

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/0339
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Responsible Officer:	Nick Keeler
Land to be developed (Address):	Lot 5 DP 554506, 47 Sydney Road MANLY NSW 2095
Proposed Development:	Use of premises as a cafe and signage
Zoning:	Manly LEP2013 - Land zoned B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Terra Rossa Investments Pty Ltd David Charles Ryals
Applicant:	Homebread Pty Ltd T/as Berkelo

Application Lodged:	14/04/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	23/04/2021 to 07/05/2021
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 90,000.00
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PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for the use and fit-out of the northern ground floor tenancy as a cafe. The proposed works include:

- changes to shopfront glazing including closing the current corner doorway to create a corner bar with internal and external seating and bi-fold window
- new 4 panel glazed bi-folding door that will stack internally providing access direct from Sydney Road
- modified windows on Whistler Street facade
- signage utilising two existing hanging signs under the awning plus banner signage on the face of the awning and decals on the new glazing

Seating for nine (9) patrons is proposed and existing service functions and amenities are to be unaltered. Three (3) staff members are to be onsite at any one time.

The business is proposed to operate Monday to Sunday between 6:00am and 7:00pm.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

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

Manly Development Control Plan - 4.2.5.4 Car Parking and Access

SITE DESCRIPTION

Property Description:	Lot 5 DP 554506 , 47 Sydney Road MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the southern side of Sydney Road and eastern side of Whistler Street.</p> <p>The site is generally regular in shape with a primary frontage of 6.12m along Sydney Road and a secondary frontage of 17.985m along Whistler Street. The site has a surveyed area of 109.4m². The subject tenancy is the northern-most on the ground floor.</p> <p>The site is located within the B2 Local Centre zone and accommodates three-storey semi-detached commercial building with retail tenancies at the ground floor and business tenancies on the upper floors.</p> <p>The site is flat and does not contain any natural features of</p>

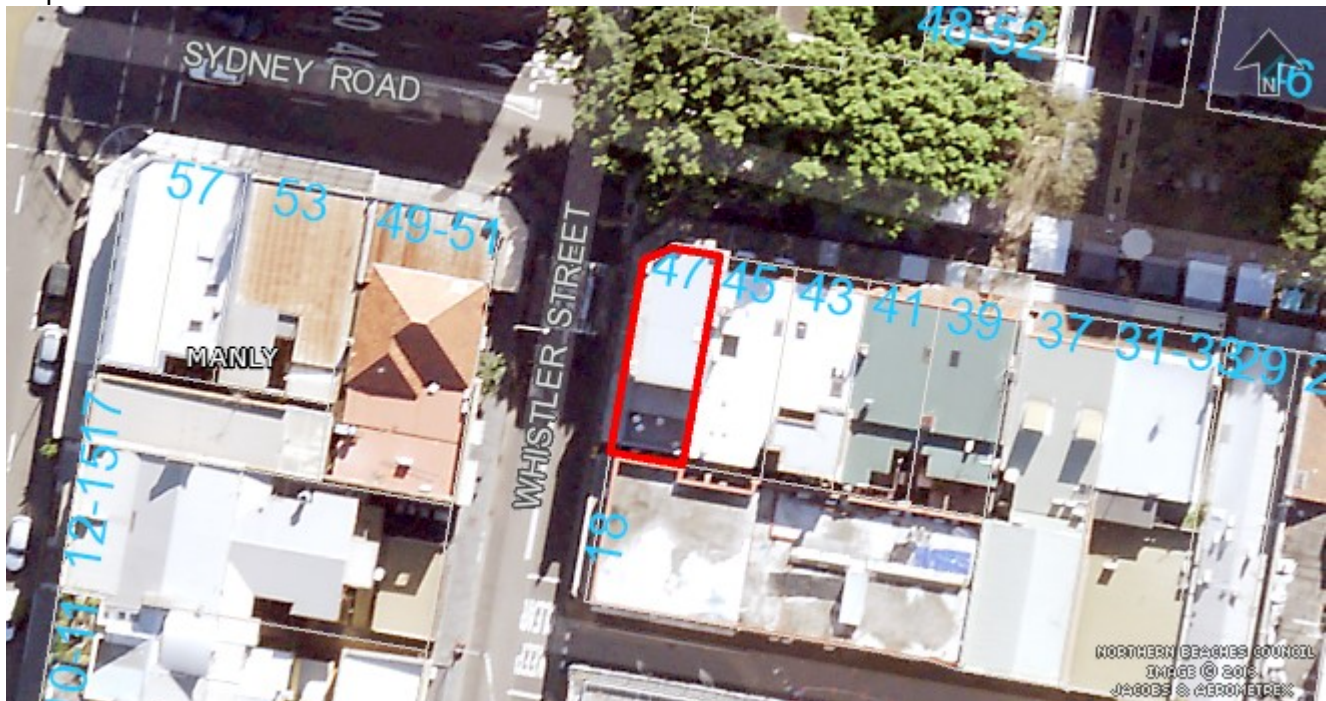
vegetation.

