

Annexure A

DETERMINATION OF DEVELOPMENT APPLICATION BY GRANT OF CONSENT

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| Modification Application No: | Mod2022/0983 |
| Development Consent modified: | REV2021/0034 |
| Description of development to be carried out under the consent (as previously modified): | Demolition works and construction of a Mixed Use Development comprising Shop Top Housing and retail premises, with associated carparking, landscaping and strata subdivision |
| Address and particulars of title of land on which development to be carried out: | Lot B DP 316404, 231 Whale Beach Road WHALE BEACH, NSW 2107 |
| Description of modification to the development consent: | Modification to approved patron numbers for restaurant and other minor amendments |

Determination: The development consent is modified as follows:

A. Amend Condition 1 Approved Plans and supporting Documentation to read as follows:

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

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 |
| DA01 Site Plan, Revision W | 8 November 2021 | Richard Cole Architecture |
| DA03 Basement Plan, Revision V | 7 October 2021 | Richard Cole Architecture |
| DA04 Ground Floor Plan, Revision V | 7 October 2021 | Richard Cole Architecture |
| <u>DA04 Ground Floor Plan, revision Y</u> | <u>4 July 2023</u> | <u>Richard Cole Architecture</u> |

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|--|-----------------|---------------------------|
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| DA05 Level 1 Plan, Revision V | 7 October 2021 | Richard Cole Architecture |
| DA06 Level 2 Plan, Revision V | 7 October 2021 | Richard Cole Architecture |
| DA07 Level 3 Plan, Revision V | 7 October 2021 | Richard Cole Architecture |
| DA08 Level 4 Plan, Revision V | 7 October 2021 | Richard Cole Architecture |
| DA09 Roof Plan, Revision W | 8 November 2021 | Richard Cole Architecture |
| DA10 Elevations, Revision V | 7 October 2021 | Richard Cole Architecture |
| DA11 Elevations, Revision W | 8 November 2021 | Richard Cole Architecture |
| DA12 Boundary Elevations, Revision V | 7 October 2021 | Richard Cole Architecture |
| DA13 Section, Revision V | 7 October 2021 | Richard Cole Architecture |
| DA14 Section, Revision V | 7 October 2021 | Richard Cole Architecture |
| DA35 Finishes Board - Surf Road, Revision V | 7 October 2021 | Richard Cole Architecture |
| DA36 Finishes Board - Whale Beach Road, Revision V | 7 October 2021 | Richard Cole Architecture |

| Engineering Plans | | |
|---|------------------|--------------------|
| Drawing No. | Dated | Prepared By |
| 21078/01 Proposed Car Park Layout, Revision D | 10 November 2021 | TEF Consulting |

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| Reports / Documentation – All recommendations and requirements contained |
|---|

| within: | | |
|---|--------------------------|---|
| Report No. / Page No. / Section No. | Dated | Prepared By |
| Access Report, Issue B | 28 July 2021 | Accessible Building Solutions |
| Acoustic Report, Revision B | 5 February 2020 | JHA Services |
| Acoustic Report Addendum Letter | 26 July 2021 | JHA Services |
| <u>Acoustic Report for Development Application, Revision E</u> | <u>28 September 2023</u> | <u>JHA Services</u> |
| <u>Acoustic Report Revision B Project No: 190351 only Part 5.1 - Roof top Mechanical Plan Recommendations</u> | <u>05.02.2020</u> | <u>JHA Services</u> |
| Geotechnical Report | 27 September 2019 | Douglas Partners Pty Ltd |
| Geotechnical Forms 1 and 1a | 28 October 2021 | Douglas Partners Pty Ltd |
| Coastline Risk Management Report | 7 October 2021 | Cardno (NSW/ACT) Pty Ltd |
| Coastline Risk Management Form 1 | 7 October 2021 | Cardno (NSW/ACT) Pty Ltd |
| Arboricultural Impact Assessment | July 2021 | Urban Forestry Australia |
| BCA Design Compliance Report | 2 August 2021 | MBC Modern Building Certifiers |
| <u>SCA Design Compliance Report</u> | <u>02.08.2021</u> | <u>Modern Building Certifiers</u> |
| Stormwater Asset Relocation Investigation & Report | October 2020 | Barrenjoey Consulting Engineers Pty Ltd |
| <u>Plan of Management</u> | <u>14 March 2024</u> | <u>SJB Planning</u> |

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:

| Landscape Plans | | |
|---------------------------------------|---------------|--------------------|
| Drawing No. | Dated | Prepared By |
| DA-L01C Landscape Site Plan | 9 August 2021 | Trish Dobson |
| DA-L02C Site Planting Plan | 9 August 2021 | Trish Dobson |
| DA-L07C Planting Schedule | 9 August 2021 | Trish Dobson |
| DA-L08C Tree Retention Plan + Details | 9 August 2021 | Trish Dobson |
| DA-L09C Street Elevations | 9 August 2021 | Trish Dobson |

| Waste Management Plan | | |
|------------------------------|---------------|--------------------------------|
| Drawing No/Title. | Dated | Prepared By |
| Waste Management Plan | 23 April 2020 | Diane Cassar and Leslie Cassar |

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.

