

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0987
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Responsible Officer:	Kent Bull
Land to be developed (Address):	Lot 1 DP 1170245, 0 Wharves And Jetties MANLY NSW 2095
Proposed Development:	Use of premises as a licensed restaurant, fitout, and signage
Zoning:	W2 Environmental Protection
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Roads & Maritime Services TMG Developments Pty Ltd
Applicant:	Paul Papacosta

Application Lodged:	09/09/2019
Integrated Development:	Yes
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	28/09/2019 to 28/10/2019
Advertised:	28/09/2019
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 1,086,919.00
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PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for the use of premises as a licensed restaurant, fitout, and signage. In particular, the works include:

- Change of use from a takeaway food and drinks premises (McDonalds) to a licensed restaurant;
- Alterations to shop front including front and rear entrances;
- Fitout for the Restaurant including counter, kitchen and back-of-house facilities;
- Removal and relocation of existing columns within the Restaurant;
- Removal and installation of mechanical services and new rooftop walkway;
- Trading hours between 9am and 12 midnight Monday to Sunday;
- Internal seating area for 20 seated patrons;
- External seating area for 36 seated patrons; and

- Associated signage.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 5.10 Heritage conservation

Manly Local Environmental Plan 2013 - 6.21 Noise impacts—licensed premises

Manly Development Control Plan - 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)

Manly Development Control Plan - 4.4.3 Signage

SITE DESCRIPTION

Property Description:	Lot 1 DP 1170245 , 0 Wharves And Jetties MANLY NSW 2095
Detailed Site Description:	<p>The subject site is legally referred to as Lot 1 in DP 1170245 and is commonly known as Manly Wharf. The site is located within Manly Cove and is located at the junction of East Esplanade and West Esplanade, Manly.</p> <p>The proposed site within Manly Wharf is known as Shop 15.</p> <p>The area of the site where the proposed development is located within the boundaries defined as the Manly Wharf Lease Line and the line of the Mean High Water Mark. This site has an estimated area of 13.405m².</p> <p>The site is located within the W2 - Environmental Protection zone under the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.</p>

The site is oriented east west with the northern and southern boundaries fronting the western and eastern promenades and Manly Cove respectively.

The development site is limited to the eastern wing of Manly Wharf. The eastern wing currently accommodates a single retail level and first floor accommodating centre management offices, with the Manly Wharf signage and clock tower above. The existing eastern wing has frontage to The Corso.

A single basement level sits below the Wharf deck level and is accessed from the intersection at East Esplanade and Wentworth Street. This level includes vehicle parking and loading facilities.

The site has multiple pedestrian accesses from the street as well as from the Ferry terminal.

The Wharf is surrounded by sheltered marine environment. The surrounding waters and nearby harbour foreshore is known to provide habitat for Little Penguins and possess other marine ecology including seagrass beds.

Detailed Description of Adjoining/Surrounding Development

Opposite the site to the east is Manly Corso. The Corso is a wide open promenade and public open space between Manly Beach and Manly Wharf and provides street furniture, public art and a focal point for the Manly Town Centre. Commercial uses including shops, offices, restaurants, cafes, licensed premises and services and amenities dominate the frontages of The Corso. The scale of development along The Corso is varied between two (2) to four (4) storeys.

The uses opposite the site along East Esplanade are dominated by mixed use developments mainly consisting of ground floor commercial uses such as shops, offices, restaurants and cafes with residential above. Some of the buildings along East Esplanade consist primarily of multistorey commercial developments. The scale of development along East Esplanade is predominately between three (3) to six (6) storeys.

The uses opposite the site along West Esplanade are dominated by mixed use developments mainly consisting of ground floor commercial uses such as shops, offices, restaurants and cafes with residential above. The scale of development along East Esplanade is predominately between three (3) to eight (8) storeys.

Map:



SITE HISTORY

Shop 15 (previously referred to as Shop 221) has been used for commercial purposes for an extended period of time. A search of Council's records has revealed the following recent consents:

15 March 2001

Development Application No. 426/00 for the change of use and shop fitout with associated signage and seating for McDonald's was granted consent on 15 March 2001.

APPLICATION HISTORY

9 September 2019

Subject application received.

20 September 2019 - 4 March 2020

Phone and email communication with the Applicant and the Development Assessment Officer with regards to the subject application.

3 October 2019

Photo evidence of the notification sign in place on site provided to Council.

25 October 2019

Site inspection undertaken by the development assessment officer. Site manager present at inspection. The notification sign was in place at the time of the inspection.

21 November 2019

Heritage NSW provides General Terms of Approval.

