



Land and Environment Court
New South Wales

Case Name: Harbord Hotel Holdings Pty Ltd v Northern Beaches Council

Medium Neutral Citation: [2023] NSWLEC 1270

Hearing Date(s): 29 May 2023

Date of Orders: 02 June 2023

Decision Date: 2 June 2023

Jurisdiction: Class 1

Before: Dixon SC

Decision: The Court orders:
(1) The applicant's written request pursuant to clause 4.6 of Warringah Local Environmental Plan 2011 (LEP) seeking a variation to maximum height of building control in clause 4.3 of the LEP, prepared by Boston Blyth Fleming dated 15 August 2021, is upheld.
(2) The appeal is upheld.
(3) Development consent is granted to development application no. DA2021/1620 for alterations and additions to an existing pub (Harbord Hotel) at 29-31 Moore Road, Freshwater subject to the conditions of consent in Annexure A.
(4) The exhibits are returned except for A, B, D, E, 2, 3 and 4.

Catchwords: APPEAL – development application – alterations and additions to the Harbord Hotel – imposition of conditions relating to noise compliance, patron numbers, shuttle bus for patrons and vehicle parking – plan of management amended to give effect to conditions imposed

Legislation Cited: Environmental Planning and Assessment Act 1979, ss 4.16, 4.17, 8.14

Land and Environment Court Act 1979, s 34(4)(b)(i)
State Environmental Planning Policy (Coastal Management) 2018 (repealed)
State Environmental Planning Policy (Infrastructure) 2007 (repealed), cl 45
State Environmental Planning Policy (Resilience and Hazards) 2021, Ch 2, ss 2.10, 2.12, 2.13; Ch 4
State Environmental Planning Policy (Transport and Infrastructure) 2021, s 2.48
Warringah Local Environmental Plan 2011, cl 2.5, 2.7, 4.3, 4.6, 5.10, 5.20, 6.4; Sch 1 Item 14; Sch 5

Cases Cited: Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827

Texts Cited: Building Code of Australia
NSW Noise Policy for Industry
Warringah Development Control Plan 2011

Category: Principal judgment

Parties: Harbord Hotel Holdings Pty Ltd (Applicant)
Northern Beaches Council (Respondent)

Representation: Counsel:
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File Number(s): 2022/181844

Publication Restriction: Nil

JUDGMENT

Background

1 The Harbord Hotel has operated from its site at 29-31 Moore Road, Freshwater since 24 December 1928. The liquor licence for the Hotel, first issued on 29 April 1957, continues to authorise the service of alcohol on the premises subject to the terms of any relevant development consent.

- 2 Over the years, the Hotel building, which is identified as a local heritage item, has undergone various alterations and additions. The detail of which is conveniently recorded in the Heritage Impact Statement (HIS) prepared by Weir Phillips and dated August 2021. The most recent substantial development at the site was the extensive refurbishment of the ground floor level of the Hotel restaurant and bar carried out pursuant to development consent DA2020/0468 (Ex A Vol 1 Tab 7(a)), as modified by the approval of modification application MOD2020/0416 (2020 Consent) (Ex A Vol 1 Tab 8 Development Application Assessment Report (DAR)).
- 3 Curiously, however, the 2020 Consent did not impose any limitations on the Hotel in respect of the patron numbers, an omission that has in part given rise to the current proceedings.

Current proceedings

- 4 The current proceedings concern a development application (DA2021/1620) (DA) lodged by the applicant on 21 September 2021 seeking consent to carry out works at the first floor and attic levels of the Hotel to accommodate a bar function and ancillary recording studio floor space and ancillary amenities. The DA also proposes lift access to the attic level, and as this necessitates the raising of the roof in contravention of the height of buildings development standard in cl 4.3(2) of Warringah Local Environmental Plan 2011 (LEP), the applicant has lodged a written request pursuant to cl 4.6 for a relaxation of that standard. There is also a reconfiguration of the carparking to provide additional spaces and some minor upgrade works to address Building Code of Australia (BCA) requirements and acoustic mitigation works and conditions.
- 5 In accordance with the Council's policy the DA was publicly notified from 28 September 2021 to 12 October 2021 and 130 submissions were received of which 101 were objections and 29 were submissions in support. Given the significant public interest in the application the DA was referred to the Northern Beaches Planning Panel (Panel) for determination.
- 6 The DA went before the Panel on 15 December 2021 and was deferred with a request that the applicant provide additional information. The minutes of the Panel meeting (Ex A Vol 2 Tab 9(a) folio 634) record the additional information

sought by the Panel went to patron capacity (Items 1 and 2), parking surveys and mode of transportation (Item 3), acoustic assessment of the existing Hotel operations plus the proposed development including compliance of existing operations (Item 4), an amended plan of management (Item 5), details of the recording studio to demonstrate how it is ancillary to the Hotel use (Item 6) and amended plans which clearly indicate and dimension the proposed new work including car parking (Item 7).

- 7 The applicant also submitted to the Panel a Supplementary Statement of Environmental Effects (SEE) (Ex A Vol 1 Tab 2(e) folios 156-163) which included the following documents:
 - Attachment 1 - Current Liquor Licence (Ex A Vol 1 Tab 6 folio 497)
 - Attachment 2 - Existing premises patron capacity advice prepared by Trevor R Howse (Ex A Vol 1 Tab 2(e) folios 163a-163d)
 - Attachment 3 - Patron distribution plan (Ex A Vol 2 Tab 10 folio 671)
 - Attachment 4 - Transport modes surveys prepared by Colston Budd Rogers and Kaffes Pty Limited (Ex A Vol 1 Tab 2(e) folios 163e-163g)
 - Attachment 5 - Acoustic Compliance Report prepared by AKA Acoustics (Ex A Vol 1 Tab 2(i) folio 230)
 - Attachment 6 - Updated Plan of Management (Ex A Vol 1 Tab 2(p) folio 345)
 - Attachment 7 - Amended site plan (Ex A Vol 2 Tab 11 folio 672)
- 8 A memorandum dated 10 March 2022 prepared by the Assessing Officer assessing the applicant's additional information was provided to the Panel with a recommendation for changes to conditions (Ex A Vol 2 Tab 12).
- 9 The Panel met on 1 April 2022 and reconvened on 8 April 2022 to determine the DA and granted consent to the DA subject to conditions (Ex A Vol 1 Tab 2(c)).
- 10 The applicant was dissatisfied with conditions 37, 39, 43 and 45 and contended that those conditions should be deleted and or amended for the reasons set out in the Statement of Facts and Contentions (SOFAC) (Ex A Vol 1 Tab 3) and the Addendum to the SEE (Ex A Vol 1 Tab 5(a)).
- 11 The conditions at issue are as follows:

Condition 37

“The car parking area shown on the approved drawings must be used for vehicle parking only. Loading and unloading of vehicles and delivery of goods to the land must be carried out within the site. Any loading or unloading of materials of potential environmental damage must be appropriately banded with adequate spill response equipment in place to ensure nil runoff from the site.”

Condition 39

“Noise caused by the operation of amplified music must not be audible beyond the boundary of any residence between the hours of 10pm and 8pm on any day”

Condition 43

“The number of patrons within the venue shall be limited to a maximum of 650 at any time.”

Condition 45

“The applicant/operator is to provide a shuttle bus service between the subject premises, Manly CBD and other locations as required, operating in line with the amended Plan of Management. The shuttle bus service is to operate during operating hours as follows:

- Thursday and Friday- 4pm to thirty minutes after close
- Saturday, Sunday and Public Holidays - 11am to thirty minutes after close
- Any events or functions where it is expected a large number of patrons will be attending the period the event is occurring to thirty minutes after the event concludes.”

12 Although the appeal is against conditions, the consent ceases to have effect by operation of s 8.14(1) of the EPA Act therefore I am required to exercise the functions and discretions of the consent authority and determine the DA pursuant to ss 4.16 and 4.17 of the EPA Act.

Section 34 conference

13 Before the matter proceeded to hearing the Registrar of the Court directed that the proceedings be listed for a conciliation conference under s 34 of the *Land and Environment Court Act 1979* (LEC Act), and I presided over the conference. The conference took place over an extended time on 28 September 2022, 24 October 2022, 13 December 2022, 17 January 2023, 9 March 2023 and was ultimately terminated on 14 March 2023 on the basis that I determine the matter following a further hearing under s 34(4)(b)(i) of the LEC Act commencing onsite with a view.

- 14 It was also agreed that the matters discussed at the conference be allowed into evidence. To that end, the Court granted the applicant leave to amend its application on 19 April 2023 to incorporate the further plans and expert reports prepared by the applicant during the conciliation. The amended application was then notified to the original submitters and the further submissions received by the Council were included in the evidence.
- 15 The parties have also prepared and filed a joint planning report dated 5 May 2023 and a supplementary joint planning report dated 23 May 2023 from Mr Greg Boston and Mr Kerry Nash.

Statement of Facts and Contentions

- 16 The applicant's SOFAC filed on 11 August 2022 identifies that the land is zoned R2 Low Density Residential pursuant to the LEP, and Pubs are a prohibited land use in that zone. However, they are permissible on the land as an additional permitted use pursuant to cl 2.5(1) and Item 14 of Sch 1 of the LEP. (Clause 2.5(2) provides that cl 2.5 has effect "despite anything to the contrary in the Land Use Table or other provision of this Plan").
- 17 The objectives of the R2 zone are:
- To provide for the housing needs of the community within a low density residential environment.
 - To enable other land uses that provide facilities or services to meet the day to day needs of residents.
 - To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.
- 18 The second objective is the relevant objective, and the development is consistent with it.
- 19 Clause 2.7 of the LEP permits demolition with development consent. To the extent that demolition is proposed, the impacts have been considered and conditions have been proposed which satisfactorily address those matters.
- 20 Clause 4.3(2) of the LEP prescribes a maximum height of building development standard of 8.5m. The existing Hotel building already contravenes the height limit. The development proposes a further contravention by raising the roof at its south-eastern corner by 950mm, which results in a contravention

of 9.8m at its southern end and 10.7m at its northern end. Diagrams depicting the existing and proposed height contraventions are shown diagrammatically on pp 2, 3 and 4 of the written request pursuant to cl 4.6 of the LEP seeking a variation of cl 4.3 prepared by Boston Blyth Fleming dated 15 August 2021 (Clause 4.6 Request) (Ex A Vol 1 Tab 2(f) folio 164).

