

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/0827
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Responsible Officer:	Catriona Shirley
Land to be developed (Address):	Lot 2 SP 72732, 2 / 1 Sydenham Road BROOKVALE NSW 2100
Proposed Development:	Use of premises as a Restaurant including internal fit-out
Zoning:	Warringah LEP2011 - Land zoned B5 Business Development WLEP Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Bermagui Holdings Pty Ltd
Applicant:	Four Towns Planning

Application Lodged:	28/06/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	05/07/2021 to 19/07/2021
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 74,930.00
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PROPOSED DEVELOPMENT IN DETAIL

The proposed development seeks consent for a change of use to a licensed restaurant. Works will include an internal fitout and installation of mechanical ventilation at Unit 2, 1 Sydenham Road, Brookvale.

Change of Use

The proposal seeks a change of use to a licensed restaurant known as Pocket Pizza.

Internal Fit Out Works

- New flooring
- New kitchen and preparation area fit out
- Seating dining area
- New cold storage room
- Alterations to existing toilets to allow for an accessible toilet and two additional toilets

Hours of Operation

Proposed hours of operation:

- Monday to Saturday 7.00am – 11.00pm
- Sunday 8.00am – 10.00pm

Lunch time service is proposed from 11.00am to 3.00pm, with dinner service from 5.00pm till closing.

Patron Numbers

Maximum patron numbers onsite is to be 50 people.

Staff

Five (5) full time employees plus casuals on as needs basis.

Loading/Unloading

Existing loading and unloading facilities on-site. All deliveries to be provided between 7am to 11am outside of peak service times.

Carparking

The site has access to two (2) car spaces on-site.

Waste Management

A designated waste area will be allocated to the Unit. Waste will be collected by a commercial contractor.

Signage

No signage has been included as part of this development application.

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

Warringah Local Environmental Plan 2011 - 2.5 Additional permitted uses for particular land

Warringah Development Control Plan - C3 Parking Facilities

Warringah Development Control Plan - D3 Noise

Warringah Development Control Plan - D23 Signs

SITE DESCRIPTION

Property Description:	Lot 2 SP 72732 , 2 / 1 Sydenham Road BROOKVALE NSW 2100
Detailed Site Description:	<p>The subject site is described as Lot 2 SP 72732, known as Unit 2, No.1 Sydenham Road, Brookvale. The site is located within the B5 Business Development zone as mapped within the Warringah Local Environment Plan.</p> <p>The site is located on the northern side of Sydenham Road near the intersection with Pittwater Road. The site is rectangular in shape with a 15.24m frontage to Sydenham Road.</p> <p>The building is two storeys in height with a total of three tenancies. Unit 1 is currently Divine Designs Furniture & Decorating, Unit 2 is currently an empty tenancy for a factory/warehouse and Unit 3 is approved as a residential Unit.</p> <p>Unit 2 is located on the ground floor of the building and is accessed from the Pittwater Road frontage. The property has vehicular access from Sydenham Road with access to two (2) car parking spaces onsite for Lot 2.</p> <p>Surrounding sites comprises a eclectic mix of commercial and industrial land uses including micor breweries, restaurants, cafes, offices and building supplies.</p>

Map:



SITE HISTORY

A search of Councils records have revealed the following relevant development applications:

- Development Application **DA2020/0705** for the change of use to Unit 3 as a dwelling house (Shop Top Housing) was approved on the 4 September 2020.
- Development Application **DA2013/1073** for the use of premises (being Unit 3) as a restricted premises (adult shop) was approved on 5 March 2014.
- Development Application **DA0386/2002** for alterations and additions to existing factory/warehouse premises (Unit 2) was approved on 13 May 2002.

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	<p>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 site has been used for industrial and commercial purposes for a significant period of time with no prior land uses.</p> <p>The ground floor (the subject of this proposal), has been used for retail and office and factory/warehouse purposes.</p>

Section 4.15 Matters for Consideration'	Comments
	<p>The development occurs at the ground level and does not require any works to be conducted which would otherwise disturb the existing concrete pad.</p> <p>Council's Environmental Health Officer has reviewed the report and does not raise any objection to the proposal nor impose any conditions.</p> <p>In this regard it is considered that the site poses no risk of contamination.</p>
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – 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>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to an Acoustic Report.</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 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>
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 Warringah 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</p>

Section 4.15 Matters for Consideration'	Comments
	existing and proposed land use.
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 05/07/2021 to 19/07/2021 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 Brian Patrick Dunphy	2 / 2 Sheridan Place MANLY NSW 2095