6 December 2019 - 3 March 2020

Phone and email correspondence between the Development Assessment Officer and the NSW Police (Licensing Unit - Northern Beaches Police Area Command) with regards to subject application.

3 March 2020

Letter received from the NSW Police for the subject application.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Mainly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a</p>

Section 4.15 Matters for Consideration'	Comments
	<p>condition of consent.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p>Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p><i>Note: The proposed development may not comply with some requirements of the BCA the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</i></p>
Environmental Health (Food Premises, Skin Pen.)	<p>General Comments</p> <p>Environmental Health only have one main reservation that relates to the hours of use (to midnight) in regard to noise.</p> <p>Although a management plan has been submitted it has not necessarily been assessed by an acoustic engineer.</p> <p>Likewise mechanical exhaust equipment needs to be assessed.</p> <p>Council is mindful of complaints concerning other businesses in the general area and therefore is obliged to look closer at this issue. Environmental Health is of the opinion that the potential noise issues can be addressed and therefore it is proposed rather than delay the application that approval be given with conditions addressing our issues.</p> <p>Smoke and odour matters can be dealt with conditions.</p> <p>Recommendation</p> <p>APPROVAL - subject to conditions.</p>
NECC (Bushland)	<p>The proposal is located within an area adjoining known habitat for Little Penguins. As such has been assessed for potential impacts to penguins and their habitat. The submitted plan</p>

Internal Referral Body	Comments
and Biodiversity)	<p>and documentation indicate that the proposal is generally within the existing developer footprint and is therefore unlikely to result in direct impact to penguins or their habitat.</p> <p>However, it is noted that the proposal includes provision of 36 new outdoor seating space which represents a substantial increase on the previous seating capacity and potentially increase in the amount of litter (e.g. from napkins, food containers, disposable cutlery) be generated at the site. It is further noted that the proposal includes no details of proposed measures to reduce the impact of litter potentially generated at the site.</p> <p>Given the subject site's proximity to sensitive marine environments including seagrass bed and penguin breeding habitat, it is recommended that the Assessing Officer apply a condition requiring preparation of a Waste Management Plan prior to Occupation Certificate which includes provisions for using alternatives to disposable packaging, cutlery and table furnishings.</p> <p>Note: Council's Biodiversity Section has assessed the proposal for relevant impacts to wildlife and their habitat. Comments relating to ongoing waste management are advisory only and it is assumed these considerations will be addressed in further detail by the relevant Council department.</p> <p>Planner Comments 9/03/20:</p> <p>An on-going condition has been recommended to ensure that no waste generated on site from the commercial operation is to be placed in public place bins and that the commercial operators must maintain their commercial waste bins in an organised, clean and sanitary condition, preventing potential for litter from overflowing bins. Further, these waste bins are not to be stored in public spaces such as footpaths. It is seen that the recommendation of this condition is an appropriate measure to minimise litter potentially generated at the site from impacting the surrounding sensitive marine environment and to maintain the public amenity of Manly Wharf.</p>
NECC (Coast and Catchments)	<p>The application has been assessed in consideration of the <i>Coastal Management Act 2011</i>, State Environmental Planning Policy (Coastal Management) 2018, Sydney Harbour Catchment Regional Environment Plan, 2005 and Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005. It has also been assessed against requirements of the Manly LEP and DCP.</p> <p>Manly Local Environmental Plan 2013 does not apply as the Restaurant is located outside the land identified on the Land Application Map.</p> <p>The application has been assessed using Northern Beaches SREP assessment template.</p> <p>Coastal Management Act 2016</p> <p>The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development.</p>

Internal Referral Body	Comments
	<p>The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p>State Environmental Planning Policy (Coastal Management) 2018 As the subject site has been identified as being within the coastal zone and therefore SE (Coastal Management) 2018 is also applicable to the proposed development.</p> <p>The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps but not been included on the Coastal Vulnerability Area Map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Clauses 13 (coastal environment area) and 14 (coastal use area) do not apply as the site is also located within the SREP area. Hence, only Clause 15 of the CM SEPP apply for this DA.</p> <p>Comment:</p> <p>On internal assessment, the DA satisfies requirements under Clause 15 of the CM SEPP.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p> <p>Sydney Regional Environment Plan (Sydney Harbour Catchment), 2005</p> <p>The subject site is located within/adjacent to the W2 (Environmental Protection) Zone.</p> <p>As assessed in the submitted Statement of Environmental Effects (SEE) report prepared Design Collaborative Pty. Ltd. dated September 2019 and Council accepts the assessment that it will not have any adverse impact on the waters and adjoining foreshores, it is determined that the objectives and assessment criteria of the zone have been met.</p>
NECC (Development Engineering)	Development Engineering raises no objection to the Development Application.
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	<p>This application has been referred as it affects a State heritage item, being Item I145 - Manly Wharf, which is listed in Schedule 5 of Manly Local Environmental Plan 2013 and also on the State Heritage Register.</p> <p>It is also in the vicinity of a number of other heritage items, the closest being Item I153 Commercial and residential building, Item I152 Commercial and residential building and Item I151 Terrace building, located on the opposite side of East Esplanade, along</p>