- 21 Clause 4.6 of the LEP allows the Court, exercising the functions and discretions of the consent authority, to grant consent to the DA notwithstanding the contravention of cl 4.3(2) subject to it being satisfied that the relevant preconditions in cl 4.6 have been met.
- 22 For the purposes of cl 4.6(4), I am satisfied that:
 - (1) the Clause 4.6 Request has adequately addressed the matters required to be demonstrated by subcl (3), and
 - (2) the development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.
- 23 The Clause 4.6 Request addresses cl 4.6(3)(a) by demonstrating that the objectives of cl 4.3 are achieved notwithstanding that the development contravenes the numerical standard consistent with test 2 set out in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 decided by Preston CJ (see Ex A Vol 1 Tab 2(f) folios 172-179).
- 24 The Clause 4.6 Request demonstrates that there are sufficient environmental planning grounds to justify the contravention by demonstrating that the height variation facilitates disabled access to the attic level in the most appropriate location and in the form of a pitched roof that is a better design outcome than a compliant flat roof having regard to the heritage significance of the Hotel (see Ex A Vol 1 Tab 2(f) folios 181-182).
- 25 The Clause 4.6 Request states why the development is consistent with the relevant objectives of the R2 zone (see Ex A Vol 1 Tab 2(f) folio 179). As the Clause 4.6 Request demonstrates that the objectives of the building height standard are achieved, and that the development is consistent with the objectives of the R2 zone I am satisfied that the development is in the public interest (cl 4.6(4)(a)(ii)).

- 26 The Court can grant consent without the concurrence of the Planning Secretary pursuant to s 8.14(3) of the EPA Act but should take into account the matters in cl 4.6(5). In this case the development is local development with a minor non-compliance and an adequately justified breach of the height standard. In the circumstances of this case the contravention of cl 4.3(2) of the LEP does not raise any matter of significance for State or regional planning and there is no public benefit in maintaining the standard as regards the determination of the DA.
- 27 The Panel agreed that the Clause 4.6 Request was well founded and the Council has not raised any contention that the Clause 4.6 Request should not be upheld (Ex A Vol 1 Tab 2(c) folio 86).
- 28 Clause 5.10 of the LEP applies to the development as the Hotel is listed as a local heritage item (I174) in Sch 5. A HIS was submitted with the DA (Ex A Vol 1 Tab 2(k)) and was considered by the Council's Heritage Officer who was satisfied that the development would not have an unacceptable impact on the heritage significance of the Hotel (Ex A Vol 1 Tab 2(b) folio 59).
- 29 Clause 5.20 of the LEP applies to the development as the development is in relation to licensed premises. Under cl 5.20(1), the Court must not refuse consent on the grounds, amongst others, that music is played or performed on the premises or that dancing takes place on the premises. Further, under cl 5.20(2) the Court must not refuse consent on the grounds of noise caused by the playing or performance of music, if the consent authority is satisfied the noise may be managed and minimised to an acceptable level. I am satisfied on the basis of the acoustic reports and the proposed noise conditions that noise caused by the playing or performance of music will be managed and minimised to an acceptable level.
- 30 Clause 6.4 of the LEP applies as the land is mapped as Area B on the Landslip Risk Map. The land has already been developed for the purpose of a hotel and has been in existence since 1924. The development does not propose any earthworks that would increase the risk of landslide. The Hotel has existing stormwater drainage to which the new works will connect. The development

does not involve excavation or works that will impact sub-surface flows (Ex A Vol 1 Tab 2(b) folio 67).

State Environmental Planning Policy (Resilience and Hazards) 2021 (RH SEPP)

Coastal Management

- 31 Chapter 2 of the RH SEPP applies because the land is in the coastal zone.
- 32 The land is mapped as being within the coastal environment area. Accordingly, s 2.10 applies. In addition, ss 2.12 and 2.13 apply.
- 33 These matters were considered in the DAR under the provisions relating to the State Environmental Planning Policy (Coastal Management) 2018 which have now been transferred into the new SEPP (Ex A Vol 1 Tab 2(b) folios 53-54).

Contamination

- 34 Chapter 4 of the RH SEPP applies to the land and requires consideration of whether the land is contaminated and if so whether it is suitable for the proposed use with or without remediation.
- 35 The Hotel has been in continuous operation since 1928 with no history of contaminating activities. The development does not propose the disturbance of the land.
- 36 In the circumstances I am satisfied that the site is suitable for the proposed use (being the continuing use of a Pub) without the need for remediation.

State Environmental Planning Policy (Transport and Infrastructure) 2021 (TI SEPP)

- 37 The DA was referred to Ausgrid pursuant to the provisions of cl 45 of the former State Environmental Planning Policy (Infrastructure) 2007 which has been transferred into the new TI SEPP as s 2.48. Ausgrid raised no objections to the DA (Ex A Vol 1 Tab 2(b) folio 52).

Contentions

Contention 1 – Audibility of Amplified Music (Condition 39)

- 38 Condition 39 as imposed on the Consent provides:

"Noise caused by the operation of amplified music must not be audible beyond the boundary of any residence between the hours of 10pm and 8pm on any day."

39 The applicant contends that this condition should be deleted because it is contrary to the recommendations in the Acoustic Reports submitted with the DA to the Council (Ex A Vol 1 Tabs 2(h) & 2(i)) and is inconsistent with the noise condition that currently applies to the Hotel and which the Hotel was assessed against in those Acoustic Reports. Conditions 1, 18 and 19 of the Notice of Determination (Ex A Vol 1 Tab 2(a)) are sufficient to ensure compliance with the existing noise criteria that applies to the Hotel.

40 The Hotel is subject to a noise condition on its licence in the standard OLGR form (Noise Condition) that requires:

"The LA10 noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre (31.5Hz- BkHz inclusive) by more than 5dB between 07:00 am and 12:00 midnight at the boundary of any affected residence.

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

Notwithstanding compliance with the above, the noise from the licensed premises shall not be audible within any habitable room in any residential premises between the hours of 12:00 midnight and 07:00am.

Interior noise levels which, although restricted in accordance with the above condition still exceed safe hearings levels are in no way supported or condoned by the Authority."

(Ex A Vol 1 Tab 6 folio 498)

41 This noise condition is incorporated in the proposed conditions of consent and referred to in the Plan of Management (POM).

42 It is also incorporated in Condition 21 of the earlier 2020 Consent. That is, the existing Hotel operations are required to comply with the Noise Condition (Ex A Vol 1 Tab 7(a) folio 509). Condition 17 (Ex A Vol 1 Tab 7(a) folio 508) of the 2020 Consent and par 33 (Ex A Vol 1 Tab 7(e) folio 574) of the POM approved by the 2020 Consent also refer to the Noise Condition. The 2020 Consent was also assessed against the Noise Condition (Ex A Vol 1 Tab 7(b) folios 529-530).

43 The DA was accompanied by an Acoustic Report prepared by AKA Acoustics dated 27 July 2021 (Ex A Vol 1 Tab 2(h)) which assessed the proposed first floor and second floor (attic) for acoustic compliance against the Noise

Condition (Ex A Vol 1 Tab 2(h) folio 208) and made recommendations for mitigation works and conditions to ensure compliance.

- 44 At the meeting of the Panel on 15 December 2022, the Panel requested that the applicant provide additional information including the provision of:

“An amended acoustic report that addresses all noise generation sources from the operations of the hotel, including the existing use of the ground floor and all outdoor areas. The measurement of noise generated by existing use is to be undertaken on the same night as point 3.”

- 45 Point 3 required that the applicant:

“Undertake at least one traffic and parking survey on an evening where there is an event or function being held. The survey shall include the travel modes of the patrons attending.”

- 46 Due to the COVID-19 pandemic, events at the Hotel were restricted however surveys were undertaken on 1, 18, 26 and 31 January 2022 (Ex A Vol 1 Tab 2(e) folios 163e-163g). These surveys showed peak patron attendance of 305 patrons on 1 January 2022. This should be contrasted with a peak patron attendance prior to the COVID-19 pandemic on 29 February 2020 of 549 patrons. It is also of relevance that the 1 January 2022 event had 600 tickets issued all of which were sold but half of which did not attend due to the COVID-19 pandemic risks (Ex A Vol 1 Tab 2(e) folio 157).

- 47 An Acoustic Compliance Report prepared by AKA Acoustics dated 23 January 2023 (Ex A Vol 1 Tab 2(i)) was submitted to the Panel. This Report carried out measurements on 1 January 2022 between 2.15pm and 5.10pm and focussed on the front courtyard area (Ex A Vol 1 Tab 2(i) folio 244). At the time of measurements, the peak capacity of the front courtyard was 200 patrons (Ex A Vol 1 Tab 2(i) folio 244 Table 7). The Acoustic Report found that noise emissions were dictated by the music played through the outdoor speakers and had the potential to lead to non-compliance with the noise criteria (Ex A Vol 1 Tab 2(i) folio 246). To address this non-compliance, the Acoustic Compliance Report made three recommendations in relation to positioning and settings of the outdoor speakers (Ex A Vol 1 Tab 2(i) folio 247). The Acoustic Compliance Report also made recommendations in relation to improving the acoustic screening around the front courtyard (Ex A Vol 1 Tab 2(i) folio 248). The Acoustic Compliance Report determined that with the adjustments to the

outdoor speakers and the changes to the acoustic screening that the 250 persons in the courtyard would comply with the Noise Condition between 7am and 10pm and that after 10pm the number of patrons in the courtyard should be reduced to 125 to ensure compliance (Ex A Vol 1 Tab 2(i) folio 249). It also made recommendations for control of loud voices in the courtyard which is dealt with at par 51 of the Updated POM (Ex A Vol 2 Tab 22 folio 836).