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

- **Owners Consent**
- **Grease Arrestor**
- **Mechanical Ventilation**
- **Pedestrian Access**

The matters raised within the submissions are addressed as follows:

- **Concern was raised that the Owners Consent approval was not for the plans submitted to Council as part of this application.**

Comment:

The documentation submitted with the application included the minutes from the Extraordinary General Meeting (EGM) for Strata Plan 72732 for 1 Sydenham Road Brookvale. These minutes demonstrate approval for the proposed change of use to a restaurant and associated fit-out works. Comparison between the plans approved via the EGM and the submitted plans noted amendments to provide an additional WCs, three in total rather than two, separate hand basins, along with an additional hand basin in the kitchen due to obtaining compliance with the Building Code of Australia.

The proposed changes are located within Unit 2 and not on common property.

Accordingly, the owners signatures provided on the application satisfy this requirement for owners consent. As a result, this issue does not hold determining weight for refusal.

- ***Concern was raised that Unit 1 objected to the location of the above ground grease arrestor as demonstrated in the minutes of the EGM.***

Comment:

Discussion with the applicant revealed that the owner of Lot 1 would not grant approval for the location of the above ground grease arrestor due to a disagreement with the proposed by-law. The owner of Lot 2 is currently liaising with a Legal Representative to re-word the by-law and submit for another EGM for the owners of the three Units within 1 Sydenham Road Brookvale.

The minutes from the Extraordinary General Meeting (EGM) for Strata Plan 72732 for 1 Sydenham Road Brookvale demonstrate approval for the proposed change of use and associated works. Accordingly, the owners signatures provided on the application satisfy this owners requirement for approval for the Development Application. The matter of by-laws approval is a issue between the Lot Owner and the Owners Corporation. As a result, this issue does not hold determining weight for a reason for refusal.

- ***Concern was raised in regards to the mechanical ventilation system not being demonstrated on the plans.***

Comment:

The submitted plans demonstrate the location and point of penetration. The proposed mechanical ventilation will be constructed through the existing window and up the side of the nib wall which is located approximately 1.5m from the side boundary. As a result, the mechanical ventilation is entirely within the property boundaries.

Councils Environmental Health Officers have assed the mechanical ventilation system and support the application, subject to the imposition of conditions. The conditions include detailed plans to be submitted to and approved by the Certifying Authority that demonstrate compliance with the Australian Standard (AS) 1668.2 "*The use of ventilation and air-conditioning in buildings - Mechanical ventilation in buildings*"; and *any external exhaust discharge must be above the roofline and discharged in a manner that is not likely to cause an amenity impact*". As a result, this issue does not hold determining weight for the refusal of the application.

- ***Concern is raised in regards to the pedestrian access being via the driveway access to Unit 2.***

Comment:

Car parking for three Units is located on the roof top car park via a separate ramp.

The driveway access to the entry of the proposed restaurant is to only be utilised for loading/unloading, no parking can be undertaken on the driveway. Conditions will be imposed that all deliveries that would utilise the driveway are to be undertaken outside of the main lunch time and dinner service hours, therefore minimising and safety or pedestrian access concerns. As a result, this issue does not hold determining weight for the refusal of the application.

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 the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Environmental Health (Industrial)	<p>An acoustic report has been provided to account for the noise amenity impacts on the residential unit above the restaurant. The acoustic report demonstrates compliance with relevant NPfI criteria and gives recommendations on mitigation measures to reduce noise.</p> <p>Environmental health is satisfied with the development proposal and recommend conditions aligning with the acoustic report.</p>
Environmental Health (Food Premises, Skin Pen.)	<p>Environmental Health reviewed the proposal for a food premises including mechanical exhaust. We find the proposal satisfactory and recommend a standard set of conditions for premises fit-out and mechanical exhaust installation certification. The proposal is supported subject to conditions.</p>
Traffic Engineer	<p>The proposal includes the fit-out of unit 2 for use as a restaurant (specifically a pizzeria) covering the existing 136 m². The pizzeria is proposed to operate 11:00 am to 11:00 pm seven days a week with staff to arrive for preparation from 7:00 am. Seating for 50 patrons is proposed internal to the existing building with a maximum of five staff rostered on at any one time.</p> <p>Under the DCP the requirement for onsite parking is 15 spaces per 100 m² or 1 space per three customers seated, which ever is the greater (20.4 ≈ 21 or 16.67 ≈ 17 respectively). There is only 2 spaces provided on site under the strata plan.</p> <p>The proposal relies on the use of on-street parking in Sydenham Road for the main trading periods.</p> <p>The proposal is supported based on the parking availability in the precinct during the peak trading periods and the proximity to public transport services for staff.</p>

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 industrial and commercial purposes for a significant period of time with no prior land uses. The ground floor (the subject of this proposal, has been used for factory/warehouse purposes).