Internal Referral Body	Comments	
	with the adjacent Item I1 - All stone kerbs and the Manly Town Centre Conservation Area on the opposite side of East Esplanade.	
	Details of heritage items affected	
	Details of this heritage item are:	
	Item I145 - Manly Wharf	
	<u>Statement of Significance</u>	
	Of environmental significance as a visually prominent man-made feature. Of historical significance for its association with the maritime activities at Manly as a tourist destination and suburb of Sydney, dependent on the ferry link to the CBD. (Anglin 1990:2033)	
	Together with Circular Quay, the wharf is the only substantial older style ferry wharf surviving in Port Jackson: association with Manly's history as a recreational centre. (Blackmore, Ashton, Higginbotham, Rich, Burton, Maitland, Pike 1985)	
	<u>Physical Description</u>	
	A broad wharf supported on timber piers and with a concrete platform. The superstructure is constructed of steel and timber. The facade and side walls form an important architectural design, similar to the Circular Quay ferry terminals. (Blackmore, Ashton, Higginbotham, Rich, Burton, Maitland, Pike, 1985).	
	The original part of the wharf was built in a modernistic transport idiom, with typical stylistic features of era including play of circular and rectangular geometric terms, bayed facade to the water (marine connotations), wide arc plan at entrance, clock tower with "fins", flat roofing marked by wide fascia board. The current entrance was originally designed as a tram terminus and turning area. Timber clad framed structure opening at large internal spaces, concrete deck to west enclosed by "ship" railing. Some original shop fittings, signage etc. Subjected to major alterations to the wharf wings involving a shaped clerestorey (Stapleton, 1981).	
	Other relevant heritage listings	
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	Yes
Australian Heritage Register	No	
NSW State Heritage Register	Yes	
National Trust of Aust (NSW) Register	Yes	
RAIA Register of 20th Century Buildings of Significance	Maybe	
Other	No	
Consideration of Application		
This application is for change of use, internal fitout and signage for Shop 15 of the Man		

Internal Referral Body	Comments
	<p>Wharf building.</p> <p>The proposal is for a new concept seafood restaurant called Fish & Lemonade in the shop tenancy previously occupied by McDonald's. This shop is located on the eastern side of the Wharf at the main entrance and is in a highly visible location.</p> <p>The application was accompanied by a Statement of Heritage Impact by CityPlan, dated September 2019, which has been reviewed. The proposal includes internal fitout, external alterations to the shop front and rear entrances, signage, mechanical ventilation and a change of use to a licensed restaurant. From a heritage point of view, there are no issues with the proposed use, nor the internal fitout (as the interior has already been extensively altered/changed). There are some concerns however with some of the external finishes and proposed signage.</p> <p>As the application affects a State heritage listed item, the application is Integrated Development and requires consultation with the Heritage NSW and eventual approval under Section 60 of the Heritage Act, 1977.</p> <p>Heritage NSW have responded by letter dated 21 November 2019, providing general terms of approval for this integrated development application. These comments have been reviewed and all required terms of approval (conditions) are agreed with.</p> <p>As the application is only for fitout and use of this shop space, and does not involve any extension of the building, there will be no adverse impact upon heritage items in the vicinity, nor on the Manly Town Centre Conservation Area.</p> <p>Therefore, no objections are raised on heritage grounds, subject to all terms of approval (conditions) required by Heritage NSW being included in any consent.</p> <p><u>Consider against the provisions of CL5.10 of MLEP 2013</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? N/A Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? N/A</p> <p>Further Comments</p> <p>COMPLETED BY: Janine Formica, Heritage Planner DATE: 4 December 2019</p>
Waste Officer	There is no residential component to this DA therefore it should not have triggered a referral to waste services.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is

