

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1027
Responsible officer:	Geoff Goodyer, planning consultant, Symons Goodyer Pty Ltd
Land to be developed (address):	Lot 1 DP 1129384 and Lot 1 DP 1159168, Stuart Street, MANLY NSW 2095
Proposed development:	Alterations and additions to the existing café, use of cool room, freezer room and bin storage area, and signage.
Zoning:	Manly LEP 2013 – Land zoned RE1 Public Recreation
Development permissible:	Yes
Existing use rights:	No
Consent authority:	Northern Beaches Council
Delegation level:	Northern Beaches Local Planning Panel
Land and Environment Court action:	No
Owner:	Northern Beaches Council
Applicant:	Prophetable Hospitality Pty Ltd
Application lodged:	8 September 2020
Integrated development:	No
Designated development:	No
State reporting category:	commercial/retail/office
Notified:	Original proposal: 15/9/2020 – 29/9/2020. Amended information: 21/12/2020 – 25/1/2021.
Advertised:	No
Submissions received:	Original proposal: Eight (8), none in support. Amended information: Twenty-three (23), including four (4) in support.
Recommendation:	Approval (deferred commencement)
Estimated cost of works:	\$495,000

EXECUTIVE SUMMARY

The proposal involves alterations and additions to the existing café including the addition of a take away / kiosk and a kitchen fit-out.

Additional seating for 12 patrons is proposed outside and to the north of the current seating area, bringing the total seating capacity of the premises to 32 persons. PVC roller blinds around the existing seating area are proposed to be replaced with glass windows.

The original proposal included a cool room and bin storage area which have been previously constructed without approval. The application has been amended to remove these works from the proposal and a separate Building Information Certificate ("BIC") application has been lodged with Council in this regard. The BIC application has not yet been determined. The proposed café expansion includes the use of the buildings that have not yet been approved by the BIC. It is considered that the use of these buildings cannot be approved until the BIC is approved and it is recommended that a deferred commencement condition be imposed in this regard.

The original proposal included extended hours of operation. The application has been amended such that the hours of operation are unchanged from that which was previously approved by Council, ie: Monday and Tuesday 7.00am to 5.00pm, Wednesday to Saturday 7.00am to 10.00pm, and Sunday 7.00am to 7.00pm, with take-away only available until 6.00pm. Meal service ceases 30 minutes prior to closing time and the site is fully vacated an hour after closing time.

Up to six people will be employed on site at any time. The venue is not proposed to be licenced and no amplified music is proposed.

A number of community objections relate to the traffic and parking impacts of the proposal. The applicant has submitted a Traffic Report. The report acknowledges that on-street parking in the vicinity of the site is in high demand, particularly in summer. The report does not comment on existing road widths in the vicinity of the site, but it is to be noted that these are narrow particularly when on-street parking is under high use. The Traffic Report has been prepared on the basis that the proposed expanded café is used by people who are visiting the area for other purposes, particularly to visit the beach; however, no evidence is provided to support this assumption and it is not concurred with. As a result, the conclusions drawn in the Traffic Report are not concurred with and it is recommended that the additional seating that is proposed (being the outdoor seating for 12 patrons) not be approved.

Council's Biodiversity Officer has recommended that the hours of operation of the premises be reduced from a 10pm closing time on Wednesday to Saturday to a 7pm closing time to offset impacts resulting from the intensification of the use of the premises, including noise and traffic impacts. However, if the additional outdoor seating is not approved, as described in the previous paragraph, the use of the café is not intensified and it is not necessary to limit the hours of operation beyond those which are currently approved.

The development site is in the vicinity of aboriginal heritage. Further archaeological investigation is required to determine the likelihood of aboriginal heritage within the area of the proposed works and those investigations require an Aboriginal Heritage Impact Permit ("AHIP") from the NSW Office of Environment and Heritage. It may be that those investigations disclose the need for a further AHIP to undertake the development. It is recommended that a deferred commencement condition be imposed requiring that such permit/s be obtained prior to the consent becoming operative.

Eight submissions were received as a result of the notification of the original proposal, all of which raised concerns regarding the proposal. The issues raised in the submissions include noise, traffic, parking, development creep, adequacy of toilets and adequacy of storage areas. These issues have been addressed in the Submissions section of this report.

Twenty-three submissions were received as a result of the notification of the amended proposal, including four submission in support of the proposal. The remaining nineteen submissions raised issues including the lack of solar panels, noise, potential future development, the desire for toilets or a kiosk instead of a restaurant, inadequate storage areas, alienation of public open space, hours of operation, odours, waste management, consumption of alcohol, and impacts on pedestrian access. An assessment of these submissions is included in this report and concludes that none of these issues warrant refusal of the application, but that the intensification of the use (increased seating capacity and separate take away area) not be approved due to concerns relating to traffic and parking.

The application has been assessed against the Environmental Planning and Assessment Act 1979 (EP&A Act 1979), Environmental Planning and Assessment Regulations 2000 (EP&A Regulations 2000), relevant Environmental Planning Instruments (EPIs), Plans of Management and Council policies. The outcome of this assessment is detailed within this report.

Accordingly, based on the detailed assessment contained in this report, it is recommended that the application be approved.

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 (ie: this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- An inspection of the subject site and neighbouring sites 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 and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Community Participation Plan;
- A review and consideration of all submissions made by the public in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination); review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

- Manly Development Control Plan 2013 – 3.2 Heritage Considerations
- Manly Development Control Plan 2013 – 3.4.2.3 Acoustical Privacy (Noise Nuisance)

- Manly Development Control Plan 2013 – 5.4.2 Threatened Species and Critical Habitat Lands
- Manly Development Control Plan 2013 – Schedule 3 Parking and Access

STATUTORY CONTROLS

- Environmental Planning and Assessment Act 1979
- Environmental Planning and Assessment Regulation 2000
- Manly Local Environmental Plan 2013
- Manly Development Control Plan 2013
- Little Manly Coastline Plan of Management 2004
- State Environmental Planning Policy No. 19 – Bushland in Urban Areas
- State Environmental Planning Policy No. 55 – Remediation of Land and Draft SEPP
- State Environmental Planning Policy No. 64 – Advertising and Signage
- State Environmental Planning Policy (Coastal Management) 2018
- Draft State Environmental Planning Policy – Environment
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

SITE DESCRIPTION

Property description:	Lot 1 DP 1129384 and Lot 1 DP 1159168, Stuart Street, MANLY NSW 2095
Detailed site description:	<p>The site is located in Little Manly Reserve on the south-western side of Stuart Street opposite the intersection with Marshall Street.</p> <p>The existing café is located between Little Manly Beach and Stuart Street. It is owned by Council and leased to a private operator. It is a single-storey structure and includes public toilets and shower facilities.</p> <p>Little Manly Reserve has a fenced swimming area and playground equipment.</p> <p>Surrounding development comprises a mix of residential housing types including dwelling houses and apartment buildings up to 4-storeys in height.</p>

LOCALITY PLAN (not to scale)



Figure 1 – Location of Site (source: <https://maps.six.nsw.gov.au>)



Photo 1 – Existing building (note: external seating and umbrellas have not previously received development consent)

SITE HISTORY

Development Consent DA493/07 was issued on 20 May 2008 for “*alterations and additions to an existing kiosk*”. There were no conditions attached to the consent relating to operating hours or maximum number of patron seating.

Development Consent DA493/07 was modified on 12 March 2010. Relevantly, the following condition was added to the approval:

ANS015

The hours of operation of the premises are not to exceed the following:

Winter Opening Hours (1 June to 31 August)

<i>Sunday, Monday, Tuesday, Wednesday and Thursday</i>	<i>9:00am to 5:00pm,</i>
<i>Friday and Saturday</i>	<i>9:00am to 9:00pm</i>

Summer Opening Hours (1 September to 31 May)

<i>Monday and Tuesday</i>	<i>7:00am to 5:00pm,</i>
<i>Wednesday and Thursday</i>	<i>7:00am to 9:00pm,</i>
<i>Friday and Saturday</i>	<i>7:00am to 10:00pm,</i>
<i>Sunday</i>	<i>7:00am to 7:00pm.</i>

Note: The serving of meals is to cease thirty (30) minutes prior to closing time on each day and the premises are to be fully vacated outside these times (including patrons, staff and operator / manager).

Development Consent DA439/07 was further modified on 22 July 2010. Relevantly, Condition ANS015 was modified to read:

ANS015 (Modification)

The hours of operation of the premises are not to exceed the following:

<i>Monday and Tuesday</i>	<i>7:00am to 5:00pm</i>
<i>Wednesday to Saturday</i>	<i>7:00am to 10:00pm</i>
<i>Sunday</i>	<i>7:00am to 7:00pm</i>

Note: The serving of meals is to cease thirty (30) minutes prior to closing time on each day and the premises is to be fully vacated by staff and management one (1) hour after closing time.

Reason: To control the operation of the kiosk and preserve the amenity of the locality.

Complying Development Certificate CDC2019/0610 was issued in 2019 for “*Change of use to food and drink premises at Little Manly Reserve from Kiosk to Café*”.

The current development application (DA2020/1027) was lodged on 8 September 2020 and was publicly notified from 15 September 2020 to 29 September 2020. The application was amended and the amended proposal was notified from 21 December 2020 to 25 January 2021.

It is noted that the application is being independently assessed because the land is owned by Council.

PROPOSED DEVELOPMENT IN DETAIL

The proposal is to carry out alterations and additions to the existing café.

- Addition of a take-away food / kiosk on the northern side of the building.
- Construction of a waiters' station.
- Replacement of existing PVC blinds with sashless glass windows.
- Addition of seating for 12 patrons on the paved area to the north of the building together with removable umbrellas. The total capacity of the café is proposed to be seating for 32 patrons.
- Installation of security screens for night time lock-up.
- Relocation of grease trap to under the paved area to the north of the building.
- Kitchen fit-out.
- Use of cool room and bin store (structures subject to a separate Building Information Certificate application)

The proposal states that the hours of operation are unchanged from that which were previously approved by Council (DA493/07, condition ANS015, as amended 22 July 2010), ie:

- *Monday and Tuesday* 7:00am to 5:00pm
- *Wednesday to Saturday* 7:00am to 10:00pm
- *Sunday* 7:00am to 7:00pm

Note: The serving of meals is to cease thirty (30) minutes prior to closing time on each day and the premises is to be fully vacated by staff and management one (1) hour after closing time.

Take-away service is proposed to cease at 6.00pm.

Up to six people will be employed on site at any time (3 kitchen staff, 1 café staff and 1 server/table clearer). Supplier deliveries are proposed between 7am and 12pm by small van with 1-2 deliveries per day. The venue is not proposed to be licenced and no amplified music will be played.