The development occurs at the ground level and does not require any works to be conducted at ground level which would otherwise disturb the existing concrete pad.

Council's Environmental Health Officer has reviewed the report and does not raise any objection to the proposal nor impose any conditions.

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 mixed land use.

SEPP (Infrastructure) 2007

The proposal is for internal works only (i.e. a change of use). Therefore, the application was not required to be referred to Ausgrid.

Warringah Local Environmental Plan 2011

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

As the proposed development is for a change of use which does not involve any external building works, the development standards are not applicable in this application.

Compliance Assessment

Clause	Compliance with Requirements
2.5 Additional permitted uses for particular land	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

2.5 Additional permitted uses for particular land

The subject site and the adjoining premises are not zoned for purely retail purposes. The site is zoned B5 Business Development which provides the following objectives:

"To enable a mix of business and warehouse uses, and bulky goods premises that require a large floor area, in locations that are close to and that support the vitality of, centres."

The proposed food and drink premises (i.e. licensed restaurant) represents a permissible business use, using the provisions of Schedule 1 Additional Permitted Uses (Area 5) of Warringah LEP2011, and provide a service to the wider community.

Warringah Development Control Plan

Built Form Controls

As the proposed development is for consent for use to operate as a restaurant premises with no external building works, the built form controls are not applicable to this application.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	No	Yes
C9 Waste Management	Yes	Yes
D3 Noise	Yes	Yes
D8 Privacy	Yes	Yes
D18 Accessibility and Adaptability	Yes	Yes
D20 Safety and Security	Yes	Yes
D23 Signs	N/A	N/A
E10 Landslip Risk	Yes	Yes

Detailed Assessment

C3 Parking Facilities

Merit consideration

The development is considered against the underlying Objectives of the Control as follows:

- To provide adequate off street carparking.

Comment:

The development provides the following on-site car parking:

Use	Appendix 1 Calculation	Required	Provided	Difference (+/-)

Restaurant	15 spaces per 100 m ² or 1 space per three customers seated, which ever is the greater	21	2	19
Total		21	2	19

The proposal is for a change of use with no increase to the floor space of Unit 2 (136sqm). The restaurant proposes a maximum seated patronage of 50 pax.

It is impractical for the site to provide any additional off-street parking. It is considered that this location is well served by on-street parking, near by public car parks and public transport with the subject site being located within close proximity to bus stops that service high-frequency bus routes along Warringah Road to numerous destinations; this would subsequently have the potential to offset some parking demand.

The demand for car parking during the peak lunch time period was detailed within the submitted Traffic Report. The report states during the lunch time peak period the car parking availability was as follows: *"a total capacity of 132 parking spaces within 200m walking distance of the site (Pittwater Road, Sydenham Road & Orchard Road via Charlton Lane), there was found to be an average spare capacity of 16 parking spaces."* It would be expected that weekday lunch time clientele would predominantly be from nearby and surrounding business, who would most likely walk to the proposed restaurant. Accordingly, it is anticipated that on-street parking in the area can accommodate the anticipated small demand associated with the lunch time period.

The hours of operation for the evening period are outside of peak trading hours, therefore the on-street parking demand at these times would be considered lower. As stated in the Traffic Report, *"of the 40 parking spaces along Sydenham Road, 60 per cent were vacant at 6pm on the surveyed weekday and a minimum 38 per cent were vacant during the surveyed Saturday. This equates to between 15 and 25 vacant spaces on Sydenham Road. These results are consistent with industrial precincts where parking demand coincides with typical weekday demand."*

There are multiple car parking operations nearby including Warringah Mall (4650 parking spaces) and Council operated car park on Chard Road (74 parking spaces for public use) which could also be utilised by patrons.

On this basis, it is considered that the existing public parking is adequate for the demand associated with the proposed restaurant.

Council's Traffic Engineer has not raised concern with the development in terms of additional parking demand.

As a result, the proposal will not generate any significant increase in parking requirements within the area and will not result in any unreasonable impacts on the parking within the locality.

Based on this assessment, the non-compliant car parking situation does not warrant refusal of the application.

- *To site and design parking facilities (including garages) to have minimal visual impact on the street frontage or other public place.*

Comment:

The proposed development provides two car parking space and there will be no change to location or design of the existing car parking on the site.

