

DEVELOPMENT APPLICATION ASSESSMENT REPORT

| | |
|----------------------------|-------------|
| Application Number: | DA2022/1320 |
|----------------------------|-------------|

| | |
|---|---|
| Responsible Officer: | Grace Facer |
| Land to be developed (Address): | Lot 21 DP 226287, 20 Albert Street FRESHWATER NSW 2096 |
| Proposed Development: | Alterations and additions to an existing restaurant and a change of hours |
| Zoning: | Warringah LEP2011 - Land zoned B2 Local Centre |
| Development Permissible: | Yes |
| Existing Use Rights: | No |
| Consent Authority: | Northern Beaches Council |
| Delegation Level: | DDP |
| Land and Environment Court Action: | No |
| Owner: | Dominic Seeto Rose Seeto |
| Applicant: | David Moody |

| | |
|----------------------------------|--------------------------|
| Application Lodged: | 30/08/2022 |
| Integrated Development: | No |
| Designated Development: | No |
| State Reporting Category: | Commercial/Retail/Office |
| Notified: | 08/09/2022 to 22/09/2022 |
| Advertised: | Not Advertised |
| Submissions Received: | 7 |
| Clause 4.6 Variation: | Nil |
| Recommendation: | Approval |

| | |
|---------------------------------|---------------|
| Estimated Cost of Works: | \$ 132,000.00 |
|---------------------------------|---------------|

EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to an existing restaurant to provide an outdoor seating area. The proposal also seeks consent to increase the existing hours of operation.

The application is referred to the Development Determination Panel (DDP) due to receiving 7 submissions in objection to the proposal. Concerns raised in the objections predominantly relate to amenity impacts, particularly loss of acoustic privacy, traffic issues and parking. The proposal does not result in any variations to principal development standards under WLEP 2011 or built form controls under WDCP.

A detailed assessment has been conducted and the proposal is found to be consistent with the objectives of relevant standards and controls, with no matters that would warrant the refusal of the proposed development.

This report concludes with a recommendation that the DDP grant approval to the development application, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development comprises of the following works:

New outdoor seating area

- Removal of the driveway and existing 2 on-site parking spaces to provide an additional 35m² covered outdoor dining courtyard
- New masonry wall along the northern boundary
- New masonry wall along the eastern edge of the proposed outdoor seating
- New acoustic awning over the outdoor seating area
- New enclosed bin area located adjoining the proposed masonry wall and eastern boundary
- Associated fit out of outdoor dining area

Existing Approved Hours of Operation

Indoor Seating Area

Monday to Sunday: 11:30am - 10:00pm

Proposed New Hours of Operation

Indoor Seating Area

Monday to Saturday: Midday - Midnight

Sunday: Midday - 10:00pm

Outdoor Seating Area

Monday to Saturday: Midday - 10:00pm

Sunday: Midday - 9:00pm

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 Development Control Plan - B6 Merit Assessment of Side Boundary Setbacks

Warringah Development Control Plan - B10 Merit assessment of rear boundary setbacks

Warringah Development Control Plan - C2 Traffic, Access and Safety

Warringah Development Control Plan - C3 Parking Facilities

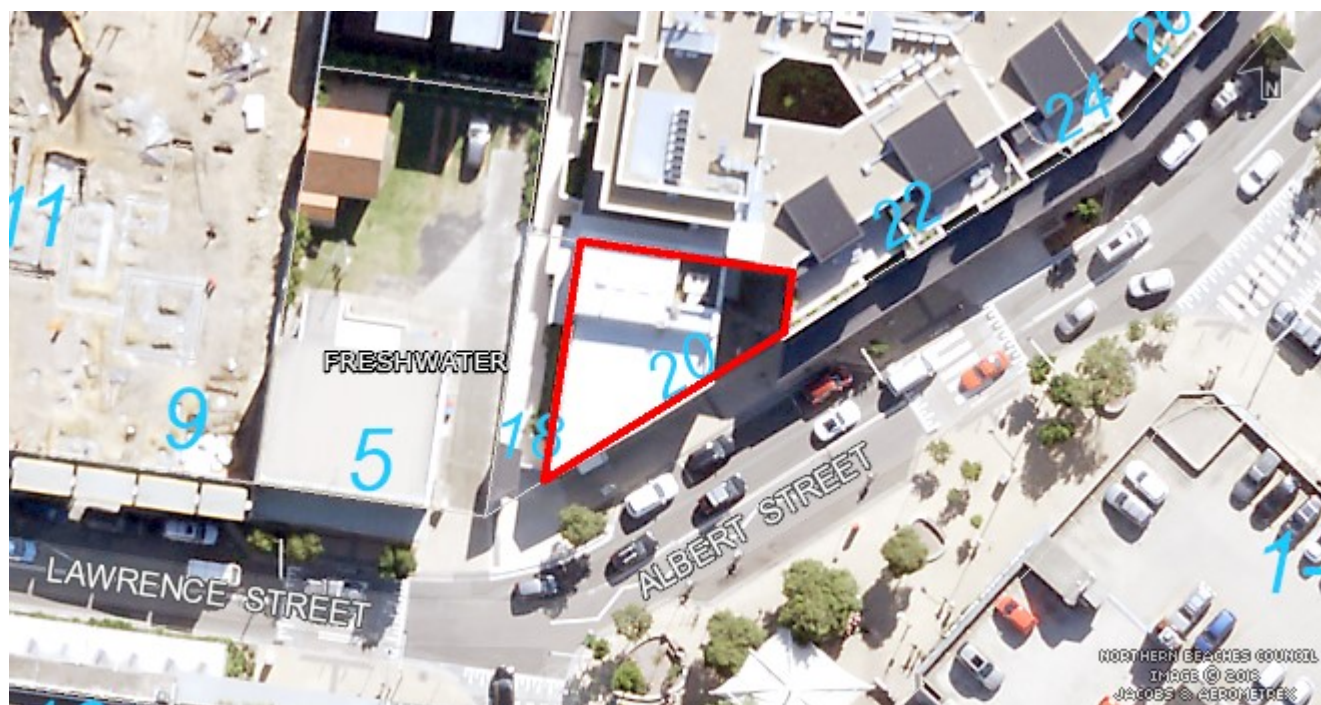
Warringah Development Control Plan - D3 Noise

Warringah Development Control Plan - D8 Privacy

SITE DESCRIPTION

| | |
|-----------------------------------|--|
| 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:

OC2021/0923

Occupation Certificate for Change of use from a business premises to a take-away food premise with maximum seating capacity of 8 patrons, including internal alteration
Approved on 21 December 2021 by External Private Certifying Authority

DA2021/1541

Development Application for use of premises as a restaurant. Specifically, the proposal comprised 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 comprised of some minor alterations and additions to the internal and external walls of the building.