- 48 The Consent imposes conditions requiring the implementation of the acoustic mitigation measures and conditions recommended in the Acoustic Reports (Conditions 1, 18 and 19).
- 49 The town planning experts at par 2.1.1 of the joint report (Ex A Vol 2 Tab 13) agree that the recommendations in the Acoustic Reports address the issue of amplified music and that Condition 39 can be deleted.
- 50 The DAR and the relevant referrals do not provide any explanation for the formulation of Condition 39. The effect of Condition 39 would be to impose a new restriction on the existing operation of the Hotel that does not arise from the proposed development.
- 51 The Council does not have any specific planning control in relation to noise emissions from licensed premises. Section 03 of the Warringah Development Control Plan 2011 refers to a criteria of background + 5dba for mechanical plant and equipment and otherwise refers to the NSW Industrial Noise Policy which has been replaced by the NSW Noise Policy for Industry (Ex A Vol 2 Tab 15 folio 724) which expressly does not apply to licensed premises (Ex A Vol 2 Tab 15 folio 724d).
- 52 In these circumstances I accept that the Noise Condition being the OLGR standard condition for noise emissions from licensed premises is the appropriate noise criteria which applies to the Hotel and should continue to apply and will be met by the development and that Condition 39 which is contrary to that condition and the existing approved operations of the Hotel should be deleted.

Contention 2 - Patron Numbers (Condition 43)

- 53 Condition 43 of the Consent provides:

“The number of patrons within the venue shall be limited to a maximum of 650 at any time.”

- 54 Like Condition 39, this condition seeks to apply a limitation to the whole of the Hotel premises including the ground floor which is currently operating without any limitation on patron numbers.
- 55 The genesis of the limitation appears to be a concern by the Panel that the development could result in an intensification of the use of the Hotel (Ex A Vol 1 Tab 2(c) folio 102).
- 56 In an endeavour to limit any intensification, the Panel sought to ascertain through patron surveys the maximum capacity of the Hotel. Because of the COVID-19 pandemic it was not possible to survey the Hotel when it was operating at maximum capacity. Instead, the Panel resorted to using the ‘deemed to satisfy’ provisions of the BCA having regard to the floor area of the Hotel to determine the maximum capacity of the ground floor area of the Hotel. By applying the ‘deemed to satisfy’ rate of 1 person per sqm, the Panel came up with a number of 650 patrons (Ex A Vol 1 Tab 2(c) folio 102 and Vol 2 Tab 16).
- 57 This calculation was contrary to the BCA Report and documents that were before the Panel and failed to have regard to the fact that the table from the BCA relied upon by the Panel to determine numbers was not the only method that could be used to determine numbers (Ex A Vol 2 Tab 17(b)). This, in any event, was not correctly applied as the table allowed increased numbers along bar frontages and on dance floors both of which exist at the Hotel and were either not shown or not correctly shown on the plans before the Panel (Ex A Vol 2 Tab 17 folio 728).
- 58 The latest BCA Report (Ex A Vol 1 Tab 5(d) folio 475) filed with the application confirms that, when applying the BCA, the maximum population load on the ground floor of the Hotel is 800 - with up to 275 in the ground floor courtyard. The BCA Report confirms that the existing first floor is capable of accommodating a population of up to 175 people making a total population of 975 within the Hotel (Ex A Vol 1 Tab 5(d) folio 476 par 2.2.6).

- 59 The BCA Report confirms that following the proposed development the Hotel would be capable of accommodating a population of 650 on the ground floor (excluding terrace), 320 on the first floor and 100 on the attic level which equates to 1070. A further 150 would be permitted in the courtyard terrace which equates to 1,220 (Ex A Vol 1 Tab 5(d) folio 477 par 4.3.9).
- 60 These calculations are slightly different to the conclusions of the town planners at par 2.2.1 of their joint report because the planners have added 275 population in the front courtyard. However, only a total of 800 are allowed on the ground floor including the courtyard. As the 1,070 population already includes 650 on the ground floor, there can only be an additional 150 in the courtyard.
- 61 Notwithstanding the potential capacity of the Hotel, the applicant is prepared to accept a condition which limits the number of patrons to 750 except for 12 events in any calendar year where the number of patrons may exceed 750 but not exceed 800. The applicant proposes this amendment by way of inclusion of the patron limitation in the POM together with additional limitations on patrons numbers in particular areas of the Hotel to reflect acoustic and/or BCA requirements (Ex A Vol 1 Tab 5(c) folio 421).
- 62 The town planning experts have agreed that the applicant's proposed amendment is acceptable at par 2.2.1 of their joint report (Ex A Vol 2 Tab 13).
- 63 The experts opine that:
- “...it would be beneficial for the local community to have certainty as to a maximum patron capacity for the whole of the Licensed premises including the ground floor with such capacity reflected in an amendment to Condition 43 and the Plan of Management.”
- 64 The experts further opine that:
- “The experts agree that the adoption of these maximum patron numbers provides better planning and residential amenity outcomes compare (sic) to the current unrestricted patron capacity for the Harbord Hotel with the amended Plan of Management providing certainty to residents in relation to the ongoing operation and management of the hotel premises.”
- 65 Consistent with the 2020 Consent and the Liquor Licence, the DA did not seek any limitation on an overall population for the Hotel other than limitations on outdoor areas to achieve acoustic compliance.

- 66 The proposal for a limitation originated from the Panel in relation to the whole of the Hotel notwithstanding that the DA proposed works to the first floor and attic levels. In an endeavour to resolve concerns raised by the Panel, the applicant offered to accept a limitation of 870 which would have resulted in an increase of 50 based upon the BCA Report submitted with the DA (Ex A Vol 1 Tabs 2(a) and 2(e)). That report indicated that the ground floor of the existing premises could accommodate 820.
- 67 The Traffic and Parking Report submitted with the DA (Ex A Vol 1 Tab 2(j)) determined a driver rate for patrons of 6% and a driver rate for staff of 61% (Ex A Vol 1 Tab 2(j) folio 265). The report also determined a staffing rate of 1 staff per 14.4 patrons. These rates were based on actual surveys. Assuming that the 800 patrons on 12 days a year was an intensification, then those additional 50 patrons would result in a demand for 3 car spaces (50 x 6%) and a need for 4 additional staff with a carparking demand of 2.11 cars. The DA proposes to provide 5 additional car spaces and a courtesy bus (22-30 capacity) which will address the additional car parking demand.
- 68 The proposal to now accept 750 as a base with an increase to 800 on 12 occasions in a calendar year strikes an appropriate balance given that there will now be an enforceable limit on patron numbers together with a rigorous plan of management together with additional acoustic measures to mitigate noise emissions from the existing Hotel operations as well as the new operations above ground floor.

Contention 3 - Shuttle Bus for Patrons (Condition 45)

- 69 Condition 45 of the Consent provides:

“The applicant/operator is to provide a shuttle bus service between the subject premises, Manly CBD and other locations as required, operating in line with the amended Plan of Management. The shuttle bus service is to operate during operating hours as follows:

- Thursday and Friday- 4pm to thirty minutes after close
- Saturday, Sunday and Public Holidays - 11am to thirty minutes after close
- Any events or functions where it is expected a large number of patrons will be attending the period the event is occurring to thirty minutes after the even concludes.”

70 The DA as lodged included a SEE (Ex A Vol 1 Tab 2(d)), Traffic and Parking Report (Ex A Vol 1 Tab 2(j)) and Plan of Management (Ex A Vol 1 Tab 2(p)). The SEE (Ex A Vol 1 Tab 2(d) folio 113) and Traffic and Parking Report (Ex A Vol 1 Tab 2(j) folio 264) indicated that a courtesy bus would be provided to and from Manly at busy times. The February 2022 POM (Ex A Vol 1 Tab 2(p) par 86) said that the courtesy bus would be provided in peak periods on Friday and Saturday night and would commence at 9pm until 12am and will drop off guests at Manly, Dee Why or Brookvale at their request. At par 87 the POM stated that the courtesy bus service will be provided on special event days and other days it deems necessary.

71 It is apparent that Condition 45, as imposed, is beyond the scope of what has been offered. There was no justification offered by the Council for the discrepancy.

72 In its contentions, the applicant proposed that the courtesy bus operate generally in accordance with the DA documents except that it would drop off guests at Manly only.

73 The experts deal with the contention at par 2.3.1 of their joint report and have agreed on a hybrid form of the condition that provides:

“A courtesy bus service must be available between the subject premises, Manly CBD and other locations as required, operating in line with this Plan of Management. The courtesy bus service is to operate during operating hours as follows:

(a) Friday and Saturday- 9pm to 12.30am

(b) Days where there are more than 500 patrons at the Hotel from 9pm to 12.30am

(c) Any other day deemed necessary by Hotel Management.

The courtesy bus driver shall be notified by Hotel Management when the Hotel is at or approaching capacity at which time the shuttle bus operation will be limited to transporting patrons away from the Hotel only.”

74 The applicant is prepared to accept the condition in form proposed by the experts and based on the evidence, I am satisfied that it should do so.

Contention 4 - Vehicle Parking (Condition 37)

75 Condition 37 of the Consent provides:

"The car parking area shown on the approved drawings must be used for vehicle parking only. Loading and unloading of vehicles and delivery of goods to the land must be carried out within the site. Any loading or unloading of materials of potential environmental damage must be appropriately banded with adequate spill response equipment in place to ensure nil runoff from the site."

76 The applicant's contention relates only to part of this condition and in particular to keg deliveries.

77 This condition is discussed by the experts at par 2.4.1 of the joint report. The experts note at par 2.4.1 that the Hotel has a keg room located in the basement of the premises which is accessed via an access hatch from the Charles Street frontage. The experts further note that the Hotel has a long-standing arrangement of keg delivery from Charles Street via the access hatch with all other deliveries occurring from within the property.

78 The applicant's proposed alternate condition seeks to maintain the status quo by providing all loading and unloading within the site with the exception of kegs which will continue to be delivered from Charles Street via the access hatch as follows:

"The car parking area shown on the approved drawings must be used for vehicle parking only. Loading and unloading of vehicles and delivery of goods to the land, except the delivery of kegs, must be carried out within the site. Any loading or unloading of materials of potential environmental damage must be appropriately banded with adequate spill response equipment in place to ensure nil runoff from the site."

79 The experts agree at par 2.4.1 of their joint report that in the absence of any identified traffic impacts that the maintenance of this long established and historical keg delivery arrangement is acceptable provided all other deliveries occur from within the site. There is no expert evidence that suggests any unacceptable traffic impacts currently occur or will occur from keg deliveries.

