

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0869
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Responsible Officer:	Nick Keeler
Land to be developed (Address):	Lot 1 SP 69948, 1 / 43 - 45 North Steyne MANLY NSW 2095
Proposed Development:	Change of use to a food and drink premises (restaurant), new interior fitout, mechanical ventilation exhaust and hours of operation
Zoning:	Manly LEP2013 - Land zoned B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	C.G.M.B. Co Pty Ltd
Applicant:	Dingo Partners Pty Ltd

Application Lodged:	02/06/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	13/06/2022 to 27/06/2022
Advertised:	Not Advertised
Submissions Received:	7
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 523,930.00
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EXECUTIVE SUMMARY

This development application seeks consent for change of use to a food and drink premises, operating as a restaurant, new interior fit-out, mechanical ventilation exhaust and new hours of operation.

The application is referred to the Development Determination Panel (DDP) due to the receipt of more than five (5) unique submissions.

Concerns raised in the objections predominantly relate to the lodgement of inaccurate technical reports, ambiguity regarding the mechanical ventilation exhaust outlets on the roof and the acoustic impact of the proposed mechanical ventilation.

Critical assessment issues included consideration of the acoustic impacts of the mechanical ventilation to nearby dwellings and the visual and view impacts of the proposed exhaust flues when viewed from dwellings to the west of the site. These matter have been addressed in the amended plans and additional information submitted by the applicant.

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

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for the change of use of Shop 1 at the ground floor of the existing mixed-use building from a "shop" to a "food and drinks premises" and internal fit-out, including upgraded disability access, a new kitchen, mechanical ventilation, food storage areas, dining area and sanitary facilities.

The proposal seeks to operate the food and drinks premises on Monday to Sunday from 7am to 10pm with a maximum capacity for 70 patrons.

While the submitted documentation refers to the proposed change of use to a "food and drinks premises", the proposed use is consistent with the definition of a "restaurant or cafe" in the Manly LEP 2013. As such, this assessment is based on the change of use from a "shop" to a "restaurant or cafe".

AMENDED PLANS

During assessment, Council requested the applicant provide amended plans to make clear the specific rooftop exhaust flues that consent is sought and to exclude the display any other structure on the roof that does not relate to this particular development proposal.

The applicant submitted amended plans to make clear the only proposed rooftop exhaust flues are for the kitchen mechanical ventilation and the grease trap aeration flue.

In accordance with the provisions of the Northern Beaches Community Participation Plan, re-notification of the application was not required. The amendments are considered to be minor and will result in a lesser environmental impact on nearby properties and the public domain.

ASSESSMENT INTRODUCTION

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

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

- determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Manly Development Control Plan - 3.4.3 Maintenance of Views

Manly Development Control Plan - 4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor

Manly Development Control Plan - 4.2.5.4 Car Parking and Access

SITE DESCRIPTION

Property Description:	Lot 1 SP 69948 , 1 / 43 - 45 North Steyne MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one (1) strata allotment located at the northern side of the ground floor within SP 69948 on the western side of North Steyne.</p> <p>The site is irregular in shape with a frontage of 6.7m along North Steyne and a depth of 31.5m. The site has a surveyed area of 164m².</p> <p>The site is located within the B2 Local Centre zone and accommodates a shop-top housing building with commercial tenancies at the ground floor with three storeys of residential units above and two basement levels below.</p> <p>The site is generally flat and is completely built upon.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by mixed-use residential and commercial buildings. Manly Beach and promenade is located opposite the site.</p>

Map:



SITE HISTORY

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

Application **DA0025/2000** for demolition of existing building and construction of a retail/residential development containing two restaurants and eleven residential units in a five storey building with two basement carpark levels was approved on 01/06/2000.

Application **DA0168/2003** for a seafood cafe at Shop 1 was approved on 17/06/2003.

Application **DA0200/2006** for change of use to convenience store was approved on 05/07/2006.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report. The NSW employment zones reforms have been made and will come into force on 26 April 2023. These reforms will result in this property changing from a B2 zone to an E1 zone. The proposed use will remain permissible in the new zone.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any	Manly Development Control Plan applies to this proposal.