B. Amend Condition 3 - Approved Land Use to read as follows:

This consent authorises a mixed-use development, comprising shop top housing and additional retail premises.

Shop top Housing means one or more dwellings located above ground floor retail premises or business premises.

Retail Premises means a building or place used for the purpose of selling items by retail, or hiring or displaying items for the purpose of selling them or hiring them out, whether the items are goods or materials (or whether also sold by wholesale), and includes any of the following:

- (a) *(Repealed)*
- (b) *cellar door premises,*
- (c) **food and drink premises,**
- (d) *garden centres,*
- (e) *hardware and building supplies,*
- (f) *kiosks,*
- (g) *landscaping material supplies,*
- (h) *markets,*
- (i) *plant nurseries,*
- (j) *roadside stalls,*
- (k) *rural supplies,*
- (l) **shops,**
- (la) *specialised retail premises,*
- (m) *timber yards,*
- (n) *vehicle sales or hire premises, but does not include highway service centres, service stations, industrial retail outlets or restricted premises.*

~~This consent authorises the first use of the Ground Floor and Level 3 retail premises. Retail 1 is specifically approved for the purpose of a restaurant or cafe.~~

~~**restaurant or cafe** means a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, takeaway meals and drinks or entertainment are also provided.~~

This consent restricts the use of Retail 2 and Retail 3 on Level 3 (fronting Whale Beach Road) as a **Neighbourhood Shop** which is defined in the Pittwater LEP 2014 as:

Neighbourhood Shop means premises used for the purposes of selling general merchandise such as foodstuffs, personal care products, newspapers and the like to provide for the day-to-day needs of people who live or work in the local area, and may

include ancillary services such as a post office, bank or dry cleaning, but does not include neighbourhood supermarkets or restricted premises.

Neighbourhood Shops are a type of shop which are classified as a type of retail premises.

This consent restricts the use of Retail 1 on the Ground Floor Level (fronting Surf Road) as a **Restaurant / Cafe** which is defined in the Pittwater LEP 2014 as:

Restaurant / Cafe means a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, takeaway meals and drinks or entertainment are also provided.

This consent prohibits the use of Retail 1 as a Function Centre, including weddings.

function centre are defined in the Pittwater LEP as a building or place used for the holding of events, functions, conferences and the like, and includes convention centres, exhibition centres and reception centres, but does not include an entertainment facility.

Any variation to the approved land use and/occupancy of the building or any part of the building beyond the scope of the above definitions will require separate development consent.

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

C. Modify Condition 67 – Signage and Linemarking – Implementation – to read as follows:

Kerbside Parking Restrictions Signage and Linemarking – Implementation

The applicant is to install all signage and linemarking, as per any Roads Act approval. These works are to be completed prior to the issue of any Occupation Certificate.

Prior to the issue of an Occupation Certificate, a separate submission must be made to Council's Traffic Committee seeking approval for the installation of parking signage within the indented parking bay along the Surf Road site frontage. The signage shall require the indented parking bay to signposted as a 'Loading Zone' between the hours of 7am-10am, 7 days a week and as a '5-minute' parking zone (for set-down / pick-up of patrons) between the hours of 10am-10pm, 7 days a week.

The submission must include a plan showing the proposed kerbside parking restriction signs and stems, and include chainages to all signs and stems from the kerbline of the nearest intersection.

All costs associated with the supply and installation of the appropriate signage is to be paid for by the developer at no cost to Council.

Reason: To ensure compliance with the Road Act and ensure safety of pedestrians and road users.

D. Modify Condition 80 - Kitchen Design, Construction and Fit-out of Food Premises Certification – to read as follows

Prior to the issuing of the 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.

Note: This condition is only relevant to occupation certificate for the restaurant/café

E. Add a new condition 89A – Green Travel Plan – to read as follows:

89A GREEN TRAVEL PLAN AND AMENDMENT TO PLAN OF MANAGEMENT

To promote the use of active and sustainable transport modes for staff and patrons travelling to and from the restaurant/cafe, a Green Travel Plan must be submitted to and approved by Council, and incorporated into the Plan of Management, prior to the issue of an Occupation Certificate for the use of the restaurant/cafe. The Green Travel Plan must:

- a) Be prepared by a suitably qualified traffic consultant in consultation with Northern Beaches Council.
- b) Include objectives and mode share targets (site and land use specific, measurable and achievable and timeframes for implementation) to define the direction and purpose of the Green Travel Plan.
- c) Include specific tools and actions to help achieve the objectives and mode share targets.
- d) Include measures to promote and support the implementation of the Green Travel Plan, including roles and responsibilities for relevant employees involved in the implementation of the Green Travel Plan.
- e) Include a Transport Access Guide, in the form of a map, showing all sustainable transport modes that are available in the locality for travel to and from the site.
- f) Include details regarding the methodology and monitoring/review program to measure the effectiveness of the objectives and mode share targets of the Green Travel Plan, including the frequency of monitoring and the requirement for travel surveys to identify travel behaviour of users of the development.