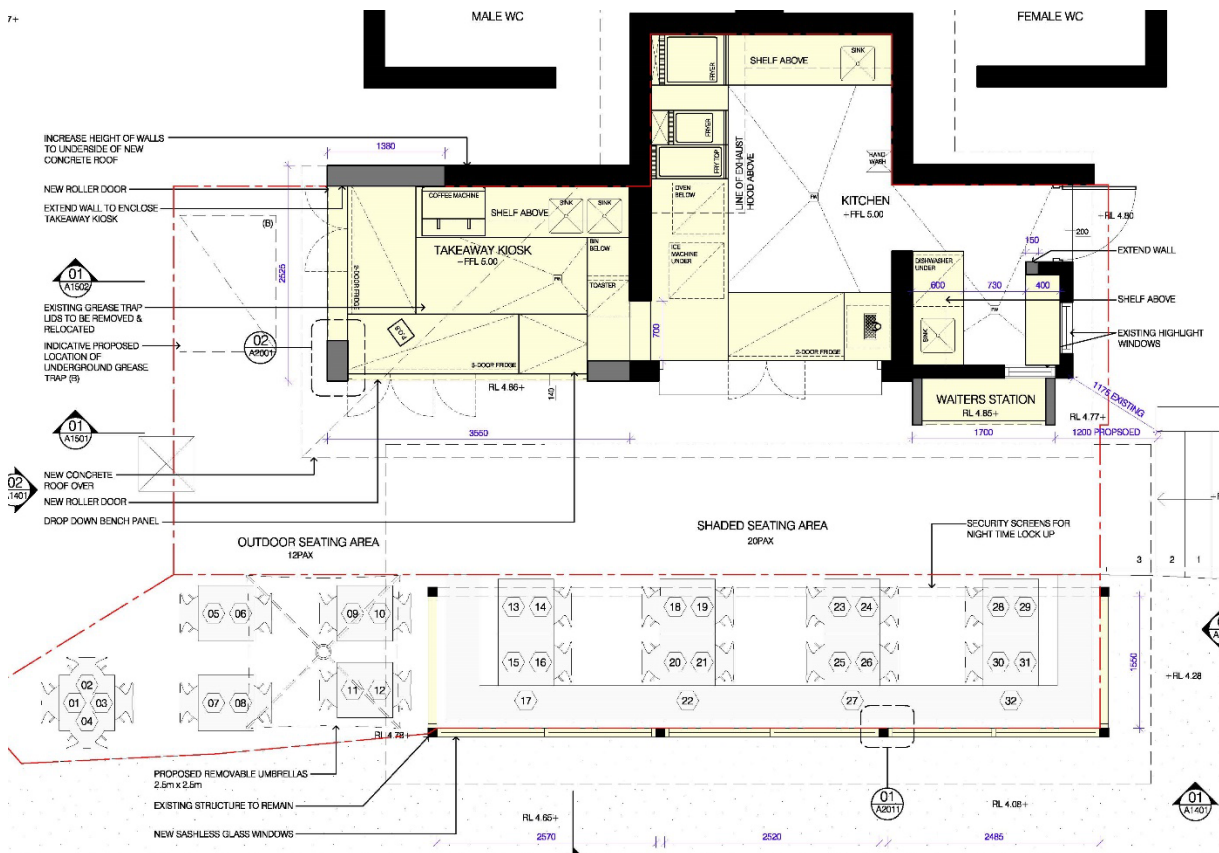


Figure 2: Proposed floor plan

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under Section 4.15 of the EPAA 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	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	See discussion on “Manly Development Control Plan 2013” in this report.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the regulations	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters can be 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, enable Council to request additional information in relation to a development application. Additional information was requested on 13/11/2020. Amended information was received on 4/12/2020 comprising amended plans, updated Statement of Environmental Effects, Plan of Management, and amended hours of operation.</p> <p>Further additional information was requested on 7/12/2020 and 12/1/2021.</p> <p>Additional information was submitted on 21/12/2020 comprising an amended Plan of Management. Further additional information was submitted on 15/1/2021 comprising a Biodiversity Report and an Aboriginal Due Diligence Report. A draft Contamination Report was submitted on 4/2/2021. A Traffic Report was submitted on 2/3/2021.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter can be addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>development). This matter can be addressed via a condition of consent.</p> <p><u>Clause 98(1)(b)</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(1)(a)</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter can be addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
<p>Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</p>	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan 2013 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 proposed works.</p>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered to be suitable for use as a café. However, the intensification of the use of the café arising from the additional seating capacity that is proposed and the lack of car parking in the vicinity of the site is such that the site is not considered to be suitable for the proposal. The site is not subject to natural constraints such as landslip, flooding, acid sulfate soils or bushfire risk that would</p>

Section 4.15 'Matters for Consideration'	Comments
	make it unsuitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” in this report.
Section 4.15 (1) (e) – the public interest	The public interest is considered to be served by upgrading the food and drink premises on the site to enhance the amenity of the public open space.

LOCAL GOVERNMENT ACT 1993

The site is classified as “*community land*” under the *Local Government Act 1993* (“LG Act”).

Section 36(1) of the LG Act requires the preparation of a Plan of Management for all community land. The Little Manly Coastline Management Plan (“LMCMP”) applies to the land.

Section 36(3)(a) of the LG Act provides that the LMCMP must categorise the land. The area the subject of this development application has been categorised by the LMCMP as a park.

Section 35 of the LG Act requires that the land be used and managed in accordance with the relevant Plan of Management. However, legal advice obtained by Council in relation to the redevelopment of Brookvale Oval (DA2019/1190) was that, whilst the Plan of Management was a relevant consideration under s. 4.15(e) of the EPA Act (ie: “public interest”), it was not necessary that a proposal forming a development application made under the EPA Act had to be “in accordance with” the Plan of Management as required by s. 35 of the LG Act.

The legal advice continued:

In our view the proper approach for the Panel, in its weighing up task of considering the POM, is to take a more general approach on the basis that the POM is to be treated as a policy of the Council (which would also cover the objects of the EPA Act referred to above).

The LMCMP does not make specific reference to development of the café but acknowledges the continued operation of what was then a kiosk (and has since been lawfully changed to a café pursuant to CDC2019/0610).

The proposed development is not considered to substantially change the nature of the use of the building as a café with attached public facilities. In this regard it is considered that the proposed development is not antithetical to the LMCMP and satisfies the requirements of the LG Act as they apply to the development application.

EXISTING USE RIGHTS

Existing use rights are not applicable to this application.

INTEGRATED DEVELOPMENT

Section 4.46(1) of the EP&A Act 1979 prescribes certain development to be “Integrated Development”. Integrated Development requires consultation with relevant authorities to obtain general terms of approval prior to the granting of consent.

Development that requires an activity approval under Section 91 of the *Water Management Act 2000* is identified as integrated development. The site is “*waterfront land*” under the *Water Management Act 2000* and the proposed works within the waterfront land are a “*controlled activity*” that require an activity approval. However, clause 36 of Schedule 4 of the *Water Management (General) Regulation 2018* provide an exemption for controlled activity on certain land, including land mapped on Sydney Harbour including the subject site.

Development that requires an Aboriginal heritage impact permit (“AHIP”) under s. 90 of the *National Parks and Wildlife Act 1974* is identified as integrated development. The Aboriginal Due Diligence report submitted as part of the development application identifies that further site investigations are required which includes sub-surface investigations that require an AHIP. Depending on what those investigations reveal it may be necessary to apply for a further AHIP. However, s. 4.46(2)(a) provides that development requiring an AHIP is not integrated development unless:

- (a) *an Aboriginal object referred to in that Part is known, immediately before the development application is made, to exist on the land to which the development application applies, or*
- (b) *the land to which the development application applies is an Aboriginal place within the meaning of that Act immediately before the development application is made.*

The site does not satisfy either (a) or (b) above.

Consequently, the proposal is not Integrated Development.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS

The subject application was notified to surrounding and nearby properties in accordance with the EPA Regulation 2000 and the Northern Beaches Community Participation Plan from 15 September 2020 to 29 September 2020.

In response, Council received 8 submissions, none of which supported the proposal, from the following people:

Name:	Address;
Ms Julie Bakalor	1/2 Stuart St, MANLY NSW 2095
Mr Nicolas Ewald	3/57 Stuart St, MANLY NSW 2095
Mr Allan Fisk	16 / 11-15 Spring Cove Ave, MANLY NSW 2095
Mrs Catherine Griffin	65-67 Stuart St, MANLY NSW 2095
Mr Ian Macfarlane	No address supplied
Mr Ray Mathieson	1/28A Addison Rd, MANLY NSW 2095
Dr Susan Rice	3/57 Stuart St, MANLY NSW 2095
Miss Katja Thies	71/1 Addison Rd, MANLY NSW 2095

The amended proposal was notified from 21 December 2020 to 25 January 2021. In response, Council received 23 submissions, of which 4 supported the proposal, from the following people:

Ms Wendy Allpress	No address supplied
Mr Roger Amos	No address supplied
Ms Julie Bakalor	1/2 Stuart St, MANLY NSW 2095
Doug and Lee Carruthers	2/57 Stuart St, MANLY NSW 2095
John and Adrienne Chatterton	No address supplied
Mr Reginald Gibson	1 / 2-4 Stuart St, MANLY NSW 2095
Mrs Catherine Griffin	65-67 Stuart St, MANLY NSW 2095
Mr Terry Harris	63 Stuart St, MANLY NSW 2095
Pam and Martin Kirwan	No address supplied
Kim Lee	59 Stuart St, MANLY NSW 2095
Ms Judy LeVine	39 Osborne Rd, MANLY NSW 2095
Mr Ian Macfarlane	12/59 Stuart St, MANLY NSW 2095
Mr Robert Manson	51 Stuart St, MANLY NSW 2095
Mr Paul Nelson	1/34 Addison Rd, MANLY NSW 2095
Dr Susan Rice	3/57 Stuart St, MANLY NSW 2095
Ms Sue Sacker	78 Alexander St, MANLY NSW 2095
Ms Janne Seletto	3/22 Cliff St, MANLY NSW 2095
Mrs Ann Vindin	59 Stuart St, MANLY NSW 2095
Mrs Frances White	83 Wood St, MANLY NSW 2095
Mr Tony White	83 Wood St, MANLY NSW 2095
Ms Carol Young	57 Stuart St, MANLY NSW 2095
Mr Alan Young	6 Oyama Ave, MANLY NSW 2095
Mr Philip Zillman	69 Stuart St, MANLY NSW 2095

The submissions that did not support the proposal raised the following issues:

Noise

The proposal does not extend the hours of operation, does not involve amplified music and does not involve the service of alcohol. Whilst there will be an additional 12 patrons seated outside there is sufficient separation distance from the nearest residential receivers (approximately 40 metres) to mitigate the impacts of noise arising from the use of the outdoor seating area.

The Plan of Management submitted by the applicant provides further controls on patron management, deliveries and waste management that mitigate potential noise impacts.

With regards to the use of the existing cool room, which has been constructed without approval, Council's Environmental Health Officer recommends that an Acoustic Report be provided prior to the issue of a Construction Certificate associated with this development application, with recommended measures to be implemented prior to the release of the Occupation Certificate.

In summary, this issue has not been given determining weight.

Traffic and Parking

The proposal involves an intensification of the use of the premises, through the additional patron seating and the introduction of a separate take-away section.

The Traffic Report submitted by the Applicant acknowledges the high demand for on-street car parking in the vicinity of the site. The author of this assessment report has observed that the streets in the vicinity of the site are relatively narrow when on-street parking is occupied.

The Traffic Report has been prepared on the basis that patrons of the premises will be visiting the site for other reasons (ie: to use the beach). However, no information has been submitted to justify this assumption.

It is considered that the intensification of the use of the café, through the provision of seating for 12 additional patrons (bringing the total capacity to 32 seated patrons) will have negative impacts on the availability of on-street car parking and local traffic conditions and that these will also have a negative impact on the amenity of local residents.

Consequently, it is recommended that the outdoor seating not be approved and that the existing approved capacity of the café for 20 seated patrons be retained.

Scale of development

The proposal will not increase the scale of the building in a significant way. The minor increase as a result of the construction of the take-away area, an area measuring approximately 2.2m x 2.4m, will not have a negative impact in terms of the scale of the building and complements the existing built form.

In summary, this issue has not been given determining weight.

Adequacy of toilet facilities

The proposal retains the existing toilet facilities within the building which are also available to members of the public using the adjacent beach and park.

In summary, this issue has not been given determining weight.

Lack of solar panels

It has been suggested in submissions that solar panels should be incorporated into the development. There is no requirement in the planning controls for the provision of solar panels and, whilst they would improve the environmental sustainability of the development, the lack of solar panels is not considered to be a reason to refuse development consent.

Potential future development

Concern is raised that approval of this development could lead to further development proposals in the future. However, this development application must be considered on its individual merits. It does not set a precedent for future development proposals and this concern has not been given determining weight.

