



15<sup>th</sup> December 2021

Northern Beaches Council

## SECTION 4.55 (2) APPLICATION

REV2021/0034

**REVIEW OF DETERMINATION OF APPLICATION DA2020/0442 FOR DEMOLITION WORKS AND CONSTRUCTION OF A MIXED USE DEVELOPMENT COMPRISING SHOP TOP HOUSING AND RETAIL PREMISES, WITH ASSOCIATED CARPARKING, LANDSCAPING AND STRATA SUBDIVISION**

Dear Sir/Madam,

Please find following Section 4.55(2) submission to Northern Beaches Council in relation to the above application.

Please do not hesitate to contact the office if you have any queries.

Yours faithfully,

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## Statement of Environmental Effects

### Re: Condition of Consent No. 99

- We seek to amend the Conditions of Consent REV2021/0034 Dated 1/12/2021 - Condition 99.
- Condition 99 states:
  - *The capacity of the Ground Floor cafe/restaurant premises is limited to 44 indoor patrons, 20 outdoor patrons and 6 staff members.*
  - *Reason: To ensure residential amenity is protected and maintained.*
- This condition is based on the number of patrons as described in the original DA submitted, not the updated number of patrons in the amended plans for the Section 8.2 Review.
- We seek that Condition 99 be amended to reflect the number of patrons as submitted in the Section 8.2 Review, which is 170 patrons and 18 staff (total 188).
- This condition is inconsistent with the Section 8.2 Review as submitted and has the effect of making the proposed restaurant economically unviable to any operator. It does not provide the public amenity as intended with regards to this specific and significant amendment made in the review application.
- The number of patrons in Condition 99 is based on the original Development Application acoustic report by JHA Engineering Revision B Dated 5/2/2020 which stated: *based on Architectural drawings, the Ground Floor retail is assumed to have an operating capacity of 50 people internally (44 patrons and 6 staff members), 20 in the outdoor seating area.*
- The modified plans for the Section 8.2 Review specifically provided a larger Retail 1 space on the ground floor (Surf Rd), and correspondingly a smaller Retail 2 (on Whale Beach Rd). The BCA report, which was provided with the Section 8.2 Review submission, clearly provides numbers for use as a restaurant of 170 patrons and 18 staff (total 188). This is based on Section F2.4 of the BCA.
- The original DA plans showed restaurant/café usage both on the Ground Floor (Surf Rd) and Level 3 (Whale Beach Rd). An important change for the Section 8.2 Review, to minimise the acoustic and privacy impacts on neighbouring dwellings, was to increase the size of the restaurant on the ground floor and change the usage of the retail space on Level 3 to neighbourhood shops. This was shown on the architectural plans and referenced in the submission report, town planning report, acoustic report and schedule of amendments. The increased size and capacity of the restaurant was deliberately relocated to the ground floor where it would have least impact.
- An Acoustic Letter of Support was provided with the Section 8.2 Review submission which provided overall support for the Section 8.2 Review amended proposal, which included the BCA report, and which clearly stipulates 170 patrons and 18 staff (total 188). Whilst the updated acoustic report did not specifically address the increase in patron numbers, the Review documentation was clear in that our submission is for a total of 170 patrons and 18 staff as stated in the BCA report. The acoustic letter of support was obviously to cover the new plans and not the original DA plans.
- We only became aware of this issue once the draft conditions of consent were released. There was not time to provide additional acoustic information and have it notified within the time limits of the Local Planning Meeting held on 1<sup>st</sup> December 2021. If we had been advised earlier that this condition was to be imposed, we could have provided additional clarifying documentation during the Review process.

- Our acoustic engineer has provided an updated full acoustic report with this submission which assesses the impact of the restaurant in the Retail 1 space with occupancy numbers as follows:
  - A full capacity of 188 people – 30 patrons in the outdoor seating area, 140 patrons in the indoor area plus 18 staff overall. The staff is assumed to be split between the two seating areas based on the ratio of patrons – 3 staff in the outdoor area and 15 staff in the indoor area. Acoustic impacts were assessed to the nearest 3 residential dwellings including 229 Whale Beach Road, 233 Whale Beach Road and 24 The Strand, and all were found to be compliant with the relevant noise standards and guidelines.
- The following points clarify the acoustic impact in relation to 24 The Strand, Whale Beach:
  - The original DA acoustic report was based on 24 The Strand, Whale Beach as a commercial premises based on the following consent:
    - *Modification of Development Consent DA 1990/519 granted for alterations and additions and the change of use from a shop to a restaurant to include internal and external alterations and an extension to the approved trading hours. (Submitted: 07/01/2020)*
  - This is the most recent development approval for the site at 24 The Strand.
  - A previous DA and CC approval had also been granted on 24 The Strand for construction of a two-storey dwelling house with basement car parking. Existing buildings have been demolished and the site is currently dormant. It is unclear at the present time what will be built on the site.
  - For the above reasons this property has been assessed as a residential receiver for the noise impact assessments as it has the most stringent noise criteria.
  - Our acoustic engineer has confirmed in the assessment submitted with this application that the acoustic impacts with the higher number of occupants (170 patrons and 18 staff) in the Retail 1 space will comply with relevant noise standards and guidelines for this property whether it is a residential or commercial use.
- There are no physical changes to the proposed building from that shown in the REV2021/0034 Consent dated 1/12/2021.
- As carparking requirements are based on area, they are not altered by a change in patron numbers.
- Visual privacy is unaffected by a change in patron numbers and has been assessed as compliant in the approved plans.
- The number of patrons and staff for the Retail 1 space based on Section F2.4 of the BCA is 188. The building as approved meets the requirements for sanitary facilities, parking, visual privacy and acoustic privacy for this number of occupants.
- We request that Condition 99 be amended to:
  - *The capacity of the Ground Floor cafe/restaurant premises is limited to 140 indoor patrons, 30 outdoor patrons and 18 staff members.*

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