At the public meeting held on 17 November 2021, the Panel was addressed by 2 representatives of the applicant. The panel generally agreed with the assessment report and conditions. The application was subsequently approved on 17 November 2021 by Northern Beaches Local Planning Panel

CDC2021/0324

Complying Development Certificate for Change of use from a business premises to a take-away food premise with maximum seating capacity of 8 patrons, including internal alterations
Approved on 14 April 2021 by External Private Certifying Authority

PCA2010/0129

Occupation Certificate for Internal alterations to a business premises
Approved on 29 October 2010 by External Private Certifying Authority

CDC2010/0009

Complying Development Certificate for Internal alterations to a business premises
Approved on 5 February 2010

DA2001/1857

Development Application for Internal alterations and fitout, and external sign

Approved on 20 December 2001

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

| Section 4.15 Matters for Consideration | Comments |
|---|---|
| Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument | See discussion on “Environmental Planning Instruments” in this report. |
| Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument | There are no current draft environmental planning instruments. |
| Section 4.15 (1) (a)(iii) – Provisions of any development control plan | Warringah Development Control Plan 2011 applies to this proposal. |
| Section 4.15 (1) (a)(iia) – Provisions of any planning agreement | None applicable. |
| Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021) | <p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 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 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 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 62 and/or 64</u> of the EP&A Regulation 2021 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 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the</p> |

| Section 4.15 Matters for Consideration | Comments |
|--|---|
| | consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent. |
| 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 2011 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 08/09/2022 to 22/09/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 7 submission/s from:

| Name: | Address: |
|---------------------------|---|
| Mr Ross Malcolm Locket | 406 / 2 Sylvan Avenue BALGOWLAH NSW 2093 |
| Miss Qingliang Zhong | 3 / 18 Albert Street FRESHWATER NSW 2096 |
| Mrs Alicia Colette Ryan | 20 / 18 Albert Street FRESHWATER NSW 2096 |
| Ms Georgina Maree Sawyer | 78 Cassia Street DEE WHY NSW 2099 |
| Annette Marlene Portanger | 22 Undercliff Road FRESHWATER NSW 2096 |

| Name: | Address: |
|--------------------------------|--|
| Mr Christopher Marshall Thomas | 9 / 43 Adams Street CURL CURL NSW 2096 |
| Mrs Rachael Louise Thomas | 9 / 43 Adams Street CURL CURL NSW 2096 |

The following issues were raised in the submissions:

- Parking
- Loss of Amenity (Noise, Air Pollution, Lingering in Public Spaces)
- Waste Management
- Inspections Pits & Ventilation Ducts
- Storage Facilities

The above issues are addressed as follows:

- **Parking**

The submissions raised concerns that the proposed development will result in the loss of 2 parking spaces on the subject site which are also used as the restaurant's loading zone for deliveries. The loss of 2 parking spaces on-site could potentially result in increased congestion in the area from cars, delivery vans and trucks.

Comment:

The proposal will result in a net parking loss of one space and is supported by a Traffic & Parking Impact Assessment Report that indicates there is sufficient alternative parking available in the surrounding streets and Council car park. The application was referred to Council's Traffic Engineer who determined that the change is considered to have a minimal impact, subject to conditions. Furthermore, Council's Traffic Committee

recently approved a new Loading Zone on the west side of Moore Road, immediately to the south of Albert Street. At the October Traffic Committee, consideration will also be given to the creation of a further Loading Zone in on the south side of Albert St directly opposite No.20 Albert Street. It is therefore likely that two new on street Loading Zones within 50m of the subject site will soon be available which should prove adequate to cater for the loading needs associated with the restaurant.

- **Loss of Amenity (Noise, Air Pollution, Lingering in Public Spaces)**

The submissions raised concerns that the proposed outdoor area and proposed change to the hours of operation will adversely impact acoustic privacy and significantly disrupt the residents nearby, particularly the unit block adjoining the restaurant. Concerns raised that "another disruptive aspect of this proposal is the likelihood of air pollution to the neighbouring properties from smokers and vape users who may well locate themselves in this outdoor courtyard" as well as noise from patrons lingering in front of the restaurant,

Comment:

Subject to conditions, the proposal will comply with the recommendations outlined in the accompanying Acoustic Report carried out by Pulse White Noise Acoustics to mitigate noise emissions. Notably, no increase to the approved patron numbers is proposed. A detailed

assessment of Noise has been addressed in D3 of this report. Furthermore, Council's Environmental Health Officer has included a condition of consent Acoustic Review requiring a review/further assessment upon operation to determine if assumptions and calculations are accurate in actual operation and ensure any necessary adjustments to design or operation necessary are made to achieve compliance and protect the amenity of the surrounding area. It should also be noted that Clause 5.20 of the Warringah LEP 2011 states that the consent authority must not refuse consent to development in relation to licensed premises due to the playing or performing of music.

The application is also supported by a Plan of Management that details smoke and odour emissions will be minimised. As such, an Avalier Electrostatic Precipitator has been fitted to the exhaust which will achieve at a minimum a 91.3%- 98.5% particle removal efficiency. A bin room is also proposed with a metal roof to inhibit odours. Moreover, under the Smoke-free Environment Act 2000 smoking and using e-cigarettes in outdoor dining areas is prohibited.

Additionally, the proposed extension to the hours of operation is consistent with that of surrounding businesses and is permitted in the business zone. A condition of consent Hours of Operation has been included which requires that 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.

