

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/2114
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Responsible Officer:	Megan Surtees
Land to be developed (Address):	Lot 3 DP 201017, 1 - 7 Sydney Road MANLY NSW 2095
Proposed Development:	Change to hours of operation of an approved food and drink premises and installation of illuminated 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:	George Economy Peter Economy Jeanette Lalas
Applicant:	GM Manly Pty Ltd

Application Lodged:	17/01/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	23/01/2023 to 06/02/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 10,780.00
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PROPOSED DEVELOPMENT IN DETAIL

This application seeks consent for the opening hours and illuminated signage, pursuant to the *Manly Local Environmental Plan 2014 (MLEP 2014)*, specifically:

Opening hours:

- Monday 10:00am to 11:00pm
- Tuesday 10:00am to 11:00pm
- Wednesday 10:00am to 11:00pm
- Thursday 10:00am to 11:00pm
- Friday 10:00am to 11:30pm

- Saturday 10:00am to 11:30pm
- Sunday 10:00am to 11:00pm

Signage details:

- Retention of existing under awning sign along the northern elevation (shop front to Sydney Road)
- New 3D illuminated black-lit signage fixed to existing shop front wall along the eastern elevation (shop front to Market Place)

Amended plans were provided which removed the back-lit illumination of the wall sign, and retention of the existing drop lights and inclusion of one (1) additional drop light above the wall sign.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 5.10 Heritage conservation
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Local Environmental Plan 2013 - 6.11 Active street frontages
 Manly Development Control Plan - 4.2.5.6 Late Night Venues
 Manly Development Control Plan - 4.4.3 Signage

SITE DESCRIPTION

Property Description:	Lot 3 DP 201017 , 1 - 7 Sydney Road MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of subject site is allotment located on the southern side of Sydney Road.</p> <p>The site is irregular in shape with a frontage of 7.47m along</p>

Sydney Road and a depth of 13.35m. The site has a surveyed area of 67.8m².

The site is located within the B2 Local Centre zone within the *Manly Local Environmental Plan 2013* and accommodates a single level building with three (3) unit tenancies - 'Benbry Burgers'; 'Messina Gelato' (the subject site); and an empty tenancy,

The site has an northerly orientation toward Sydney Road, with a secondary entrance to the shop along the eastern elevation orientated toward Market Place. The site is located on a flat block within the Manly Town Centre.

Due to the use of the land, and the zoning, the site has no vegetation.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by a variety of commercial developments and mixed use developments. Manly Beach is a short walk to the east from the subject site, and The Corso is located to the east of the subject site.

Map:



SITE HISTORY

The unit tenancy has been used for commercial purposes for an extended period of time. A search of Council's records has revealed the following relevant history and most recent approvals to the subject site:

- **DA94/08** sought consent for the change of use and fitout of a shop from a cafe to a clothes shop including new signage and glazed shop front. This application was approved, subject to conditions, on 23 May 2008.
- **CDC2022/0990** was granted approval for the fitout and change of use as a gelato bar ('Messina Gelato') on 26 September 2022. An Occupation Certificate (OC2023/0016) for the CDC was submitted to Council, dated 13 January 2023.

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	There are no current draft environmental planning instruments.
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 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 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 29</u> of the EP&A Regulation 2021 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 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 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 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements</p>

Section 4.15 Matters for Consideration	Comments
	<p>under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 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 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 23/01/2023 to 06/02/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>
Environmental Health (Industrial)	<p>General Comments</p> <p>Environmental Health has reviewed the applications and associated acoustic report and recommends conditions be added to the DA</p> <p>Recommendation</p> <p>APPROVAL - subject to conditions</p>
Environmental Health (Food Premises, Skin Pen.)	<p>General Comments</p> <p>Environmental Health has reviewed the proposal and recommend standard conditions</p> <p>Recommendation</p> <p>APPROVAL - subject to conditions</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>The proposed development proposes alterations and additions to an approved food and drink premises including:</p> <ul style="list-style-type: none"> • Change of trading hours, and • Illuminated signage within approved signage zone. <p>The proposed development is not considered to increase flood risk.</p>
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	<p>The proposal has been referred to heritage as the subject property sits within C2 - Manly Town Centre Conservation Area and is within the vicinity of a number of heritage items:</p> <p>Item I106 - Group of commercial buildings - All numbers, The Corso, Manly</p> <p>Item I110 - New Brighton Hotel - 69–71 The Corso, Manly</p> <p>Item I232 - Commercial and residential building (street facade</p>