Desire for toilets or a kiosk instead of a restaurant

A number of submissions expressed a desire for the retention of the building as toilets or as a kiosk. This desire is noted but the proposed development has been assessed on its merits and this desire is not considered to be a reason for refusal of the development application.

Inadequate storage areas

Concern has been raised that the proposal provides inadequate storage areas. There is room within the building for the storage of foodstuffs, etc. in association with the café and take-away areas. There is also room for the storage of tables, chairs and umbrellas associated with the outdoor seating area when the premises are closed. The recommendation of this assessment report includes appropriate conditions of consent requiring all goods and materials associated with the use to be stored within the building and, consequently, this objection has not been given determining weight.

Alienation of public open space

Concern is raised that the proposal will result in the alienation of public open space. In this regard, the proposal includes additional built form measuring approximately 2.2m x 2.4m for the take-away area as well as an area for 5 x tables and 12 chairs plus umbrellas for the outdoor eating area. These areas are available to the public and are considered to be complementary to the use of the public open space and, in this regard, there are many such facilities providing food and public amenities in public open spaces in the northern beaches area. The scale of the facilities is not considered to be excessive.

This issue has not been given determining weight.

Hours of operation

Concern is raised with regards to the proposed hours of operation, with people making submissions under the impression that the proposal involves extending the approved hours of operation. This impression is incorrect and the proposal retains the existing approved hours of operation.

This issue has not been given determining weight.

Odours

Concern is raised that the proposal will result in odours. The proposal has been reviewed by Council's Health Officer who has raised no objections in this regard. The kitchen fit-out includes extractor fans capable of minimising the impact of odours. This objection may be addressed through the imposition of appropriate conditions of consent.

Waste management

Concern is raised regarding the management of waste from the site. In this regard waste is stored in bins at the rear of the building in the bin storage enclosure (subject to a separate Building Information Certificate) such that visual and odour impacts are minimised. Waste is removed by contractors. The Plan of Management specifies that waste is removed three times per week with collection occurring between 7am and 9am.

The management of waste is considered to be satisfactory and this issue has not been given determining weight.

Consumption of alcohol

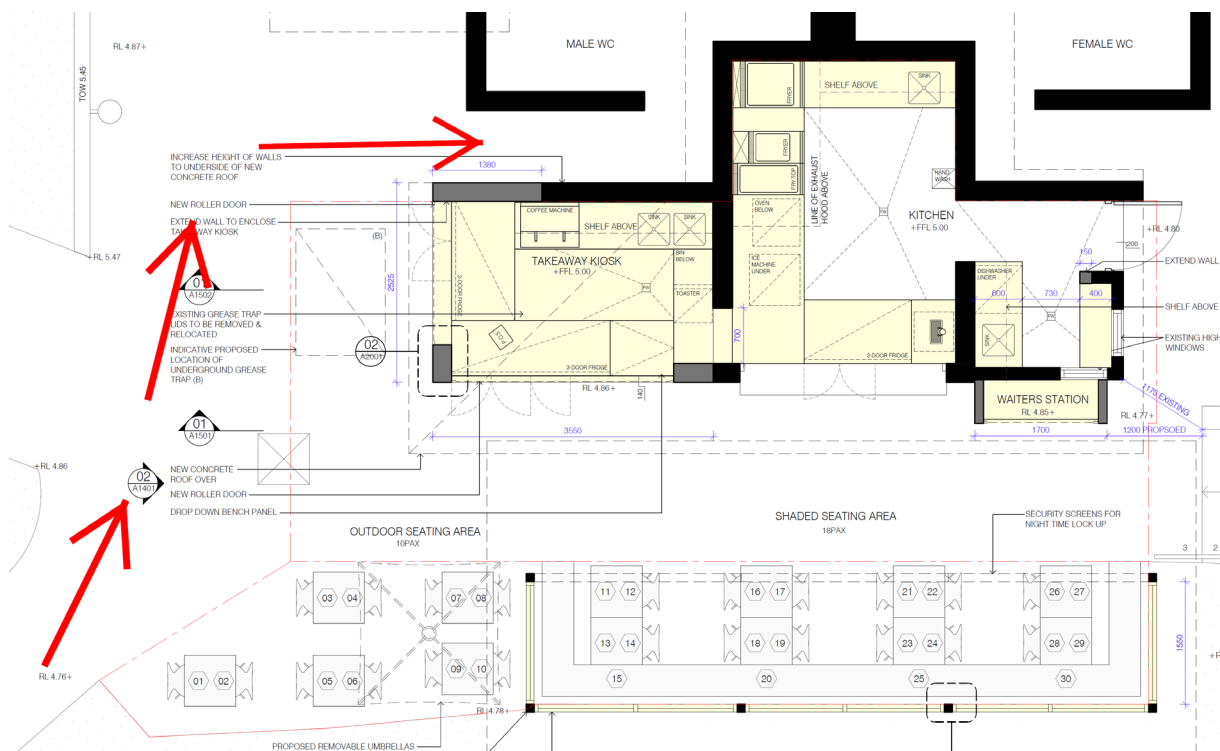
Concern is raised regarding the potential impacts that would arise from the consumption of alcohol on the premises.

The Statement of Environmental Effects and Plan of Management specify that the premises are not proposed to be licensed. This issue has not been given determining weight.

Pedestrian access

Concern is raised that the proposed outdoor seating will impede pedestrian access through the site and to the existing men's public toilets.

In this regard it is considered that sufficient access area is retained to the men's toilets, as shown in the following diagram:



This issue has not been given determining weight.

Previous unauthorised works

The applicant has amended the application to remove from it all previous unauthorised works which are the subject of a separate Building Information Certificate that is being assessed by Council.

At the time of preparation of this assessment report the Building Information Certificate has not been issued. It is recommended that a deferred commencement condition be imposed

requiring the Building Information Certificate to be issued prior to the consent becoming operative.

Master-planning for Little Manly Beach

Submissions have been made requesting further master planning of the Little Manly Beach area prior to the approval of changes to the café.

The applicant has lodged the development application which must be assessed pursuant to the planning controls and relevant legislation as it applies as this point in time.

In summary, this issue has not been given determining weight.

MEDIATION

No requests for mediation have been made in relation to this application.

REFERRALS

Internal referrals

Referral officer	Comments	Consent recommended
Aboriginal Heritage Office	<p>The Aboriginal Heritage Office has reviewed the additional information and does not object to the deferred commencement proposal, subject to any Heritage NSW, Northern Beaches Council or other relevant authority that may have an alternate recommendation.</p> <p>Just to confirm, the Aboriginal Heritage Office is a partnership of Councils and provides advice to those partners in relation to Aboriginal heritage matters. It has no legislative authority and is an advisory service only. Heritage NSW is the agency responsible for the legislation protecting Aboriginal heritage in NSW and is the agency responsible for issuing an Aboriginal Heritage Impact Permit for archaeological testing for this proposed development. It is the AHO's view that if development planning can identify Aboriginal heritage constraints as early in the planning process as possible and then avoid any Aboriginal sites or areas of potential, then there would be no requirement for an AHIP. In those cases where avoidance isn't possible, and an AHIP is necessary, then Heritage NSW must be contacted and its procedures followed. Whether this is prior to making an AHIP application for advice or at the time of application is up to the relevant parties.</p> <p><i>[Assessing Officer's comment: The context of the above referral comments is that the AHO originally requested that an AHIP be obtained prior to consent or the proposal be otherwise refused. However, subsequent discussions resulted in the AHO</i></p>	Yes, subject to conditions

Referral officer	Comments	Consent recommended
	<i>accepting that a deferred commencement condition could address this concern. A suitable condition is included in the recommendation of this assessment report requiring the carrying out of further archaeological investigations which themselves require an AHIP and, if identified as appropriate by those investigations, that an AHIP be obtained for the development.]</i>	
Environmental Health – Commercial Use	<p>Application is for the alterations and additions to the existing café Stuart Street, Little Manly Reserve, Manly.</p> <p>SEE advises the following:</p> <p>The development proposes a small rear extension including cold storage and freezer rooms and a bin storage area, as well as a reorganisation of the existing interior of the café and an addition to the outdoor seating area.</p> <p>The proposed works include condenser units for the cold storage that will be located externally on a slab adjacent to the northern side of the building. Despite the nearest residential receptors being located across the road as the condenser units would be required to run 24/7, without any adequate acoustic treatment there could be potential noise concerns for the residents. This could particularly be an issue during the night when background noise is typically lower.</p> <p>An acoustic assessment in accordance with NSW EPA Noise Policy for Industry will be required prior to the construction certificate being issued in order to evaluate the design of the mechanical plant including the condensers and to recommend any acoustic treatment.</p>	Yes, subject to conditions
Environmental Health – Contaminated Lands	<p>New Information – Additional Review 9 February 2021</p> <p>The applicant has submitted a Preliminary Site Investigation by Martens and Associates dated 14 January 2021 (reference: P208072JR01V01). The report concluded/recommended the following:</p> <p><i>Based on the site history, no significant risk to current or future receptors is expected at the site. No further investigation for contamination is warranted. If any unexpected finds (such as fibro material, odours or soil staining) are encountered at a later date, the unexpected find will require assessment by MA to determine requirements for additional investigation and / or remedial action.</i></p> <p>The proposal is therefore supported.</p>	Yes, subject to conditions

Referral officer	Comments	Consent recommended
Engineering	No objections subject to conditions	Yes, subject to conditions
Heritage	<p>The site contains a heritage item (Item I1 Harbour Foreshores). The Little Manly Tidal Pool is listed as a heritage item in Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 and is on the register of the National Trust.</p> <p>The proposal seeks consent for alterations and additions to the existing kiosk/cafe at Little Manly. Some of the larger components of the proposal include a new takeaway kiosk area and the creation of new bin, freezer and cool rooms to the rear. The heritage items are located to the south of the cafe, with I1 running along the mean high water mark and the tidal pool located further south into the harbour itself. Given the separation between the site of the building and the heritage items, the proposal is considered to not impact upon them or their significance.</p> <p>Therefore, Heritage raises no objections and requires no conditions.</p>	Yes
Landscape	The proposed works are largely confined to existing disturbed or built areas. No objections are raised to approval subject to conditions as recommended.	Yes, subject to conditions
Natural Environment – Biodiversity	<p>Council's Biodiversity referrals team have assessed the development application against the following provisions:</p> <ul style="list-style-type: none"> • NSW Biodiversity Conservation Act 2016 (BC Act) • NSW SEPP (Coastal Management) - Coastal Environment Area • Manly LEP Clause 6.5 (Terrestrial Biodiversity) • Manly DCP Clause 5.3.2.1 (Threatened Species and Critical Habitat Lands) • Manly DCP Clause Manly DCP Clause 3.3.1.iv) (Landscaping in Bandicoot Habitat) <p>Whilst the amended Terrestrial Biodiversity Report (GIS Environmental Consultants 12 January 2021) has made reference to risks associated with increased traffic and noise generation, it has not provided mitigation measures to reduce potential impacts on the endangered Long-Nosed Bandicoot or Little Penguin populations. In light of this, Council's Biodiversity referrals team have proposed conditions of consent to mitigate potential impacts resulting from noise and disturbance associated with operation of the restaurant. This includes a proposed reduction in approved operating hours on some evenings to offset a likely intensification of use and additional traffic as a result of the increased capacity. This restriction will mitigate any potential increase in bandicoot road mortality during dusk/evening hours (when</p>	Yes, subject to conditions