- **Waste Management**

The submissions raised concerns that the proposal will result in the loss of available space for waste bins, which may be left blocking either the footpath or communal parking spaces.

Comment:

As per the accompanying Architectural Plans, the proposal involves constructing a bin room along the northern end of the subject site, where all waste will be kept to avoid any obstructions to the community or encroach on council property.

- **Inspection Pits & Ventilation Duct**

The submissions raised concerns "The new works as proposed to extend to the property boundary line and as a result totally cover access to a number of existing inspection pits, including a manhole access panel and drainage service pits, within the concrete hard standing. This will severely impact access in the event of issues with underground services. In addition there is an upstanding ventilation duct in the area of the outswinging door from the bin store".

Comment:

These concerns are Building Code of Australia / Construction Certificate matters which can be appropriately managed during the Construction Certificate process.

- **Storage Facilities**

The submissions raised concerns that the existing area is currently used for storage.

Comment:

The restaurant will be required to relocate any items stored in the existing space to ensure no items are stored in the public domain.

REFERRALS

| Internal Referral Body | Comments |
|--------------------------------------|---|
| Environmental Health (Industrial) | <p>General Comments</p> <p>The proposed development relates to alterations and additions to an existing restaurant to provide an outdoor seating area. Furthermore a change in the hours of operation is sought as follows;</p> <p>Indoor Seating Area: Midday – Midnight Monday to Saturday Midday – 10:00pm Sunday</p> <p>Outdoor Seating Area: Midday – 10:00pm Monday to Saturday Midday – 9:00pm Sunday</p> <p>There is no overall increase in patron numbers to DA2021/1541- 71 seated patrons.</p> <p>Impacts considered include noise from patrons and extended hours of the mechanical exhaust system.</p> <p>The acoustic assessment by Pulse White Noise Acoustic 12 July 2022 states:</p> <p>Our recommendations are split into 3 categories, being daytime (operation from 11:30 am to 7:00 pm), evening (operation from 7:00 pm to 10:00 pm), and night-time (operation from 10:00 pm to 12:00 am). Based on our predictive modelling and acoustic assessment, several operational control measures are advised for each operational period. These are summarised in Section 4.2.1.</p> <p>For the night-time operating period (10:00 pm to 12:00 am), compliance is expected if either of the following two operational controls are enforced:</p> <ul style="list-style-type: none"> i. The restaurant operates at full patron capacity internally (maximum of 51 people indoors), but zero (0) capacity in the external area (i.e., no patrons outdoors), with all doors closed (including the door between the external and internal eating areas) and windows closed, awning retracted/open, and ambient music inside the restaurant is limited to a maximum level of 72 dBA LAeq. No amplified or acoustic music should be played in the outdoor seating area. ii. Alternatively, the restaurant operates at full patron capacity (maximum of 20 people outdoors, 51 people indoors), with all doors closed (including the door between the external and internal eating areas) and windows closed, awning fully extended over the entire external dining area, and ambient music inside the restaurant is limited to a maximum level of 72 dBA LAeq. No amplified or acoustic music should be played in the outdoor seating area. If the awning is to be a retractable construction, it must remain extended (i.e., covering the entire outdoor area, with no gaps) for the entirety of the night-time operating period (i.e., from 10:00 pm to 12:00 am) if any patrons are seated in this area. The acoustic performance requirements for the overhead awning are as follows: <ul style="list-style-type: none"> o The roofing system should have a minimum design sound insulation rating (Rw) of 16. o The proposed awning is to include SergeFerrari Soltis Proof 502 |

| Internal Referral Body | Comments |
|------------------------|--|
| | <p>fabric. No acoustic data is available for this system. This system should meet the minimum required design sound insulation rating (Rw) of 16, and the following must be achieved as a minimum:</p> <ul style="list-style-type: none"> o The awning should be a continuous construction with no perforations or gaps. Note that the entire roofing system must have an overall Rw of at least 16, i.e., gaps will significantly reduce the acoustic performance of the selected roofing system. o The awning is fully extended and covers the entire external dining area (as specified above). <p>Note: If a PVC fabric roof system cannot be provided which meets an Rw rating of 16 it is recommended that glazed panels are installed. An equal construction would be a 6 mm float glass.</p> <p>Comment.</p> <p>Conditions of the current DA2021/1541 include:</p> <p>1. Amplified Music</p> <p>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.</p> <p>Reason: To protect surrounding residence from any noise generated by the operation of the</p> <p>2, Compliance with the Plan of Management</p> <p>The requirements of the approved Plan of Management are to be fully implemented in perpetuity from the issue of any interim / final occupation certificate.</p> <p>Reason: To protect the amenity of the surrounding area</p> <p>3. Acoustic Report Certification</p> <p>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 12 November 2021 (Rev5) and compliance with any relevant acoustic conditions of the consent.</p> <p>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.</p> <p>Details demonstrating compliance are to be submitted to the satisfaction of the Principal Certifying Authority.</p> <p>Reason: To protect the acoustic amenity of neighbouring properties.</p> |

