <li data-bbox="552 846 1422 1014">• It is noted that the onsite car parking spaces will be used for unloading/loading purposes prior to restaurant service hours. This is supported. To ensure that the spaces are available for delivery purposes prior to restaurant opening hours they should be labelled customer parking. <p data-bbox="520 1126 1430 1339">The amended proposal is is now considered acceptable given the reduced seating capacity, retention of pre-existing parking on the site and the high likelihood that many customers will either be undertaking combined trips to the Freshwater Village or will walk, catch public transport or use ride share services for travel to and from the restaurant.</p> <p data-bbox="520 1373 1270 1406">The proposal is therefore supported subject to conditions.</p> |

| External Referral Body | Comments |
|--|---|
| NSW Police – Licensing (Clubs, Hotels, Pubs) | The development application has been reviewed by NSW Police Northern Beaches Police Area Command. The recommendations made by the NSW Police have been incorporated into the conditions of consent. |

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 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for commercial purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the commercial land use.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

There are no changes proposed to the built form of the existing building as part of this development application.

Detailed Assessment

Zone B2 Local Centre

| Proposed Use | Permitted or Prohibited |
|---------------------|--------------------------------|
| Restaurant | Permitted with consent |

The underlying objectives of the B2 Local Centre zone

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*

Comment:

The proposal will serve the needs of the people who live, work in and visit the locality by providing for a restaurant in a town centre.

- *To encourage employment opportunities in accessible locations.*

Comment:

The proposed restaurant will encourage employment opportunities in an accessible location.

- *To maximise public transport patronage and encourage walking and cycling.*

Comment:

The proposed restaurant is within 100m of the closest bus stop along Moore Road and will be accessible to pedestrians due to its central location within Freshwater Village.

- *To provide an environment for pedestrians that is safe, comfortable and interesting.*

Comment:

The proposal will provide for a safe, comfortable and interesting environment through passive surveillance from inside the restaurant and providing an active frontage to Albert Street.

- *To create urban form that relates favourably in scale and in architectural and landscape treatment to neighbouring land uses and to the natural environment.*

Comment:

There are no proposed changes to the built form of the existing building, however the facade approved as part of the Complying Development Certificate will reflect favourably with the neighbouring land uses and the natural environment.

- *To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of any adjoining or nearby residential land uses.*

Comment:

The proposal will add to the diversity of land uses within the centre of the Freshwater Village. The development application originally proposed an outdoor seating area. This has been removed from the proposal and operating hours reduced to ensure a reasonable level of residential amenity will be maintained for the adjoining residential flat building along Albert Street.

Warringah Development Control Plan

Built Form Controls

There are no changes proposed to the built form of the existing building as part of this development application.

Compliance Assessment

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|--------------------------------|-------------------------------------|------------------------------------|
| A.5 Objectives | Yes | Yes |
| C2 Traffic, Access and Safety | Yes | Yes |
| C3 Parking Facilities | No | Yes |
| C8 Demolition and Construction | Yes | Yes |
| C9 Waste Management | Yes | Yes |
| D3 Noise | Yes | Yes |
| | | |

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|--|------------------------------|-----------------------------|
| D8 Privacy | Yes | Yes |
| D10 Building Colours and Materials | Yes | Yes |
| D12 Glare and Reflection | Yes | Yes |
| D14 Site Facilities | Yes | Yes |
| D18 Accessibility and Adaptability | Yes | Yes |
| D20 Safety and Security | Yes | Yes |
| D21 Provision and Location of Utility Services | Yes | Yes |
| D22 Conservation of Energy and Water | Yes | Yes |
| F1 Local and Neighbourhood Centres | Yes | Yes |
| G5 Freshwater Village | Yes | Yes |
| 1. Built form in Freshwater | N/A | N/A |
| 2. Number of storeys | N/A | N/A |
| 3. Street activation | Yes | Yes |
| 4. Street facades and shopfront design | Yes | Yes |
| 5. Access and loading | Yes | Yes |
| 6. Lighting | Yes | Yes |
| 7. Safety and security | Yes | Yes |
| 8. Signage | N/A | N/A |
| 9. Awnings | N/A | N/A |
| 10. Front setback | N/A | N/A |
| 11. Side and rear setbacks | N/A | N/A |
| 12. Other side and rear setbacks | N/A | N/A |
| 13. Roofs and building form | Yes | Yes |
| 14. Building massing | N/A | N/A |
| 15. Building sustainability | Yes | Yes |
| 16. Materials and colours | Yes | Yes |
| 17. Active travel links | Yes | Yes |