Section 4.15 Matters for Consideration	Comments
development control plan	
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted. / This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to in relation to documentation relating to the subject tenancy.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental</p>

Section 4.15 Matters for Consideration	Comments
	economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 13/06/2022 to 27/06/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Steven Cooper	
Mrs Samantha Barbara Stow	505 / 9 - 15 Central Avenue MANLY NSW 2095
Mr Gregory Ernest Brown	8 Macquarie Road PYMBLE NSW 2073
Mr Ray Caryl Stone	704 / 9 - 15 Central Avenue MANLY NSW 2095
Mr Faustino Miguel Martinez De Morentin	508 / 9 - 15 Central Avenue MANLY NSW 2095
Mr David Edward Glading	507 / 9 - 15 Central Avenue MANLY NSW 2095
Mr Peter Eugene Dybac	509 / 9 - 15 Central Avenue MANLY NSW 2095

The following issues were raised in the submissions:

- Inaccurate technical reports
- Roof plant equipment
- Acoustic impacts
- Inconsistency regarding DA applicant

The above issues are addressed as follows:

- **Inaccurate technical reports**

The submissions raised concerns that some of the application's supporting technical reports do not relate to the subject site.

Comment:

Council requested the applicant submit revised technical report relating to the proposed development at Shop 1 which was received during the assessment of the application.