- *To ensure that parking facilities (including garages) are designed so as not to dominate the street frontage or other public spaces.*

Comment:

The proposed development provides two car parking space and there will be no change to location or design of the existing car parking on the site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D3 Noise

Merit consideration

The development application proposes the change of use of an industrial/commercial building for a licensed restaurant which includes eat-in areas, and a take away service on the ground floor. Entry and exist to the restaurant will be via entry roller door accessed at the end of the Unit 2 driveway and adjacent the carpark ramp.

The subject application was referred to Council's Environmental Health Team for comment and was supported by a submitted Acoustic Report that assessed the potential noise impact specifically on the residential unit on the first floor (Unit 3). The nearest residential, Unit 3, is are above and offset from the Unit 2 i.e. closer to Sydenham Road. Unit 3 bedrooms are located at the Sydenham Road façade whilst the office areas are located at the rear.

The restaurants main trading times is to include lunchtime 11.00am-3.00pm, with dinner trade between 5.00pm to 11.00pm Monday to Saturday and 5.00pm - 10.00pm on Sunday.

The Acoustic Report was supported by Council's Environmental Officer, and sufficient in its assessment of noise impacts from the proposed restaurant to the occupants in the first floor residential unit.

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To encourage innovative design solutions to improve the urban environment.*
- *To ensure that noise emission does not unreasonably diminish the amenity of the area or result in noise intrusion which would be unreasonable for occupants, users or visitors.*

Comment:

The applicant has submitted an acoustic report by Acoustic Logic with recommendations for

acoustic operational management techniques to be undertaken for the proposed restaurant. The acoustic report follows assessment methodology consistent with the EPA Noise Policy for industry and provides a number of recommendations for physical and administrative noise controls for inside the tenancy.

The administrative recommendations from the acoustic report are to be conditioned to be incorporated into the restaurants operational management plan.

Whilst the land is zoned for this type of use there are direct residential receivers to the development on the first floor. As a result, the additional acoustic impacts as a result of clientele arriving and leaving also is required to be taken into consideration.

In order to minimise adverse impacts of arrivals and departures on nearby surrounding residential dwellings, the operational hours will be amended to finish at 10.00pm Monday to Thursday. These amended hours are more acceptable for the proposed use as a Licensed Restaurant, and consistent with other nearby food and beverage businesses.

Therefore, the conditioned hours of use combined with the given the distance of the premises from the nearest residential property, it is unlikely the restaurant will create any unreasonable acoustic impact. As a result, the proposed hours of operations are considered acceptable and are suitably conditioned.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D23 Signs

No signage is proposed as part of this application.

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 2021

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;
- Warringah Local Environment Plan;
- Warringah 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 DA2021/0827 for Use of premises as a Restaurant including internal fit-out on land at Lot 2 SP 72732, 2 / 1 Sydenham Road, BROOKVALE, 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
Floor Plan A2	17 March 2021	Luke Miller
Floor Plan A3	17 March 2021	Luke Miller
Floor Plan A4	17 March 2021	Luke Miller
Floor Plan A5	17 March 2021	Luke Miller
Floor Plan A6	17 March 2021	Luke Miller
Floor Plan A7	17 March 2021	Luke Miller

Kitchen Exhaust Ventilation Sheet 1 of 5	19 March 2021	Ace Ventilation
Kitchen Exhaust Ventilation Sheet 2 of 5	19 March 2021	Ace Ventilation
Kitchen Exhaust Ventilation Sheet 3 of 5	19 March 2021	Ace Ventilation
Kitchen Exhaust Ventilation Sheet 4 of 5	19 March 2021	Ace Ventilation

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Noise Impact Assessment	9 September 2021	Acoustic Logic
Transport Impact Statement	10 June 2021	Stantec

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

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 site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a Restaurant premises.

A Restaurant premises is defined as:

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

Note—

Restaurants or cafes are a type of food and drink premises—see the definition of that term in this Dictionary."

(development is defined by the Warringah Local Environment Plan 2011 (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.

3. **Operational Noise Controls**

Any recommendations made in the acoustic report prepared by Acoustic Logic dated 9 September 2021 (Reference 20211101.1/0909A/R0/HD) must be implemented in order to achieve compliance with noise amenity criteria.

The operation of the premises must comply with the following:

1. Venue capacity of 50 patrons is not to be exceeded;
2. Venue not to operate outside of approved hours (i.e. after 11pm);
3. Entry roller door is to remain closed after 10pm;
4. Management to ensure that patrons depart the premises in a prompt and orderly manner at closing times;
5. Music sound pressure levels within general restaurant areas are to be controlled as follows:

- Up to 70dB(A) L10 uniform sound pressure level during operational hours.