External Referral Body	Comments
	assumed that no objections are raised and no conditions are recommended.
NSW Police – Crime Prevention Office (Local Command matters)	<p><u>Planner Comments 9/03/20:</u></p> <p>The application was referred to the NSW Police as the proposal seeks consent for the use of premises as a 'licensed' restaurant.</p> <p>Guidelines under section 4.15 of the Environmental Planning and Assessment Act 1979 help councils consider and implement Crime Prevention Through Environmental Design (CPTED) principles when assessing development applications. To ensure that a resultant development provides safety and security to premises users and the community, recommendations from the NSW Police (received on 3 March 2020) including those limiting the service of alcohol to the internal areas of the restaurant facility only, measures to ensure suitable management of a premises supplying liquor, clarification regarding the approved land use, trading hours, patron capacity, and requirements in relation the installation Closed-Circuit Television (CCTV) have been incorporated as conditions of consent should the application be approved. Comments were also received with regards to the consistency in trading hours with similar businesses at Manly Wharf. A review was undertaken by Council's Development Assessment Officer identifying that the proposed hours are in fact compatible with these businesses.</p> <p>The response received from the NSW Police was for the support of the application subject to the adherence of recommended conditions.</p>
Nominated Integrated Development – NSW Office of Environment and Heritage	A letter (Ref.DOC19/97694) is provided by the Heritage Council of New South Wales which granted approval for the works subject to conditions. This letter has been attached as a condition of this consent. As such, the conditions in this letter form part of this consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP 64 - Advertising and Signage

Clauses 8 and 13 of SEPP 64 require Council to determine consistency with the objectives stipulated under Clause 3(1)(a) of the aforementioned SEPP and to assess the proposal against the assessment criteria of Schedule 1.

The objectives of the policy aim to ensure that the proposed signage is compatible with the desired amenity and visual character of the locality, provides effective communication and is of high quality having regards to both design and finishes.

In accordance with the provisions stipulated under Schedule 1 of SEPP 64, the following assessment is provided:

Matters for Consideration	Comment	Complies
1. Character of the area Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	The proposed signage is compatible with the existing and desired future character of the Manly Wharf. The proposed signage arrangement has been supported by both Councils Heritage officer and Heritage NSW (subject to the General Terms of Approval). Excluding signage facing the internal areas of the Wharf, signage is generally limited to the bulkhead and to window glazing along the eastern and southern elevations. The illuminated tenancy blade signage located at the eastern end of the bulkhead is not approved per the condition of Heritage NSW. Acknowledging the existing signage arrangement of surrounding food and drink premises, the proposal is considered to be compatible the desired future character of the Manly Wharf.	YES
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	The illuminated bulkhead signage along northern elevation and use of colours in the proposed signage arrangement is not inconsistent with outdoor advertising associated with business and retail premises within Manly Wharf and the immediately surrounding area.	YES
2. Special areas Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	The proposal is within Manly Wharf which is a state heritage listed item. Councils Heritage Officer provided no objection to the application. Heritage NSW also provided support of the application (subject to the General Terms of Approval). It is therefore considered that the proposal does not detract from the amenity or visual quality of surrounding area, particularly in	YES

	reference to heritage.	
3. Views and vistas Does the proposal obscure or compromise important views?	The proposal is within the existing Manly Wharf building envelope and would not obscure or compromise on views or vistas.	YES
Does the proposal dominate the skyline and reduce the quality of vistas?	The proposal is within the existing Manly Wharf building envelope and would not dominate the skyline or reduce the quality of vistas.	YES
Does the proposal respect the viewing rights of other advertisers?	The proposal, including the signage to glazing, does not result impinge on the viewing rights of other advertisers.	YES
4. Streetscape, setting or landscape Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	Given the context of this part of Manly Wharf and the surrounding retail uses, the proposed scale, proportion and form of the proposed signage is considered appropriate.	YES
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	The proposed "Fish & Lemonade" signage utilises a limited amount of pastel colours that contributes to the visual interest through providing consistency with other Wharf tenancies facing Manly Corso.	YES
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	The proposed signage replaces the "McDonald's" signage that consisted of a plastic back-lit sign that protruded along a significant portion of the northern bulkhead as well as full height vinyl wall signage. While the proposal incorporates additional signage to glazing, the overall arrangement is considered to be more coherent in style and generally in keeping the heritage of the building (subject to compliance with conditions).	YES
Does the proposal screen unsightliness?	The proposed signage to glazing along the eastern and southern elevations does assist with screening service and storage areas from being directly visible from the public domain.	YES
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	No.	YES
5. Site and building Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	The proposal is considered compatible with the scale, proportion and characteristics such as the heritage significance, given the context of this part of Manly Wharf, the surrounding tenancies.	YES
Does the proposal respect important features of the site or building, or both?	As discussed above, the proposal has been supported by relevant Heritage Officer's subject to conditions. It is therefore considered that the resultant signage will respect the heritage values of Manly Wharf.	YES
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	The proposal demonstrates innovation and imagination in relation to the site and building through a coherent signage and colour arrangement.	YES