Internal Referral Body	Comments
	<p>only) - 4–10 Sydney Road, Manly</p> <p>Item I233 - Commercial and residential building - 12 Sydney Road, Manly</p> <p>Details of heritage items affected</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.</p> <p>Item I106 - Group of commercial buildings <u>Statement of significance</u> The streetscape and its special qualities are of major significance to the state. The Corso has important historical links to the development of tourism and recreation which is still present and likely to continue. It's role as the pedestrian link between harbour and ocean, city and sea - for the tourist, is fundamental to Manly's status as a resort. <u>Physical description</u> The Corso acts as a low scale horizontal corridor which steps down from the harbour to the ocean. The atmosphere of The Corso is of a 19th century place. Its special qualities include the contrasts of horizontal (low scale architecture) and vertical (planting) dimensions, and urban and natural elements.</p> <p>Item I110 - New Brighton Hotel <u>Statement of significance</u> This building is an example of exotic Egyptian-like motifs and Inter-war Free Classical style. The hotel is of major significance due to its contribution to the streetscape, its visual/textural interest an its association with early 20th century development of the resort. <u>Physical description</u> This is a three storey, rendered brick, wedge shaped building forming the corner of Sydney Road and The Corso. Date 1926 written on parapet. The ground floor elevations are rendered and tiled and remnants of the original door/window joiner survive, although much altered. Several windows, especially in Sydney Road, have the original classically ornamented acid etched and gold leaf highlighted windows intact. Decorative spandrel panels occur beneath the second floor windows, except in the central bay which is crowned by a low pitched gabled pediment. There is a simple masonry parapet.</p> <p>Other relevant heritage listings</p>

Internal Referral Body	Comments		
	Sydney Regional 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		
	<p>The proposal seeks consent for new identification signage only and no other external works included in this application. The existing building is not heritage listed but originates from the significant era of development of the heritage conservation area and contributes positively to the conservation area. It is considered that the proposed signage should not detract from its contribution to the historic character of the streetscape and should be complementary to the context. Therefore, the proposed illuminated sign on the wall is not supported by Heritage, as illuminated signs on buildings are not considered to be appropriate within the Town Centre Heritage Conservation Area. The existing signage could be replaced with a non-illuminated signage on the existing wall. However, the existing under-awning light box with new logo is considered acceptable.</p>		
	Revised Comments - 22 February 2023		
	<p>Amended drawings, received on 20 February 2023, have resolved the heritage concern regarding the illumination on the wall signage. The applicant has now removed the illumination of the wall signage, and proposed to retain the existing spotlights with an additional spotlight above the wall signage. Given the proposed wall signage is for the replacement of the existing identification signage with the existing spotlights above it, the additional impact upon the significance of the HCA and the heritage items is considered manageable.</p> <p>Therefore, no objections are raised on heritage grounds and no conditions required.</p>		
	<p><u>Consider against the provisions of CL5.10 of MLEP 2013.</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? Yes</p>		
	Further Comments		

Internal Referral Body	Comments

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs 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 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 (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

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

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

SEPP (Industry and Employment) 2021

Section 3.6 and 3.11 of Chapter 3 require Council to determine consistency with the objectives stipulated under Subsection 3.1 (1)(a) of the aforementioned SEPP and to assess the proposal against the assessment criteria of Schedule 5.