Reason: To maintain acoustic amenity of the surrounding area.

4. **No Approval for any Signage**

No approval is granted under this Development Consent for signs (as defined under Warringah Local Environment Plan 2011 and State Environmental Planning Policy No. 64). A separate Development Application for any signs (other than exempt and signs permitted under Complying Development) must be submitted for the approval prior to the erection or display of any such signs.

Reason: Control of signage.

5. **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.

6. 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

7. 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

8. Construction Traffic Management Plan

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

Due to heavy traffic congestion throughout the town centre, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm. Truck movements must be agreed with Council's Traffic and Development Engineer prior to submission of the CTMP.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- Make provision for all construction materials to be stored on site, at all times
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent
- Proposed protection for Council and adjoining properties
- The location and operation of any on site crane

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

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

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

9. **Change of Building Class/Building Upgrade**

The existing building that is proposed to be converted to a restaurant will result in a change of classification to a Class 6 building and will be required to comply with Parts C, D, E & F of the Building Code of Australia.

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

Reason: To ensure adequate provision is made for fire safety and for building occupant safety.

10. **Access for People with Disabilities**

Access to and within the building is to be provided for Persons with a Disability. In particular the front entrance doorway and access to the accessible toilet are to comply with the Building Code of Australia and AS 1428.1. Details are to be provided to the Certifying Authority prior to the issue of the Construction Certificate and be implemented prior to occupation of the building.

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

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

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

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

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

12. **Plans of Mechanical ventilation**

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

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

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

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

13. **Acoustic design incorporated into Plans**

Any design recommendations made in Section 6.2 of the acoustic report prepared by Acoustic Logic dated 9 September 2021 (Reference 20211101.1/0909A/R0/HD) must be implemented into the plans prior to issuing the Construction Certificate in order to achieve compliance with noted conditions of this consent.

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

Reason: To maintain amenity of the surrounding area.

14. **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.

15. **Waste Management Plan**

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

16. Work Zones and Permits

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

17. Implementation of Construction Traffic Management Plan

All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to Council on request.

Reason: To ensure compliance of the developer/builder in adhering to the Construction Traffic Management procedures agreed and are held liable to the conditions of consent.

18. 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.

19. Maintenance of Public Pathways

The public footways and roadways adjacent to the site shall be maintained in a safe condition at all times during the course of the work.

Reason: Public Safety.

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

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

Prior to the issuing of any interim / final occupation certificate, certification is to be provided to the Principal Certifying Authority by a suitably qualified person demonstrating that 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.

21. Mechanical Ventilation certification

Where Mechanical ventilation is required to be installed in the food premises it must comply with the following:

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

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

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

22. 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.

23. Operational Management Plan

Prior to the issue of the Occupation Certificate an Operational Plan of Management is to be prepared for the premises to the satisfaction of the Certifying Authority. The plan shall include the hours, maximum number of patrons and recommendations section of the acoustic report by Acoustic Logic referenced as 20211104.1/0909A/R0/HD and dated 9 September 2021.

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

Reason: To ensure the premises are maintained in an appropriate manner.

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

24. Allocation of Spaces

The car parking spaces shall be provided, made accessible, and maintained, at all times. The

spaces shall be allocated as follows:

- Two (2) - Commercial

Car-parking provided shall be used solely in conjunction with the uses contained within the development. Each car parking space allocated to a particular unit / tenancy shall be line marked and numbered or signposted to indicate the unit / tenancy to which it is allocated.

No parking is permitted in the driveway entry access to Unit 2.

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

Reason: To ensure that adequate parking facilities to service the development are provided on site.

25. **Hours of Operation**

The hours of operation are to be restricted to:

- Monday to Thursday – 7am to 10pm
- Friday and Saturday – 7am to 11pm
- Sunday and Public Holidays – 8am to 10pm

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.

26. **Operational Management Plan**

The Operational Management Plan is to be complied with during operational hours.

Reason: To maintain the acoustic amenity of the area.

27. **Patronage**

The maximum number of people on the site at any given time are to be restricted as follows:

Patrons: Fifty (50)

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

28. **Delivery Management**

All deliveries and commercial waste collection, are to be scheduled outside the hours of 5pm to 7am, and outside peak operating times of 11am and 2 pm.

All SRV delivery vehicles are to utilise the available on site parking spaces assigned to the property.

Reason: Limit the impact of delivery vehicles on the provision of parking.

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

Signed



Catriona Shirley, Planner

The application is determined on 01/10/2021, under the delegated authority of:



Rodney Piggott, Manager Development Assessments