80 The Council's internal traffic engineer suggested that the signage on Charles Street be altered to provide a loading zone to facilitate keg deliveries and to otherwise provide short-term parking for pick-up and drop-offs. The applicant through the Addendum SEE (Ex A Vol 1 Tab 5(a)) proposed an ancillary condition to the following effect:

"An application shall be made to the local traffic committee for signage to be installed in Charles Street adjacent to the hotel which provides for a loading zone to operate between 7am and 12pm Monday- Saturday. The signage shall provide short term (10 minute) parking after this time from 12pm to 12am

Monday to Saturday. If approval is granted the signage will be installed at the cost of the Applicant. Should approval not be granted by the local traffic committee, no signage is required to be installed.

Reason: to provide for deliveries to the hotel and to provide for set down and pick up operations at the hotel, including taxis, ride-share and min-buses."

81 The experts considered this ancillary condition at par 2.5.1 and were of the opinion that the condition as drafted conflicts with Condition 37.

82 The experts prepared a supplementary joint report on 23 May 2023 which further considered the ancillary condition at par 2.5.1 of their original report. The experts agreed that the ancillary condition should be amended to read as follows to clarify any inconsistency with Condition 37:

"An application shall be made to the local traffic committee for signage to be installed in Charles Street adjacent to the keg room access hatch which provides for a loading zone for keg deliveries between 7am and 12pm (noon) Monday - Saturday. The signage shall provide short term (10 minute) parking after this time from 6pm to 12am (midnight), Monday to Saturday. If approval is granted the signage will be installed at the cost of the Applicant. Should approval not be granted by the local traffic committee, no signage is required to be installed.

Reason: to provide for keg deliveries to the hotel and to provide for set down and pick up operations at the hotel, including taxis, ride-share, mini-buses and courtesy bus operations."

83 It is understood that the short-term parking is responsive to a request by the Council for the implementation of arrangements to enable pick-up and drop-off of guests to avoid double parking and traffic congestion around the Hotel. The experts have modified the condition to maintain the status quo from 12pm to 6pm with the short-term drop-off/pick-up occurring from the busy operating period at 6pm to midnight. This change was to balance concerns raised by residents against concerns raised by Council. The applicant's primary position is that the ancillary condition is not necessary because the applicant's Condition 37 reflects the status quo. However, the applicant does not oppose the imposition of the condition and the installation of the signage at its expense provided that should the traffic committee not support the condition then no signage will be required.

84 During the hearing Condition 37 was amended to remove any reference to minibuses and courtesy bus operations after it was decided that those activities would be carried out on site in accordance with Condition 47.

Ancillary Condition - POM (Condition 29)

- 85 The Amended DA includes an updated POM (Ex A Vol 2 Tab 22) which gives effect to the amended conditions agreed by the experts together with other improved management requirements that came out of discussions between the experts.
- 86 Condition 29 of the Consent as imposed by the Panel requires amendments to the POM filed with the DA. As the POM has been updated to include the required amendments, Condition 29 can now be deleted.

Objectors' evidence

- 87 At the commencement of the s34 conference, the Council co-ordinated oral submissions from several objectors who wished to address the process. Some of these submitters also gave evidence at the site view held at the commencement of the hearing (Ex 2). Their written submissions (Ex 4) together with the other submissions received by the Council have been tendered as part of the Council's case and read. Collectively, the residents who object to the proposal, particularly those most proximate to the site, said that an approval of this DA will exacerbate the already unacceptable noise and amenity issues they presently suffer. They strenuously oppose any further loss of their quiet enjoyment of their home/residential amenity and seek a limitation on the number of patrons attending the site. They are also concerned about the lack of onsite parking and the movements and pick-up location of the proposed courtesy bus which is to operate in accordance with the POM to ferry patrons from the premises shortly before closing time. They suggest that the pick-up be located within the site rather than the public street or in some cases private driveways as has been their experience. They also request that the area historically used for the delivery of kegs be removed to an onsite location rather than the street frontage. Several submitters asked for improved surveillance by the Hotel's security staff to move on unruly noisy patrons leaving the site.
- 88 As I have outlined above a number of the objectors' demands have been acted upon. The application was amended with the Court's leave to provide that the courtesy bus park and load onsite. To that end, Condition 47 was amended to provide that car spaces 01 and 02 on plan DA000.011(B) be nominated as

being available to be used for the parking and standing of the courtesy bus whilst in operation. And all other deliveries, other than the kegs (which are to be delivered from Charles Street between the hours of 7am and 5pm Monday to Saturday (within a loading zone if applicable with the applicant making such application to the local traffic committee)), are also to be carried out on site.

- 89 The POM has been amended to require the windows of the premises on the western side of the Hotel to be key locked at 9pm whenever entertainment is being conducted. Similarly, the conditions of consent were clarified to include a condition (Condition 48) referencing the maximum noise levels permitted at the Hotel as endorsed on the Liquor Licence and the recommended acoustic measures included in the AKA Acoustics Compliance Reports.

Conclusion

- 90 There is no expert evidence before the Court to support a refusal of this DA. I accept the agreed expert evidence and conclusions put to the Court. The terms of the consent will introduce new regulation of Hotel use - that but for this consent - would not be in place. On that basis, I find that an approval of this application is in the public interest; as it offers appropriate mitigation strategies in the form of conditions which are enforceable.

- 91 The Court orders:

- (1) The applicant's written request pursuant to clause 4.6 of Warringah Local Environmental Plan 2011 (LEP) seeking a variation to maximum height of building control in clause 4.3 of the LEP, prepared by Boston Blyth Fleming dated 15 August 2021, is upheld.
- (2) The appeal is upheld.
- (3) Development consent is granted to development application no. DA2021/1620 for alterations and additions to an existing pub (Harbord Hotel) at 29-31 Moore Road, Freshwater subject to the conditions of consent in Annexure A.
- (4) The exhibits are returned except for A, B, D, E, 2, 3 and 4.

.....

S Dixon

Senior Commissioner of the Court

Annexure A (777824,

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DISCLAIMER - Every effort has been made to comply with suppression orders or statutory provisions prohibiting publication that may apply to this judgment or decision. The onus remains on any person using material in the judgment or decision to ensure that the intended use of that material does not breach any such order or provision. Further enquiries may be directed to the Registry of the Court or Tribunal in which it was generated.

Annexure A

DETERMINATION OF DEVELOPMENT APPLICATION BY GRANT OF CONSENT

Development Application No: DA2021/1620

Development: Alterations and additions to an existing pub (Harbord Hotel)

Site:

Lot 1 DP 7022 , 29 Moore Road FRESHWATER NSW 2096
Lot 2 DP 7022 , 29 Moore Road FRESHWATER NSW 2096
Lot 3 DP 7022 , 29 Moore Road FRESHWATER NSW 2096
Lot 4 DP 7022 , 29 Moore Road FRESHWATER NSW 2096
Lot 5 DP 7022 , 29 Moore Road FRESHWATER NSW 2096
Lot 13 DP 7022, 31 Moore Road FRESHWATER NSW 2096

The above development application has been determined by the granting of consent subject to the conditions specified in this consent.

Date of determination: 2 June 2023

Date from which consent takes effect: Date the consent is registered on the NSW Planning Portal

TERMINOLOGY

In this consent:

- (a) Any reference to a Construction, Compliance, Occupation or Subdivision Certificate is a reference to such a certificate as defined in the *Environmental Planning and Assessment Act 1979*.
- (b) Any reference to the “applicant” means a reference to the applicant for development consent or any person who may be carrying out development from time to time pursuant to this consent.
- (c) Any reference to the “site”, means the land known as Lots 1-5 in DP 7022 and Lot 13 DP 7022, known as 29-31 Moore Road FRESHWATER NSW 2096

The conditions of consent are as follows:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans		
Drawing No.	Dated	Prepared By
DA-D00-011 - Ground Floor - General Arrangement Plan	Rev. B, 28 July 2021	Alexander & Co.
DA-A01-011 - First Floor - General Arrangement Plan	Rev. B, 28 July 2021	Alexander & Co.
DA-A02-011 - Upper Floor - General Arrangement Plan	Rev. B, 28 July 2021	Alexander & Co.
DA-DXX-011 - Site & Roof - Proposed Plan	Rev. C, 11 February 2022	Alexander & Co.
DA-EXX-011 - External Elevations 01	Rev. B, 28 July 2021	Alexander & Co.
DA-EXX-021 - External Elevations 02	Rev. B, 28 July 2021	Alexander & Co.
DA-FXX-011 - Section 01	Rev. B, 28 July 2021	Alexander & Co.
DA-FXX-021 - Section 02	Rev. B, 28 July 2021	Alexander & Co.
DA-FXX-031 - Section 03	Rev. B, 28 July 2021	Alexander & Co.
DA-FXX-041 - Section 04	Rev. B, 28 July 2021	Alexander & Co.
MXX-011 - Material Palette	Rev. A, 31 May 2021	Alexander & Co.
Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Acoustics Report	27 July 2021	AKA Acoustics
Acoustic Compliance Report	23 January 2022	AKA Acoustics
Accessibility Report	Issue 2, 30 May 2021	Trevor R Howse

BCA Expert Report of Hayden Howse	Undated (Tab 4 of Exhibit EJF-1 filed in the Land and Environment Court Proceedings No. 2022/181844)	Trevor R Howse
Heritage Impact Statement	August 2021	Weir Phillips Heritage and Planning
Traffic and Parking Report	20 April 2021	Colston Budd Rogers & Kafes Ptf Ltd
Addendum Traffic Response	Colston Budd Rogers Pty Ltd	22 March 2023
Plan of Management	26 May 2023	Harbord Hotel
Operational Waste Management Plan	Revision B, 7 June 2021	Elephants Foot Recycling Solutions

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:

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.

d) For the avoidance of doubt, the Plan of Management dated for 26 May 2023 approved by this development consent supersedes any previously approved Plan of Management.

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

2. Compliance with Other Department, Authority or Service Requirements The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Response Ausgrid Referral	20 October 2021
NSW Police Licensing Unit	NSW Police Referral Response	22 November 2021

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

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

3. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

- (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

4. General Requirements

- (a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

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

Demolition and excavation works are restricted to:

8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$28,364.73 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of \$2,836,472.76.

The monetary contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate whichever occurs first, or prior to the issue of the Subdivision Certificate where no Construction Certificate is required. If the monetary contribution (total or in part)

remains unpaid after the financial quarter that the development consent is issued, the amount unpaid (whether it be the full cash contribution or part thereof) will be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index. If this situation applies, the cash contribution payable for this development will be the total unpaid monetary contribution as adjusted.