The objectives of this chapter 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 5 of Chapter 3, 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?	Yes. The proposed signage will be compatible with the business identification signs of adjoining and nearby commercial premises.	YES
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	Yes. The proposed signage will be consistent with the theme of commercial signage within the Manly Town Centre.	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?	No. The proposed signage will not detract from the amenity and visual quality of the heritage nature of the Manly Town Centre.	YES
3. Views and vistas Does the proposal obscure or compromise important views?	No. The signage is affixed to an existing building and will not obscure important views.	YES
Does the proposal dominate the skyline and reduce the quality of vistas?	No. The signage is affixed to an existing building frontage on ground level and will not impact upon the skyline within the Manly Town Centre. The quality of vistas will not be impacted as a result of the signage.	YES
Does the proposal respect the viewing rights of other advertisers?	Yes. The proposal is affixed to an existing building on ground level and, as such, will continue to allow for 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?	Yes. The proposed signage is an appropriate scale, proportion and form for the streetscape.	YES
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	Yes. The proposed signage will provide a positive visual interest to Sydney Road and Market Place, as well as the Manly Town Centre.	YES
Does the proposal reduce clutter by rationalising	Yes. The proposed signage is	YES

and simplifying existing advertising?	appropriately scaled and sited on the existing building at ground level and will not result in visual clutter.	
Does the proposal screen unsightliness?	N/A. No unsightliness will be screened as a result of the proposed signage.	YES
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	No. The proposed signage is affixed to the front of the existing building at ground level to Market Place, and under the existing awning to Sydney Road.	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?	Yes. The proposed signage will be compatible with the scale, proportion and other characteristics of the existing building.	YES
Does the proposal respect important features of the site or building, or both?	Yes. The proposed signage will not adversely impact upon the important features of the site and building.	YES
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	Yes. The proposal seeks to retain the existing under-awning lightbox signage, and an additional wall-mounted light above the 'Messina' sign to Market Place will show innovation and imagination in its relationship to the building and surrounding buildings and advertising within the Manly Town Centre.	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?	Yes. The existing under-awning lightbox sign will be retained. The 'Messina' signage is not illuminated, however an additional small spotlight above this sign is proposed and is considered acceptable.	YES
7. Illumination Would illumination result in unacceptable glare, affect safety for pedestrians, vehicles or aircraft, detract from the amenity of any residence or other form of accommodation?	No. The existing lightbox under-awning sign will remain and will only be illuminated when the premises is open for business (as recommended by a condition). The 'Messina' sign, as amended, is not illuminated. The signage and associated illumination will not detract from the amenity of any residence or other form of accommodation in the nearby vicinity.	YES
Can the intensity of the illumination be adjusted, if necessary?	Yes. As detailed above, a condition will be recommended to limit the hours of illumination to occur only during the operating hours.	YES
Is the illumination subject to a curfew?	Yes. As detailed above.	YES
8. Safety Would the proposal reduce the safety for any	No. The proposed signage will not adversely impact upon the safety of any	YES

public road, pedestrians or bicyclists?	public road, pedestrians or cyclists.	
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	No. As above.	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 this chapter and its underlying objectives.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

Division 4 Coastal use area

2.11 Development on land within the coastal use area

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

Comment:

This Clause applies to the subject site. However, the proposed development does not seek to alter the existing building footprint. It is considered that the above requirements are satisfied the proposal has been designed appropriately and is unlikely to adversely impact upon the requirements as prescribed within this Clause.

Division 5 General

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

hazards

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

Comment:

It is unlikely the proposal will increase the risk of coastal hazards.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for commercial purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the commercial land use.

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	Fixed wall signage: 3.15m	N/A	Yes
Floor Space Ratio	FSR: 3:1	FSR: 0.3:1 (67.8m ²) Existing no change	N/A	Yes
Gross floor area in Zone B2	25% Commercial GFA, maximum 1000sqm per premises	N/A	N/A	N/A

Planner Note:

The subject site has already been approved for the use of a food premises. This development application seeks consent for the operating hours and signage, which bears no impact upon the gross floor area of the site within the B2 zone.