Referral officer	Comments	Consent recommended
	<p>bandicoots are most active), as well as managing disturbance to penguins attempting to come ashore to nests after dusk.</p> <p>Any increase in noise associated with operation of the condenser unit will be managed via conditions provided by Council's Environmental Health referral body, which will require preparation of an acoustic report and no increase in noise above background levels at the nearest residential receptors.</p> <p>Subject to the recommended conditions of consent, it is considered that the proposal can be managed to avoid adverse impacts to the endangered populations of Little Penguins and Long-Nosed Bandicoots.</p> <p><i>[Assessing officer's comment: The conditions recommend that the closing time for the premises be 7pm Wednesday to Saturday instead of the currently approved 10pm. The closing time on Sunday is unchanged at 7pm and unchanged on Monday and Tuesday at 5pm. The Biodiversity Officer's comments identify a nexus between the development that is proposed and the condition that is recommended. However, instead of limiting the hours of operation the recommendation of this assessment report is that the intensification of the use of the premises (ie: the additional seating for 12 patrons) not be approved for reasons relating to traffic and parking impacts. The proposal includes the replacement of existing PVC blinds around the seating area with glass louvres which will further mitigate potential impacts on local wildlife.]</i></p> <p>Additional Comments from Biodiversity Officer 29/03/2021</p> <p>The Biodiversity referral body considers that the proposal to increase seating capacity will result in an intensification of use, greater traffic and increased human presence within the area during dusk and evening when penguins and bandicoots are most active in the area and vulnerable to disturbance. Given that the existing approved hours allow for operation up to 10pm on some nights, a condition was proposed to mitigate potential impacts to bandicoots and nesting penguins by limiting operating hours to no later than 7pm each night. However, the assessment report's recommendation to not approve the</p>	

Referral officer	Comments	Consent recommended
	<p>increase in capacity would also satisfactorily address this concern.</p> <p>Should the panel determine to approve the proposed capacity increase, the Biodiversity referral body's support for the proposal would be contingent upon a condition or other mechanism to limit the café's operating hours such that trading during dusk and evening hours is minimised.</p>	
Natural Environment – Coastal	<p>The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018, Sydney Harbour Catchment Regional Environment Plan 2005 and Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005. It has also been assessed against requirements of the Manly LEP and DCP.</p> <p>The application has also been assessed using Northern Beaches SREP assessment template.</p> <p>The proposal is therefore supported.</p>	Yes
Parks and Reserves	No objections are raised to approval subject to conditions to protect the public and Council assets.	Yes, subject to conditions
Traffic Engineer	<p>The proposal is supported on Traffic and Transport grounds, with all parking for the cafe to be provided on street as the premises is located wholly within Council reserve land. The existing seating area increase would require 1 additional parking space to be provided to comply with the DCP requirement, however this is not possible given the site location. The nearby "No Parking" zone can be utilised for delivery purposes subject to signage change approval for the Northern Beaches Council Local Traffic Committee to formalise this use.</p> <p>The pedestrian access is to be improved to the cafe by removal of the existing gate and replacing with a suitable removable bollard solution.</p> <p>All access work is to comply with the accessibility standards and Council Standards of construction. The application is therefore supported.</p> <p>The proposal is therefore supported.</p> <p><i>[Assessing officer's comment: The issue of traffic and parking is discussed in detail below under the heading "Schedule 3: Parking and Access".]</i></p>	Yes, subject to conditions

Referral officer	Comments	Consent recommended
Waste	The proposal is acceptable. The proposal is therefore supported.	Yes, subject to conditions

External referrals

Referral Body External	Comments	Consent Recommended
Ausgrid	<p>Ausgrid has no objection to this development application, however the design submission must comply with relevant Ausgrid Network Standards and Safe Work NSW Codes of Practice for construction works near existing electrical assets.</p> <p>The “as constructed” minimum clearances to Ausgrid’s infrastructure must not be encroached by the building development. It also remains the responsibility of the developer and relevant contractors to verify and maintain these clearances onsite.</p>	Yes, subject to condition

ENVIRONMENTAL PLANNING INSTRUMENTS

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

SEPP 55 – Remediation of Land and draft Remediation of Land SEPP

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. The applicant has submitted a draft Preliminary Site Investigation (Martens Consulting Engineers, 14/1/2021). The report relevantly concludes:

Based on the lines of evidence outlined above, the Investigation Area is considered to generally have a low risk of contamination and is considered suitable for continued commercial use as a café following the recent completion of development work.

The report has been reviewed by Council’s Environmental Health Officer who has raised no objections subject to conditions.

The draft SEPP proposes to rationalise the existing controls for remediation of land and update the relevant guidelines. The proposal is consistent with these requirements.

SEPP 64 – Advertising and Signage

The proposal includes the erection of three (3) non-illuminated wall signs, each reading “Ripples little manly”, as follows:

1. North-west elevation measuring 1.8m x 0.5m.
2. South-west elevation measuring 1.8m x 0.5m.
3. South-west elevation measuring 1.4m x 0.4m.

The signs fall within the definition of “*business identification signs*”. Under clause 8(1) of SEPP 64 Council must be satisfied that the proposal is consistent with the aims in clause 3(1)(a) of SEPP 64 and the assessment criteria in Schedule 1.

The proposal is considered to be consistent with the aims of SEPP 64 in that the signs are compatible with the desired amenity and visual character of an area, provide effective communication of the use of the building as a café, are in suitable locations, and are of high quality design and finish.

The signs are considered to satisfy the assessment criteria in Schedule 1 of the policy:

- *Character of the area*: The signs are consistent with the character of the area.
- *Special areas*: The signs do not detract from the open space area that they are located in.
- *Views and vistas*: The signs are considered to be of an appropriate scale proportion and form and contribute to the visual interest of the area. They do not result in visual clutter or protrude above the building. They do not require ongoing vegetation management.
- *Site and building*: The signs are in scale with the building to which they are attached.
- *Associated devices and logos with advertisements and advertising structures*: The logos, where applicable, are designed as an integral part of the signs.
- *Illumination*: The signs are not proposed to be illuminated.
- *Safety*: The signs do not reduce safety of any public road, pedestrians or bicyclists.

In summary, the proposed signs satisfy the requirements of SEPP 64.

SEPP (Infrastructure) 2007

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

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

The proposal was referred to Ausgrid who raised no objections.

SEPP (Vegetation in Non-Rural Areas) 2017

The proposal does not involve the removal of any vegetation.

SEPP (Coastal Management) 2018

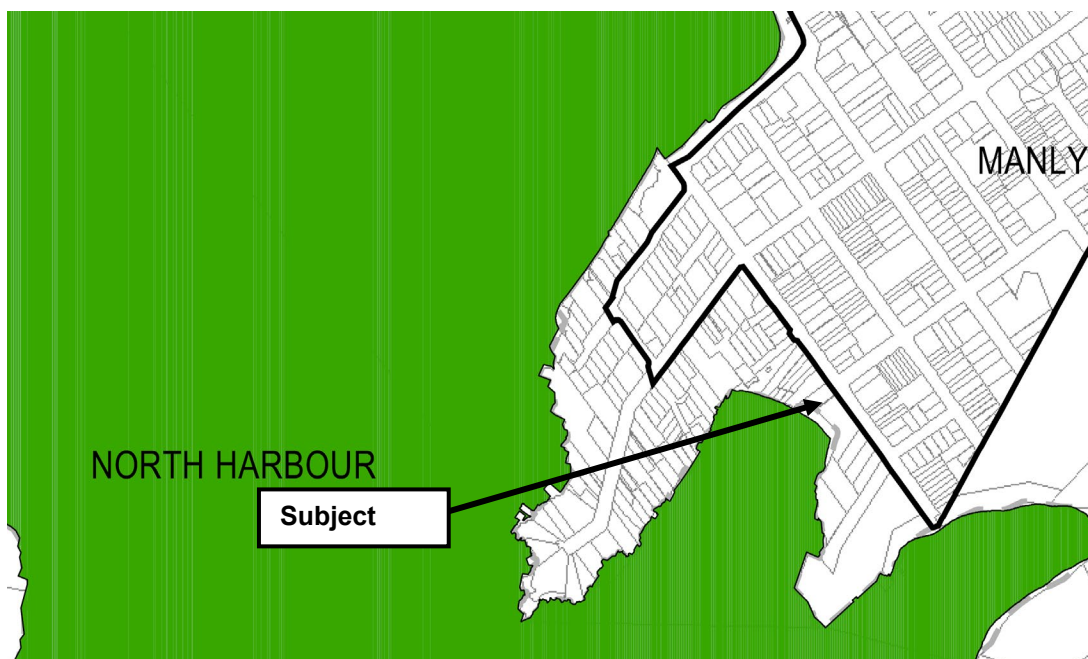
The site is located within the Coastal Environment Area and the Coastal Use Area as identified in SEPP (Coastal Management) 2018. Clauses 13 and 14 of SEPP (Coastal Management) 2018 contain a list of matters for consideration with regards to development in these areas. However, clauses 13(3) and 14(2) provide that these are not applicable to land within the Foreshores and Waterways Area within the meaning of REP (Sydney Harbour Catchment) 2005. As discussed below, the site is within the Foreshores and Waterways Area.

Clause 15 of SEPP (Coastal Management) 2018 requires that Council be satisfied that development is not likely to increase the risk of coastal hazards. Given the minor nature of the works proposed and the existing presence of the café the proposed development is unlikely to increase the risk of coastal hazards.

Clause 16 of SEPP (Coastal Management) 2018 requires that Council consider the relevant provisions of any coastal management program when assessing this development application. The site is not subject to any coastal management programs.

SREP (Sydney Harbour Catchment) 2005

SREP (Sydney Harbour Catchment) 2005 applies to all land within the Sydney Harbour Catchment. However, the matters for consideration in relation to development applications apply only to land within the Foreshores and Waterways Area. The following extract from the Zoning Map shows that the subject site is affected by the provisions of SREP (Sydney Harbour Catchment) 2005.



Map 1 - SREP (Sydney Harbour Catchment) 2005 Zoning Map (Sheet 16). The site is within the boundary of the Foreshore Area which is indicated by the black line.

Part 3 - Foreshores and Waterways Area

Division 1 - Development Control

The land is unzoned under SREP (Sydney Harbour Catchment) 2005 and is adjacent to land zoned *W2 Environment Protection* under the SREP. The proposal is considered to be consistent with the objectives of the zone in that:

- a) The proposal will have no impact on the natural and cultural values of the waterway subject to appropriate and standard erosion, sedimentation and pollution management and controls.
- b) Subject to compliance with appropriate conditions the application there will be no long-term detrimental impacts on the waterway or adjoining foreshores.
- c) The proposal does not present opportunities for enhancing or rehabilitating the waterway or foreshore.
- d) The proposal is consistent with the long-term management of the waterway and foreshore.