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

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

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

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

6. Security Bond

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

7. Photographic Archival Record

A photographic archival record is to be made of all components of the building affected by the proposed works (including interiors and exteriors and their setting), generally in accordance with the guidelines issued by the Heritage NSW. This should include all areas of the 1st floor (internal and external) and the external appearance and setting of the building when viewed from Moore Road and Charles Street.

This record must be submitted to Council's Heritage Advisor for approval prior to commencement of any demolition or works on-site.

The photographic record should be made using digital technology, and should include:

- i Location of property, date of survey and author of survey;
- i A site plan at a scale of 1:200 showing all structures and major landscape elements;
- i Floor plans of any buildings at a scale of 1:100;
- i Photographs which document the site, cross-referenced in accordance with recognised archival recording practice to catalogue sheets. The extent of documentation will depend on the nature of the item.

Reason: To provide an archival photographic record of the site, including any buildings and landscape elements, prior to any works.

8. Car Parking Standards

The driveway/access ramp grades, access and car parking facilities must comply with the Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking. The dimensions of car parking bays and aisle widths in the car park are to comply with Australian/New Zealand Standard for Off-Street Parking AS/NZS 2890.1-2004.

Details demonstrating compliance with this condition are to be submitted to the Certifying Authority prior to the issue of a construction certificate.

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicles.

9. Vehicular Swept Paths

Vehicular manoeuvring paths must be provided to demonstrate all vehicles can enter or depart the site in a forward direction without encroaching on required car parking spaces. The drawings must be compliant with Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking.

Details demonstrating compliance with this condition must be submitted to the Certifying Authority prior to the issue of the construction Certificate.

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicles.

10. Construction Traffic Management Plan

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

Truck movements must be agreed with Council's Traffic Engineer prior to submission of the CTMP.

The CTMP must address following:

- i The proposed phases of construction works on the site, and the expected duration of each construction phase
- i The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- i Make provision for all construction materials to be stored on site, at all times
- i The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- i The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed
- i The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- i Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available
- i Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
- i Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic
- i The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Seven (7) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure
- i Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees
- i Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site
- i The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site
- i Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council

- i The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent
- i Proposed protection for Council and adjoining properties
- i The location and operation of any on site crane

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

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

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

11. Waste and Service Vehicle Access (12.5 Heavy Rigid Vehicle)
Access to the on-site loading bay area including ramp grades, transitions and height clearance shall be designed for safe forward in and forward out access of a 12.5m HRV delivery truck, as a minimum requirement. The height clearance required is 4.5m, measured from the surface level to any overhead structures such as pipes. Swept path diagrams must include details of the road including, kerb line, line marking, signs, traffic devices, power poles, other structures and neighbouring driveways. Plans showing the ramp grades, transitions and height clearance and swept path diagrams of 12.5m delivery vehicle shall be submitted to and approved by the Certifying Authority prior to the issue of the Construction Certificate.

Reason: to ensure adequate service vehicle access.

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

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

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

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

13. Building Code of Australia Report (Class 2-9) and BCA requirements

A 'Building Code of Australia (BCA) Assessment Report' / 'Fire Audit Report' from an appropriately qualified Registered Certifier* will need to be submitted with the Construction Certificate application addressing the following:

The report is to detail the extent to which the existing building (relevant affected parts) does or does not comply with the deemed-to satisfy provisions of Sections C, D, E and F of the Building Code of Australia. The report is to also provide recommendations with respect to the existing building / works required to ensure that the specified measures and facilities contained in the existing building, including any modifications to be made by the proposed development are appropriate for its intended use.

Notes 01-08 contained on drawing DWG No 01 Egress Analysis – Site Plan and DWG No 02 Egress Analysis – Existing Photos, prepared by Trevor R Howse, 12/12/22 as contained within the expert BCA report must be implemented prior to the release of a Construction Certificate.

The population (staff and patrons) using the Front Terrace may be limited to a maximum of 250 persons (staff and patrons) where information is provided, at Construction Certificate stage, that shows a detailed layout of the Terrace, demonstrating the proposed layout / use of the space in conjunction with an egress assessment of the building, particularly for the management of Terrace occupants and also occupants egressing via the north-eastern air-lock door that then use either the external stairs leading to Moore Road and the south-eastern gate from the Terrace.

*To be regarded as an "appropriately qualified registered certifier" the certifier must hold the relevant level of accreditation that would enable the certifier to issue a construction certificate for the subject building.

The 'Building Code of Australia (BCA) Assessment Report' / 'Fire Audit Report' is to be submitted to the Certifying Authority with the Construction Certificate application.

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

14. Building Code of Australia Access

Access and facilities to and within the building are to be provided for Persons with a Disability and are to comply with the Building Code of Australia and AS 1428.1. The "Design Specification – Accessibility" report prepared by Trevor R Howse Pty Ltd dated 30/5/2021 is to be taken into consideration as part of the assessment of the Construction Certificate. Details are to be provided to the Certifying Authority prior to the issue of the Construction Certificate and be implemented prior to occupation of the building.

Reason: To ensure adequate provision is made for access to and within the building for Persons with a disability.

15. Interpretation Strategy and Plan

An Interpretation Strategy and Plan for the 1st floor of the hotel, is to be prepared by a suitably qualified heritage professional. The Plan should outline how this interpretation will be incorporated into the adaptive re-use of the 1st floor. This must be submitted to Council's Heritage Advisor for approval, prior to the commencement of any works on-site and implemented prior to completion of works.

Reason: To ensure that the historical use of the 1st floor of the hotel is interpreted as part of its adaptive re-use.

16. 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 premises complies with the design construction and fit-out requirements.

17. Mechanical Ventilation Plans

Where Mechanical ventilation is required to be installed in the food premises detailed plans must be submitted to and approved by the Certifying Authority that demonstrate compliance with the following:

- Australian Standard (AS) 1668.2 “The use of ventilation and air-conditioning in buildings - Mechanical ventilation in buildings”; and
- Any external exhaust discharge must be above the roofline and discharged in a manner that is not likely to cause an amenity impact.

These plans are to be prepared by a suitably qualified person.

Reason: To ensure that the installed mechanical ventilation complies with the requirements of the Australian Standard 1668.2 and to prevent amenity impacts.

18. Acoustic Design Incorporated into Plans

All design components detailed in Section 3 of the acoustic report prepared by AKA Acoustics and AKA Music Pty. Ltd. dated 23 January 2022 (Reference R-072HBH220117.3) must be implemented into the plans, and conducted prior to issuing the Construction Certificate in order to achieve compliance with noted conditions of this consent.

Details demonstrating these actions and design are to be submitted to the satisfaction of the Principal Certifier.

Reason: To prevent noise nuisance for the surrounding area.

19. Acoustic design incorporated into plans

All design components detailed in Section 4, and actions listed in Section 5.2 of the acoustic report prepared by AKA Acoustics and AKA Music Pty. Ltd. dated 27 July 2021 (Reference R054HBH210717.4) respectively, must be, implemented into the plans, and conducted prior to issuing the Construction Certificate in order to achieve compliance with noted conditions of this consent.

Details demonstrating these actions and design are to be submitted to the satisfaction of the Principal Certifying Authority.

Reason: To prevent noise nuisance for the surrounding area.

20. 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](http://www.hreoc.gov.au/disability%20rights%20/buildings/good.htm). <www.hreoc.gov.au/disability%20rights%20/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)

21. External Finishes to Roof

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development.

22. Certification of Design Specification - Accessibility

Prior to the issue of the Construction Certificate, all recommendations contained in Sections 1.3 and 4.1 - 4.4 of the Accessibility Report referenced in condition 1 shall be incorporated into the plans and supporting documentation.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure that the development is carried out in accordance with the approval documentation.

23. Certification of Acoustic Reports

The recommendations contained in the Acoustic Reports referenced in condition 1 shall be incorporated into the plans and supporting documentation, including but not limited to the following:

Acoustics Report prepared by AKA Acoustics, dated 27 July 2021

- i 4.1.2 Acoustic barrier specifications for the first-floor balcony and heritage balustrade
- i 4.1.3 Outdoor PA system and noise limits for background music
- i 4.1.4 Acoustic door and perimeter seals for the main first floor entrance
- i 4.1.5 Acoustic door and perimeter seals for balcony entrance
- i 4.1.6 Acoustic glazing for the first floor patron area
- i 4.1.7 Airlock between the first floor patron area and outdoor balcony
- i 4.2.1 Floor-ceiling system between the first and second floor
- i 4.2.2 Ceiling insulation system

Acoustic Compliance Report prepared by AKA Acoustics, dated 23 January 2022

- i 3.3.1 Reconfiguration of outdoor PA system
- i 3.3.2 Increased height, configuration and density of noise barrier

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure that the development is carried out in accordance with the approval documentation.

24. Waste Management Plan

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

25. Work Zones and Permits

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

A separate application is required with a Traffic Management Plan for standing of construction vehicles in a trafficable lane and a Roads and Maritime Services Work Zone Permit shall be obtained for State Roads.

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

26. 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.

27. 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.

28. Stockpiling materials
During construction, all material associated with works is to be contained at source, covered and must be within the construction area. All material is to be removed off site and disposed of according to local regulations. The property is to be kept clean and any building debris removed as frequently as required to ensure no debris enters receiving waters.

Reason: To ensure pollution control measures are effective to protect the aquatic habitats within receiving waters throughout the construction period.

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

29. Certification of Design Specification - Accessibility
Details demonstrating that the works have been carried out in accordance with recommendations contained in Sections 1.3 and 4.1 - 4.1 of the Accessibility Report referenced in condition 1 are to be submitted to the Certifying Authority prior to the issue of the occupation certificate.

Reason: To ensure that the development is carried out in accordance with the approval documentation.