The site is identified as a heritage item and is located within the Manly Town Centre heritage conservation area.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by buildings of varied age, size and architectural styles with mixed residential and commercial land uses.

Map:



SITE HISTORY

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

Application **DA242/2001** for Change of Use of Shop (Asian Grocery Shop); Shop Fit-Out was approved on 29/06/2001 by Council staff.

Application **DA108/2002** for Change of use to a hairdresser and signage was approved on 10/05/2002 by Council staff.

Application **DA504/2006** for Change of Use from Retail to a Cafe with internal fit out was approved on 15/12/2006 by Council staff.

Application **DA20/2008** for Alterations and additions to an existing commercial building was approved on 31/03/2008 by Council staff.

Application **DA27/2016** for Change of use to a clothing and homeware shop, shop fitout and signage was approved on 03/05/2016 by Council staff.

Application **DA190/2016** for Change of use to a take away food and drink premises, internal fitout and associated signage was approved on 17/08/2016 by Council staff.

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	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly 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 matter has been addressed via a condition of consent.</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 clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home</p>

Section 4.15 Matters for Consideration'	Comments
	<p>Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> 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><u>Clause 143A</u> 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 from 23/04/2021 to 07/05/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Mr Kevin Nicholson	214 / 48 - 52 Sydney Road MANLY NSW 2095

The following issues were raised in the submissions and each have been addressed below:

- Use of footpath for customer service

The matters raised within the submissions are addressed as follows:

- *Concern is raised of the use of the public footpath to serve customers.*

Comment:

A consent condition is included to prohibit the service of customers from any window on the Whistler Street building frontage. This aims to limit impacts to pedestrian amenity and safety on the adjacent public footpath.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Food Premises, Skin Pen.)	<p>General Comments</p> <p>Environmental Health have been requested to provide comment on the proposed development for minor alterations of an existing building to operate a cafe. As part of this referral food premise operation of the business, fit out and noise have been considered.</p> <p>The development proposal advises that the business will operate from 6am to 7pm Mondays Sunday. The EPA noise policy for industry defines daytime as 7am-6pm Monday to Saturday and 8am-6pm on a Sunday. Meaning the proposed use of the site sits in the shoulder periods between night and evening. As background noise is increasing in the morning during this time and decreasing in the evenings the use of the site is expected to maintain acoustic amenity. The site is also located within the business center of Manly where an increased level of noise is expected.</p> <p>Based on the information provided in the SEE and plans the overall flow of the kitchens areas seem sufficient. Food premise fit out and any required mechanical ventilation is to be conditioned to provide certification that kitchen fit out and mechanical ventilation comply with AS 1668 & AS 4674. Environmental Health recommend approval subject to conditions.</p> <p>Recommendation</p> <p>APPROVAL - subject to conditions</p>