Detailed Assessment

C3 Parking Facilities

Merit consideration

The development is considered against the underlying Objectives of the Control as follows:

- *To provide adequate off street carparking.*

Comment:

The development provides the following on-site car parking:

| Use | Appendix 1 | Required | Provided | Difference (+/-) |
|-----|------------|----------|----------|------------------|
|-----|------------|----------|----------|------------------|

| | Calculation | | |) |
|--------------|--|---|---|------|
| Restaurant | 15 spaces per 100m ² of GFA or 1 space per 3 seats whichever is greater | 32.5 (15 spaces per 100m ² of GFA) | 2 | 30.5 |
| Total | | 32.5 | 2 | 30.5 |

The proposal presents a non compliance to the numerical car parking requirements for the use as a restaurant. It should be noted the WDCP 2011 allows for the above rate to be reduced, if there is, in the consent authorities opinion, suitable available parking in the vicinity during the operating hours of the proposed development.

Strict compliance with the control for a restaurant within the Freshwater Village Centre would be unreasonable given the mixed use nature. The site is also located within close proximity to shop top housing and low density residential areas who provide a high patronage to the restaurant. Additionally there is readily available public transport to and from the Freshwater Village for visitors.

The nature of the site as a restaurant with a liquor license will also encourage car pooling and the use of public transport which will also decrease the demand for off site car parking spaces.

Following preliminary assessment Council requested the outdoor seating area be removed to reinstate the two existing car parking spaces and to reduce the overall maximum patrons. It is considered that these measures will appropriately reduce car parking demand and result in a development that is respectful to the mixed use nature of the Freshwater Village.

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

Comment:

The proposal is for the use of the premise as a restaurant and does not provide for the construction of any parking facilities. Existing on site car parking spaces will be retained.

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

Comment:

The proposal does not provide for the construction of any car parking facilities. The existing site constraints, subdivision pattern and the size of the site limit the potential for any redevelopment of the site. The provision of additional car parking facilities on site would most likely result in a bulky development that would dominate the street frontage.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this

particular circumstance.

D3 Noise

Merit consideration

The proposed use of the site as a restaurant is considered to be appropriate within the Freshwater Village Centre. Appropriate noise mitigation measures have been incorporated into the daily operation of the restaurant, including the removal of the outdoor seating area, reduction in number of patrons and reduction in operating hours. Additionally the exhaust system on the roof has been designed to minimise any unreasonable noise being carried onto the nearby residential receivers.

The development is considered against the underlying Objectives of the Control as follows:

- *To encourage innovative design solutions to improve the urban environment.*

Comment:

The proposal has been redesigned to remove any unreasonable impacts on nearby residential receivers. The proposed exhaust system has been detailed in additional plans provided by the applicant.

- *To ensure that noise emission does not unreasonably diminish the amenity of the area or result in noise intrusion which would be unreasonable for occupants, users or visitors.*

Comment:

The original outdoor seating area proposed as part of the application has been removed to ensure a reasonable level of amenity for nearby residential properties. Additionally the operating hours and patron capacity has been reduced. It is considered there will not be an unreasonable level of noise emission.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

G5 Freshwater Village

The proposed change of use to an internal restaurant is considered to be compatible with the objectives of the B2 Local Centre zone and the existing and desired character of the Freshwater Village. The development will activate the shop frontage and provide an additional dining option for the residents and visitors of Freshwater. The location of the restaurant is accessible by foot for surrounding residential areas and the site is serviced by readily accessible public transport in Freshwater Village. Additionally, the removal of the outdoor dining area and reduction in patrons and operating hours will ensure the development responds to the residential uses within the Freshwater Village.

3. Street activation

The proposed development seeks to provide activation to the public domain, including streets, lands and public open spaces. The Albert Street facade has been designed to retain existing significant glazing and appropriate colours and finishes to complement the existing building. The existing windows

will provide opportunities for casual surveillance and overlooking into the public domain.