6. Associated devices and logos with advertisements and advertising structures Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	The proposal incorporates LED signage as well as a heart shaped logo as part of the overall signage arrangement.	YES
7. Illumination Would illumination result in unacceptable glare, affect safety for pedestrians, vehicles or aircraft, detract from the amenity of any residence or other form of accommodation?	The physical separation to neighbouring residential accommodation along West Esplanade and the location signage on the bulkhead and below awning ensures that the illumination will not result in any unacceptable impacts or the surrounding safety or amenity.	YES
Can the intensity of the illumination be adjusted, if necessary?	Yes. The custom LED signage is dimmable.	YES
Is the illumination subject to a curfew?	No, however the trading hours are proposed between 9am and 12 midnight Monday to Sunday.	YES
8. Safety Would the proposal reduce the safety for any public road, pedestrians or bicyclists?	No.	YES
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	No.	YES

Accordingly, the proposed signage is considered to be of a scale and design suitable for the locality. The proposal is therefore deemed to be consistent with the provisions of the SEPP and its underlying objectives.

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory

period and therefore, it is assumed that no objections are raised and no conditions are recommended.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

Manly Wharf is located outside the land application map for the *Manly Local Environment Plan 2013*. The subject property is located within the Sydney Harbour Catchment therefore the provisions of this plan apply to this development.

The subject site is located in Zone W2 Environmental Protection the *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*.

The objectives of this zone are as follows:

- (a) to protect the natural and cultural values of waters in this zone,
- (b) to prevent damage or the possibility of longer term detrimental impacts to the natural and cultural values of waters in this zone and adjoining foreshores,
- (c) to give preference to enhancing and rehabilitating the natural and cultural values of waters in this zone and adjoining foreshores,
- (d) to provide for the long-term management of the natural and cultural values of waters in this zone and adjoining foreshores.

Comment:

The application seeks consent to change the change of use from a takeaway food and drinks premises (McDonalds) to a licensed restaurant. The proposed works are limited to external and internal alterations to the existing premises, including restaurant fit out and signage. Consideration has been given subject to compliance with conditions recommended within this consent, such as those aiming protect the surrounding sensitive marine environment, the proposal would ensure consistency with these above objectives.

An assessment of the proposal against Clause 2(1) (aims of the SREP), Clause 13 (nominated planning principles) and Clause 21 (relating to biodiversity, ecology and environmental protection) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the proposal and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

Land Use Permissibly under the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The proposed development is land/water interface development under the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 and in accordance with clause 5(1) Northern Beaches Council is the consent authority.

The proposed development is not listed as a permissible use within clause 18 and as a result an assessment pursuant to clause 18(2) is necessary to consider the permissibility of the development.

Clause 18(2) states the following:

- "(2) Despite subclause (1), development not referred to in the Table to this clause may be carried out with development consent, but only if the consent authority is satisfied that the development:
- (a) is not inconsistent with the aims of this plan or the objectives of the zone in which it is proposed to be carried out, and
 - (b) is not inconsistent with any other environmental planning instrument that applies to the land, and
 - (c) will not otherwise have any adverse impacts."

Comment:

With regard to the above, the assessment of the proposed change of use from a takeaway food and drinks premises to a licensed restaurant is considered acceptable given it is consistent with surrounding uses and maintains consistency with the zone objectives detailed within clause 17. As such the development is permissible with development consent.

Note: A condition of consent has been recommended to ensure that, should the application be approved, the business operation is consistent with the definition of a 'food and drink premises'.

A food and drink premises is defined as a:

“premises that are used for the preparation and retail sale of food or drink (or both) for immediate consumption on or off the premises, and includes any of the following—

- (a) a restaurant or cafe,*
- (b) take away food and drink premises,*
- (c) a pub,*
- (d) a small bar.*

Note.

Food and drink premises are a type of retail premises—see the definition of that term in this Dictionary.”

(development is defined by the Manly Local Environment Plan 2013 (as amended) Dictionary)

SEPP (Coastal Management) 2018

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

13 Development on land within the coastal environment area

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
 - (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
 - (b) *coastal environmental values and natural coastal processes,*
 - (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
 - (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
 - (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (f) *Aboriginal cultural heritage, practices and places,*
 - (g) *the use of the surf zone.*

Comment:

This clause does not apply to land within the Foreshore and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

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

Comment:

This clause does not apply to land within the Foreshore and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

14 Development on land within the coastal use area

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

Comment:

This clause does not apply to land within the Foreshore and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

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

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

Comment:

Council's Coast and Catchments Division has provided comments indicating that the proposal satisfies

the requirements under Clause 15.