30. Certification of Acoustic Reports
Details demonstrating that the works shall be carried out in accordance with the recommendations contained in the Acoustic Reports referenced in condition 1 are to be submitted to the Certifying Authority prior to the issue of the occupation certificate, including but not limited to the following:

Acoustics Report prepared by AKA Acoustics, dated 27 July 2021

- i 4.1.2 Acoustic barrier specifications for the first-floor balcony and heritage balustrade
- i 4.1.3 Outdoor PA system and noise limits for background music
- i 4.1.4 Acoustic door and perimeter seals for the main first floor entrance
- i 4.1.5 Acoustic door and perimeter seals for balcony entrance
- i 4.1.6 Acoustic glazing for the first floor patron area
- i 4.1.7 Airlock between the first floor patron area and outdoor balcony
- i 4.2.1 Floor-ceiling system between the first and second floor
- i 4.2.2 Ceiling insulation system

Acoustic Compliance Report prepared by AKA Acoustics, dated 23 January 2022

- i 3.3.1 Reconfiguration of outdoor PA system
- i 3.3.2 Increased height, configuration and density of noise barrier

Reason: To ensure that the development is carried out in accordance with the approval documentation.

32. Kitchen Design, Construction and Fit-out of Food Premises Certification

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

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

33. Mechanical Ventilation certification

Where Mechanical ventilation is required to be installed in the food premises it must comply with Australian Standard (AS) 1668.2 "The use of ventilation and air-conditioning in buildings Mechanical ventilation in buildings" prior to any Occupation Certificate (OC) being issued.

Certification is to be provided to the Principal Certifying Authority by a suitably qualified person that the mechanical ventilation complies with the above requirements.

Reason: To ensure that the installed mechanical ventilation complies with the requirements of the Australian Standard 1668.2.

34. Noise Mitigation Measures

Prior to any occupation certificate being issued, a suitably qualified and experienced person must provide evidence to the Principal Certifier that confirms compliance with Section 4, and Section 3 of the acoustic report prepared by AKA Acoustics and AKA Music Pty. Ltd. dated 23 January 2022 (Reference R-072HBH220117.3).

Reason: To protect the acoustic amenity of neighbouring properties.

35. Acoustic Assessment

Prior to any occupation certificate being issued, a further acoustic assessment is to be undertaken by a qualified and experienced person(s) to confirm compliance with Section 4, and Section 5.2 of the acoustic report prepared by AKA Acoustics and AKA Music Pty. Ltd. dated 27 July 2021 (Reference R-054HBH210717.4).

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. The updated acoustic assessment is to be submitted to the PCA for certification.

Reason: To protect the acoustic amenity of neighbouring properties (DACHPFPOC6)

36. 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 Certifying Authority prior to the issue of the Interim / Final 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 under Part 9 Division 4 & 5 of the Environmental Planning and Assessment Regulation 2000.

37. An application shall be made to the local traffic committee for signage to be installed in Charles Street adjacent to the keg room access hatch which provides for a loading zone for keg deliveries between 7am and 12pm (noon) Monday -Saturday. The signage shall provide short term (10 minute) parking after this time from 6pm to 12am (midnight), Monday to Saturday. If approval is granted the signage will be installed at the cost of the Applicant. Should approval not be granted by the local traffic committee, no signage is required to be installed.

Reason: to provide for keg deliveries to the hotel and to provide for set down and pick up operations at the hotel, including taxis, ride-share.

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

38. Vehicle Parking

The car parking area shown on the approved drawings must be used for vehicle parking only. Loading and unloading of vehicles and delivery of goods to the land, except the delivery of kegs, must be carried out within the site. Any loading or unloading of materials of potential environmental damage must be appropriately bundled with adequate spill response equipment in place to ensure nil runoff from the site.

Reason: To ensure the safety and amenity of the general public using public streets, and to ensure the protection of the environment from spillage of materials.

39. Sight lines within carparks

The required sight lines to pedestrians and other vehicles in and around the carpark and entrance(s) are not to be obstructed by landscaping or signage.

Reason: To maintain unobstructed sight distance for motorists.

40. Compliance with the Plan of Management

The requirements of the approved Plan of Management required by condition 1(d) must be followed in perpetuity. Any changes to the Plan of Management are to be approved by the Council.

Reason: To ensure operations of the premises are maintained in an appropriate manner in perpetuity. (DACHPGOG5)

41. Noise Mitigation Measures

All noise mitigation measures detailed in Section 3 of the acoustic report prepared by AKA Acoustics and AKA Music Pty. Ltd. dated 23 January 2022 (Reference R-072HBH220117.3) must be implemented at all times during operation.

Reason: To protect the acoustic amenity of neighbouring properties.

42. Hours of Operation

The hours of operation are to be restricted to:

- i Monday to Saturday – 5:00am to 12am midnight
- i Sunday and Public Holidays – 10:00am to 12am midnight

- i Good Friday – 12pm noon to 10:00pm
- i Christmas Day – 12pm noon to 10:00pm
- i December 31st – Normal opening time until normal closing time or 2:00am on New Year's Day, whichever is the later

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 15 minutes with the exception of patrons waiting inside the hotel (other than in any restricted area) for collection by a taxi or courtesy bus.

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

43. Patron Numbers

The maximum number of patrons permitted within the Hotel shall be limited as follows:

- a) A base limit of 750 patrons at any one time; and
- b) On twelve (12) days during any calendar year, the number of patrons may exceed 750 but shall not exceed 800 patrons within the Hotel (“a special event”) at any one time.

In relation to the twelve (12) special event days, the Hotel will implement the following community notification process:

- No later than 30 days prior to a special event the Hotel will place a notice on its website confirming the date of such event and advising that patron numbers will be capped at 800 within the venue at any time.
- No latter than 14 days prior to a special event the Hotel will letter box drop immediate neighbours with a notice confirming the date of such event and advising that patron numbers will be capped at 800 within the venue at any time.

Reason: To ensure that the operation of the premises is consistent with the proposed development.

44. Staff Numbers

The Hotel will have deployed at any one time, between one (1) and fifty (50) members of staff.

45. Occupancy

In relation to the maximum number of patrons and staff permitted within the Hotel at any time, occupancy numbers shall not exceed the following in relation to the areas nominated:

- (a) There shall not be more than 800 persons (inclusive of both staff and patrons) on the ground floor, with not more than:
 - a. 250 of those persons (inclusive of both staff and patrons) within the front courtyard area between 7am and 10pm;
 - b. 100 of those persons (inclusive of both staff and patrons) in the front terrace after 10pm with last drink service at 11:30pm and the terrace vacated by 11:45pm.
- (b) There shall be no more than 320 persons (inclusive of both staff and patrons) on the first floor at any time.
- (c) There shall be no more than 100 persons (inclusive of both staff and patrons) on the attic floor at any time.
- (d) The number of patrons on the first floor balcony (inclusive of both staff and patrons) shall be limited to:
 - (i) 90 between 7am and 6pm,
 - (ii) 80 between 6pm and 8pm,
 - (iii) 60 between 8pm and 10pm, and
 - (iv) 8 including staff after 10pm.

46. Operation of Premises in Accordance with Acoustic Reports

The ongoing operation of the premises shall be in accordance with the recommendations of the Acoustic Reports referenced in condition 1, including but not limited to the following:

Acoustics Report prepared by AKA Acoustics, dated 27 July 2021

- i 4.1.1 Occupancy levels and time of trade for first-floor balcony
- i 4.1.3 Outdoor PA system and noise limits for background music
- i 4.1.6 Acoustic glazing for the first floor patron area
- i 4.1.7 Airlock between the first floor patron area and outdoor balcony

Acoustic Compliance Report prepared by AKA Acoustics, dated 23 January 2022

- i 3.3.1 Reconfiguration of Outdoor PA System
- i 3.3.3 Operational controls after 10:00pm

Reason: To ensure that the development is carried out in accordance with the approval documentation.

47. Provision of Shuttle Bus for patrons

A courtesy bus service must be available between the subject premises, Manly CBD and other locations as required, operating in line with this Plan of Management. The courtesy bus service is to operate during operating hours as follows:

- (a) Friday and Saturday – 9pm to 12.30am
- (b) Days where there are more than 500 patrons at the Hotel from 9pm to 12.30am
- (c) Any other day deemed necessary by Hotel Management.

The courtesy bus driver shall be notified by Hotel Management when the Hotel is at or approaching capacity at which time the shuttle bus operation will be limited to transporting patrons away from the Hotel only.

Car spaces 01-02 as nominated on plan DA.000.011 (B) shall be available and used for the parking / standing of the courtesy bus whilst in operation in accordance with this condition. All pick and drop offs will occur from those two spaces.

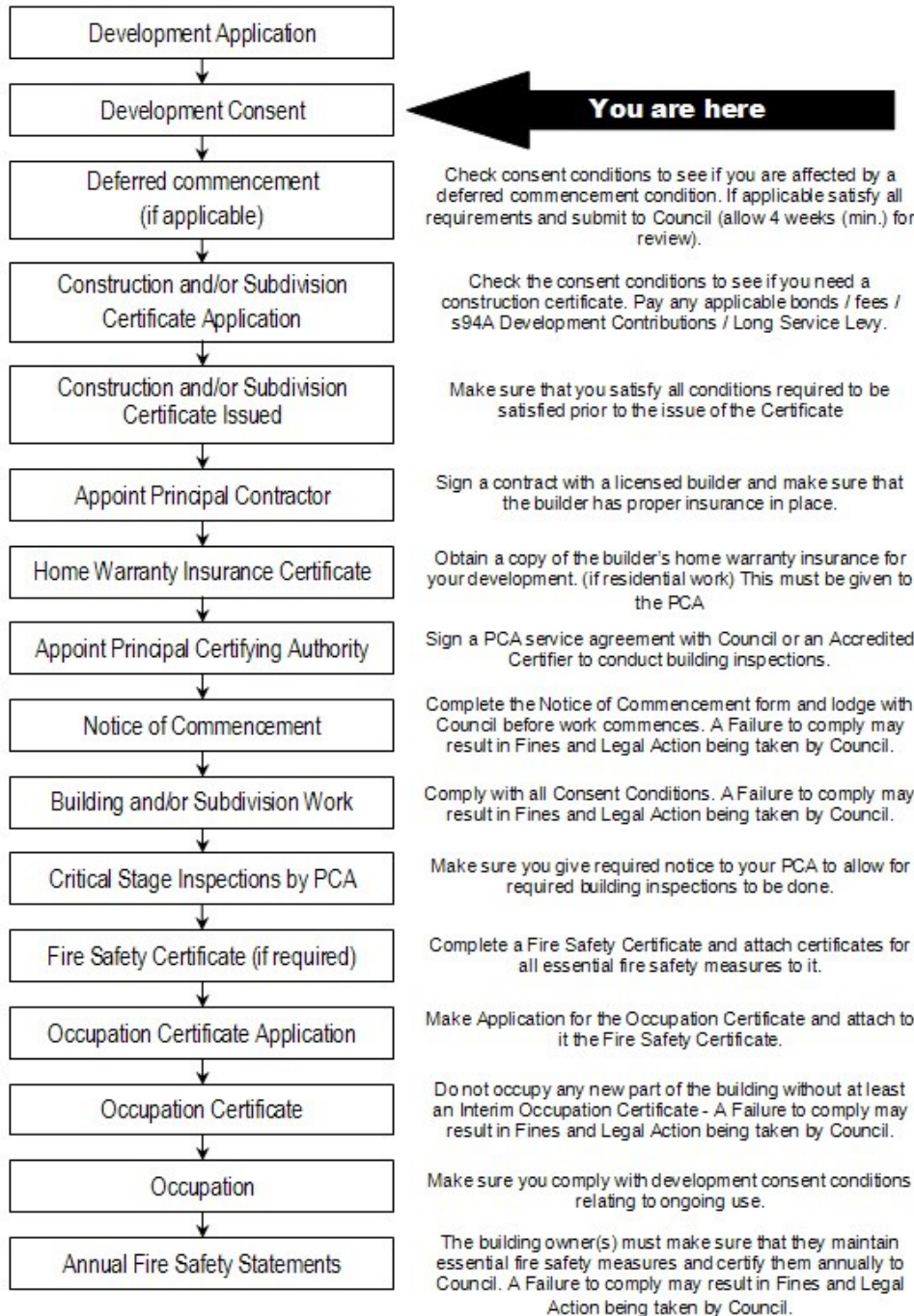
Reason: To provide an additional transport option for patrons to offset the lack of on site parking.