Internal Referral Body	Comments
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>The proposal is for the change of use to a cafe bakery in an existing ground floor retail space, with fitout including the relocation of the doorway.</p> <p>It is not considered that flood risk would be increased.</p> <p>No flood related objections.</p>
Strategic and Place Planning (Heritage Officer)	<p>HERITAGE COMMENTS</p>
	<p>Discussion of reason for referral</p>
	<p>The proposal has been referred to Heritage as the subject property is part of a group listed heritage item, being Item I234 - Group of 5 commercial buildings at 39–47 Sydney Road, listed in Schedule 5 of the Manly LEP 2013. It is also located within the Manly Town Centre Conservation Area and in the vicinity of two heritage items:</p> <p>Item I231 - Congregational Church - Sydney Road (corner of Whistler Street)</p> <p>Item I84 - Commercial and residential building - 12 Belgrave Street</p>
	<p>Details of heritage items affected</p>
	<p>Details of the heritage items as contained within the Northern Beaches Heritage inventory are as follows:</p> <p>Item I234 - Group of 5 commercial buildings <u>Statement of significance:</u> A fine representative and unified group of Federation Queen Anne style shops. <u>Physical description:</u> Fine terrace of Federation Queen Anne style 2 storey shops, alternately brick and roughcast stuccoed, terminating in a 3 storey corner shop featuring a 2 storey oriel window.</p> <p>C2 - Manly Town Centre Conservation Area <u>Statement of significance:</u> The Manly Town Centre Conservation Area (TCCA) is of local heritage significance as a reflection of the early development of Manly as a peripheral harbor and beachside village in the fledgling colony of New South Wales. This significance is enhanced by its role as a day-trip and holiday destination during those early years, continuing up to the present time, and its association with H G Smith, the original designer and developer of the TCCA as it is today. The physical elements of the TCCA reflect this early development and its continued use for recreational purposes, most notably the intact promenade quality of The Corso and its turn of the century streetscape, as well as key built elements such as hotels, and remaining original commercial and small scale residential buildings.</p>

Internal Referral Body	Comments
	<p>Item I231 - Congregational Church</p> <p><u>Statement of significance:</u> Congregational Church in Whistler Street is of significance for Manly area for its historical, aesthetic and social reasons, and for the rarity and representativeness of its qualities. The site has a long association with the local community for spiritual reasons, being a place of public worship since the 1860s when the current building was created. The church building is a major landmark visible from the direction of Sydney Road and Whistler Street and makes an important contribution to the townscape character. The building is representative of stone churches of its date of creation, particularly of Victorian Rustic Gothic architectural style, which is rare in the local area context. It is believed to be "the oldest church in Manly".</p> <p><u>Physical description:</u> Sandstone Victorian Rustic Gothic style church with pointed arched leadlight windows with quatrefoil and trefoil motifs, and pointed arched doors. The church was extended east in 1907. The church has a gabled concrete tile roof with copper roof plumbing.</p> <p>Item I84 - Commercial and residential building</p> <p><u>Statement of significance:</u> This item is of local significance for its ability to demonstrate the pattern of Manly's development, and in particular, that associated with Belgrave Street. Belgrave Street, formerly the East Promenade was a major element of HG Smith's concept for his township and the gateway to Manly and the Corso. This building is associated with a second phase of development in the 1920's with development of a group of late 19th century buildings reflecting growth of Manly in the Inter-war period, a commuting workforce and the popularity of apartment dwelling at this time. It enables the research into the development of building technology and architectural development by virtue of its retention of the 1880s terrace houses behind the 1920s façade.</p> <p><u>Physical description:</u> Substantial three storey residential building with street level shops in prominent location and featuring stepped parapet and central timber framed bay. This would appear to be a later façade added to a group of late 19th century terraced buildings as evidenced by remnant firewall parapets at rear and fenestrations on upper level verandah of adjoining building at no 10. The adjoining building has similar detail and appears to have been altered as part of the same development. Parapet has rendered coping, date and name plaques. The brickwork is painted on the middle level and the bay is paneled. The side windows have sliding sashes and appear to be later enclosure of balconies. The former openings are framed with rendered detail but obscured by painting of brickwork. The windows of the bay are double hung with the upper sash divided into small panes. The shopfronts have been altered. The interior was not inspected.</p> <p>Other relevant heritage listings</p> <p>Sydney Regional</p>

Internal Referral Body	Comments		
	Environmental Plan (Sydney Harbour Catchment) 2005	No	
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	No	
	Consideration of Application		
	Outline what development is proposed by the application, from a review of the Statement of Environmental Effects and Plans submitted with the DA. In some instances, an inspection of the subject site will be necessary. Assess the impact of this proposed development on the identified heritage item/s. Discuss the impact.		
	<u>Consider against the provisions of CL5.10 of Manly LEP 2013.</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? Yes		
	Further Comments		
	<p>The proposal seeks consent for shop fitout to the existing tenancy, involving changes to the shopfront fenestration to enlarge the existing opening and replace the existing corner door with bi-fold windows and create external seating at this corner; to replace the existing window, facing Sydney Road, with bi-fold doors; to enlarge and replace the existing window, facing Whistler Street, with bi-fold windows. The proposed internal changes will not modify the existing walls.</p> <p>It is noted that the proposed colour scheme has been referenced by the brand and the proposed materials have not been specified in the proposal. Heritage recommends to use timber doors and windows to respect the heritage identity of the building.</p> <p>The proposed signage will be replacing the existing and no additional signage is proposed. Given minor nature of the proposal, the proposed works are considered to not impact upon the significance of the heritage items and the conservation area.</p> <p>Therefore, no objections are raised on heritage grounds subject to one condition.</p> <p>COMPLETED BY: Oya Guner, Heritage Advisor</p>		