Division 2 - Matters for Consideration

These considerations are summarised in the following Table:

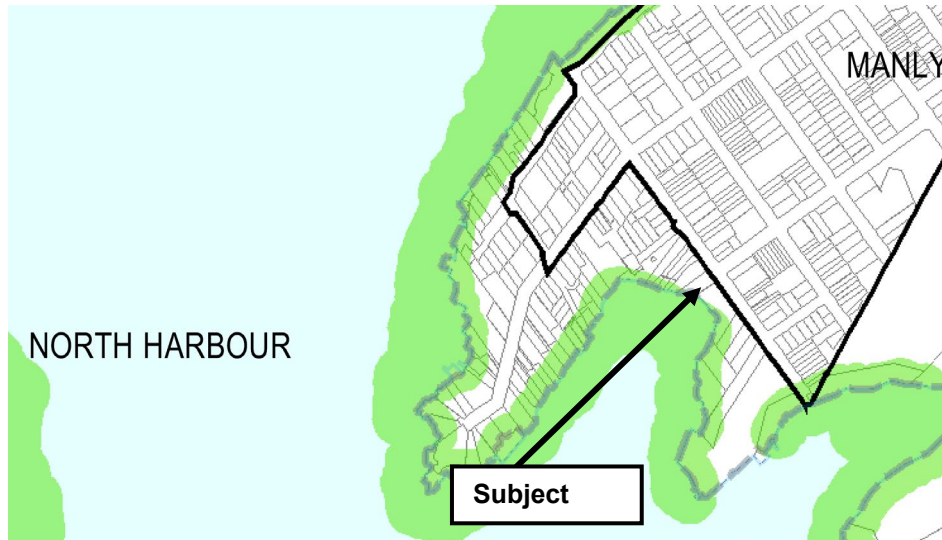
Biodiversity, ecology and environment protection	
(a) development should have a neutral or beneficial effect on the quality of water entering the waterways	No impact, subject to conditions regarding erosion and siltation during construction.
(b) development should protect and enhance terrestrial and aquatic species, populations and ecological communities and, in particular, should avoid physical damage and shading of aquatic vegetation (such as seagrass, saltmarsh and algal and mangrove communities)	No impact, subject to compliance with the Terrestrial Biodiversity Impact Assessment by GIS Consultants and conditions as recommended by Council's Biodiversity Officer.
(c) development should promote ecological connectivity between neighbouring areas of aquatic vegetation (such as seagrass, saltmarsh and algal and mangrove communities)	
(d) development should avoid indirect impacts on aquatic vegetation (such as changes to flow, current and wave action and changes to water quality) as a result of increased access	
(e) development should protect and reinstate natural intertidal foreshore areas, natural landforms and native vegetation	The proposal will retain the existing intertidal area.
(f) development should retain, rehabilitate and restore riparian land	No impact.
(g) development on land adjoining wetlands should maintain and enhance the ecological integrity of the wetlands and, where possible, should provide a vegetative buffer to protect the wetlands	No impact, subject to conditions regarding erosion and siltation during construction.
(h) the cumulative environmental impact of development	

(i) whether sediments in the waterway adjacent to the development are contaminated, and what means will minimise their disturbance	
Public access to, and use of, foreshores and waterways	
(a) development should maintain and improve public access to and along the foreshore, without adversely impacting on watercourses, wetlands, riparian lands or remnant vegetation	Existing public access to and along the foreshore is maintained.
(b) development should maintain and improve public access to and from the waterways for recreational purposes (such as swimming, fishing and boating), without adversely impacting on watercourses, wetlands, riparian lands or remnant vegetation	
(c) if foreshore land made available for public access is not in public ownership, development should provide appropriate tenure and management mechanisms to safeguard public access to, and public use of, that land	The land is owned by Council.
(d) the undesirability of boardwalks as a means of access across or along land below the mean high water mark if adequate alternative public access can otherwise be provided	Not relevant.
(e) the need to minimise disturbance of contaminated sediments	No impact.
Maintenance of a working harbour	
(a) foreshore sites should be retained so as to preserve the character and functions of a working harbour, in relation to both current and future demand	Not relevant.
(b) consideration should be given to integrating facilities for maritime activities in any development	
(c) in the case of development on land that adjoins land used for industrial and commercial maritime purposes, development should be compatible with the use of the adjoining land for those purposes	
(d) in the case of development for industrial and commercial maritime purposes, development should provide and maintain public access to and along the foreshore where such access does not interfere with the use of the land for those purposes	
Interrelationship of waterway and foreshore uses	
(a) development should promote equitable use of the waterway, including use by passive recreation craft	No impact.
(b) development on foreshore land should minimise any adverse impact on the use of the waterway, including the use of the waterway for commercial and recreational uses	

(c) development on foreshore land should minimise excessive congestion of traffic in the waterways or along the foreshore	
(d) water-dependent land uses should have priority over other uses	Not relevant.
(e) development should avoid conflict between the various uses in the waterways and along the foreshores	
Foreshore and waterways scenic quality	
(a) the scale, form, design and siting of any building should be based on an analysis of: (i) the land on which it is to be erected, and (ii) the adjoining land, and (iii) the likely future character of the locality	Proposal is consistent with the existing building bulk and scale and character of the locality.
(b) development should maintain, protect and enhance the unique visual qualities of Sydney Harbour and its islands, foreshores and tributaries	Minimal impact.
(c) the cumulative impact of water-based development should not detract from the character of the waterways and adjoining foreshores	Not relevant.
Maintenance, protection and enhancement of views	
(a) development should maintain, protect and enhance views (including night views) to and from Sydney Harbour	The proposal will not have a significant impact on views from the harbour or on heritage items.
(b) development should minimise any adverse impacts on views and vistas to and from public places, landmarks and heritage items	
(c) the cumulative impact of development on views should be minimised	
Boat storage facilities	
(a) development should increase the number of public boat storage facilities and encourage the use of such facilities	Not relevant.
(b) development should avoid the proliferation of boat sheds and other related buildings and structures below the mean high water mark	
(c) development should provide for the shared use of private boat storage facilities	
(d) development should avoid the proliferation of private boat storage facilities in and over the waterways by ensuring that all such facilities satisfy a demonstrated demand	
(e) boat storage facilities should be as visually unobtrusive as possible	
(f) in the case of permanent boat storage, the safety and utility of the development should not be adversely affected by the wave environment, and the development should avoid adverse impacts on safe navigation and single moorings	

Part 6 - Wetlands Protection

The site is within proximity to wetlands protection areas identified on the Wetland Protection Area Map:



Map 2 - SREP (Sydney Harbour Catchment) 2005 Wetlands Protection Area Map (Sheet 12). The wetlands protection areas are shown in green.

The proposed development is considered to be consistent with the objectives of this designation at Clause 61 of the SREP in that it will not impact on the health, viability, natural ecological functions or scenic quality of wetlands. Appropriate management during construction will ensure no impact in terms of erosion or siltation.

The matters for consideration under Clause 63 of the SREP are summarised in the following table:

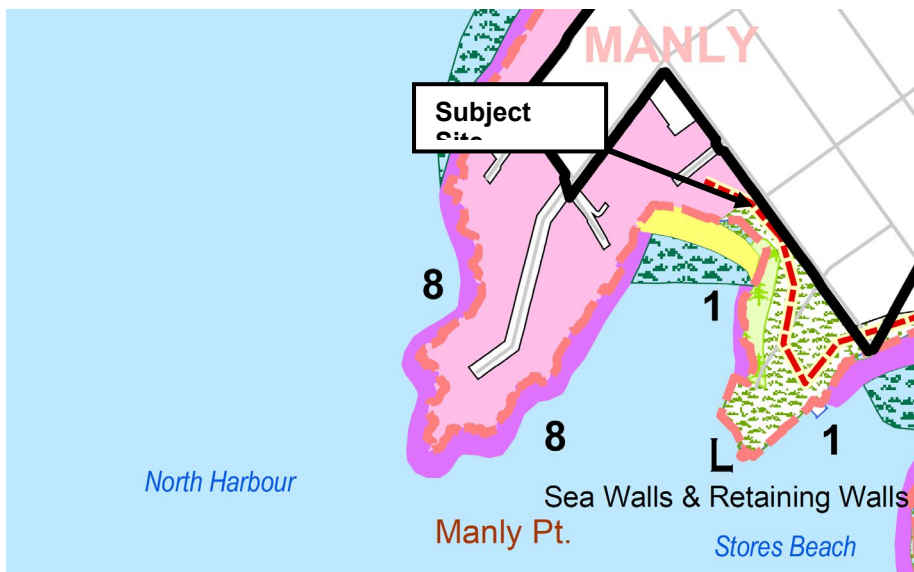
Matter for consideration	Response
(a) the development should have a neutral or beneficial effect on the quality of water entering the waterways,	No impact, subject to conditions regarding erosion and siltation during construction and the implementation of the recommendations of the Terrestrial Biodiversity Impact Assessment by GIS Consultants and conditions recommended by Council's Biodiversity Officer.
(b) the environmental effects of the development, including effects on: <ul style="list-style-type: none"> (i) the growth of native plant communities, (ii) the survival of native wildlife populations, (iii) the provision and quality of habitats for both indigenous and migratory species, (iv) the surface and groundwater characteristics of the site on which the development is proposed to be carried out and of the surrounding areas, including salinity and water quality and whether the wetland ecosystems are groundwater dependent, 	

Matter for consideration	Response
(c) whether adequate safeguards and rehabilitation measures have been, or will be, made to protect the environment,	
(d) whether carrying out the development would be consistent with the principles set out in <i>The NSW Wetlands Management Policy</i> (as published in March 1996 by the then Department of Land and Water Conservation),	
(e) whether the development adequately preserves and enhances local native vegetation,	No vegetation is affected by the proposal.
(f) whether the development application adequately demonstrates: <ul style="list-style-type: none"> (i) how the direct and indirect impacts of the development will preserve and enhance wetlands, and (ii) how the development will preserve and enhance the continuity and integrity of the wetlands, and (iii) how soil erosion and siltation will be minimised both while the development is being carried out and after it is completed, and (iv) how appropriate on-site measures are to be implemented to ensure that the intertidal zone is kept free from pollutants arising from the development, and (v) that the nutrient levels in the wetlands do not increase as a consequence of the development, and (vi) that stands of vegetation (both terrestrial and aquatic) are protected or rehabilitated, and (vii) that the development minimises physical damage to aquatic ecological communities, and (viii) that the development does not cause physical damage to aquatic ecological communities, 	No impact, subject to conditions regarding erosion and siltation during construction.
(g) whether conditions should be imposed on the carrying out of the development requiring the carrying out of works to preserve or enhance the value of any surrounding wetlands.	No impact, subject to conditions regarding erosion and siltation during construction.

Sydney Harbour Foreshores and Waterways Area DCP 2005

The Sydney Harbour Foreshores and Waterways Area DCP 2005 ("the Harbour DCP") contains provisions in terms of Ecological Assessment, Landscape Assessment, Design Guidelines, and Other Matters for Consideration.

In terms of Ecological Assessment, the site of the proposed development is identified on the Harbour DCP Map as being "Grassland" (see extract of map below):



Map 3 – Extract from SHFWA DCP Ecological Assessment Map.

This area is identified at Table 1 as having low conservation value. The character of this area is maintained by this proposal.

The site is within the vicinity of the “Sandy Beaches” Terrestrial Ecological Community and, subject to appropriate conditions regarding construction management, soil erosion and sediment control, will have no impacts.

The proposal is considered to be consistent with the performance criteria for the identified ecological communities.

In terms of Landscape Assessment, the Harbour DCP identifies sixteen different landscape character types and provides assessment criteria for each type. The subject site is within Landscape Character Type 1. This area applies to undeveloped headlands and shorelines. The intent is to ensure the key features which contribute to the visual character of the area are protected.

The proposal is considered to be consistent with the landscape performance criteria. The natural elements of the area around the building are maintained and protected. The visual continuity of the beach is retained and unbroken.

In terms of Design Guidelines, Part 5.3 of the Harbour DCP relates to the siting of buildings and structures. The proposal is generally consistent with the criteria listed in Part 5.3. Part 5.4 contains guidelines in terms of the built form of development. The proposal maintains the scale of the existing development in the locality. The cumulative visual impact of the proposed building in the locality is considered to be acceptable in that it will maintain the existing visual character.

In summary, it is considered that the proposal is consistent with the provisions of the Harbour DCP.

Draft SEPP Environment 2017

This draft SEPP proposes to integrate the provisions of seven (7) SEPPs/SREPs including SREP (Sydney Harbour Catchment) 2005. The majority of the current provisions of SREP

(Sydney Harbour Catchment) 2005 would be transferred to the draft SEPP with necessary updates and some amendments. The proposal would not offend the relevant provisions of the draft SEPP due to the nature of the proposed development.