Compliance Assessment

Clause	Compliance with Requirements

Clause	Compliance with Requirements
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
6.9 Foreshore scenic protection area	Yes
6.11 Active street frontages	Yes
6.12 Essential services	Yes
6.13 Design excellence	Yes
Schedule 5 Environmental heritage	Yes

Detailed Assessment

5.10 Heritage conservation

Merit consideration

(1) Objectives

The objectives of this clause are as follows:

- (a) *To conserve the environmental heritage of Manly,*
- (b) *To conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*
- (c) *To conserve archaeological sites,*
- (d) *To conserve Aboriginal objects and Aboriginal places of heritage significance*

Comment:

The subject site is located within a Heritage Conservation Area. As such, the proposal has been referred to Council's Heritage Officer for review and comment. Based on the amended plans, Council's Heritage Officer is satisfied the proposed signage will not create any unreasonable impact upon the Heritage Conservation Area. In this instance, the proposal can achieve the objectives of this Clause.

(2) Requirement for Consent

This Clause details that development consent is required for any of the following:

- (a) *Demolishing or moving any of the following or altering the exterior of any of the following (including, in the case of a building, making changes to its detail, fabric, finish or appearance):*
 - (i) *a heritage item;*
 - (ii) *an Aboriginal object;*
 - (iii) *a building, work, relic or tree within a heritage conservation area*
- (b) *Altering a heritage item that is a building by making structural changes to its interior or by making changes to anything inside the item that is specified in Schedule 5 in relation to the item,*
- (c) *Disturbing or excavating an archaeological site while knowing, or having reasonable cause to suspect, that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed,*
- (d) *Disturbing or excavating an Aboriginal place of heritage significance,*
- (e) *Erecting a building on land:*
 - (i) *on which a heritage item is located or that is within a heritage conservation area, or*

(ii) on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance.

(f) Subdividing land:

(i) on which a heritage item is located or that is within a heritage conservation area, or

(ii) on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance.

Comment:

The proposed development seeks to alter the exterior of the subject site by including signage of the word 'Messina' (along the eastern elevation which fronts Market Place) and a small additional spotlight (which is consistent with the two [2] spotlights along the eastern elevation). As such, consent is required from the relevant consent authority which, in this instance, is Northern Beaches Council.

(3) When consent not required

This Clause details that development consent under this Clause is not required if:

- (a) The Applicant has notified the consent authority of the proposed development and the consent authority has advised the Applicant in writing before any work is carried out that it is satisfied that the proposed development:
 - (i) is of a minor nature or is for the maintenance of the heritage item, Aboriginal object, Aboriginal place of heritage significance or archaeological site or a building, work, relic, tree or place within the heritage conservation area, and*
 - (ii) would not adversely affect the heritage significance of the heritage item, Aboriginal object, Aboriginal place, archaeological site or heritage conservation area, or**
- (b) The development is in a cemetery or burial ground and the proposed development:
 - (i) is the creation of a new grave or monument, or excavation or disturbance of land for the purpose of conserving or repairing monuments or grave markers, and*
 - (ii) would not cause disturbance to human remains, relics, Aboriginal objects in the form of grave goods, or to an Aboriginal place of heritage significance, or**
- (c) The development is limited to the removal of a tree or other vegetation that the Council is satisfied is a risk to human life or property, or*
- (d) The development is exempt development.*

Comment:

Consent is required, as detailed above under Clause (2).

(4) Effect of proposed development on heritage significance

The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned. This subclause applies regardless of whether a heritage management document is prepared under subclause (5) or a heritage conservation management plan is submitted under subclause (6).

Comment:

As the proposed development seeks consent to add one (1) additional flush wall sign along the eastern elevation on the ground floor tenancy. In respect of this and with consideration to the Heritage Conservation Area, it is considered that the effect of the proposed signage within the Heritage

Conservation Area and is satisfied the proposal is acceptable with no adverse or unreasonable impacts upon the Heritage Conservation Area and nearby Heritage items.

(5) Heritage Assessment

The consent authority may, before granting consent to any development:

- (a) On land on which a heritage item is located, or*
- (b) On land that is within a heritage conservation area, or*
- (c) On land that is within the vicinity of land referred to in paragraph (a) or (b),*
require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.