4. Street facades and shopfront design

The proposal comprises of the use of the existing building as a restaurant. The proposal does not seek to change the façade as approved under CDC2021/0324. The proposed use of colours and materials have been selected to complement the existing building and will result in a development that reflects the character of Freshwater and its local beachside culture. The proposal is considered to respond to the objectives in relation to street facades and shopfront designs.

5. Access and loading

The proposed outdoor seating area has been removed and the existing on site car parking spaces have been reinstated as part of the proposal. The on site car parking area will be used for loading and unloading during approved delivery hours. A condition will also be included to ensure the driveway shall not be blocked at any point to ensure pedestrians safety.

6. Lighting

The proposal is not expected to result in any unreasonable light spill to adjoining residential sites. The proposed lighting along the Albert Street façade will provide lighting for the footpath for customers and pedestrians for effective wayfinding at night.

7. Safety and security

Casual surveillance of Albert Street and the public domain will be available from the subject site. The proposed development also incorporates new lighting along Albert Street.

The proposal has also been reviewed by NSW Police. All recommendations made within the referral have been included as conditions of consent.

8. Signage

No signage has been proposed as part of the development application. All signage for the proposed development is subject to a separate development application or *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

13. Roofs and building form

The proposed exhaust system will be integrated into the existing roof form to ensure it is not likely to be visible from Albert Street.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2021.

A monetary contribution of \$7,300 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$730,000.

CONCLUSION

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

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

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

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

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

In summary, a detailed assessment was conducted and the following has been included as conditions of consent to ensure a reasonable level of amenity will be maintained:

- Deletion of the outdoor seating area and reinstatement of the two car parking spaces to be used for staff parking and loading/unloading
- Reduced maximum patrons
- Reduced operating hours

The applicant will also provide further clarification in regard to the sanitary facilities and the exhaust system. Evidence to be provided to ensure consistency with relevant BCA standards.

The proposed use of the premise as an internal restaurant only with a maximum patron capacity of 71 people and operating hours of 11:30am to 10:00pm is supported by Council subject to the recommended conditions of consent.

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

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2021/1541 for Use of premises as a restaurant on land at Lot 21 DP 226287, 20 Albert Street, FRESHWATER, 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 |
| DA.001 Existing Site Plan RevA | 11/05/2021 | FiveFootOne |
| DA.100 Demolition Plan RevA | 11/05/2021 | FiveFootOne |
| DA.101 General Arrangement Plan RevA | 11/05/2021 | FiveFootOne |
| DA.201 Proposed Elevations RevA | 11/05/2021 | FiveFootOne |
| DA.202 Proposed Elevations RevA | 11/05/2021 | FiveFootOne |
| DA.203 Proposed Elevations RevA | 11/05/2021 | FiveFootOne |
| DA.300 Finishes RevA | 11/05/2021 | FiveFootOne |

| Reports / Documentation – All recommendations and requirements contained within: | | |
|---|--------------|----------------------------------|
| Report No. / Page No. / Section No. | Dated | Prepared By |
| Plan of Management | Undated | Jack Leary |
| Traffic Report | 01/11/2021 | Lyle Marshall & Partners Pty Ltd |
| Access Report | 03/2021 | Access-i |
| Acoustic Report | 26/02/2021 | Pulse White Noise Acoustics |
| Odour Certificate | 22/10/2021 | Avalier Ventilation |
| Lighting Schedule | 20/08/2021 | FiveFootOne |
| Exhaust Schedule | 4/03/2021 | Ace Ventilation |

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 | 16/02/2021 | Jack Michael Leary |

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. **Compliance with Other Department, Authority or Service Requirements**

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

| Other Department, Authority or Service | EDMS Reference | Dated |
|--|--|------------|
| NSW Police | NSW Police Northern Beaches Area Command | 21/10/2021 |

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

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

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 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.

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 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.

5. **Patron Capacity**

The maximum patron capacity for the restaurant shall be 71 patrons. All patrons must be seated. Any increase to patron numbers shall be subject to a separate development application.

Reason: To protect the amenity of nearby residential sites and reduce parking demand within Freshwater Village.

FEES / CHARGES / CONTRIBUTIONS

6. **Policy Controls**

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$7,300.00 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 2021. The monetary contribution is based on a development cost of \$730,000.00.