| Internal Referral Body | Comments |
|------------------------|---|
| | <p>Comment.</p> <p>With the minor works proposed and the business in operation we are not aware if an OC will be required therefore our conditions relate to "operations".</p> <p>At this time we are not aware of any complaints or objections.</p> <p>A residential receiver is located immediately next door.</p> <p>The updating of Plan of Management is critical to avoiding a nuisance.</p> <p>The acoustic assessment is very detailed and prescriptive and compliance ongoing essential.</p> <p>Subject to conditions Environmental Health supports the proposal.</p> <p>Review following numerous submissions:</p> <p>Objections relevant to Environmental Health include this comment that reflects to main objections:</p> <p>"We already have heavy noises at night after the restaurant closes at 10:00pm, as the patrons making their way out and linger in front of the restaurant, smoking and making noises due to the cocktail bar within this restaurant and across the road at Stowaway Bar. By extending the operating hours, this situation will compound the problem and escalate the noise levels. Freshwater already has its bars/pubs that operate till midnight. As residents, we'd appreciate Council's careful consideration to minimise noises in the neighbourhood late in the night. It is not Manly CBD or Sydney city CBD it is a village and not a "Night Club" district.</p> <p>The changing nature of what was historically a residential neighbourhood with shops originally operating 9am to 5pm to, a night time venue is for others to comment on. The State Government and Council have allowed and encouraged this nighttime economy to develop with little consideration to the impacts of sleep quality for residents, and this is an emerging public health issue where poor sleep has significant documented health and safety issues (Professor Matthew Walker -Why we Sleep)</p> <p>However Environmental Health at this time can only comment on what is permissible and what is enforceable under legislation.</p> <p>The applicant has provided an "expert" noise assessment which indicates a legal nuisance will not occur if actions are undertaken for the proposal.</p> <p>Environmental Health has accordingly a condition required a review/further assessment upon operation to determine if assumptions and calculations are accurate in actual operation and any necessary adjustments to design or operation necessary to achieve compliance being undertaken.</p> <p>Outside our scope of assessment is the comment raised by local residents that following closure of the venue people do gather while waiting for taxis and the like and talk /laugh and even shout walking to vehicles in a public place not in the venue.</p> <p>Requiring dispersal of groups can result in them simply moving further down the road. Others will need to judge these issues.</p> |

| Internal Referral Body | Comments |
|---|--|
| | Therefore Environmental Healths comments and proposed conditions stand. |
| Environmental Health (Food Premises, Skin Pen.) | <p>General Comments</p> <p>There are no changes to the fit-out of food related areas. The proposed development relates to alterations and additions to an existing restaurant to provide an outdoor seating area. Furthermore a change in the hours of operation is sought as follows;</p> <p>Indoor Seating Area: Midday – Midnight Monday to Saturday Midday – 10:00pm Sunday</p> <p>Outdoor Seating Area: Midday – 10:00pm Monday to Saturday Midday – 9:00pm Sunday</p> <p>Environmental Health also consider Sanitary Facilities under the BCA requirements. However to patron numbers remain the same as DA2021/1541 and are stated as :</p> <p>Outdoor seating area facing Albert Street: Maximum of 20 patrons</p> <ul style="list-style-type: none"> • Indoor dining area: Maximum of 51 people • Staff: Maximum of 10 people <p>Environmental Health in this referral of food related issues supports the proposal without conditions.</p> |
| NECC (Development Engineering) | <p>Development Engineering has no objection to the application. Our traffic section has reviewed and requested the reinstatement of the driveway, layback and on street parking.</p> <p>The following S138 condition shall be used to address the requested works.</p> |
| Traffic Engineer | <p>The proposal is for alterations and additions to the existing approved restaurant on the site. The proposal incorporates an increase in the outdoor covered outdoor dining courtyard of some 35 m2. This is achieved by the removal of the two existing offstreet parking spaces serving the development. The proposal does include any increase in seating capacity.</p> <p><u>Parking impact</u></p> <p>The removal of two offstreet parking spaces will be offset by the resultant increase in on-street parking supply by one space. The proposed changes will therefore result in a net parking loss of one space. It is noted that parking surveys have demonstrated that approximately half of the restaurant's customers are travelling to the restaurant by means other than private motor vehicle with more than half of those who are travelling by private car doing so as a passenger. The change is considered to have a minimal impact and is not opposed on traffic grounds subject to conditions</p> |

| External Referral Body | Comments |
|------------------------|----------|
| | |

| External Referral Body | Comments |
|--|---|
| NSW Police - Licensing (Clubs, Hotels, Pubs) | The proposal was referred to NSW Police who provided a response stating that the proposal is acceptable subject to compliance with relevant conditions. These recommendations will be included as a condition of consent. |

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for commercial purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the commercial land use.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

| Standard | Requirement | Proposed | % Variation | Complies |
|----------------------|-------------|--|-------------|----------|
| Height of Buildings: | 11m | 3.4m (new solid wall to close in bin area) | - | Yes |

Compliance Assessment

| Clause | Compliance with Requirements |
|--------|------------------------------|
| | |

| Clause | Compliance with Requirements |
|---|------------------------------|
| 4.3 Height of buildings | Yes |
| 5.20 Standards that cannot be used to refuse consent – playing and performing music | Yes |
| 6.2 Earthworks | Yes |
| 6.4 Development on sloping land | Yes |

Warringah Development Control Plan

Built Form Controls

| Built Form Control | Requirement | Proposed | % Variation* | Complies |
|----------------------------|--|---|--------------|----------|
| B2 Number of storeys | 3 | Unaltered | - | Yes |
| B5 Side Boundary Setbacks | Merit Assessment = (West) | Unaltered | - | Yes |
| | Merit Assessment = (East) | 1.3m | - | Yes* |
| B7 Front Boundary Setbacks | Ground and first floor maintain street front, second floor up 5m | Aligns with existing street front | - | Yes |
| B9 Rear Boundary Setbacks | Merit Assessment | Nil (Aligns with existing rear setback) | - | Yes** |

*A detailed merit assessment has been undertaken for the eastern side boundary setback in Section B6 of this report.

**A detailed merit assessment has been undertaken for the rear boundary setback in Section B10 of this report.

Compliance Assessment

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|--|------------------------------|-----------------------------|
| A.5 Objectives | Yes | Yes |
| B2 Number of Storeys | Yes | Yes |
| B6 Merit Assessment of Side Boundary Setbacks | Yes | Yes |
| B7 Front Boundary Setbacks | Yes | Yes |
| B10 Merit assessment of rear boundary setbacks | Yes | Yes |
| C2 Traffic, Access and Safety | Yes | Yes |
| C3 Parking Facilities | Yes | Yes |
| C4 Stormwater | Yes | Yes |
| C7 Excavation and Landfill | Yes | Yes |
| C8 Demolition and Construction | Yes | Yes |
| C9 Waste Management | Yes | Yes |
| D3 Noise | Yes | Yes |
| D6 Access to Sunlight | Yes | Yes |
| | | |