Comment:

Based on the minor scope of works to the external eastern elevation of the building, a Heritage Management document is not required to be submitted as part of this development application. As detailed above, it is considered that the proposed signage will not create an adverse or unreasonable amenity impact upon the Heritage Conservation Area to which the subject site is located.

(6) Heritage conservation management plans

The consent authority may require, after considering the heritage significance of a heritage item and the extent of change proposed to it, the submission of a heritage conservation management plan before granting consent under this clause.

Comment:

For the reasons detailed above under Clause (5), a Heritage Conservation Management plan is not required to be submitted with this application.

(7) Archaeological sites

The consent authority must, before granting consent under this clause to the carrying out of development on an archaeological site (other than land listed on the State Heritage Register or to which an interim heritage order under the Heritage Act 1977 applies):

- (a) Notify the Heritage Council of its intention to grant consent, and*
- (b) Take into consideration any response received from the Heritage Council within 28 days after the notice is sent.*

Comment:

The subject site is not an archaeological site. In this instance, this Clause does not apply to this application.

(8) Aboriginal places of heritage significance

The consent authority must, before granting consent under this clause to the carrying out of development in an Aboriginal place of heritage significance:

- (a) Consider the effect of the proposed development on the heritage significance of the place and*

any Aboriginal object known or reasonably likely to be located at the place by means of an adequate investigation and assessment (which may involve consideration of a heritage impact statement), and

- (b) Notify the local Aboriginal communities, in writing or in such other manner as may be appropriate, about the application and take into consideration any response received within 28 days after the notice is sent.*

Comment:

The subject site is not an Aboriginal place of heritage significance. In this instance, this Clause does not apply to this application.

(9) Demolition of nominated State heritage items

The consent authority must, before granting consent under this clause for the demolition of a nominated State heritage item:

- (a) Notify the Heritage Council about the application, and*
- (b) Take into consideration any response received from the Heritage Council within 28 days after the notice is sent.*

Comment:

The subject site is not a State heritage item. In this instance, this Clause does not apply to this application.

(10) Conservation incentives

The consent authority may grant consent to development for any purpose of a building that is a heritage item or of the land on which such a building is erected, or for any purpose on an Aboriginal place of heritage significance, even though development for that purpose would otherwise not be allowed by this Plan, if the consent authority is satisfied that:

- (a) The conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent, and*
- (b) The proposed development is in accordance with a heritage management document that has been approved by the consent authority, and*
- (c) The consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out, and*
- (d) The proposed development would not adversely affect the heritage significance of the heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance, and*
- (e) The proposed development would not have any significant adverse effect on the amenity of the surrounding area.*

Comment:

As detailed above, the proposed development does not require a heritage management document, the proposal does not adversely or unreasonably impact upon the heritage conservation area, nor will it unreasonably impact upon the amenity of the surrounding area.

Based on the above information, the proposed development is considered acceptable and will not have an adverse impact upon the Heritage Conservation Area.

6.9 Foreshore scenic protection area

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the following matters:

- (a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,*
- (b) measures to protect and improve scenic qualities of the coastline,*
- (c) suitability of development given its type, location and design and its relationship with and impact on the foreshore,*
- (d) measures to reduce the potential for conflict between land-based and water-based coastal activities.*

Comment:

The proposed external illuminated signage titled 'Messina' located along the eastern elevation shop front to Market Place will not be viewed from North Steyne, South Steyne or the Manly Beach front. Business identification signage is a common feature for all commercial and retail premises within the Manly Town Centre. In this instance, Council, as the consent authority, has considered the above prescriptive matters and is satisfied the proposal can achieve these matters, with minimal environmental and amenity impacts upon the surrounding locality.

6.11 Active street frontages

Under this clause, development consent must not be granted to the erection of a building, or a change of use of a building, on land to which this clause applies unless the consent authority is satisfied that the building will have an active street frontage after its erection or change of use.

Comment:

The proposed development does not seek consent for the construction of a new building or the change of use of the tenancy (which was approved under a CDC2022/0990). Council, as the consent authority, can be satisfied that the proposed signage will provide an active street frontage, notwithstanding the proposal does not seek to construct a new building or a change of use of the tenancy.