The monetary contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate whichever occurs first, or prior to the issue of the Subdivision Certificate where no Construction Certificate is required. If the monetary contribution (total or in part) remains unpaid after the financial quarter that the development consent is issued, the amount unpaid (whether it be the full cash contribution or part thereof) will be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index. If this situation applies, the cash contribution payable for this development will be the total unpaid monetary contribution as adjusted.

The proponent shall provide to the Certifying Authority written evidence (receipt/s) from Council that the total monetary contribution has been paid.

The Northern Beaches Section 7.12 Contributions Plan 2021 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

This fee must be paid prior to the issue of the Construction Certificate. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

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

7. 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 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

8. Boundary Identification Survey

A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

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

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

9. Plans of Kitchen Design, construction and fit out

Prior to any Construction Certificate (CC) being issued, detailed plans that demonstrate compliance with Standard 3.2.3 of the Australian and New Zealand Food Standards Code, the

Food Act 2003 and Australian Standard AS 4674 'Design, construction and fit out of food premises', must be submitted to and approved by the Certifying Authority. These plans are to be prepared by a suitably qualified person.

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

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

10. **Plans of Mechanical ventilation**

Prior to any Construction Certificate (CC) being issued, detailed plans that demonstrate compliance with the Australian Standard (AS) 1668.2 "The use of ventilation and air-conditioning in buildings - Mechanical ventilation in buildings", must be approved by the Certifying Authority for any cooking equipment with an individual or combined power rating level that triggers the requirement for mechanical ventilation under AS1668.2 including any deep frying equipment.

Reason: To ensure that the design, construction and installation requirement for mechanical ventilation complies with the Australian Standard 1668.2.

11. **Plan of Management Update**

An updated Plan of Management is to be prepared to the satisfaction of Councils Environmental Health Team and the Principal Certifying Authority. Updates to the Plan of Management are to include:

- Updates based on approved trading hours; and
- That all speakers or any sound equipment used as part of the development, must not exceed an output 65dB(A) when measured at any point inside the premises. An electronic limiter with a maximum output of 65 dB(A) must be installed at all times. The limiter is to be installed in a tamper proof enclosure (or in the case of a DSP based limiter) with no access to the limiter controls by staff.
- A dedicated phone number is to be provided within the Plan of Management for complaints. For avoidance of doubt this number should be separate to the business operation phone number used for making bookings and takeaway orders.

The updated Plan of Management is to be available on the restaurants website for the general public to access. A hard copy of the Plan of Management shall also be physically distributed to all residents within 100m of the premise.

A complaints register should be kept and be made available to Council upon request.

The updated Plan of Management is to be submitted to Council for review and approval by Councils Environmental Health Team.

Reason: To maintain amenity of the surrounding area.

12. **Noise - Design of Mechanical Plant**

Prior to the issue of a Construction Certificate, the design, specifications and location of the mechanical exhaust fan are to be provided to the Principal Certifying Authority. An acoustic assessment of the proposed mechanical exhaust fan is to be undertaken by a suitably qualified professional such as an acoustic engineer to determine if the proposed exhaust will meet the recommendations within the Acoustic Report prepared by Pulse White Noise Acoustics Pty Ltd dated 26 February 2021 (Reference 210020 – 20 Albert Street, Freshwater – DA Acoustic

Assessment – Rev 2).

Any design recommendations made by the consultant must be implemented into the plans prior to issuing the Construction Certificate in order to achieve compliance with noted conditions of this consent.

Details demonstrating compliance are to be submitted to the satisfaction of the Principal Certifying Authority.

Reason: To maintain amenity of the surrounding area.

13. 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.

14. Construction Traffic Management Plan

As a result of the site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) and report shall be prepared by an RMS accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to issue of any Construction Certificate.

Due to heavy traffic congestion throughout the Freshwater town centre, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm. Truck movements must be agreed with Council's Traffic Engineer prior to submission of the CTMP.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- Make provision for all construction materials to be stored on site, at all times
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic
- The proposed manner in which adjoining property owners will be kept advised of the

timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure

- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent
- Proposed protection for Council and adjoining properties
- The location and operation of any on site crane

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.

15. Customer and Delivery Vehicle Parking

Both on-site vehicle parking spaces shall be marked on the plans as “Customer/Delivery Parking”

These amendment(s) must be clearly marked on the plans submitted to the Certifying Authority prior to the issue of a Construction Certificate.