Local Environment Plans (LEP's)

Manly Local Environmental Plan 2013 (MLEP 2013)

Consideration of proposal against Manly Local Environment Plan 2013:

Definition of proposed development: (ref. MLEP 2013 Dictionary)	Restaurants or cafes
Zone:	RE1 Public Recreation
Permitted with Consent or Prohibited:	Permissible with consent

Objectives of the Zone
<ul style="list-style-type: none"> To enable land to be used for public open space or recreational purposes. To provide a range of recreational settings and activities and compatible land uses. To protect and enhance the natural environment for recreational purposes. To protect, manage and restore areas visually exposed to the waters of Middle Harbour, North Harbour, Burnt Bridge Creek and the Pacific Ocean. To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.
<p>The development is considered to be consistent with the relevant objectives of the zone for the following reasons:</p> <ul style="list-style-type: none"> The proposal is compatible with the recreational setting. The natural environment around the building is maintained for recreational purposes. The proposal has minimal visual impact. The proposal maintains the existing height and bulk of the building.

Principal Development Standards:			
Standard	Permitted	Proposed	Complies
None applicable			N/A

Compliance Assessment

Clause	Compliance with Requirements
2.7 Development requires consent	Yes
5.10 Heritage conservation	Yes
6.1 Acid sulfate soils	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes

Detailed Assessment

Zone RE1 Public Recreation

The proposed works to the café are permissible with development consent as it falls within the definition of “restaurants or cafes”. The take-away sales area and the proposed signage are considered to be ancillary to the café use.

5.10 Heritage conservation

The site is within the vicinity of item I1 – Harbour Foreshores. The proposed works have no impact on the heritage significance of that heritage item. Council's Heritage Officer has raised no objections to the proposal.

6.1 Acid sulfate soils

The site is partly within an area identified as Class 5 on the Acid Sulfate Soils map. The proposal involves the disturbance of less than 1 tonne of soil and will not lower the water table and, pursuant to clause 51(6) of MLEP 2013, the provisions relating to acid sulfate soils are not applicable to this development.

6.5 Terrestrial biodiversity

The site is identified on the Terrestrial Biodiversity map. The impact of the proposal on terrestrial biodiversity, in particular the Little Penguin and the Long-nosed Bandicoot, is examined in the Biodiversity Report by GIS Consultants. This report has been reviewed by Council's Biodiversity Officer who has raised no objections subject to conditions.

The comments from Council's Biodiversity Officer are discussed above under the heading “Internal Referrals”. Those comments identify a nexus between the intensification of the use of the site and its impact on local biodiversity and that the hours of operation of the premises should be limited to less than the currently approved hours (ie: 7pm instead of 10pm Wednesday to Saturday) to mitigate those impacts. This assessment report recommends, instead, that the intensification of the use of the site (ie: the additional seating for 12 patrons) not be approved and, in these circumstances, restricting the hours of operation to less than currently approved is considered to be unnecessary.

6.8 Landslide risk

The site is identified on the Landslide Risk map.

Under clause 6.8(3) Council must consider the following matters in deciding whether or not the proposal takes into account the risk of landslide:

- (a) *site layout, including access,*
- (b) *the development's design and construction methods,*
- (c) *the amount of cut and fill that will be required for the development,*
- (d) *waste water management, stormwater and drainage across the land,*
- (e) *the geotechnical constraints of the site,*
- (f) *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

It is considered that the proposal, which involves minor building additions on an area that is already paved, satisfies the above criteria.

Under clause 6.8(4) development consent must not be granted to development on land to which this clause applies unless Council is satisfied that the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and that:

- (a) *the development is designed, sited and will be managed to avoid any landslide risk or significant adverse impact on the development and the land surrounding the development, or*
- (b) *if that risk or impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that risk or impact, or*
- (c) *if that risk or impact cannot be minimised—the development will be managed to mitigate that risk or impact.*

The proposal will not increase stormwater run-off from the site as it does not increase the paved area. The proposal will not be subject to landslide risk considering the minor nature of the additions and the existing built structures.

6.9 Foreshore scenic protection area

The site is located within the foreshore scenic protection area. Under clause 6.9(3) Council must consider the following matters:

- (a) *impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,*
- (b) *measures to protect and improve scenic qualities of the coastline,*
- (c) *suitability of development given its type, location and design and its relationship with and impact on the foreshore,*
- (d) *measures to reduce the potential for conflict between land-based and water-based coastal activities.*

The proposal is form minor additions to an existing building. It is considered that the development will not have a significant impact on the visual amenity of the harbour or the scenic qualities of the area. It will not create conflict between land-based and water-based activities and is considered to satisfy the matters for consideration in clause 6.9 of MLEP 2013.

Manly Development Control Plan 2013 (MDCP 2013)

Detailed Assessment

Part 3.2 Heritage Considerations

The site contains a heritage item (Item I1 Harbour Foreshores). The Little Manly Tidal Pool is listed as a heritage item in Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 and is on the register of the National Trust (noting that National Trust listing is not a matter for consideration in terms of the force given to environmental planning instruments such as the LEP and SREP).

Council's Heritage Officer has reviewed the proposal and has raised no objections. The comments and conclusions of Council's Heritage Officer are concurred with.

The site has also been reviewed with regards to its impact on Aboriginal heritage and an Aboriginal Due Diligence Assessment has been submitted. The authors of that report carried out a non-invasive site inspection which did not record any Aboriginal objects or sites. However, approximately 70 metres to the west of the report's study area there is a site recorded on the Aboriginal Heritage Inventory Management System, being the burial of the partial remains of an Aboriginal female in foreshore sand dunes.

The report notes:

Aboriginal sites including burials, rock shelters, art, middens or stone artefacts could be expected within the study area. The study area does not contain any outcropping of sandstone suitable for habitation structures such as rock shelters, however it is possible that sandstone bedrock located below the sand could contain rock engravings or grinding grooves created by sharpening ground edged implements. The surface of the sand dune on which the kiosk building sits has been modified to create a flatter surface above the sandstone beach wall. The sand dune behind the kiosk has also been truncated during its construction, however it is anticipated that any burials or subsurface archaeological deposits could remain.

The report makes three recommendations:

- 1. Aboriginal consultation should be undertaken in accordance with OEH's Aboriginal cultural heritage consultation requirements for proponents 2010. The results of that consultation must be detailed in an Aboriginal Cultural Heritage Assessment Report (ACHAR);*
- 2. Archaeological testing in accordance with OEH's Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW cannot be undertaken due to the possibility of a burial within the study area and the proximity to a registered Aboriginal burial. Therefore, it will be necessary to apply for an Aboriginal Heritage Impact Permit (AHIP) to undertake test excavations to determine the nature and extent of the archaeological deposit;*
- 3. Following test excavations, it may be necessary to apply for a subsequent AHIP for harm, including relevant mitigation, which could include salvage excavations, depending on the results of the test excavations, prior to the proposed development.*

The proposal was referred to the Aboriginal Heritage Office, a non-statutory advisory body, for comment. Initial feedback was that the application should be refused until an investigatory AHIP was obtained and further investigations carried out to determine if the proposal would have any impacts on Aboriginal heritage. Following further representations from the applicant were made to the Aboriginal Heritage Office, which provided the following comments:

The Aboriginal Heritage Office has reviewed the additional information and does not object to the deferred commencement proposal, subject to any Heritage NSW, Northern Beaches Council or other relevant authority that may have an alternate recommendation.

Just to confirm, the Aboriginal Heritage Office is a partnership of Councils and provides advice to those partners in relation to Aboriginal heritage matters. It has no legislative authority and is an advisory service only. Heritage NSW is the agency responsible for the legislation protecting Aboriginal heritage in NSW and is the agency responsible for issuing an Aboriginal Heritage Impact Permit for archaeological testing for this proposed development. It is the AHO's view that if development planning can identify Aboriginal heritage constraints as

early in the planning process as possible and then avoid any Aboriginal sites or areas of potential, then there would be no requirement for an AHIP. In those cases where avoidance isn't possible, and an AHIP is necessary, then Heritage NSW must be contacted and its procedures followed. Whether this is prior to making an AHIP application for advice or at the time of application is up to the relevant parties.

Having reviewed the Aboriginal Due Diligence report and the comments from the Aboriginal Heritage Office it is considered that this issue may be addressed by an appropriate deferred consent condition. The condition would require that an AHIP be obtained to complete site investigations and that if those investigations determine that there is no likelihood of damage to objects or places of Aboriginal heritage that the development consent be issued. If, however, the further site investigations identify that a further AHIP is required for the development then the consent not become operative until a further AHIP is obtained. The process of obtaining that further AHIP would enable the NSW Heritage Office to determine if impacts on Aboriginal heritage were reasonable under the relevant legislation (*National Parks and Wildlife Act*, etc).

Part 3.4.2.3 Acoustical Privacy (Noise Nuisance)

The original proposal included the construction of a cool room. However, this element of the proposal was removed from the application as it has already been constructed and is the subject of a separate Building Information Certificate, although the use of the cool room remains a part of the proposal. Council's Environmental Health Officer has reviewed the proposal, noted the separation distance to the nearest residential premises, and recommended that the potential for noise arising from the operation of the cool room could be addressed by the submission of an acoustic report prior to the release of the Construction Certification associated with this development application and the implementation of the recommendations of such a study. Such conditions are considered to be an appropriate and practical way of addressing potential noise from the operation of the cool room.

The proposal does not seek to extend the currently approved hours of operation. However, the proposal does seek to increase patron seating. The replacement of p.v.c. blinds with fixed glazing around the existing seating area will mitigate noise from patrons, but the proposed additional external seating area may generate noise. The applicant was requested to submit a Plan of Management addressing patron behaviour (amongst other things). The PoM submitted in response to this request was considered to be inadequate but an amended PoM was submitted and is considered to be satisfactory, including that staff take reasonable steps to control patron behaviour and that no amplified music is to be played.

Part 4.4.3 Signage

The proposal includes three non-illuminated wall signs that read "Ripples little manly". The signs are considered to satisfy the controls applicable to all development types (Part 4.4.3.1), with the signage not considered to be excessive, the content relating to the use of the building, the design integrated with the building, and with no illumination proposed.

The signs satisfy the requirements to flush wall signs (Part 4.4.3.3, paragraphs (f), (g) and (h)), in that they are not on a wall adjoining residential premises or hard on the common boundary and are appropriately located on the wall of the building. The area of the signs is less than the maximum permitted in the MDCP 2013 (ie: 4.6 times the distance of the signs from ground level).

Part 5.4.2 Threatened Species and Critical Habitat Lands

The site is identified on the Terrestrial Biodiversity map. The impact of the proposal on terrestrial biodiversity, in particular the Little Penguin and the Long-nosed Bandicoot, is examined in the Biodiversity Report by GIS Consultants. This report has been reviewed by Council's Biodiversity Officer who has raised no objections subject to conditions.

The comments from Council's Biodiversity Officer are discussed above under the heading "Internal Referrals". Those comments identify a nexus between the intensification of the use of the site and its impact on local biodiversity and that the hours of operation of the premises should be limited to less than the currently approved hours (ie: 7pm instead of 10pm Wednesday to Saturday) to mitigate those impacts. Instead, this issue has been addressed in the recommendation of this assessment report with a condition that restricts patron seating to that which has previously been approved (ie: 20 patrons) to address traffic and parking impacts. This condition also addresses the concerns raised by Council's Biodiversity Officer.

Schedule 3 Parking and Access

The proposal involves the addition of approximately 9.0sqm of serviced area, being the outdoor seating for 12 patrons. The existing seating area of 14.0sqm with seating for 20 patrons is to be retained but will be enclosed by fixed windows rather than the existing p.v.c. roller blinds.

Schedule 3 of the MDCP 2013 requires car parking to be provided at a rate of 1 parking space for every 40sqm of gross floor area of serviced area. In this regard the additional external seating area does not comprise "gross floor area" because it is not enclosed by walls, but the existing seating will become "gross floor area" by virtue of the proposed fixed glazing which will enclose the area.

Strict application of the requirements of the DCP 2013 with regards to the provision of car parking would be that no spaces are currently required because the existing seating area is not gross floor area. The development will generate the need for one car space as a result of the existing seating area becoming enclosed but none for the external seating area.