Manly Development Control Plan

Built Form Controls

The proposed development does not involve physical construction works to the existing commercial premises. As such, there are no built form controls that can be assessed against the proposed Business Identification Signage.

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

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.2.5 Manly Town Centre and Surrounds	Yes	Yes
4.2.5.6 Late Night Venues	Yes	Yes
4.4.3 Signage	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.1.1 General Character	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes
Schedule 2 - Townscape Principles	Yes	Yes

Detailed Assessment

4.2.5.6 Late Night Venues

Detailed description

It is noted that the use of the subject property as 'Gelato Messina' operates to the following hours:

- Monday to Thursday – 12:00pm - 10:30pm
- Friday and Saturday – 12:00pm - 11:00pm
- Sunday – 12:00pm - 10:30pm

The proposal seeks consent to change the opening hours to:

- Monday to Thursday – 10:00am to 11:00pm
- Friday and Saturday – 10:00am to 11:30pm
- Sunday and Public Holidays – 10:00am to 11:00pm

The previous consent for the subject property was a clothing store. However, 'Benbry Burgers' (the adjoining shop) (which forms part of the subject property being 1-7 Sydney Road, Manly) was granted consent under Development Application No. 155/07 on 27 June 2007 for the following opening hours 7 days a week: 11am to 1am. Further, a recent approval for 'Anita Gelato' at 46 The Corso under DA2021/0105 granted consent for the following opening hours: Monday to Friday 9:00am to 11:00pm, Saturday 8:00am to 12:00am midnight, and Sunday and Public Holidays 8:00am to 12:00am midnight.

In this instance, the proposal can be categorised as a late night venue within the 'Manly Town Centre Entertainment Precinct'.

Given consideration of the abovementioned approvals, the proposed operating hours will be consistent

with other food and drink premises within the Manly Town Centre and entertainment area.

As such, consideration of these amended hours against the objectives and requirements of this control is undertaken below.

Merit consideration

Objective 1) To achieve for Manly's entertainment precinct as a place of excellence in which all people can use and enjoy Manly's highly valued natural amenity qualities as a place:

- for leisure and entertainment;*
- in which late night venues can safely entertain and provide for the enjoyment of social and recreational pursuits;*

without disturbing the peace of the community in terms of safety and security.

Comment:

The proposed development does not seek the use of the site, as this was approved under the recent Complying Development Certificate. The proposal seeks to install new signage and change the hours of operation, however the use remains as approved, and will continue to operate without disturbing the peace of the community.

Objective 2) To regulate the activities and design of late night venues to minimize late night disturbances to the public and promote Manly as a safe place for all the community late at night such that:

- frontages to public spaces must be designed to minimize conflict between customers within the establishments and public using the public spaces;*
- the applicant demonstrate (see lodgement requirements at Council's Administrative Guidelines) that the premises will not detract from the safety and security of the Entertainment Precinct and as a place which is acceptable for families; and*
- obligations of any current Accord are addressed in minimizing anti-social behaviour and adverse effects of excessive alcohol consumption.*

Comment:

The proposal does not include a Plan of Management. In this instance, a condition of consent will be recommended to provide a trial period of 24 months of the proposed operating hours. This condition will allow the Applicant to lodge a modification 3 months prior to the end of the trial period to formalise the opening hours. As conditioned, the proposed development can achieve this objective.

a) Intensity of Development

In order to provide diversity, it is proposed to limit the number of patrons which attend late-night licensed venues within the Entertainment Precinct. Within the Entertainment Precinct the total number of patrons capable of being accommodated within Late Night Venues must not exceed 8000 persons. Exceptions to this will only be granted where Council is satisfied that the existing levels of adverse impact will not be added to nor detract from opportunities to provide a diverse range of alternative entertainment activities.