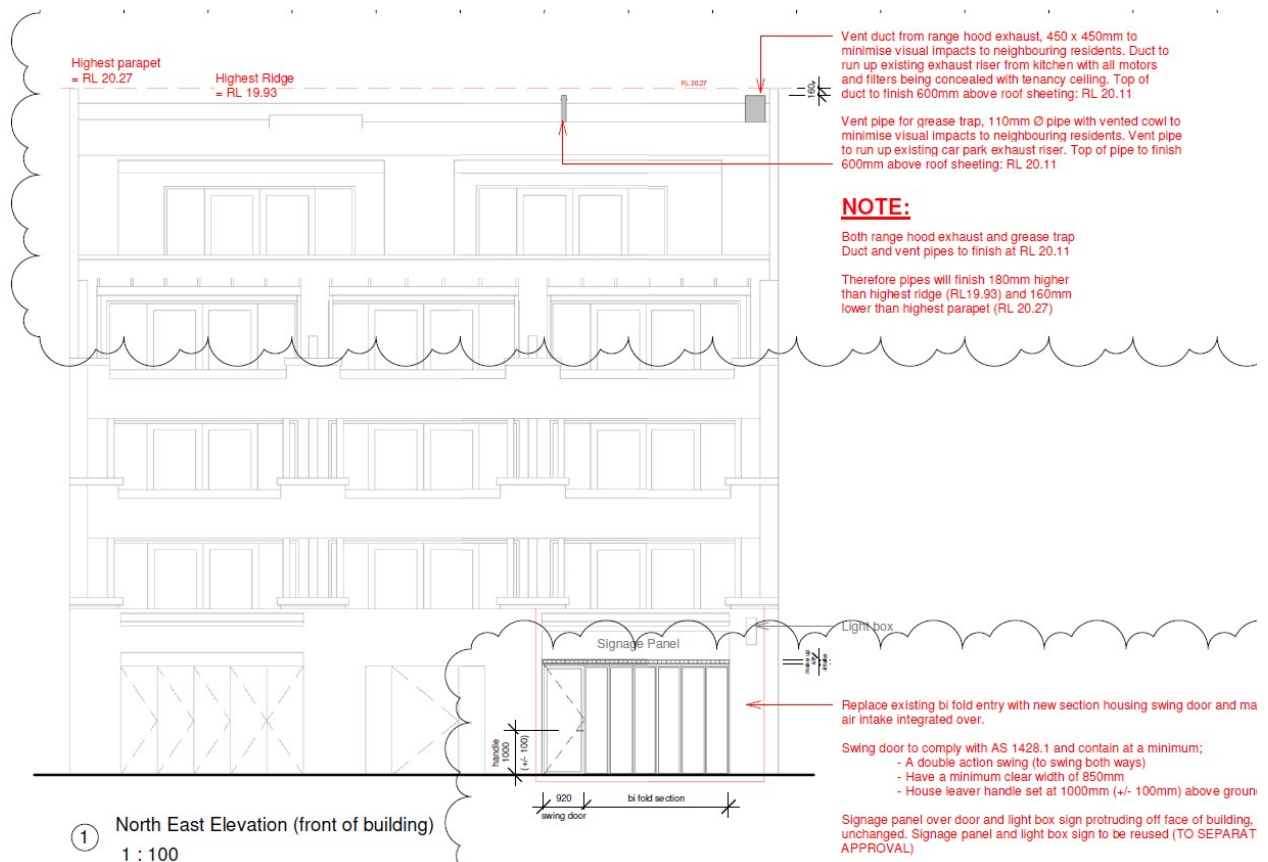
- **Roof plant equipment**

The submissions raised concerns that the proposed roof plan includes significant mechanical ventilation plant equipment that will unreasonably impact upon the amenity of nearby residents.

Comment:

Council sought clarification from the applicant regarding the proposed roof ventilation flues. The applicant submitted amended plans indicating two small flues are to be installed on the roof, one for the kitchen ventilation and the other for the grease trap aeration.

The height of the flues are indicated to be RL 20.11, which is approx. 180mm higher than the highest part of the roof ridge and 160mm below the height of the northern side boundary parapet. The maximum width of the kitchen exhaust flue is 450mm and 110mm for the grease trap flue.



Mechanical plant equipment is not proposed to be installed on the roof.

The proposed rooftop flues are small in size and are not expected to unreasonably impact the visual and acoustic amenity of nearby residents.

- **Acoustic impacts**

The submissions raised concerns that the submitted acoustic report does not relate to the proposal and that the development may unreasonably impact upon the acoustic amenity of surrounding residents.

Comment:

Council requested the applicant submit an acoustic report specific to the proposed development. This report has been submitted and reviewed by Council's Environmental Health team who raise no objection to the proposal, subject to the compliance with the recommendations of the acoustic report and consent conditions.

- **Inconsistency regarding DA applicant**

The submissions raised concerns that the submitted documentation contains inconsistencies identifying the applicant of the development application.

Comment:

The applicant of the development application is the person or company who lodges the application through the NSW Planning Portal. In this case, Dingo Partners Pty Ltd is the applicant for the DA who has lodged it on behalf of the property owner.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Environmental Health (Industrial)	<p>General Comments</p> <p>UPDATED REFERRAL RESPONSE</p> <p>The applicant has clarified a number of matters and submitted amended plans.</p> <p>Environmental Health supports the proposal subject to conditions.</p>
Environmental Health (Food	General Comments

Internal Referral Body	Comments
Premises, Skin Pen.)	<p>Environmental Health has reviewed the development application which proposes a restaurant , associated internal fit-out, new mechanical ventilation and hours of operation from 7am – 10pm, Monday to Sunday.</p> <p>The current proposal has a potentially confusing history with Shop 1 often being confused with Shop 2 (DA 48/09) information.</p> <p>These comments relate to the food premises referral ONLY. Industrial considerations are addressed separately.</p> <p>1. Ventilation This will be addressed in the Industrial referral as there are concerns for compliance.</p> <p>2. Grease Arrestor It is not clear from the plans where the grease arrestor is located and how it will be emptied without entering the kitchen and food storage areas . Access to a grease arrestor in a commercial kitchen has a high likelihood of contamination of food sources and food contact surfaces. Therefore it must be located outside of all food kitchen and storage areas.eg The bin storage room The applicant needs to address this issue.</p> <p>3. Waste oil Based on the proposed operations, including frying, the premises will produce waste oil. There are no details on where waste oil will be stored. Waste oil storage must be provided with a hose tap connected to a water supply, paved with impervious material, graded and either drained to the grease arrestor or provided with a bund that is 110% the capacity of the waste oil tank. Depending of the bin room capacity it may be stored there. The applicant needs to address this issue.</p> <p>4. Toilets/Sanitary accommodation The proposal provides seating for a maximum number of 70 patrons. The BCA requires two female toilets and one male toilet and a urinal for a food premises with 70 patrons. The recent amended plans depict the provision of two unisex toilets which is permitted to address compliance numbers however a male urinal is still required. The applicant needs to address this issue.</p> <p>Environmental Health does not support the proposal at this time.</p> <p>UPDATED RESPONSE 6 December 2022 Additional information received from the applicant clarifying matters raised by EH Environmental Health supports the proposal subject to conditions.</p>
NECC (Coast and Catchments)	<p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> • Supplied plans and reports; • Coastal Management Act 2016; • State Environmental Planning Policy (Resilience and Hazards) 2021 (clauses 2.10 & 2.12); and • Relevant LEP and DCP clauses. <p>The application meets the requirements of the relevant Environmental</p>