Internal Referral Body	Comments
	DATE: 21 April 2021

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 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 proposal is compatible with the existing character of the area. Given the nature of surrounding development and applicable development controls, the proposal is consistent with the likely future character of the area.	YES
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	The proposed signage is consistent with other existing and advertising in the 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 site is identified as a local heritage item, located within an heritage conservation area and located in the vicinity of other heritage items. The proposal will not unreasonably detract from the visual quality of the area.	YES

3. Views and vistas Does the proposal obscure or compromise important views?	The proposal will not obstruct views.	YES
Does the proposal dominate the skyline and reduce the quality of vistas?	The signage is contained within the extent of the awning fascia and existing under awning vessels. The proposal will not dominate the skyline.	YES
Does the proposal respect the viewing rights of other advertisers?	The proposal will not affect 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?	The scale and form of the advertising is consistent with applicable development controls, and is appropriate for the streetscape.	YES
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	The proposal will create additional visual interest in the pedestrianised Sydney Road streetscape.	YES
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	The signage is limited to the awning fascia and existing under awning vessels of the building and is not expected to contribute towards visual clutter.	YES
Does the proposal screen unsightliness?	The signs will be flush-fitted and will not screen structures.	YES
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	The proposed signs will not protrude above any structures.	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 compatible with the scale, proportion and visual appearance of signs both on the building and within the area more generally.	YES
Does the proposal respect important features of the site or building, or both?	The proposal will have no adverse impact on the appearance of the building nor any specific architectural structures.	YES
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	The signs show innovation by utilising areas that will not adversely affect the appearance of the building nor streetscape character.	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?	Not applicable.	N/A
7. Illumination Would illumination result in unacceptable glare, affect safety for pedestrians, vehicles or aircraft, detract from the amenity of any residence or	The signs will not be illuminated.	N/A

other form of accommodation?		
Can the intensity of the illumination be adjusted, if necessary?	As above.	N/A
Is the illumination subject to a curfew?	As above.	N/A
8. Safety Would the proposal reduce the safety for any public road, pedestrians or bicyclists?	The signs will not affect sightlines, and their placement/design will not create a distraction thereby creating foreseeable safety hazards.	YES
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	The signs will be flush-fitted and as such will not affect sightlines.	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.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The subject property is located within the Sydney Harbour Catchment therefore the provisions of this plan apply to this development.

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.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	12m	No change to building height	N/A	Yes
Floor Space Ratio	3:1	No change to GFA	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes

Clause	Compliance with Requirements
5.10 Heritage conservation	Yes
6.1 Acid sulfate soils	N/A
6.2 Earthworks	N/A
6.4 Stormwater management	N/A
6.8 Landslide risk	N/A
6.9 Foreshore scenic protection area	Yes
6.11 Active street frontages	Yes
6.13 Design excellence	Yes
6.16 Gross floor area in Zone B2	Yes

Manly Development Control Plan

Built Form Controls

The proposed development involves the change of use and internal fit-out of the existing ground floor tenancy. No change to the built form of the existing building is proposed. As such, the MDCP built form controls do not apply to this proposal.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.3 Townscape (Local and Neighbourhood Centres)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.3.1 Landscaping Design	N/A	N/A
3.3.2 Preservation of Trees or Bushland Vegetation	N/A	N/A
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	N/A	N/A
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	N/A	N/A
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	N/A	N/A
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.2.1 FSR (Consideration of Exceptions including Arcades)	Yes	Yes
4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2)	Yes	Yes
4.2.3 Setbacks Controls in LEP Zones B1 and B2	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor	No	Yes
4.2.5 Manly Town Centre and Surrounds	Yes	Yes
4.2.5.1 Design for Townscape	Yes	Yes
4.2.5.2 Height of Buildings: Consideration of Townscape Principles in determining exceptions to height in LEP Zone B2 in Manly Town Centre	Yes	Yes
4.2.5.3 Security Shutters	Yes	Yes
4.2.5.4 Car Parking and Access	No	Yes
4.2.5.6 Late Night Venues	N/A	N/A
4.4.3 Signage	Yes	Yes
4.4.4.1 Awnings in LEP B1 and B2 Business Zones	N/A	N/A
4.4.4.2 Awning supported from the ground	N/A	N/A
4.4.5 Earthworks (Excavation and Filling)	N/A	N/A
5 Special Character Areas and Sites	Yes	Yes
5.1.1 General Character	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor

Refer to Part 4.2.5.4 for detailed assessment regarding onsite parking.

4.2.5.4 Car Parking and Access

Description of non-compliance

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

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

The tenancy has 30m² of gross floor area of serviced area. Therefore, a minimum of 1 off-street parking spaces is required for the proposed development.

The proposal does not provide any off-street parking.

Merit consideration

When considering the proposal on merit, it is important to note that there is no existing off-street parking and provision of such is impractical due to the size, location and heritage significance of the existing building. The proposed change of use is not considered to result in any significant traffic or parking generation and requires less onsite parking than the previous business premises. The site is centrally located and is well serviced by public parking facilities and public transport services. In this regard,

Council can be satisfied that the proposal will not result in adverse traffic or parking.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this application.

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 DA2021/0339 for Use of premises as a cafe and signage on land at Lot 5 DP 554506, 47 Sydney Road, 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
448-01 01 Issue B	26/03/2021	Baxter & Jacobson Architects
448-01 03 Issue B	26/03/2021	Baxter & Jacobson Architects
448-01 06 Issue B	26/03/2021	Baxter & Jacobson Architects
448-01 07 Issue B	26/03/2021	Baxter & Jacobson Architects
448-01 08 Issue B	26/03/2021	Baxter & Jacobson Architects

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	26/03/2021	Mark Baxter

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

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

2. **Approved Land Use**

Nothing in this consent shall authorise the use of tenancy as detailed on the approved plans for any land use of the site beyond the definition of a *restaurant or cafe*.

A *restaurant or cafe* is defined as:

“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, take away meals and drinks or entertainment are also provided.”

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.

3. **Prescribed Conditions**

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

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention

to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

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

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

Reason: Legislative requirement.

4. **General Requirements**

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no

hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner

that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

5. Security Bond

A bond (determined from cost of works) of \$1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

6. Flooding

In order to protect property and occupants from flood risk the following is required:

Building Components and Structural Soundness – B3

All new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed and/or located above the Flood Planning Level of 6.05m AHD. All existing electrical equipment and power points located below the Flood Planning Level must have residual current devices installed to cut electricity supply during flood events.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

7. **Materials and colour scheme**

The proposed materials and colours should be submitted to Council for approval prior to the issue of the Construction Certificate.

Reason: To preserve the significance of the Heritage item and the conservation area.

8. **Plans of Kitchen Design, construction and fit out**

Prior to any Construction Certificate (CC) being issued, detailed plans that demonstrate compliance with Standard 3.2.3 of the Australian and New Zealand Food Standards Code, the Food Act 2003 and Australian Standard AS 4674 'Design, construction and fit out of food premises', must be submitted to and approved by the Certifying Authority. These plans are to be prepared by a suitably qualified person.

The plans must detail adequate provision for storage including separate storage of food, equipment, chemicals and personal belongings.

Reason: To ensure that the Food premise complies with the design construction and fit-out requirements.

9. **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 WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE
OCCUPATION CERTIFICATE**

10. **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.

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

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

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

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

12. **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.

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

13. **Hours of Operation**

The hours of operation are to be restricted to 6:00am to 7:00pm on any day.

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.

14. **Commercial Waste Collection & Deliveries**

Waste and recyclable material, generated by this premises, must not be collected and any deliveries to the premises outside the approved hours of operation.

Reason: To protect the acoustic amenity of surrounding properties.

15. **Service of Customers**

Service of customers must not be conducted via any window on the Whistler Street building frontage at any time.

Reason: To maintain reasonable pedestrian amenity and safety on the public footpath.

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

Signed



Nick Keeler, Planner

The application is determined on 26/05/2021, under the delegated authority of:



Rodney Piggott, Manager Development Assessments