As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

Manly Local Environmental Plan 2013

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

Manly Wharf is located outside the land application map for the *Manly Local Environment Plan 2013*.

*Please refer to the discussion above under the section of the report titled 'Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005'.

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
5.10 Heritage conservation	Yes
6.12 Essential services	Yes
6.21 Noise impacts—licensed premises	Yes
Schedule 5 Environmental heritage	Yes

Detailed Assessment

5.10 Heritage conservation

The site is located within the State Heritage Register curtilage item of I145 - Manly Wharf that is listed within Schedule 5 of Manly Local Environmental Plan 2013.

In accordance with clause 5.10(4) of the Manly LEP 2013, the consent authority must consider the effect of the proposed development of the heritage significance of the item or area concerned prior to granting consent to the proposal. In this regard, the proposal has been considered by Council's Heritage Officer who is satisfied that the proposal is acceptable without conditions. Detailed commentary from Council's Heritage Officer is provided in the 'Referrals' section of this report.

As the site is also identified as an item of State heritage significance on the State Heritage Register, the application has been referred to Heritage NSW. In this regard, general terms of approval were issued by Heritage NSW on 21 November 2019, and have been included as conditions of consent.

6.21 Noise impacts—licensed premises

The premises is well separated from residential uses and there are no residential uses within Manly Wharf. Directly adjacent to the premises are commercial tenancies that are located on land zoned as

B2 - Local Centre under the Manly LEP 2013. The nearest residential uses are located on upper floor apartments on shop-top developments along East and West Esplanade. Conditions have been recommended to ensure noise reduction measures are incorporated and implemented. Conditions have also been placed with regards to the compliance of mechanical ventilation, restriction of hours of operations and patron capacity as well as measures relating to the service of alcohol. Subject to compliance with these conditions, the application is seen to meet the requirements of this clause.

Manly Development Control Plan

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3 General Principles of Development	Yes	Yes
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.3 Townscape (Local and Neighbourhood Centres)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.2 Energy Sources and Systems	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.6 Energy efficiency/conservation requirements for non-residential developments	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.5.8 Water Sensitive Urban Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.4 Other Development (all LEP Zones)	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.3 Signage	Yes	Yes
4.4.4 Awnings	Yes	Yes
4.4.4.2 Awning supported from the ground	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

Detailed Assessment

3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)

Considerations relating to noise impacts have been discussed above under the section of the report titled '6.21 Noise impacts—licensed premises'.

4.4.3 Signage

The application seeks for signage to a heritage listed item and therefore the guidelines listed under Clause 4.4.32 (Signage of Heritage listed items and in Conservation Areas) of the Manly DCP applies. As detailed earlier within this report, the proposal has been considered as consistent and capable of meeting the objectives and assessment criteria of *State Environmental Planning Policy No 64 - Advertising and Signage*. It should also be noted that General Terms of Approval provided by Heritage NSW specifically does not approve the illuminated tenancy blade (sign) located at the eastern end of the bulkhead and does detail that certain external finishes are to be amended prior to the work commencing. Consideration has been given to matters such as signage to the restaurant windows, however in this regard, Council's Heritage Planner has reviewed the proposal and raised no objections on heritage grounds, subject to all terms of approval (conditions) required by Heritage NSW being included in any consent.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

Car Parking

The proposal does not seek an increase to the overall floor area of the premises. Further, given the lack of opportunity to provide new on-site parking and the extent of the existing underground car parking, the current parking situation is appropriate of the proposed use. Additionally, the proposed premises is in close vicinity to public transport including a bus station and ferry terminal.

CONCLUSION

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

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

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

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

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2019/0987 for Use of premises as a licensed restaurant, fitout, and signage on land at Lot 1 DP 1170245, 0 Wharves And Jetties, MANLY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA 00 1 00 Rev. A (Site Plan)	28.08.19	Paul Kelly Design
DA 00 1 01 Rev. A (Existing/Demolition Plan)	28.08.19	Paul Kelly Design
DA 00 1 02 Rev. B (Proposed Plan)	26.09.19	Paul Kelly Design
DA 00 1 03 Rev. B (Ground Floor, Proposed Lighting Plan)	26.09.19	Paul Kelly Design
DA 01 1 01 Rev. A (Roof Existing/Demolition Plan)	28.08.19	Paul Kelly Design
DA 01 1 02 Rev. A (Roof Proposed Plan)	28.08.19	Paul Kelly Design
DA 00 2 01 Rev. A (External Elevations Existing)	28.08.19	Paul Kelly Design
DA 00 2 02 Rev. B (External Elevations Proposed)	26.09.19	Paul Kelly Design
DA 00 2 03 Rev. A (External Elevations Existing)	28.08.19	Paul Kelly Design