Reason: the ensure such spaces are allocated for their intended use.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

16. Work Zones and Permits

Prior to commencement of the associated works, the applicant shall obtain a Work Zone Permit where it is proposed to reserve an area of road pavement for the parking of vehicles associated with a construction site.

A separate application is required with a Traffic Management Plan for standing of construction vehicles in a trafficable lane

Reason: To ensure Work zones are approved, monitored and installed correctly.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

17. 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.

18. Implementation of Construction Traffic Management Plan

All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to Council on request.

Reason: To ensure compliance of the developer/builder in adhering to the Construction Traffic Management procedures agreed and are held liable to the conditions of consent.

CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE

19. Registration of Food Business

The food business must be registered with the Appropriate Regulatory Authority, prior to Occupation Certificate being issued.

Reason: Food premises are required to be registered with the Appropriate Regulatory Authority.

20. Acoustic Report Certification

Prior to any occupation certificate being issued, a further acoustic assessment is to be undertaken by a suitably qualified professional such as an acoustic engineer to confirm compliance with recommendations within the Acoustic Report by Pulse White Noise Acoustics Pty Ltd dated 26 February 2021 (Reference 210020 – 20 Albert Street, Freshwater – DA Acoustic Assessment – Rev 2) and compliance with any relevant acoustic conditions of the consent.

Any recommendations made by the consultant must be implemented prior to issuing the Occupation Certificate in order to achieve compliance with noted conditions of this consent.

Details demonstrating compliance are to be submitted to the satisfaction of the Principal Certifying Authority.

Reason: To protect the acoustic amenity of neighbouring properties.

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

Prior to the issuing of any interim / final occupation certificate, certification is to be provided to the Principal Certifying Authority by a suitably qualified person demonstrating that the design, construction and fit out of food premises kitchen is compliant with the requirements of AS 4674 Design, construction and fit out of food premises.

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

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

22. **Mechanical Ventilation certification**

Prior to the issuing of any interim / final occupation certificate, certification is to be provided from the installer of the mechanical ventilation system that the design, construction and installation of the mechanical ventilation system is compliant with the requirements of AS1668 The use of mechanical ventilation and that the odour controls within the Odour Plan prepared by Ace Ventilation (reference: Project 20 Albert Street Freshwater) have been implemented.

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

Reason: To ensure that the mechanical ventilation system complies with the design requirements.

23. **Removal of All Temporary Structures/Material and Construction Rubbish**

Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure bushland management.

24. **Garbage and Recycling Facilities**

All internal walls of the storage area shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To prevent pollution of the environment and to protect the amenity of the area.

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

25. **Compliance with the Plan of Management**

The requirements of the approved Plan of Management are to be fully implemented in perpetuity from the issue of any interim / final occupation certificate.

Reason: To protect the amenity of the surrounding area.

26. **Amplified Music**

All speakers or any sound equipment used as part of the development, must not exceed an output 65dB(A) when measured at any point inside the premises. An electronic limiter with a maximum output of 65 dB(A) must be installed at all times. The limiter is to be installed in a

tamper proof enclosure (or in the case of a DSP based limiter) with no access to the limiter controls by staff.

Reason: To protect surrounding residence from any noise generated by the operation of the development.

27. **Hours of Operation**

The hours of operation are to be restricted to:

- Monday to Sunday - 11:30am 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.

28. **Commercial Waste Collection**

Waste and recyclable material, generated by this premises, must not be collected between the hours of 10pm and 6am on any day.

Reason: To protect the acoustic amenity of surrounding properties.

29. **Loading and Unloading**

All loading and unloading of vehicles and the delivery of goods must be carried out wholly within the site.

Reason: To ensure that deliveries can occur safely within the site and does not adversely affect traffic or pedestrian safety and amenity.

30. **Deliveries**

No deliveries, loading or unloading associated with the premises are to take place between the hours of 10:00pm and 7:00am on any day.

Reason: To protect ensure the acoustic amenity of surrounding properties.

31. **Deliveries**

Deliveries to the premises shall only take place prior to the approved trading hours of the restaurant.

Reason: to ensure the parking spaces are available for customers during trading hours.

32. **Parking Space Marking**

Both on-site parking spaces shall be marked for use as customer/delivery spaces

Reason: to ensure the spaces are available for their intended use.