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|---|------------------------------|-----------------------------|
| D7 Views | Yes | Yes |
| D8 Privacy | Yes | Yes |
| D9 Building Bulk | Yes | Yes |
| D10 Building Colours and Materials | Yes | Yes |
| D11 Roofs | Yes | Yes |
| D12 Glare and Reflection | Yes | Yes |
| D13 Front Fences and Front Walls | 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 |
| E1 Preservation of Trees or Bushland Vegetation | Yes | Yes |
| E2 Prescribed Vegetation | Yes | Yes |
| E10 Landslip Risk | Yes | Yes |
| F1 Local and Neighbourhood Centres | Yes | Yes |
| G5 Freshwater Village | Yes | Yes |
| 1. Built form in Freshwater | Yes | Yes |
| 2. Number of storeys | Yes | Yes |
| 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 | Yes | Yes |
| 9. Awnings | Yes | Yes |
| 10. Front setback | Yes | Yes |
| 12. Other side and rear setbacks | Yes | Yes |
| 14. Building massing | Yes | Yes |
| 15. Building sustainability | Yes | Yes |
| 16. Materials and colours | Yes | Yes |
| 17. Active travel links | Yes | Yes |

Detailed Assessment

B6 Merit Assessment of Side Boundary Setbacks

Clause B6 - Merit Assessment of Side Boundary Setbacks stipulates that side boundary setbacks will be determined on a merit basis with regard to streetscape, amenity of surrounding properties, and setbacks of neighbouring development.

The application proposes a reduction in the side setback to the eastern boundary with the new masonry wall setback 1.3m from the east side and the gate to the new bin area resulting in a nil setback.

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- ***To provide ample opportunities for deep soil landscape areas.***

Comment:

The proposed new outdoor dining area will be constructed over the existing parking spaces and will not result in any decrease to existing deep soil landscape areas. Furthermore, there is no requirement for landscaped open space under the zoning of the subject site.

- ***To ensure that development does not become visually dominant.***

Comment:

The design of the outdoor dining area consisting of breeze blocks and a retractable fabric awning will create a sense of openness and ensure the development does not appear "walled in" or visually dominant. The appearance of the existing large blank wall adjoining 22 Albert Street will be improved by the proposed outdoor dining area that will provide an enhanced active frontage. Furthermore, the removal of the existing vehicle crossing will have a positive visual impact on the streetscape.

- ***To ensure that the scale and bulk of buildings is minimised.***

Comment:

The surrounding streetscape comprises a range of setbacks, including nil setbacks therefore the proposal is not uncharacteristic of the immediate locality. The proposed outdoor dining space does not result in an increase to the height of the existing development and is notably constructed at a lower height than the approved restaurant.

- ***To provide adequate separation between buildings to ensure a reasonable level of amenity and solar access is maintained.***

Comment:

The only additional structures introduced by the proposal will be located within the existing carparking spaces. In this regard, the proposed development is not anticipated to result in any unreasonable overshadowing impacts or loss of amenity to adjoining buildings.

- ***To provide reasonable sharing of views to and from public and private properties.***

Comment:

The proposed development does not seek to change the height compared to the existing development, therefore it is unlikely there will be any adverse impacts on the sharing of views to and from public and private properties.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / 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.

B10 Merit assessment of rear boundary setbacks

Clause B10 - Merit assessment of rear boundary setbacks prescribes that the rear boundary setback is to be determined on merit with regard to streetscape, amenity of surrounding properties, setbacks of neighbouring development and the objectives of the control.

The proposed development proposes a nil setback to the rear boundary to the north. Notably, this setback aligns with an existing nil setback for the existing approved restaurant.

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- ***To ensure opportunities for deep soil landscape areas are maintained.***

Comment:

The proposed development does not require any major excavation works. It should also be noted that the subject site is not identified in the Landscaped Open Space and Bushland Setting Map under the DCP.

- ***To Create a sense of openness in rear yards.***

Comment:

A sense of openness has been maintained through utilising open breeze blocks above the low height brick wall.

- ***To preserve the amenity of adjacent land, particularly relating to privacy between buildings.***

Comment:

Visual privacy measures including masonry walls and an awning above the outdoor dining area have been incorporated into the design to preserve the visual privacy of adjoining buildings. Moreover, the orientation of the proposed outdoor dining area is out onto Albert Street and is not overlooking any private spaces.

- ***To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements.***

Comment:

The adjoining property to the rear of the site has a nil setback at the ground floor level to the common boundary where the proposed outdoor dining area is to be located. Therefore the proposal is considered to be consistent with the existing pattern of buildings.

- ***To provide opportunities to maintain privacy between dwellings.***

Comment:

The rear wall facing the proposed outdoor dining area does not contain any windows or balconies, and therefore the occupants of the adjoining 22-26 Albert Street will not be impacted by any loss of privacy or adverse visual impacts.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / 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.

C2 Traffic, Access and Safety

Merit consideration

The proposed development involves the removal of the 2 existing on-site car parking spaces to accommodate the new outdoor dining area.

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- ***To minimise traffic hazards.***

Comment:

The proposed development does not increase the number of seats of the approved restaurant and it can therefore be concluded that the traffic generation of the proposal will not increase the existing traffic generation of the approved restaurant.

- ***To minimise vehicles queuing on public roads.***

Comment:

The proposal has been referred to Council's Traffic Engineer who has not raised any concerns regarding an increase in vehicle queueing on public roads as a result of the proposed development.

- ***To minimise the number of vehicle crossings in a street.***

Comment:

No additional vehicle crossings are proposed as part of the proposed development.

- ***To minimise traffic, pedestrian and cyclist conflict.***

Comment:

Local area traffic management devices such as raised pedestrian crossings, raised medians, channelised linemarking and gateway entry treatments are provided to ensure a self-regulating speed environment. The subject site is well positioned between two significant pedestrian crossings that service Albert Street, therefore it is unlikely any development on the site will result in traffic, pedestrian or cyclist conflict.

- ***To minimise interference with public transport facilities.***

Comment:

The application is accompanied by a Traffic and Parking Impact Assessment that concludes the site is well connected to public transport facilities. The customer travel survey indicates that there is a 50:50 mode split between private car use and other travel modes and the proposed development is not anticipated to interfere with existing public transport routes or facilities.