Internal Referral Body	Comments
	Planning Instruments and policies.
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>The development proposes to change the existing shop to a new interior fitout, mechanical ventilation exhaust. The proposed changes is within the building and there is no change out side of the building other than changing the entry door.</p> <p>The proposed development generally complies with the flood controls in the DCP and LEP.</p>
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	<p>The proposal has been referred to Heritage as the subject site is within the vicinity of three heritage items and Manly Town Centre Conservation Area, listed in Schedule 5 of Manly Local Environmental Plan 2013:</p> <p>I111 - Hotel Steyne - 75 The Corso</p> <p>Item I74 – Beach Reserve—Merrett Park North Steyne and South Steyne</p> <p>Item I68 – Ocean foreshores - Manly municipal area, boundary adjacent to the ocean</p>
	Details of heritage items affected
	<p>Details of the heritage items as contained within the Manly Heritage inventory are as follows:</p> <p>C2 - Town Centre Conservation Area <u>Statement of Significance:</u> The Manly Town Centre Conservation Area (TCCA) is of local heritage significance as a reflection of the early development of Manly as a peripheral harbor and beachside village in the fledgling colony of New South Wales. This significance is enhanced by its role as a day-trip and holiday destination during those early years, continuing up to the present time, and its association with H G Smith, the original designer and developer of the TCCA as it is today. The physical elements of the TCCA reflect this early development and its continued use for recreational purposes, most notably the intact promenade quality of The Corso and its turn of the century streetscape, as well as key built elements such as hotels, and remaining original commercial and small scale residential buildings. The beautiful natural setting of the TCCA has provided a solid foundation for its picturesque qualities.</p> <p>Item I111 - Hotel Steyne <u>Statement of significance:</u> This building is a fine example of Inter-War Art Deco style Hotel. Landmark building on the corner of The Corso and South Steyne. <u>Physical description:</u> Original Hotel built 1862 and rebuilt in 1936 in Inter-war Art Deco</p>