48. Licensing and Compliance Conditions.

The LA10 noise level emitted from the licensed premises shall not exceed the back-ground noise level in any Octave Band Centre (31.5Hz - 8kHz inclusive) by more than 5dB between 07:00 am and 12:00 midnight at the boundary of any affected residence. The LA10 noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz - 8kHz inclusive) between 12:00 midnight and 07:00 am at the boundary of any affected residence. Notwithstanding compliance with the above, the noise from the licensed premises shall not be audible within any habitable room in any residential premises between the hours of 12:00 midnight and 07:00 am.

GENERAL ADVICE
Advisory Notes (General)

Where are you in the development process?



Note: The advice within this document is provided in good faith as a guide to assist applicants understand the broad process and will not detail every step or every requirement for demolition, building construction works or subdivision required or business operating requirements under New South Wales or Commonwealth Legislation. If you require clarification or have any questions, please contact your Certifier or Council's Planning and Development Enquiries Team.

The attached Notice of Determination includes conditions of consent which must be complied with.

(Note: A failure to gain approval prior to the works being carried out is a serious breach of the Environmental Planning & Assessment Act 1979 which attracts penalties and may also result in legal action.)

Building Certification

The Environmental Planning and Assessment Act 1979 provides that: | Building work cannot occur unless a construction certificate has been issued; | Occupation of building works cannot occur unless an occupation certificate has been issued | Subdivision cannot be registered until a subdivision certificate has been issued | Mandatory Inspection for building work must be completed

Please refer to process chart for more detail.

(Note: A failure to gain approval prior to the works being carried out is a serious breach of the Environmental Planning & Assessment Act 1979 which attracts penalties and may also result in legal action.)

Certification Services

Construction Certificates / Occupation Certificates / Subdivision Certificates / Strata Certificates, can be issued by Council or an accredited private certifier (Note Council must be the Principal Certifying Authority (PCA) for subdivisions).

Council is well placed to provide Certification Services. Council can issue Construction Certificates and act as your Principle Certifying Authority at competitive rates. Please visit our web site www.northernbeaches.nsw.gov.au or speak to our Customer Service Officers if you have any further questions about our Certification Services or if you wish to use Council as your certifier.

Charges Associated with the Development Consent

All bonds, fees, Development Contributions or the Long Service Levy detailed within the Notice of Determination are required to be paid prior to the issuing of any Construction Certificate.

Bonds are released after:

1. 'Final Occupation Certificate' has been received by Council; and
2. Final inspection by a Council Officer where:
 - | the development is complete
 - | damage has not been caused to council assets during the works |
 - | conditions of development consent have been met.

The bond will be released to the person or business who paid the bond to Council (The name that appears on the original receipt)

Acceptable Form of Security Bonds

Council will accept bank guarantee (in a form acceptable to Council) in lieu of cash and is required prior to the issue of a construction certificate.

Modifications to the consent

If you seek to make any changes to the development (which may include internal / external configuration of the building, variation to facades, site layout or any changes to the proposed operation or use), the modifications may require the submission and approval of an application to modify the

development consent prior to the issuing of a Construction Certificate and prior to the works being carried out. The proposed changes should be discussed with the PCA.

(Note: A failure to gain approval prior to the works being carried out is a serious breach of the Environmental Planning & Assessment Act 1979 which attracts penalties and may also result in legal action.)

Other Matters not detailed within the Notice of Determination

The Notice of Determination does not stipulate every requirement that must be completed to satisfy New South Wales and Commonwealth legislation.

You should check, as may be relevant, with other authorities including but not limited to:

Workcover NSW for work safety and asbestos requirements | Sydney Water

– Quick Check Agent for the provision of water and sewer services | Energy & Gas

suppliers for utility services | Department of Fair Trading for advice about

builders and licensing | Building Professionals Board for advice about private

certifiers | NSW Roads and Maritime Services for works on state roads only | Human

Rights and Equal Opportunity Commission for access issues | NSW Land and

Property Information for Land Title matters

| Australia Post for the positioning and dimensions of mail boxes in new commercial and residential developments;

Dial Before You Dig

Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets please contact Dial before you dig at www.1100.com.au or telephone on 1100 before excavating or erecting structures (This is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial before you dig service in advance of any construction or planning activities.

Telecommunications Act 1997 (Commonwealth)

Telstra (and its authorised contractors) are the only companies that are permitted to conduct works on Telstra's network and assets. Any person interfering with a facility or installation owned by Telstra is committing an offence under the Criminal Code Act 1995 (Cth) and is liable for prosecution. Furthermore, damage to Telstra's infrastructure may result in interruption to the provision of essential services and significant costs. If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact :Telstra's Network Integrity Team on Phone Number 1800810443.

- (1) if the development is likely to disturb or impact upon telecommunications infrastructure, written confirmation from the service provider that they have agreed to the proposed works must be submitted to the Principal Certifying Authority prior to the issue of a Construction Certificate or any works commencing, whichever occurs first; and
- (2) The arrangements and costs associated with any adjustment to telecommunications infrastructure shall be borne in full by the applicant/developer.

Model

If you submitted a model with the application it must be collected from the Council offices within fourteen (14) days of the date of this determination. Models not collected will be disposed of by Council.

Trade waste agreement

A Trade Waste Agreement must be obtained from Sydney Water prior to the discharge of trade wastewater to the sewer system. Trade wastewater is defined as 'discharge water containing any substance produced through industrial or commercial activities or operation on the premises'.

Waste collection

Liquid and solid wastes generated on the site must be collected, transported and disposed of in accordance with the requirements of the Protection of the Environment Operations Act 1997. Records must be kept of all waste disposal from the site.

Material to be removed from the site must be source separated on site to maximise recycling, and the material disposed of to an appropriate disposal and recycling facility in accordance with the approved Waste Management Plan.

Aboriginal Heritage

If in undertaking excavation or works and any Aboriginal site or object is, or is thought to have been found, all works are to cease immediately and the applicant is to contact the Aboriginal Heritage Officer for Warringah Council, and the Cultural Heritage Division of the Department of Environment and Climate Change (DECC).

On-Site Sewage Management System

This approval does not authorise the installation or operation of a new or modification of an existing onsite wastewater management system. An On-Site Sewage Management System must not be installed or operated unless an 'Approval to Install an On Site Sewage Management System' is obtained from Warringah Council.

Cost of Works

The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

Relocation of stormwater drainage

Council is not responsible for the cost of relocating Council's stormwater drainage pipes through the subject property.

Tree preservation

Where tree work has not been approved by this Development Consent the developer is notified that a general Tree Preservation Order applies to all trees in the Northern Beaches Local Government Area. This order prohibits the ringbarking, cutting down, topping, lopping, pruning, transplanting, injuring, or wilful destruction of such trees except without the prior written consent of Council.

Storage bins on footpath and roadway

Approval is required from Council prior to the placement of any storage bin on Council's footpath and/or roadway.

Protection of Public Places

(1) If the work involved in the erection or demolition of a building:

- (a) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient; or
- (b) building involves the enclosure of a public place, a hoarding and site fencing must be

erected between the work site and the public place.

(2) If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.

(3) The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.

(4) Any such hoarding, fence or awning is to be removed when the work has been completed.

(5) No access across public reserves or parks is permitted.

Note: Prior to the erection of any temporary fence or hoarding over property owned or managed by Council, written approval must be obtained.

Road Opening Permit

The developer/applicant is to obtain a "Road Opening Permit" from Council and pay all appropriate charges prior to commencement of any work on Council property. The developer/applicant shall be responsible for all public utilities and services in the area of the work, and as such shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

Special Permits

Unless otherwise specifically approved in writing by Council, all works, processes, storage of materials, loading and unloading associated with the development are to occur entirely on the property. The applicant, owner or builder must apply for specific permits available from Council. A minimum of forty-eight (48) hours' notice is required for all permits except work zones, which may require additional assessment time.

- | Permit for on-street mobile plant

Restrictions apply to the hours of operation and the area of operation for on street mobile plant equipment (for example cranes, concrete pumps, cherry pickers). Separate permits are required for each occasion and each piece of equipment. It is the responsibility of the applicant, owner and builder to take whatever steps are necessary to ensure that the use of any equipment does not violate adjoining property owner's rights.

- | Hoarding Permit

Permits are required to erect Class A, Class B and Class C hoardings. If an 'A' Class hoarding is to alienate a section of Council's property, that section will require a permit for the occupation of Council's property.