- ***To minimise the loss of "on street" kerbside parking.***

Comment:

The removal of the existing driveway allows for an additional kerbside parking space. Moreover, the design of the outdoor dining space has incorporated a bike rack to the courtyard to encourage more active forms of transport to the site and reduce the necessity of additional parking.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / 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.

C3 Parking Facilities

Merit consideration

The development proposes to remove the driveway and two on-site car parking spaces to accommodate the proposed outdoor dining courtyard. With the removal of the driveway, the kerb length increases to allow an additional parking space at all times on Albert Street.

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

- ***To provide adequate off street carparking.***

Comment:

The proposal will result in the addition of one on-street kerbside parking space. Importantly, no increase is proposed to the existing patron number, therefore traffic generation will not be increased and will be easily accommodated within the existing road network and parking facilities in the Freshwater locality. It should also be noted that Council's Traffic Committee recently approved a new Loading Zone on the west side of Moore Road, immediately to the south of Albert Street. At the October Traffic Committee consideration will also be given to the creation of a further Loading Zone in on the south side of Albert St directly opposite No.20 Albert Street. It is therefore likely that two new on street Loading Zones within 50m of the subject site will soon be available which should prove adequate to cater for the loading needs associated with the restaurant.

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

Comment:

The existing on-site parking facilities are proposed to be converted into an outdoor dining area, which will complement the area and assist in enhancing the role of freshwater Village as the

centre for the local community. The proposed replacement of the existing car parking spaces and vehicle cross over will enhance the streetscape whilst providing for an active street frontage.

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

Comment:

As the proposal involves the removal of the existing on-site parking, it will not result in parking facilities dominating the streetscape or other public spaces.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / 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 outdoor dining can be considered a noise generating activity, therefore a detailed assessment has been undertaken. The application is supported by an Acoustic Impact Assessment from Pulse White Noise Acoustics dated 12 July 2022.

With regard to the consideration for a variation, 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 proposed development has been designed to incorporate materials as required by the Acoustic Assessment Report accompanying the application. The exhaust fan selection has been altered with a restrictor such that the approximate noise level at 3m is no greater than 50 dBA. The western barrier which adjoins the residential zone will be increased to an acoustic rated barrier of minimum height 2m. The barrier fence will be a solid construction with no gaps or perforations. A condition of consent Amendments to Approved Plans has been included that requires the awning spanning the outdoor dining area to be a continuous construction with no perforations or gaps. The entire roofing system will have an overall Rw of at least 16 and will incorporate a Sound Barrier PVC layer to prevent excess noise. Furthermore, the application has been referred to Council's Environmental Health (Industrial) Officer who provided a response stating that the proposal is supportable and in line with the Acoustic Report's conclusions which indicate a noise nuisance will not occur if actions are undertaken for the proposal. NSW Police has also reviewed the application and found the proposal to be supportable, subject to additional noise-related conditions.

- ***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 proposed development, being located within Freshwater Village, is surrounded by other commercial noise generating activities and is not considered to diminish the amenity of the area. The accompanying Plan of Management and the recommendations included in the provided

Acoustic Assessment Report will be included as conditions of consent to ensure the development does not result in unreasonable noise for occupants, users or visitors. Furthermore, as previously discussed in this report, no increase in the approved patron numbers is proposed. The restaurant will maintain the existing approved patron capacity of 71 people, with 51 seated inside and 20 in the proposed outdoor area. As there is no increase in seating, any potential noise impacts are manageable in this instance.

To ensure that noise emission will not unreasonably diminish the amenity of the area or result in adverse impacts to noise intrusion, the proposed hours for the outdoor dining area will be reduced under the condition of consent *Hours of Operation* and limited to:

Outdoor Seating Area:

- Monday to Thursday – 12:00pm to 8:00pm
- Friday and Saturday – 12:00pm to 10:00pm
- Sunday and Public Holidays – 12:00pm to 8:00pm

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / 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.

D8 Privacy

Merit consideration

Seven (7) submissions have been received objecting to the application with concerns regarding loss of acoustic and visual privacy.

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

- ***To ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.***

Comment:

The proposed outdoor dining area is compliant with the height of buildings development standard and will not result in any unreasonable visual impacts, disruption of views or loss of privacy in this regard. The proposed courtyard area will also be oriented towards Albert Street, rather than towards the mixed use development to the north of the site and will not contain any windows or balconies facing the adjoining development. Additionally, acoustic and visual privacy measures such as the proposed masonry walls and awning covering have been incorporated into the proposed design to enhance privacy for customers of the restaurant and neighbours. In order to preserve a high level of acoustic privacy, the proposed hours of operation for the outdoor dining area will be amended via a condition of consent and restricted to an opening time until 8:00pm on Monday to Thursday and Sunday and Public Holidays, and restricted to a closing time of 10:00pm on Fridays and Saturdays.

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

Comment:

The Acoustic Report dated 12 July 2022 that accompanies the application demonstrates that the

proposed design of the outdoor dining area will preserve aural privacy. The proposal is considered an improvement to the appearance of the existing large wall adjoining No.22 Albert Street that presents to the streetscape. As such, the proposal will enhance the presentation of the subject site within the urban environment and will provide a more active frontage in keeping with the character of Freshwater Village.

- ***To provide personal and property security for occupants and visitors.***

Comment:

The proposal will improve casual surveillance of Albert Street and the surrounding pedestrian area. The application has been referred to NSW Police who found the proposal to be supportable subject to conditions including the requirement to install closed-circuit television (CCTV), which will ensure personal and property security will be maintained.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / 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.

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 2022

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$ 660 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 132,000.

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 2021;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any

unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

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

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

PLANNING CONCLUSION

This proposal, for alterations and additions to an existing restaurant and a change of hours has been referred to the Development Determination Panel (DDP) due to 7 submissions received objecting to the proposal.