Internal Referral Body	Comments														
	<p>Style of polychrome brickwork with heavy brick modelling along parapet and corrugated asbestos roof. Significant elements include: fan shaped lintels to windows; tile and brick detailing beneath windows; original tiling to ground floor, octagonal corner 'tower'.</p> <p>Item I174 - Beach Reserve <u>Statement of significance:</u> High significance as natural sand beach and cultural backdrop of paved promenade and first coastal plantings of Norfolk Island Pines. <u>Physical description:</u> Beachfront, promenade, sandstone retaining wall, paved, grassed And/or planting beds and remnant plantings of Norfolk Island Pines planted from the 1850's to the 1880's.</p> <table border="1" data-bbox="520 808 1433 1384"> <thead> <tr> <th colspan="2" data-bbox="520 808 855 842">Other relevant heritage listings</th></tr> </thead> <tbody> <tr> <td data-bbox="520 842 855 987">Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td><td data-bbox="855 842 943 987">No</td></tr> <tr> <td data-bbox="520 987 855 1066">Australian Heritage Register</td><td data-bbox="855 987 943 1066">No</td></tr> <tr> <td data-bbox="520 1066 855 1133">NSW State Heritage Register</td><td data-bbox="855 1066 943 1133">No</td></tr> <tr> <td data-bbox="520 1133 855 1200">National Trust of Aust (NSW) Register</td><td data-bbox="855 1133 943 1200">No</td></tr> <tr> <td data-bbox="520 1200 855 1312">RAIA Register of 20th Century Buildings of Significance</td><td data-bbox="855 1200 943 1312">No</td></tr> <tr> <td data-bbox="520 1312 855 1384">Other</td><td data-bbox="855 1312 943 1384">No</td></tr> </tbody> </table> <p>Consideration of Application</p> <p>The proposal seeks consent for a change of use of an existing shop to a food and drink premises, associated internal fit-out, new mechanical ventilation unit on the rooftop. The subject property is not a heritage item, however, it is in the vicinity of a number of heritage items and a conservation area.</p> <p>Given that the proposed works are mainly confined to the interior and the physical separation between the proposed works and the heritage items and the conservation area, the impact of the proposal upon the heritage items and the conservation area is considered manageable.</p> <p>Therefore, no objections are raised on heritage grounds and no conditions required.</p> <p><u>Consider against the provisions of CL5.10 of Manly LEP 2013.</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? Yes</p>	Other relevant heritage listings		Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	Australian Heritage Register	No	NSW State Heritage Register	No	National Trust of Aust (NSW) Register	No	RAIA Register of 20th Century Buildings of Significance	No	Other	No
Other relevant heritage listings															
Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No														
Australian Heritage Register	No														
NSW State Heritage Register	No														
National Trust of Aust (NSW) Register	No														
RAIA Register of 20th Century Buildings of Significance	No														
Other	No														

Internal Referral Body	Comments
	Further Comments
	COMPLETED BY: Oya Guner, Heritage Advisor
	DATE: 30 June 2022

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 65 - Design Quality of Residential Apartment Development

Clause 4 of State Environmental Planning Policy No. 65 – Design Quality for Residential Apartment Development (SEPP 65) stipulates that:

(1) This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:

(a) the development consists of any of the following:

- (i) the erection of a new building,
- (ii) the substantial redevelopment or the substantial refurbishment of an existing building,
- (iii) the conversion of an existing building, and

(b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and

(c) the building concerned contains at least 4 or more dwellings.

The proposed development is for the change of use and fit-out of a commercial tenancy within an existing five-storey shop top housing development. The proposal does not alter the existing built form of the building or results in a change of building classification. As such, the proposal is not considered to be a substantial redevelopment or refurbishment of the existing building.

As per the definition of shop top housing and the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are not applicable to the assessment of this application.

Accordingly, no further assessment is required with regard to the provisions of SEPP 65.

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 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.

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

- 1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:
 - a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
 - b) coastal environmental values and natural coastal processes,
 - c) the water quality of the marine estate (within the meaning of the Marine Estate

Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,

- d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
- e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
- f) Aboriginal cultural heritage, practices and places,
- g) the use of the surf zone.

Comment:

The proposed development is not expected to cause adverse impact to the coastal environment area.

- 2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:
 - a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or
 - b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

Council is satisfied that the proposed development is appropriately designed and sited to ensure adverse impact to the items referred to in subsection (1) is avoided.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

- 1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
 - a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - i) existing, safe access to and along the foreshore, beach, headland or rock
 - ii) platform for members of the public, including persons with a disability,
 - iii) overshadowing, wind funnelling and the loss of views from public places to
 - iv) foreshores,
 - v) the visual amenity and scenic qualities of the coast, including coastal headlands, Aboriginal cultural heritage, practices and places, cultural and built environment heritage, and
 - b) is satisfied that:
 - i) the development is designed, sited and will be managed to avoid an adverse
 - ii) impact referred to in paragraph (a), or
 - iii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or if that impact cannot be minimised—the development will be managed to mitigate that impact, and

- c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

Council is satisfied the proposed development is appropriately designed and sited in a manner that avoids adverse impact to the coastal use area.