Prior to the issue of an Occupation Certificate for the use of the restaurant/café, the Plan of Management is to be amended so that the final line in Part 4 shall read “Amplified music will not be played within the premises, and microphones are also not to be used.”

F. Modify Condition 92 - Hours of Operation to read as follows:

The hours of operation of the retail premises and internal areas of the restaurant/cafe are to be restricted to 7:00am to 10:00pm, seven days a week.

The hours of operation of the external areas of the restaurant/cafe are restricted to 7.00am to 8.00pm Sunday to Thursday, and 7.00am to 9.00pm Friday to Saturday.

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

Deliveries of goods and waste collection associated with the retail premises and restaurant/cafe must not occur between 7.00pm and 7.00am the following day.

Reason: To ensure the uses operate in accordance with the approved hours and the amenity of the surrounding locality is maintained.

G. Modify Condition 99 Capacity of Ground Level Cafe or Restaurant facing Surf Road to read as follows:

The capacity of the Ground Floor cafe/restaurant premises is limited to 44 indoor patrons, 20 outdoor patrons and 6 staff members. shall vary by time and season, as follows:

Warmer Months (October to March) - weekdays

| | | |
|----|----------------------------------|-----|
| 1. | Weekdays from morning – 11am; | 150 |
| 2. | Weekdays from 11am – 5pm; | 150 |
| 3. | Weekday nights from 5pm – 6pm; | 130 |
| 4. | Weekday nights from 6pm onwards; | 130 |

Warmer Months (October to March) - weekends

| | | |
|----|----------------------------------|-----|
| 5. | Weekends from morning – 11am | 80 |
| 6. | Weekends from 11am – 5pm; | 80 |
| 7. | Weekend nights from 5pm – 6pm; | 80 |
| 8. | Weekend nights from 6pm onwards; | 100 |

Cooler Months (April to September) - weekdays

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|-----|----------------------------------|-----|
| 9. | Weekdays from morning – 11am; | 150 |
| 10. | Weekdays from 11am – 5pm; | 150 |
| 11. | Weekday nights from 5pm – 6pm; | 150 |
| 12. | Weekday nights from 6pm onwards; | 150 |

Cooler Months (April to September) - weekends

| | | |
|-----|----------------------------------|-----|
| 13. | Weekends from morning – 11am; | 150 |
| 14. | Weekends from 11am – 5pm; | 80 |
| 15. | Weekend nights from 5pm – 6pm; | 80 |
| 16. | Weekend nights from 6pm onwards; | 140 |

The indoor area will be limited to a maximum of 70 patrons if the eastern façade doors are open/unlocked (except in the case of emergencies).

If the eastern façade doors are not open/locked, then there shall be no limit to the maximum number of patrons in the indoor area, except as set out above. On such occasions, the amenities access door shall be used to access the outdoor area (for both patrons and staff) with an automatic closing mechanism.

At all times the maximum number of patrons in the external (outdoor) area will be limited to 20 patrons.

Reason: To ensure residential amenity is protected and maintained.

H. Add Condition 99 (A) Acoustic Recommendations to read as follows:

The following acoustic recommendations shall be complied with at all times:

(a) A 1.8m high lapped and capped fence shall be erected along the southern boundary between the subject site and 229 Whale Beach Road. The paling fence shall have a minimum surface mass of 12kg/m and be constructed with an impervious material. The paling fence shall be continuous with no gaps and shall be close fitting to the ground. All bracing and structural support required to comply with loadings and building regulations shall be provided and reviewed by a structural engineer.

(b) The eastern facade of the indoor seating area is not to be operable/openable, except for the eastern façade doors which may only be opened for patron/staff ingress and egress when there are 70 or less patrons in the indoor seating area, or in the case of emergencies.

(c) A sound absorptive ceiling to be installed to the outdoor seating area.

(d) Glazing composition of the glazed facade is a 6.38mm laminated/ 16mm airgap / 10.38mm laminated, which provides an approximate Weighted Sound Insulation Rating of RW43.

(e) Glazing for the access door is 12.38mm laminated, which provides an approximate Weighted Sound Insulation Rating of RW37.

(f) Signs shall be installed regarding noise levels when patron leave the premise.

Reason: To ensure acoustic measures are carried out and residential amenity is protected.