The concerns raised in the objections have been addressed and resolved by the inclusion of conditions of consent to ensure a reasonable level of amenity will be maintained:

- Amendments to approved plans to require the retractable awning over the outdoor dining area is to cover the entire outdoor area with no gaps.
- Hours of Operation to require 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.
- Conditions of consent Acoustic Requirements and Acoustic Review to ensure acoustic compliance in an operational situation.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval.

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 DA2022/1320 for Alterations and additions to an existing restaurant and a change of hours on land at Lot 21 DP 226287, 20 Albert Street, FRESHWATER, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Plan of Management- updating and compliance

The requirements of the Plan of Management are to be upgraded to reflect the recommendations of the acoustic review by Pulse White Noise Acoustic 12 July 2022 and be fully implemented in perpetuity from the issue of any interim / final occupation certificate or operation under the terms of this consent.

A copy of the updated plan is to be sent to Council for its records prior to operations

commencing under this consent .

The premises is to be operated at all times in accordance with the Plan of Management as may be varied from time to time after consultation with NSW Police. A copy of the Plan of Management is to be kept on the premises, and made available for inspection on the request of a police officer, council officer, Liquor and Gaming NSW inspector, or any other person authorised by the Independent Liquor and Gaming Authority.

Reason: To protect the amenity of the surrounding area.

2. **Acoustic review**

Within 30 days from the operations commencing under the terms of this Consent, an acoustic review of the findings and recommendations of Pulse White Noise Acoustic (12 July 2022) shall be carried out on site and any necessary action to obtain compliance, shall be completed within a further 30 days of the assessment.

The report associated with the compliance testing is to be furnished to Council for its records.

Reason: To ensure acoustic compliance in an operational situation.

3. **Approved Plans and Supporting Documentation**

The development must be carried out in compliance with the endorsed stamped plans and documentation listed below, except as amended by any other condition of consent:

a) Approved Plans

| Architectural Plans - Endorsed with Council's stamp | | |
|--|--------------|--------------------|
| Drawing No. | Dated | Prepared By |
| Existing Site Plan - Drawing No.DA001 Revision A | 6 May 2022 | FiveFootOne |
| Demolition Plan - Drawing No.DA100 Revision A | 6 May 2022 | FiveFootOne |
| General Arrangement Plan - Drawing No.DA101 Revision A | 6 May 2022 | FiveFootOne |
| Proposed Elevations (Section - Courtyard West) - Drawing No.DA200 Revision A | 6 May 2022 | FiveFootOne |
| Proposed Elevations (Elevation - Courtyard North and Section - Courtyard East) - Drawing No.201 Revision A | 6 May 2022 | FiveFootOne |
| Finishes - Drawing No.DA300 Revision A | 6 May 2022 | FiveFootOne |

| Reports / Documentation – All recommendations and requirements contained within: | | |
|---|--------------|-----------------------------|
| Report No. / Page No. / Section No. | Dated | Prepared By |
| Acoustic Report (Revision 9) | 12 July 2022 | Pulse White Noise Acoustics |
| BCA Assessment Report | 12 July 2022 | Credwell |
| | | |

| | | |
|---|--------------|------------------------------------|
| Plan of Management | Undated | Jack Leary |
| Traffic & Parking Impact Assessment Report Revision B | 12 July 2022 | Traffic & Safety Solutions Pty Ltd |

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 | 8 July 2021 | Jack Michael Leary |
| Waste Removal Plan | 26 June 2022 | Cheapest Load of Rubbish |

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.

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

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

| Other Department, Authority or Service | EDMS Reference | Dated |
|---|------------------------------|------------------|
| NSW Police | NSW Police Referral Response | 18 November 2022 |

(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.

5. **Patron Capacity**

The maximum patron capacity for the restaurant shall be 71 patrons. The maximum patron capacity for the outdoor dining area shall be 20 patrons. All patrons must be seated.

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

6. **Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work,

subdivision work or demolition work is being carried out:

- (i) showing the name, address and telephone number of the Principal Certifier for the work, and
- (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative requirement.

7. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the 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

8. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$660.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$132,000.00.

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

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

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

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

9. **Security Bond**

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

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

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

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

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

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

10. **Removal of Redundant Driveways**

All redundant driveways shall be removed and reinstated to Council standard kerb and gutter. Parking bay markings throughout the indented parking bay fronting No.20 Albert St shall also be remarked. Suitably prepared plans shall be submitted to for an approval under and approved by Council prior to the issue of the Construction Certificate. All costs associated with the works shall be borne by the applicant.

A plan checking fee (amount to be advised) and lodgement of a performance bond may be

required from the applicant prior to the release of the approval.

Reason: To maximise on street car parking by removing driveways that are no longer needed in accordance with Council policy.

11. **Stormwater Drainage Disposal**

The stormwater drainage systems for the development are to be designed, installed and maintained in accordance with Council's Water Management for Development Policy.

All stormwater drainage systems must comply with the requirements of Council's Water Management for Development Policy. Any recommendations identified within a Geotechnical Report relevant to the development are to be incorporated into the design of the stormwater drainage system. Details demonstrating compliance from a qualified and practising Civil Engineer and where relevant a Geotechnical Engineer must be submitted to and approved by the Principal Certifier prior to the issue of a Construction Certificate.

When the proposed discharge point for the development in this consent cannot strictly comply with the Water Management for Development Policy, the Applicant must apply to verify the proposed discharge point by gaining Council approval via a Stormwater Drainage Application. Council approval must be provided to the Principal Certifier prior to the issue of a Construction Certificate when a Stormwater Drainage Application is required. The Stormwater Drainage Application form can be found on Council's website.

Compliance with this condition must not result in variations to the approved development or additional tree removal.

Reason: To ensure satisfactory management of stormwater.

12. **Amendments to the approved plans**

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

- The retractable awning over the outdoor dining area is to cover the entire outdoor area with no gaps

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

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

13. **Submission Roads Act Application for Civil Works in the Public Road**

The Applicant is to submit an application for approval for infrastructure works on Council's roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include four (4) copies of Civil Engineering plans for the design of the reinstatement of layback, footpath, tactile and parking bay line marking which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified civil engineer. The design must include the following information: The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

An approval is to be submitted to the Principal Certifier prior to the issue of the Construction

Certificate

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specification.