No additional car parking is proposed.

The applicant has submitted a Traffic and Parking Study. The study acknowledges that on-street parking is in high demand, particularly in summer. It has been observed that the local roads are narrow when on-street parking is occupied.

The Traffic and Parking Study has been prepared on the assumption that all patrons of the café will be visiting the site for other reasons, ie: to utilise the beach, but provides no evidence in this regard. It is considered that this assumption is incorrect and that the café will, to an extent, have patrons that visit the site specifically to use the café.

Consequently, the conclusions in the Traffic and Parking Study (ie: that the proposal will have no traffic and parking impacts) are not concurred with. It is considered that the proposed intensification of the use of the café, through the increase in patron seating from 20 patrons to 32 patrons, will result in a reduction in the availability of on-street parking (which is in high demand) and generate additional traffic that has not been adequately addressed in the Traffic and Parking Study. These impacts will also have an impact on the amenity of local residents.

To address these concerns, it is recommended that the proposed additional seating for 12 patrons not be approved. A suitable condition is included in the recommendation of this assessment report.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The site is identified on the Terrestrial Biodiversity map. The impact of the proposal on terrestrial biodiversity, in particular the Little Penguin and the Long-nosed Bandicoot, is examined in the Biodiversity Report by GIS Consultants. This report has been reviewed by Council's Biodiversity Officer who has raised no objections subject to conditions.

The comments from Council's Biodiversity Officer are discussed above under the heading "Internal Referrals". Those comments identify a nexus between the intensification of the use of the site and its impact on local biodiversity and that the hours of operation of the premises should be limited to less than the currently approved hours (ie: 7pm instead of 10pm Wednesday to Saturday) to mitigate those impacts. However, this assessment report recommends that the intensification of the use of the site not be approved and that the patron capacity of the café remain as currently approved to address parking and traffic impacts. Consequently, it is considered unnecessary to further limit the hours of operation beyond the currently approved hours.

POLICY CONTROLS

Northern Beaches Section 7.12 Contribution Plan 2019

A contribution of \$4,950.00 is payable under the Northern Beaches Section 7.12 Contributions Plan 2019. An appropriate condition of consent is included in the recommendation of this report.

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;
- Manly Local Environmental Plan 2013
- Manly Development Control Plan 2013
- Little Manly Coastline Plan of Management 2004
- State Environmental Planning Policy No. 19 – Bushland in Urban Areas
- State Environmental Planning Policy No. 55 – Remediation of Land and Draft SEPP
- State Environmental Planning Policy (Coastal Management) 2018
- Draft State Environmental Planning Policy – Environment
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The proposal has been assessed against the relevant matters for consideration under Sections 4.15 of the EP&A Act 1979. This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions.

The proposal was notified on two occasions, with the first notification generating 8 objections and the second notification generating 23 submissions, of which 4 supported the proposal.

Many objections related to the hours of operation of the café and the consumption of alcohol on the premises. However, the proposal does not seek to extend the approved hours of operation or include the consumption of alcohol so those objections have not been given determining weight.

The applicant submitted a Plan of Management in response to a request for additional information but this was considered to be deficient. An amended Plan of Management was subsequently provided which would adequately address issues related to patron behaviour, delivery times, waste management, etc.

The proposal as originally submitted included the construction of a cool room and bin storage area. However, those structures have already been constructed (without approval) and are the subject of a separate Building Information Certificate application which has not yet been determined. The proposal is therefore concerned only with the use of those structures. It is recommended that a deferred commencement condition be imposed such that the development consent not become operative until the BIC has been determined.

An Aboriginal Due Diligence report has been submitted that reviews the potential for impacts on objects or places of Aboriginal heritage. It identifies that further sub-surface investigations are necessary and that an Aboriginal Heritage Impact Permit (AHIP) is required to enable those investigations to be undertaken. Those investigations may identify the need for a further AHIP in relation to the proposed development. This matter has been addressed by a deferred commencement condition that, in effect, ensures that all necessary AHIP's are obtained prior to any consent becoming operative.

The recommended deferred commencement conditions relating to the need to obtain a Building Information Certificate and necessary Aboriginal Heritage Impact Permits are considered to be appropriate under the relevant legislation (section 4.16(3) of the EPA Act and clause 95 of the EPA Regulation) and to satisfy the requirements for deferred commencement conditions as identified in the relevant caselaw, ie: that they be final and not defer essential matters for later consideration (ie: *Young & Anor v Gosford City Council* [2001] NSWLEC 191 at [48]; and *Farah v Warringah Council & Ors* [2006] NSWLEC 191 at paragraphs [59],[61], and [66], *Weal v Bathurst City Council & Anor* [2000] NSWCA 88, *Opera Properties v Northern Beaches Council & anor* [2017] NSWLEC 1507).

The site is identified as containing habitat for the Little Penguin and the Long-Nosed Bandicoot, which are threatened species. A Biodiversity Impact Assessment report has been submitted and reviewed by Council's Biodiversity Officer who recommends that the hours of operation of the café be further limited to mitigate impacts on those animals arising from the intensification of the use of the site. However, it is instead recommended that the intensification of the use of the café (ie: the proposed external seating for 12 patrons) not be approved.

Many of the public submissions raised the issue of traffic and parking. The applicant has submitted a Traffic and Parking Study that bases its recommendations on the assumption that the intensification of the use of the site will not generate additional traffic because additional patrons will be already at the site to visit the beach. This assumption is not concurred with and it is recommended that the proposed additional external seating for 12 patrons not be approved.

Accordingly, the application is recommended for approval.

RECOMMENDATION

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, grant Development Consent to DA2020/1027 for alterations and additions to the existing café at Lot 1 DP 1129384 and Lot 1 DP 1159168, Stuart Street, MANLY NSW 2095 subject to the conditions printed below:

DEFERRED COMMENCEMENT CONDITIONS

1. Building Information Certificate

A Building Information Certificate is to be issued for the cool room, freezer room and bin store room located on the eastern side of the building.

Reason: To ensure that all buildings associated with the proposed use have appropriate approvals.

2. Aboriginal Investigations

The recommendations of the Aboriginal Due Diligence Assessment by Unearthed Archaeology and Heritage dated January 2021 are to be completed to the satisfaction of the Aboriginal Heritage Office:

- i. Aboriginal consultation should be undertaken in accordance with OEH's *Aboriginal cultural heritage consultation requirements for proponents 2010*. The results of that consultation must be detailed in an Aboriginal Cultural Heritage Assessment Report (ACHAR);
- ii. Archaeological testing in accordance with OEH's *Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW* cannot be undertaken due to the possibility of a burial within the study area and the proximity to a registered Aboriginal burial. Therefore, it will be necessary to apply for an Aboriginal Heritage Impact Permit (AHIP) to undertake test excavations to determine the nature and extent of the archaeological deposit;
- iii. Following test excavations, it may be necessary to apply for a subsequent AHIP for harm, including relevant mitigation, which could include salvage excavations, depending on the results of the test excavations, prior to the proposed development.

Reason: To protect and conserve the aboriginal heritage of the area.

Evidence required to satisfy these conditions must be submitted to Council within two (2) years of the date of this consent, or the consent will lapse in accordance with Section 95 of the Environmental Planning and Assessment Regulation 2000.

Evidence required to satisfy the deferred commencement condition/s must be submitted to Council within two (2) years of the date of this consent, or the consent will lapse in accordance with Section 95 of the Environmental Planning and

Assessment Regulation 2000. This evidence is to be submitted along with a completed 'Deferred Commencement Document Review Form' (available on Council's website) and the application fee, as per Council's Schedule of Fees and Charges.

Upon satisfaction of the deferred commencement condition/s, the following conditions apply:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

3. Existing Bus Stop

Location of existing community bus stop on the Stuart Street along frontage of the site must remain in its current location. Approval of Council is required to relocate the Bus Stop.

Reason: To ensure certain services are not relocated at any stage during the project.

4. Structural Adequacy and Excavation Work

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

- (a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
- (b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: To provide public and private safety.

5. 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.

6. 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.

7. Noise - Design of Mechanical Plant

Prior to the issuing of any Construction Certificate, an acoustic assessment from a suitably qualified professional such as an acoustic engineer is to be undertaken in accordance with NSW EPA Noise Policy for Industry.

The assessment is to determine if acoustic treatments are required in order to control noise emissions from the mechanical plant so that:

- Any noise emitted will not cause “Offensive Noise” as defined by the Protection of the Environment Operations Act 1997;
- Any noise emitted complies with recommendations within NSW EPA Noise Policy for Industry; and
- The sound contribution of any mechanical plant does not exceed background noise levels at the nearest residential receptors for the day, evening and night time periods.

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 protect surrounding residence from any noise generated by mechanical plant.

8. Working on and Access to Reserves Permit

Works (undertaken by principal contractors working without Council supervision) on Land owned or managed by Council require a “Working on Reserves” permit prior to commencement.

Applications can be obtained from Council’s website or the Parks and Recreation business unit.

Reason: public safety and the protection of Council infrastructure.

9. Amend Landscape Drawings – Bandicoot Habitat

The Landscape drawings, submitted in conjunction with the approved Development Application and as amended by these conditions of consent, are to be amended to include native plant species with a low dense clumping habit to provide Long-nosed Bandicoot habitat. The plantingschedule must comprise species including Lomandra sp., Dianella sp. Banksia spinulosa, Westringia fruticosa, Caustis sp., Xanthorrhoea sp., Isolepis sp., Juncus sp., Adiantum sp., Callistemon sp., Grevillea sp., and tussocky native grasses (e.g. Themeda spp.).

Plans are to be amended and submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To compensate for bandicoot habitat impacted/removed as a result of the proposal.

10. 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
A1002 - Issue E	24/11/2020	BJB Architects
A1003 - Issue E	24/11/2020	BJB Architects
A1011 - Issue E	24/11/2020	BJB Architects
A1101 - Issue E	24/11/2020	BJB Architects
A1101 - Issue E	24/11/2020	BJB Architects
A1201 - Issue E	24/11/2020	BJB Architects
A1202 - Issue E	24/11/2020	BJB Architects
A1301 - Issue E	24/11/2020	BJB Architects
A1302 - Issue E	24/11/2020	BJB Architects
A1401 - Issue E	24/11/2020	BJB Architects
A1402 - Issue E	24/11/2020	BJB Architects
A1501 - Issue E	24/11/2020	BJB Architects
A1502 - Issue E	24/11/2020	BJB Architects
A2001 - Issue E	24/11/2020	BJB Architects
A2011 - Issue E	24/11/2020	BJB Architects
A2021 - Issue E	24/11/2020	BJB Architects
A4001 - Signage Plan - Issue D	13/07/2020	BJB Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By

Terrestrial Biodiversity Report	12/01/2021	GIS Environmental Consultants
Aboriginal Due Diligence Assessment, B.2021.1037	12/01/2021	Unearthed Archaeology and Heritage
Plan of Management	18/12/2021	Ben Cummings

b) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
A1601 - Issue E	24/11/2021	BJB Architects

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	18/05/2020	Bill Drakopoulos

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.

11. 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 commitment 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.

12. 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 on site 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 SafeWorkNSW 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.