Division 5 General

2.12 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

Council is satisfied the proposed development will not cause an increased risk of coastal hazards on the site or surrounding land.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	Front portion - 10m	All unaltered Internal fitout only Exhaust flues not counted toward building height	N/A	Yes
	Rear portion - 12m		N/A	Yes

Floor Space Ratio:	Front portion - 2.5:1		N/A	Yes
	Rear portion - 3:1		N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
5.21 Flood planning	Yes
6.2 Earthworks	N/A
6.4 Stormwater management	N/A
6.9 Foreshore scenic protection area	Yes
6.11 Active street frontages	Yes
6.12 Essential services	Yes

Manly Development Control Plan

Built Form Controls

This application relates to the internal fit-out of an existing shop. No change to the existing built form of the building is proposed. As such, the MDCP built form controls do not apply in this case.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.3 Townscape (Local and Neighbourhood Centres)	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	N/A	N/A
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.2 Development in Business Centres (LEP Zones B1 Neighbourhood Centres and B2 Local Centres)	Yes	Yes
4.2.1 FSR (Consideration of Exceptions including Arcades)	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2)	Yes	Yes
4.2.3 Setbacks Controls in LEP Zones B1 and B2	Yes	Yes
4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor	No	Yes
4.2.5 Manly Town Centre and Surrounds	Yes	Yes
4.2.5.1 Design for Townscape	Yes	Yes
4.2.5.2 Height of Buildings: Consideration of Townscape Principles in determining exceptions to height in LEP Zone B2 in Manly Town Centre	Yes	Yes
4.2.5.3 Security Shutters	Yes	Yes
4.2.5.4 Car Parking and Access	No	Yes
4.2.5.6 Late Night Venues	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.3 Signage	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.3 Maintenance of Views

Merit consideration:

The development is considered against the Objectives of the Control:

Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.

Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).

Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*, are applied to the proposal.

The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (for example of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, for example a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

Comment:

View that are most likely to be impacted by the proposed development are from the windows of apartments in the Pacific Waves building west of the site towards Manly Beach to the east. The apartments most impacted are those on the level that is closest to and in line with the roof ridge of the subject building.

The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

Comment:

Most views from the affected apartments are obtained from the primary internal living areas. The view corridor is obtained across a rear boundary towards the east.

The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20 percent if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

Comment:

Despite the iconic nature of the view corridor, the extent of the impact of the proposal is considered to be negligible. The proposal does not alter the fundamental built form of the existing building and the proposed exhaust flues are minor in bulk and scale. The largest flue has dimensions of 450mm by 450mm and rises 180mm above the roof ridge level.

The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

Comment:

Overall, the proposed development generally complies with the built form development controls and is not expected to cause unreasonable view loss to adjacent dwellings. It is considered to be acceptable in the context of the site and locality.

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

4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including

B6 Enterprise Corridor

Refer to Part 4.2.5.4 for detailed assessment regarding onsite parking.

4.2.5.4 Car Parking and Access

Description of non-compliance

The minimum off-street parking requirements for food and drink premises' are as follows:

- 1 parking space for every 40m² of gross floor area of serviced area.

The tenancy has 97.3m² of gross floor area of serviced area. Therefore, a minimum of three off-street parking spaces is required for the proposed development.

One off-street parking space is associated with the subject tenancy, however the proposal does not provide any additional off-street parking.

Merit consideration

When considering the proposal on merit, it is important to note that the provision of additional off-street parking in this case is unfeasible due to the need to significantly alter of the existing building to facilitate a compliant amount of parking. Furthermore, the proposed change of use to a restaurant will lessen the required parking rate compared to that of the existing shop use (defined as commercial premises in MDCP), from 4 spaces to 3 spaces.

The control includes a provision where only 50% of the required parking rate is to be provided within the Manly Town Centre with the other 50% offset by a monetary contribution under the Manly Section 94 Contributions Plan. As this plan has been repealed and no longer applies to the subject site, this provision does not strictly apply. However, its intent reduces the required number of parking spaces from 3 spaces to 2 spaces. This results in the proposal only being deficient by 1 parking space.