14. **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 Principal Certifier prior to the issue of the Construction Certificate.

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

15. **Waste Management Plan**

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan.

Details demonstrating compliance must be provided to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

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 and a Roads and Maritime Services Work Zone Permit shall be obtained for State Roads.

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

17. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all perimeter walls columns and or other structural elements, floor levels and the finished roof/ridge height are in accordance with the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier when the external structure of the building is complete.

Reason: To demonstrate the proposal complies with the approved plans.

18. **Waste Management During Development**

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

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

19. Stormwater Drainage Disposal Certification

Certification from an appropriately qualified and practising Civil Engineer demonstrating the stormwater drainage systems have been designed and installed in accordance with the requirements of Council's Water Management for Development Policy and where relevant a Geotechnical Engineer shall be provided to the Principal Certifier prior to the issue of an Occupation Certificate, and;

If any on site stormwater detention system is installed the Applicant shall lodge the Legal Documents Authorisation Application with Council.

The application is to include the completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification. A guide to the process and associated Legal Document Authorisation Application form can be found on Council's website. The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater detention system within this development consent.

The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the authority to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user for the on-site stormwater detention system is to be submitted.

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

Reason: To ensure satisfactory management of stormwater.

20. Waste Management Confirmation

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

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

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

21. 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 residences from any noise generated by the operation of the development.

22. **Noise Management**

The LA10 noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz – 8kHz inclusive) by more than 5dB between 07:00 AM and 12:00 Midnight at the boundary of any affected residence.

The LA10 noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz – 8kHz inclusive) between 12:00 Midnight and 07:00 AM at the boundary of any affected residence.

Reason: To protect the amenity of the surrounding area.

23. **Installation of Closed-circuit television (CCTV)**

The licensee must maintain a closed-circuit television (CCTV) system on the premises in accordance with the following requirements:

- the system must record continuously from opening time until one hour after the premises is required to close (or, in the case of a premises that is not required to cease trading, continuously at all times),
- recordings must be in digital format and at a minimum of six (6) frames per second,
- any recorded image must specify the time and date of the recorded image,
- the system's cameras must cover the following areas:
 - all entry and exit points on the premises,
 - the footpath immediately adjacent to the premises, and
 - all publicly accessible areas (other than toilets) within the premises.

The licensee must also:

- keep all recordings made by the CCTV system for at least 30 days,
- ensure that the CCTV system is accessible at all times the system is required to operate pursuant to clause 1(a), by at least one person able to access and fully operate the system, including downloading and producing recordings of CCTV footage, and
- provide any recordings made by the system to a police officer or Liquor and Gaming NSW inspector within 24 hours of any request by the police officer or Liquor and Gaming NSW inspector to provide such recordings.

Suitable and clearly visible signage shall be displayed at the principal entrance(s) to the premise, in lettering not less than 50mm in height with the words "Closed Circuit Television in use on these premises". The same signage to be attached in a prominent position on the bulkhead on each respective level of the premises.

CCTV system shall be set up in staff only areas where customers cannot easily access and minimise tampering.

Reason: To protect the amenity of the surrounding area.

24. **Acoustic Requirements - ongoing**

Compliance with the recommendations within the Acoustic Assessment by Pulse White Noise Acoustic dated 12 July 2022.

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

25. **Hours of Operation**

The hours of operation are to be restricted to:

Indoor Seating Area:

- Monday to Friday – 12:00pm to 12:00am
- Saturday – 12:00pm to 12:00am
- Sunday and Public Holidays – 12:00pm to 10:00pm

Outdoor Seating Area:

- Monday to Thursday – 12:00pm to 8:00pm
- Friday and Saturday – 12:00pm to 10:00pm
- Sunday and Public Holidays – 12:00pm to 8:00pm

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.

26. **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.

27. **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.

28. **Neighbourhood Amenity**

The licensee must ensure that:

- Patrons do not crowd or loiter in the vicinity of the premises in such manner that pedestrian movement is obstructed or hindered.
- The manner in which the business of the premises is conducted, and the behaviour of persons entering and leaving the premises, do not cause undue disturbance to the amenity of the neighbourhood. In this regard, the licensee is responsible for the control of noise and litter generated by persons, and by the operation of the premises. If so directed by Council, the licensee must employ private security staff to ensure that this condition is complied with.
- The licensee must record in a register full details of any disturbance complaints made by a person to the licensee, management or staff in respect to the manner in which the business of the premises is conducted, or the behaviour of persons entering or leaving the premises. Such recording must include time, date, nature of the complaint and, if provided, any details of the complainant.
- The licensee must respond to any disturbance complaints in a timely and effective

manner. All actions undertaken by the licensee, management and staff to resolve such complaints must be recorded in the register.

- The Licensed Premises are not to be themed or operated as a Nightclub. No DJ styled booth, no disco lighting systems and no dance floor area are to be utilised at any time in the premises.

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

29. **Care of Building Surrounds**

In addition to Council's daily street sweeping and cleansing operations, the owner/manager of the business shall ensure that surrounds of the shopfront including pavements and gutters are to be kept clean and free of litter associated with the operation of the business at all times. Regular morning, noon, afternoon, evening and night time litter patrols shall be undertaken.

Reason: To protect the amenity of the surrounding area.

30. **Lighting**

Adequate lighting must be provided to all entrances and exits of the premises, to ensure the safety of all staff and visitors as they arrive, use and leave the premises.

Reason: To ensure the safety of patrons using and leaving the premises

31. **Signage**

The Licensed Premises must provide:

- A clear, unobstructed street number and business name signage.
- Signs must be erected to alert patrons that CCTV is in operation and to indicate "staff only" areas.
- No flashing signage visible from the public way shall be installed.

Reason: To ensure appropriate signage on the site

32. **Development Consent**

A copy of the relevant development consent is to be kept on the premises, and made available for inspection on the request of a police officer, council officer, Liquor & Gaming inspector, or any other person authorised by the Independent Liquor & Gaming Authority.

Reason: To ensure the development is in accordance with the terms of this approval.