DA 00 2 04 Rev. B (External Elevations Proposed)	26.09.19	Paul Kelly Design
DA 00 2 05 Rev. A (Proposed External Signage)	28.08.19	Paul Kelly Design

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Heritage Impact Statement	05.09.2019	City Plan Heritage P/L
Plan of Management	01.02.2020	Liquor Advisory Services

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Northern Beaches Waste Management Plan	No Date	Batterbox Pty Ltd

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

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

2. **Compliance with Hertiage NSW Requirements**

The development must be carried out in compliance with the General Terms of Approval issued by Heritage NSW on 21 November 2019 (Ref. DOC19/97694), as follows:

a) Works Not Approved

- i) The illuminated tenancy blade located at the eastern end of the bulkhead.
- ii) The installation of heating to the underside of the northern awning
- iii) The planters and linear seating configuration along the western edge of the outdoor dining area.

Reason: To preserve existing fabric and uncluttered character of the eastern elevation of the Manly Wharf

b) External Finishes to be Amended

- i) The proposed black powdercoated finish on the door frames located along the northern elevation are to be amended to match the existing grey frames at the eastern and southern elevation. Details of the amended glazing finish are to be submitted with the section 60 application for approval

Reason: So that the finishes are sympathetic to the Arthur Baldwinson's design.

ii) The proposed white brick finish to the bulkhead located along the northern elevation is to be amended to be lightweight timber cladding to match existing. Details of the amended cladding finish are to be submitted with the section 60 application for approval

Reason: So that the finishes are sympathetic to the Arthur Baldwinson's design.

c) Impact to Roof

Submit details including existing roof and parapet levels and proposed top of exhaust level with the section 60 application to demonstrate that the kitchen exhaust cannot be viewed from the northern or eastern pedestrian plaza. Similarly, existing roof penetrations are to be reused for penetrations for proposed services and reticulation.

Reason: So that the significant elements and finishes which survive from the Arthur Baldwinson's design are not damaged.

d) Impact to Tiled Piers

The installation of the new fitout shall not involve any works to the historic rounded piers.

Reason: To ensure that the significant elements and finishes which survive from the Arthur Baldwinson's design are not damaged.

e) Site Protection

Significant built elements are to be protected during site preparation and the works from potential damage. Protection systems must ensure significant fabric is not damaged or removed.

Reason: To ensure significant fabric is protected during construction.

f) Specialist Tradepersons

All work to, or affecting, significant fabric shall be carried out by suitably qualified tradespersons with practical experience in conservation and restoration of similar heritage structures, materials and construction methods.

Reason: So that the construction, conservation and repair of significant fabric follows best heritage practice.

g) Compliance

If requested, the applicant may be required to participate in audits of Heritage Council of NSW approvals to confirm compliance with conditions of consent.

Reason: To ensure that the proposed works are completed as approved.

h) Section 60 Application

An application under section 60 of the Heritage Act 1977 must be submitted to, and approved by, the Heritage Council of NSW (or delegate), prior to work commencing.

Reason: To meet legislative requirements.

3. **Approved Land Use**

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a food and drink premises.

A food and drink premises is defined as a:

“premises that are used for the preparation and retail sale of food or drink (or both) for immediate consumption on or off the premises, and includes any of the following—

- (a) a restaurant or cafe,*
- (b) take away food and drink premises,*
- (c) a pub,*
- (d) a small bar.*

Note.

Food and drink premises are a type of retail premises—see the definition of that term in this Dictionary.”

(development is defined by the Manly Local Environment Plan 2013 (as amended) Dictionary)

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

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

4. **Prescribed Conditions**

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

5. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) 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.
- (c) 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.

- (d) 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.
- (e) 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.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) 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.
- (j) 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.

- (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 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.

- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

6. **Service of Alcohol**

In addition to compliance with the requirements contained within the *Plan of Management* dated 1 February 2020 and prepared by Liquor Advisory Services, the following measures are to be implemented throughout operation of the premises:

- (a) That alcohol not be consumed or supplied in the outdoor area.
- (b) Alcohol may only be served and consumed whilst the patron is seated within the internal area of the premises.
- (c) No alcohol, drinks, glasses or vessels are to be taken from the licensed area.
- (d) Staff are to ensure that patrons do not enter the outdoor area with alcohol.

Reason: To ensure suitable management of a premises supplying liquor, and to ensure that the development provides safety and security to premises users and the community.