Overall, the proposed change of use is not considered to result in any significant traffic or parking generation. While a restaurant is likely to attract more patrons simultaneously compared to a shop, the site, being located in the Manly Town Centre, is well serviced by public parking facilities and public transport services. In this regard, Council can be satisfied that the proposed restaurant will not result in adverse traffic generation or parking demand.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$5,239 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$523,930.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

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

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

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

PLANNING CONCLUSION

This application is referred to the Development Determination Panel (DDP) due to the receipt of more than five (5) unique submissions.

The concerns raised in the objections have been addressed in the assessment report and have been resolved through the submission of amended plans and additional information and imposition of conditions.

The critical assessment issues include acoustic impacts of the mechanical ventilation to nearby dwellings and the visual and view impacts of the proposed exhaust flues when viewed from dwellings to the west of the site. These matter have been addressed in the additional information submitted by the applicant.

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2022/0869 for Change of use to a food and drink premises (restaurant), new interior fitout, mechanical ventilation exhaust and hours of operation on land at Lot 1 SP 69948, 1 / 43 - 45 North Steyne, MANLY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
B-2.1	16/06/2022	Nexfit
B-2.2	16/06/2022	Nexfit
B-2.3	08/09/2021	Nexfit
B-2.4	09/09/2021	Nexfit
B-2.5	16/06/2022	Nexfit
B-3.1	16/06/2022	Nexfit
B-4.1	18/10/2022	Nexfit
C-1.1	18/10/2022	Nexfit
C-1.2	16/06/2022	Nexfit
C-2.1	18/10/2022	Nexfit

Engineering Plans		
Drawing No/Title.	Dated	Prepared By
H-01 Issue E	25/10/2022	Russell Druce

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Access Report (Ref: 4401-Rev 3)	06/05/2022	AED Group
Acoustical Report	30/09/2022	Koikas Acoustics
Fire Engineering Report (Ref: F2122 PBDB Rev 02)	06/05/2022	AED Group

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

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

Waste Management Plan		

Drawing No/Title.	Dated	Prepared By
Waste Management Plan	04/05/2022	Dingo Partners

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

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

2. **Approved Land Use**

Nothing in this consent shall authorise the use of the tenancy as detailed on the approved plans for any land use beyond the definition of a *restaurant or cafe*, in accordance with the Dictionary of the Manly Local Environmental Plan 2013.

Any variation to the approved land use of the tenancy beyond the scope of the above definition will require the submission to Council of a new development application.

Reason: To ensure compliance with the terms of this consent.

3. **No Approval for any Signage**

No approval is granted under this Development Consent for signs (as defined under Manly Local Environment Plan 2013 and State Environmental Planning Policy (Transport and Infrastructure) 2021. A separate Development Application for any signs (other than exempt and signs permitted under Complying Development) must be submitted for the approval prior to the erection or display of any such signs.

Reason: Control of signage.

4. **Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifier for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:

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

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

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

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

Reason: Legislative requirement.

5. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried

out in accordance with WorkCover requirements and the relevant Australian Standards.

- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork

NSW Codes of Practice.

- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;
- Relevant legislative requirements and relevant Australian Standards (including but not limited) to:
- (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2018
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$5,239.30 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$523,930.00.

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

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

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or

on Council's website at Northern Beaches Council - Development Contributions.

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

7. Security Bond

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

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

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

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

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

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

8. Building Code of Australia Upgrade requirements and Fire Safety Upgrade

The Building Code of Australia works and fire upgrading measures to upgrade the building as detailed and recommended in the Building Code of Australia Performance Based Design Brief prepared by AED Group, dated 6/5/2022, Report Ref No. F2022PBDB Rev 2, are to be considered as part of the assessment of the Construction Certificate.

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

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

9. Building Code of Australia Access Upgrade requirements

The Building Code of Australia works and access upgrading measures to upgrade the building as detailed and recommended in the Access Report prepared by AED Group, dated 6/5/2022, Report Ref No. 4401-Rev 3 are to be considered as part of the assessment of the Construction Certificate.

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

Reason: To ensure adequate provision is made for Access for building occupant safety.

10. Adequacy of Sanitary Facilities

Provision of adequate sanitary facilities (including a male urinal) being incorporated into the design to comply with BCA requirements for the proposed number of patrons and staff.