13. Compliance with Standards

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

(Note: At the time of determination the following (but not limited to) Australian Standards applied:

- (a) AS2601.2001 - Demolition of Structures**
- (b) AS4361.2 - Guide to lead paint management - Residential and commercial buildings**
- (c) AS4282:1997 Control of the Obtrusive Effects of Outdoor Lighting**
- (d) AS 4373 - 2007 'Pruning of amenity trees' (Note: if approval is granted) **
- (e) AS 4970 - 2009 'Protection of trees on development sites'***
- (f) AS/NZS 2890.1:2004 Parking facilities - Off-street car parking**
- (g) AS 2890.2 - 2002 Parking facilities - Off-street commercial vehicle facilities**
- (h) AS 2890.3 - 1993 Parking facilities - Bicycle parking facilities**
- (i) AS 2890.5 - 1993 Parking facilities - On-street parking**
- (j) AS/NZS 2890.6 - 2009 Parking facilities - Off-street parking for people with disabilities**
- (k) AS 1742 Set - 2010 Manual of uniform traffic control devices Set**
- (l) AS 1428.1 – 2009* Design for access and mobility - General requirements for access – New building work**
- (m) AS 1428.2 – 1992*, Design for access and mobility - Enhanced and additional requirements - Buildings and facilities**

*Note: The Australian Human Rights Commission provides useful information and a guide relating to building accessibility entitled "the good the bad and the ugly: Design and construction for access". This information is available on the Australian Human Rights Commission website www.hreoc.gov.au/disability/rights/buildings/good.htm. www.hreoc.gov.au/disability/rights/buildings/good.htm.

**Note: the listed Australian Standards is not exhaustive and it is the responsibility of the applicant and the Certifying Authority to ensure

compliance with this condition and that the relevant Australian Standards are adhered to.)

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. (DACPLC02)

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 Certifying Authority prior to the issue of the Construction Certificate.

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

15. Approval of on-street parking changes by the Northern Beaches Council Local Traffic Committee

Prior to the issue of any Construction Certificate, plans showing the change in parking restrictions on Stuart Street allowing use of the "No Parking" zone as a Loading Zone for the cafe shall be submitted to and approved by the Northern Beaches Council Local Traffic Committee.

Reason: Maintain traffic flow by controlling the use of road space for the purpose of delivery vehicle use. (DACTRCPC1)

16. Policy Controls - Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$4,950.00 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 2019. The monetary contribution is based on a development cost of \$495,000.00.

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 2019 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.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

19. Dead or Injured Wildlife

If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To protect native wildlife.

20. Protection of Habitat Features

All natural landscape features, including any rock outcrops, native vegetation and/or watercourses, are to remain undisturbed during the construction works, except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

21. Tree protection

(a) Existing trees which must be retained

- i) All trees not indicated for removal on the approved plans, unless exempt under relevant planning instruments or legislation
- ii) Trees located on adjoining land

(b) Tree protection

- i) No tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.
- ii) All structures are to bridge tree roots greater than 25mm diameter unless directed otherwise by a qualified Arborist on site.
- iii) All tree protection to be in accordance with AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.
- iv) All tree pruning within the subject site is to be in accordance with AS 4373 Pruning of amenity trees
- v) All tree protection measures, including fencing, are to be in place prior to commencement of works.

Reason: To ensure compliance with the requirement to retain and protect significant planting on the site.

22. Site Induction Required – Penguin and Bandicoot Habitat

All workers, including site inspectors and sub-contractors, are to be made aware of the potential presence of relevant threatened species and endangered ecological communities through a site induction prior to commencement of works. The site induction is to include information about their conservation significance, potential activities on-site, means of identification and the measures to be implemented for their protection. A confirmation of induction is to be signed by every worker and the site manager.

Evidence of the site induction is to be documented and provided to the Principal Certifying Authority.

Reason: To prevent impacts to threatened species, endangered ecological communities and their habitats in accordance with the Biodiversity Conservation Act 2016.

23. Fauna Protection Fencing – Penguin and Bandicoot Habitat

Temporary chain wire fencing is to be installed around all work areas (including demolition, storage and construction areas) prior to the commencement of works. The fencing is to be designed to minimise the possibility of ground-dwelling native fauna (including relevant threatened species) accessing the work areas. Fencing is to be maintained for the duration of works.

Reason: To prevent impacts to ground-dwelling native fauna, including relevant threatened species.

24. Ecologist to Induct Site Manager – Penguin and Bandicoot Habitat

Prior to commencement of construction works, the project ecologist is to meet with the site manager to:

- a) advise of conditions to be implemented for protection of relevant threatened species and endangered ecological communities;
- b) ensure that all workers are appropriately briefed on required protective measures; and
- c) inspect protective measures to confirm their adequacy and advise the proponent and site manager of the inspection results and their implications.

Reason: To prevent impacts to threatened species, endangered ecological communities and their habitats in accordance with the Biodiversity Conservation Act 2016.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

25. 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.

26. Ongoing Management

The applicant shall be responsible in ensuring that the road reserve remains in a serviceable state during the course of the demolition and building works.

Reason: To ensure public safety.

27. Requirement to Notify about New Contamination Evidence

Any new information revealed during works that has the potential to alter previous conclusions about site contamination or hazardous materials shall be immediately notified to the Council and the Principal Certifying Authority.

Reason: To protect human health and the environment.

28. Protection of Council's Public Assets

Any damage to Council's public assets shall be made good by the applicant and/or the contractor, to the satisfaction of Council.

Council's public assets include, but is not limited to the following: road, kerb and gutters, crossovers, crossings, paths, grass verge, open space and associated elements such as furniture, recreational facilities and the like, within the meaning of the Local Government Act 1993.

Reason: to protect and/or restore any damaged public asset.

29. Existing Landscaped Gardens

The existing gardens and landscaped areas are to be retained and protected from any construction damage. All areas adjacent to the approved building works are to

be reinstated to have the same character and style. The existing, soft landscaped areas are not to be substituted for paving, unless shown in the approved plans.

Reason: Landscape protection

30. Construction Hours – Manly LEP Clause 6.5

Construction hours are to be adhered to, with no construction vehicles or heavy machinery used outside the hours of 7:00am and 5:00pm.

Reason: Noise and vibration can disturb local native fauna (including threatened species) and prevent access to their natural habitats.

31. Pre-clearance Survey Required – Bandicoot Habitat

A pre-clearance survey for Long-nosed Bandicoot and Little Penguin presence is required prior to the removal of any vegetation, material or debris stockpiles. Clearing may only proceed if the survey concludes that no wildlife are present within the area to be cleared. A record of each inspection is to be made in the daily inspection register log-book. The log-book is to be made available to the Principal Certifying Authority.

Reason: To avoid injury or death of Long-nosed Bandicoots or Little Penguins which may be sheltering in stockpiles.

32. Daily Inspections Required – Bandicoot Habitat

An inspection register log-book must be kept on site recording daily inspections of all holes, machinery and construction material stockpiles, checking for Long-nosed Bandicoots. Inspections are to be undertaken each work day prior to commencement of works and works may only proceed once any bandicoot has safely vacated any holes, machinery or stockpiles. The log-book is to be made available to Principal Certifying Authority.

Reason: To avoid injury or death of Long-nosed Bandicoots which may be utilising stockpiles of vegetation, materials or debris.

33. Works to be Undertaken Outside of Penguin Breeding Season

Demolition and construction works may only be undertaken outside of the formal Little Penguin breeding season (i.e. between 1st March and 31st May) except with written approval of Northern Beaches Council's Biodiversity & Planning Group.

Reason: To mitigate potential construction-related impacts to nearby Little Penguin nesting habitat.

34. Report Dead or Injured Bandicoots – Bandicoot Habitat

Any injured or dead Long-nosed Bandicoots found within the worksite must be reported to the National Parks & Wildlife Service (9457 9577) or Northern Beaches Council (1300 434 434).

Reason: To prevent impacts to Long-nosed Bandicoots in accordance with the Biodiversity Conservation Act 2016.

35. Waste/Recycling Requirements (Materials)

During demolition and/or construction the following materials are to be separated for recycling – timber – bricks – tiles – plasterboard – metal – concrete, and evidence of disposal for recycling is to be retained on site.

Reason: To ensure waste is minimised and recovered for recycling where possible. (DACWTE02)

CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO COMPLETION

36. Stormwater Disposal

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person. 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 appropriate provision for the disposal of stormwater arising from the development.

37. Certification of Landscape Plan

Landscaping is to be implemented in accordance with the amended Landscape Plans (BJB Architects 2020) and these conditions of consent.

Details demonstrating compliance are to be prepared by the landscape architect and provided to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To ensure compliance with the requirement to retain and protect significant planting on the site.

38. No Weeds Imported On To The Site

No Priority or environmental weeds (as specified on the NSW WeedWise website) are to be imported on to the site prior to or during construction works.

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

Reason: To reduce the risk of site works contributing to spread of Priority and environmental weeds

39. Acoustic Report

Prior to the issuing of any interim / final occupation certificate an Acoustic Compliance Report, prepared by a suitably qualified professional such as an acoustic engineer, must be submitted certifying that:

- The noise emitted from mechanical plant when operational will not cause “Offensive Noise” as defined by the Protection of the Environment Operations Act 1997;
- The mechanical plant complies with recommendations within NSW EPA Noise Policy for Industry; and
- The sound contribution of any plant does not exceed background noise levels at the nearest residential receptors for the day, evening and night time periods.

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.

Certification is to be submitted to the satisfaction of the Principal Certifying

Authority. Reason: To protect surrounding residence from any noise generated by mechanical plant.

40. 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.

41. 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 from a suitably qualified and experienced person that the design, construction and fit out of food premises kitchen is compliant with the requirements of 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’.

Details demonstrating compliance are to be submitted to the Principal

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

42. 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.

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.

43. Removal of All Temporary Structures/Materials and Construction Rubbish

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

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

Reason: to protect reserve amenity and public safety.

44. Completion of Landscape Works

Prior to the issue of a Whole Occupation Certificate, any approved landscape works shall be consistent with the approved design, completed to a professional standard, consistent with industry best practice and published standards.
(Reason: Landscape amenity)

45. Bright lighting

No bright lighting or motion detectors are to be installed to illuminate lawn or garden areas. A modest amount of low lighting may be used for safety purposes only. No lighting to be directed toward or to illuminate the water and foreshore at any time both during construction or post construction phase.

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

Reason: To reduce disturbance to Long-nosed Bandicoots and Little Penguins, particularly penguin breeding activities including coming ashore to tend to eggs and chicks.

46. Upgrade of pedestrian access from footpath network

To provide the fully accessible path of travel from the footpath network to the subject development the applicant shall remove the existing gate and install a suitable removable bollards solution to achieve an accessible path of travel of 1.5 metres minimum clearance, prior to the issue of any Occupation Certificate.

Reason: Equity in access to the development.

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES**47. Delivery Hours**

No deliveries, loading or unloading associated with the premises are to take place prior to 7am on any day.

Reason: To protect the acoustic amenity of surrounding properties.

48. 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.

49. Maximum number of seated patrons

A maximum of twenty (20) seated patrons are permitted on the premises. The patrons are to be seated within the premises in accordance with the seating as shown on the approved plans. The external seating area and umbrellas are not approved.

Reason: to limit the capacity of the café in recognition of traffic and parking impacts associated with the land use and to mitigate potential impacts on local fauna including the Little Penguin and the Long-nosed Bandicoot.

50. Hours of Operation

The hours of operation of the premises are not to exceed the following:

- Monday and Tuesday 7:00am to 5:00pm
- Wednesday to Saturday 7:00am to 10:00pm
- Sunday 7:00am to 7:00pm

Note: The serving of meals is to cease thirty (30) minutes prior to closing time on each day and the premises is to be fully vacated by staff and management one (1) hour after closing time.

Reason: To control the operation of the cafe and preserve the amenity of the locality.

51. All equipment to be stored within the premises overnight

All equipment associated with the use of the premises are to be stored within the premises during times outside the approved hours of operation.

Reason: To maintain the amenity of the surrounding public open space.

52. All goods to be stored within the premises at all times

All goods associated with the use of the premises are to be stored within the premises at all times.

Reason: To maintain the amenity of the surrounding public open space.

53. Consumption of alcohol not permitted

The consumption of alcohol on the premises is not permitted.

Reason: To confirm the details of the application and to maintain the amenity of the surrounding area.