FEES / CHARGES / CONTRIBUTIONS

7. **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 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, details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

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

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

8. **Plans of Mechanical ventilation**

Prior to any Construction Certificate (CC) being issued, detailed plans that demonstrate compliance with the Australian Standard (AS) 1668.2 "The use of ventilation and air-conditioning in buildings - Mechanical ventilation in buildings", must be approved by the Certifying Authority for any cooking equipment with an individual or combined power rating level that triggers the requirement for mechanical ventilation under AS1668.2 including any deep frying equipment. Additionally noise, smoke and odour potential issues shall be taken into consideration and design shall incorporate any necessary measures to avoid any nuisance to any neighbouring occupier.

Reason: To ensure that the design, construction and installation requirement for mechanical ventilation complies with the Australian Standard 1668.2 and noise, smoke and odour nuisances are avoided.

9. **Noise reduction measures**

The proposal shall be referred to an acoustic engineer to advise the applicant on any measures to be incorporated to eliminate potential noise nuisances from the use of the premises including, management and use of external areas ; mechanical ventilation, plant and equipment. Such recommendations shall be implemented prior to final occupation and be included as necessary in the Plan of Management ongoing.

Reason: To ensure noise minimisation measures are adopted for implementation and any modifications prior to construction commencing.

10. **Compliance with Standards**

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

11. **Waste Management During Development**

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

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

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

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

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

The construction fit-out and finishes of the food premises must comply 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'. Prior to any Occupation Certificate (OC) being issued certification is to be provided by a suitably qualified person that the fit-out complies with the above requirement.

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

13. **Registration of Food Business**

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

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

14. **Mechanical ventilation**

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 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.

15. **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.

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

16. **Dead or Injured Wildlife**

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

Reason: To mitigate potential impacts to native wildlife resulting from construction activity.

17. **Hours of Operation**

The hours of operation are to be restricted to:

- Monday to Friday – 9:00am to 12:00 midnight
- Saturday – 9:00am to 12:00 midnight
- Sunday and Public Holidays – 9:00am to 12:00 midnight

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

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

18. **Commercial Waste Collection**

Waste and recyclable material, generated by this premises, must not be collected between the hours of 8:00pm and 7:00am on weekdays or between the hours of 8:00pm and 8:00am on weekends and public holidays.

Reason: To ensure the acoustic amenity of surrounding properties.

19. **Deliveries**

Deliveries to this premises must only occur between the hours of 7am and 8:00pm weekdays and 8:00am and 8:00pm weekends and public holidays.

Reason: To ensure the acoustic amenity of surrounding properties.

20. **Patron Capacity**

The total patron capacity is not to exceed 56 patrons, being 20 patrons internally and 36 patrons externally.

Reason: Information to ensure the premises can be managed appropriately.

21. **Closed-Circuit Television (CCTV)**

The Closed-Circuit Television (CCTV) shall record continuously from 30 minutes prior to opening time until at least one (1) hour after the premises ceases trading, inclusive of the following requirements:

- (a) Recordings must be in digital format and at a minimum of 10 frames per second.
- (b) Any recorded image must specify the time and date of the recorded image;
- (c) The system cameras must cover the following areas:
 - (i) All the exist and entry points of the premises
 - (ii) All areas of the premises that are open to and used by the public/patrons excluding toilet/bathroom areas
 - (iii) The Fairlight Walkway immediately adjacent to the premises
- (d) Any recordings made by the CCTV system must be sufficient to enable the recognition of a person. A viewer must be able to say with a high degree of certainty whether or not an individual shown is the same as someone they have seen before, when:
 - (i) the person represents not less than 50% of screen height, and
 - (ii) there is an unobstructed view of the person's face
- (e) The system camera views are not to be obstructed by any temporary or permanent structure.
- (f) All recordings made by the CCTV system must be retained for a minimum of 30 days.
- (g) Ensure that at least one member of staff is always present at the premises when the system is operating who can assess and fully operate the system, including downloading and producing recordings of CCTV footage.
- (h) Footage made by the system is to be downloaded and supplied within 24 hours of any reasonable request made by Police, Northern Beaches Council or Liquor and Gaming officers.

Reason: To ensure that the development provides safety and security to premises users and the community.

22. **Waste Generation**

No waste generated on site from any commercial operation is to be placed in public place bins. Commercial operators must maintain their commercial waste bins in an organised, clean and sanitary condition, preventing potential for litter from overflowing bins. Waste bins are not be stored in public spaces such as footpaths.

Reason: To minimise litter potentially generated at the site from impacting the surrounding sensitive marine environment and to maintain public amenity.

In signing this report, I declare that I do not have a Conflict of Interest.

Signed



Kent Bull, Planner

The application is determined on 10/03/2020, under the delegated authority of:



Matthew Edmonds, Manager Development Assessments