- | Storage of building materials and building waste containers (skips) on Council's property

Permits to utilise Council property for the storage of building materials and building waste containers (skips) are required for each location. Failure to obtain the relevant permits will result in the building materials or building waste containers (skips) being impounded by Council with no additional notice being given.

i Kerbside restrictions, work zones

Existing kerbside restrictions apply. An application must be made to Council for the alteration of existing kerbside restrictions or the provision of a construction zone. Other permits may include out of construction hours permits.

Licensing requirements for removal of bonded asbestos

Anyone who removes, repairs or disturbs bonded asbestos must hold a bonded or a friable asbestos licence, or a demolition licence in accordance with Workcover requirements and the Occupational Health and Safety Act 2000.

Pool Access

Access to pools are required to be restricted by a child resistant barrier in accordance with the regulations prescribed in all relevant Acts, Regulations and Australian Standards including:

- (i) Swimming Pools Act 1992;
- (ii) Swimming Pools Amendment Act 2012;
- (iii) Swimming Pools Regulation 2008
- (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

It is your responsibility as a land owner to ensure any fencing is maintained.

Dewatering

Where dewatering works are required on the development site during construction, the developer/applicant must apply for and obtain a bore license from the NSW Department of Water and Energy. The bore license must be obtained prior to commencement of dewatering works.

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 Council and the Principal Certifying Authority.

Flood Evacuation Plan

If your site is on flood prone land you may wish to consider the preparation of a flood evacuation plan.

Generally a Flood Evacuation Plan would be prepared by suitably qualified Engineer (e.g. Hydraulic) with a number of years experience in flood management and who is eligible for Membership to the Australian Institute of Engineers.

Some matters that you may wish to consider (but not limited to) include:

- (i) a route of evacuation to higher ground and / or point of shelter
- (ii) depth of water for a Possible Maximum Flood event surrounding the building

- (iii) details of 'last chance' evacuation water levels / times for evacuation prior to floodwaters surrounding the building
- (iv) provide details of flood warning systems and protocols
- (v) details of how this information will be distributed and people educated for users of the site.

You may seek to discuss this with the State Emergency Service of NSW.

Utility Service Requirements

Where development requires the installation of, or the relocation of utility services being (but not limited to) gas, water, electricity and telecommunications, the installation of, or the relocation of utility services shall be conducted in accordance with the requirements of the relevant service provider / authority (unless stipulated by any other condition of the consent or will result in damage to threatened or endangered species defined under the Threatened Species Conservation Act 1995).

Plant & Equipment Kept Within Site

All plant and equipment used in the erection of the building, including concrete pumps, wagons, lifts, mobile cranes, etc, shall be situated within the boundaries of the site and so placed that all concrete slurry, water, debris and the like shall be discharged onto the building site, and is to be contained within the site boundaries. This does not prevent any requirement to comply with the Protection of the Environment Operations Act.

Lighting

Illumination of the site is to be arranged in accordance with the requirements of Australian Standard 4282 - 1997 Control of the obtrusive effects of outdoor lighting so as not to impact upon the amenity of the occupants of adjoining and nearby residential premises.

Silt and Sediment Control

During any onsite demolition, excavation and construction works, the site should be maintained in accordance with "The Blue Book - Managing Urban Stormwater (MUS): Soils and Construction".

In managing the site provision shall be made throughout the period of works to prevent transmission of soil to the public road, drainage system, any riparian lands or off site in any manner. Upon completion of the development, any measures to prevent the transition of soil off site to remain in place until the site is stabilised.

A failure to prevent the transmission of silt and sediment and / or causing, water pollution, air pollution, noise pollution or land pollution may result in a breach of the Protection of the Environment Operations Act and orders, penalties and prosecutions may occur.

Maintenance of Sediment and Erosion Control Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain.

Reason: To avoid erosion and sedimentation impacts that will result in an adverse change in watercourse or riparian land condition

Installation and Maintenance of Sediment and Erosion Control

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: soils and construction (2004).

Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

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

Dividing Fences Act 1991

The construction and maintenance of side boundary fences is to be agreed upon by all adjoining property owners of the fence. Works are to be in accordance with the Dividing Fences Act 1991.

OTHER MATTERS

Child Care Centres

A license to operate a child care centre must be obtained from the NSW Department of Community Services prior to the commencement of the use of the child care centre.

Disability Access

This decision does not ensure compliance with the Commonwealth Disability Discrimination Act 1992. Applicants are strongly advised to investigate their requirements under that Act

Food Premises

Food premises are required to comply with the requirements of the Food Act 2003, the Food Standards Code and Australian Standards.

The proprietor of a food business must notify the NSW Food Authority of the details of the business. Notification may be done either online at www.foodnotify.nsw.gov.au or by lodging a completed NSW Food Authority notification form to the NSW Food Authority or Council.

Wheel washing facility

All trucks leaving the site, having had access to unpaved or contaminated areas, shall depart via a wheel wash facility in order to prevent mud, dust or debris from being deposited on Council's roads. The wheel wash facility shall be constructed prior to any truck movements occurring. Water from the wheel wash facility must not cause pollution. Any direction of Council with regard to cleaning trucks or the clean up of road pavements adjoining the site shall be complied with immediately.

Monitoring State of Roadways

The applicant shall monitor the state of roadways leading to and from the site and shall take all necessary steps to clean up any adversely impacted road pavements as directed by Council.

Storage of Dangerous Goods

Prior to the storage of any "dangerous goods" on the premises, a copy of a license obtained from the Chemical Safety Branch of Work Cover Authority must be submitted to Council.

Storage of Flammable and Combustible Liquids

Flammable and combustible liquids must be stored in accordance with Australian Standard 1940 The Storage and Handling of Flammable and Combustible Liquids.

Noise and Vibration

The premises, including operation of vehicles, shall be conducted so as to avoid offensive noise or vibration and cause no interference to adjoining or nearby occupants. Special precautions must be

taken to avoid nuisance in neighbouring residential areas, particularly from machinery, vehicles, warning sirens, public address systems and the like.

Hairdressing/Beauty Treatment/ Skin penetration Requirements

The premises must comply with the following requirements before the commencement of business:

- i) A hand wash basin with warm water delivered through a common spout must be provided in the treatment area. The hand wash basin must be provided with liquid soap and paper towel.
- ii) The wall behind the hand wash basin from the floor to a height of 450mm above the top of the washbasin and from the centre of the washbasin to a distance of 140mm beyond each side of the wash basin, must be finished with a material that is durable, smooth, impervious to moisture and capable of being easily cleaned (eg tiles).
- iii) The premises must be provided with washing, drainage, ventilation and lighting that are adequate for the carrying out of hairdressing/beauty treatment/skin penetration procedures.
- iv) The floor coverings must be smooth and impervious.
- v) All furniture, shelves and fittings must be constructed of, or covered with a material that is smooth, impervious to moisture and capable of being easily cleaned.
- vi) Adequate lockers must be provided for the storage of employees clothing and personal effects.
- vii) The premises must be provided with facilities that are adequate for the purpose of storing of hairdressing/beauty treatment/skin penetration appliance and utensils.
- viii) The premises must be provided with a sink sullied with hot and cold water for washing equipment.

Food Premises Construction Requirements

The food premises must comply with the following specific construction requirements:

Solid walls must be provided in all food handling areas (solid includes brick, cement and foam filled preformed panels);

- ix) Walls in food preparation and wash up areas must be finished with a smooth and impervious surface to a height of at least 2 metres.
- x) Hand wash basins must be provided with warm water delivered through a common spout with taps that are hands free operation;
- xi) Coving with a radius of 25mm must be provided between all floor and wall joints in food handling areas;
- xii) The open space between the top of the coolroom and the ceiling must be fully enclosed and kept insect and pest proof;
- xiii) The coolroom must be able to be opened from the inside with out a key and fitted with an alarm that can only be operated from within the coolroom;
- xiv) The doors to the toilet air lock and toilet compartment must be tight fitting and self closing;
- xv) The rear external door must be self closing or be provided with a fly screen that is self closing;
- xvi) Where cooking or extensive heating processes or such other processes as may be specified are carried out in food preparation areas, an approved mechanical ventilation system shall be installed and operated in accordance with AS 1668 part 1 & 2.

Legionella Control

Cooling towers, warm water systems, water cooling systems must be registered with the Council.

Details of registration are to be provided to the Council prior to operation.

Pool/Spa Safety

Owners of properties with swimming pools and spa's must meet safety compliance and registration requirements. Provisions also apply when renting/selling properties. Details are available from the Division of Local Government.

Grease Trap

Contact Sydney Water to determine what trade waste provisions you are required to provide to your food premises. Should a grease trap be required by Sydney Water, it must be located in an area that is easily accessible for the removal of waste water and must not be installed in any kitchen, food preparation or food stage area. The design and location of the grease trap should also not impede on any commercial right of way or pedestrian access.

Bandicoot/Penguin

Long-nosed Bandicoots & Little Penguins – Best Practices for Residents Residents are encouraged to follow a number of Best Practices to assist with the protection and management of the endangered populations of Long-nosed Bandicoots and Little Penguins:

- | Long-nosed Bandicoots, Little Penguins and other native animals should never be fed as it may cause them nutritional problems, hardship if supplementary feeding is stopped, and it may increase predation.
- | Feral cats or foxes should never be fed or food left out where they can access it, such as rubbish bins without lids or pet food bowls, as these animals present a significant threat to Long-nosed Bandicoots, Little Penguins and other wildlife.
- | The use of insecticides, fertilisers, poisons and/or baits should be avoided on the property.

- | Garden insects will be kept in low numbers if Long-nosed Bandicoots are present.
- | When the North Head Long-nosed Bandicoot Recovery Plan is released it should be implemented where relevant.
- | Dead Long-nosed Bandicoots or Little Penguins should be reported by phoning Manly Council on 9976 1500 or Department of Environment and Conservation on 9960 6266.
- | Please drive carefully as vehicle related injuries and deaths of Long-nosed Bandicoots and Little Penguins have occurred in the area. Care should also be taken at night in the drive way when moving cars as bandicoots will seek shelter beneath vehicles.
- | Cat/s and or dog/s that currently live on the property should be kept indoors at night to avoid disturbance/death of native animals. Ideally, when the current cat/s and/or dog/s that live on the property no longer reside on the property it is recommended that they not be replaced by new dogs or cats.
- | Report all sightings of feral rabbits, feral or stray cats and/or foxes to N B Council.