Reason: To ensure compliance with BCA Sanitary Facilities requirements.

11. **Noise - Design and Location of Mechanical Plant**

Prior to the issue of a Construction Certificate, the design, specifications and location of noise generating mechanical plant including air conditioning units are to be provided to the Principal Certifier. An acoustic assessment is to be undertaken by a suitably qualified professional such as an acoustic engineer to determine acoustic treatments to control noise emissions from all mechanical plant noise in accordance with the recommendations within the Acoustical Report prepared by Koikas Acoustics dated 30 September 2022 (Project No. 5503 Version 1).

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.

Reason: To maintain acoustic amenity to building occupants and protect surrounding residence from any noise generated by the operation of the development.

12. **Compliance with Standards**

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

13. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all mechanical exhaust on the roof are in accordance with the approved plans.

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

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

14. **Waste Management During Development**

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

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

15. **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.

16. **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 person, that the design, construction and fit out of food premises kitchen and storeroom is compliant with the requirements of AS 4674 Design, construction and fit out of food premises.

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

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

17. **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, including smoke and odour control equipment, 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.

18. **Acoustic Report Certification**

Prior to any occupation certificate being issued, a further acoustic assessment (including vibration) is to be undertaken by a qualified and experienced person(s) to confirm compliance with the recommendations within the Acoustical Report prepared by Koikas Acoustics dated 30 September 2022 (Project No. 5503 Version 1).

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.

Reason: To maintain acoustic amenity to building occupants and protect surrounding residence from any noise generated by the operation of the development.

19. **Fire Safety Matters**

At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and the NSW Fire Brigade.

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

Each year the Owners must send to the Council and the NSW Fire Brigade an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement of the Environmental Planning and Assessment Regulation 2021.

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

20. **No Outdoor Dining**

No outdoor dining is approved in this consent. Any proposed outdoor dining must be consistent with State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

Any outdoor dining that is consistent with the SEPP shall be the subject of a separate Outdoor Dining Application to Council's Property team.

Reason: To ensure that outdoor dining is assessed and approved under the appropriate regulatory framework and legislation.

21. **Operational Noise Controls**

Operational ongoing noise generating plant, equipment and use of premises shall be managed in accordance with recommendations contained within the report prepared by Koikas Acoustics Pty Ltd, dated 30 September 2022.

Reason: To maintain acoustic amenity to building occupants and protect surrounding residence from any noise generated by the operation of the development.

22. **Smoke and Odour Control**

a) A smoke and odour verification assessment is to be conducted within 30 days of the restaurant opening to confirm the operation of the kitchen extraction and smoke and odour control system. The odour assessment should be performed by a suitably qualified and experienced air quality consultant, and is to provide confirmation that the smoke and odour control measures are adequate to prevent any nuisance, offensive odour or visible discharge. The cooking equipment and foods being cooked is to be documented.

b) Any changes to cooking intensity or type of cooking or cooking equipment likely to increase smoke or odour, not included in the initial assessment, will require an immediate reassessment and if necessary action taken to ensure no nuisance is created.

c) Smoke and odour control equipment is to be maintained and serviced at all times as recommended by the manufacturer and air quality consultant. A certificate of service is to be maintained on site.

d) Cooking of smoke generating foods in the kitchen shall immediately cease should smoke and odour control equipment fail to operate correctly for any reason.

e) Any changes or modifications to smoke and odour control equipment or ducting shall be assessed by an acoustic engineer to ensure a noise or vibration nuisance is not created.

Reason: To ensure smoke and offensive odour is not discharged from the business and to comply with AS1668.2. and air pollution legislation.

23. **Hours of Operation**

The hours of operation are to be restricted to 7:00am to 10:00pm everyday (including public holidays).

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

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

24. **Commercial Waste Collection and Deliveries**

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

Deliveries to the premises must not occur between the hours of 10pm and 6am on any day.

Reason: To protect the acoustic amenity of surrounding properties.

25. **Patron Capacity**

The maximum patron capacity for the tenancy at any one time is limited to 70 patrons.

Reason: To maintain acceptable levels of amenity and facilities.