Comment:

The proposal does not relate to a licensed venue and therefore, this requirement is not

relevant. If the applicant sought to apply for a NSW liquor license then a separate application would need to be made with the Department of Liquor and Gaming.

b) Hours of Operating (maximum)

The maximum hours for hotels, nightclubs, restaurants & food outlets are as follows:

- i) Hotels & Nightclubs: from 5am up to 2am (next day) and with a restricted entry policy for Nightclubs after 12.30am; and*
- ii) Restaurants & Food Outlets: from 5am up to 1am (next day).*

Comment:

The proposed hours of operation for the food and drink premises land use are consistent with the requirements above, with the exception of for New Year's Eve and New Year's Day.

c) Noise Control

Requirement of this plan in relation to licenced premises at paragraph 3.4.2.4 d - g apply to licensed Late Night Venues under this paragraph.

Comment:

As noted above, the proposal does not relate to a licensed venue.

d) Security

Proprietors of Late Night Venues must enter into arrangements with Council for the provision of late night security of the premises and the adjacent public areas.

Comment:

The proposal does not include a Plan of Management. In this instance, a condition of consent will be recommended to provide a trial period of 24 months of the proposed operating hours. This condition will allow the Applicant to lodge a modification 3 months prior to the end of the trial period to formalise the opening hours.

e) Access to Public spaces

Frontages to public spaces must be designed to minimise conflict between customers within the establishments and public using the public spaces.

Comment:

Public access to the site is maintained via both the Sydney Road and Market Place frontages. The entrances are clear and will not result in conflict between use of the building, and use of the public domain.

f) Decks, Balconies & Roof Top Area

Balconies, verandahs, any roof top areas and any external access thereto must be closed to patrons between the hours of 10pm to 8am daily.

Comment:

The proposal does not include any of the above areas and therefore, this requirement is not relevant.

g) Liquor Accord

Proprietors of the licensed premises must be a financial member of any applicable Liquor Accord and conform to the obligations of that Accord in minimizing anti-social behaviour and adverse effects of excessive alcohol consumption.

Comment:

As noted above, the proposal does not relate to a licensed venue.

h) Design

Applications must demonstrate how the design and operation of licensed venues take into account best practice outlined in the document titled "Alcohol & Licensed Premises: Best Practice in Policing" S Doherty and A Roche 2003.

Comment:

As noted above, the proposal does not relate to a licensed venue.

Based on the above assessment, it is concluded that the proposal meets the relevant requirements set out in this control.

4.4.3 Signage

4.4.3.2 Signage on Heritage listed items and in Conservation Areas

This control requires signage to complement the building and surrounding uses. The architectural features of the building should always dominate, and the advertising should be placed in locations on the building or item which would traditionally have been used as advertising areas. Generally, sign panels can be determined by dividing a building into a grid and identifying locations on:

- i) a solid parapet above a cornice;
- ii) the horizontal panel below a cornice;
- iii) verandas or awning fascia;
- iv) ground floor windows;
- v) notice boards or plaques on ground floor piers;
- vi) small signs on individual architectural elements such as rendered blocks;
- vii) under awning signs;
- viii) small not illuminated free standing pole signs; and
- ix) side walls (carefully considered).

Further, the following must be taken into consideration:

- i) Signs on shop windows should not exceed 25 percent of the window area;
- ii) As the external colours applied in different historical periods varied, and were more muted in range than today, it is wise to research appropriate colour ranges for buildings in heritage areas. Generally however, the following dark or muted colours are suggest: Maroon, dark green, terracotta, brown, charcoal etc. highlighted with cream, ochres, pinks and earth tones.
- iii) Heritage lettering styles may involve shaded letters, the mixing of sizes and styles of letters, and ornamental scrolls relevant to the period of the building;
- iv) Signs are preferably illuminated by floodlighting, with the source of the illumination being suitably concealed;
- v) Modern standardised 'trademarks' advertising will not usually be appropriate. This however, could be compromised by placing the modern sign in a panel with a perimeter margin and surrounding wall surface, printed in sympathetic heritage colours.

Comment:

The proposed flush wall sign, retention of the existing lightbox signage and the inclusion of one (1) small flood light above the wall sign has been reviewed by Council's Heritage Officer, noting that, upon

receipt of amended plans, there are no issues with the signage when considering the desired nature of the heritage conservation area.

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 2022

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 2021;
- 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 DA2022/2114 for Change to

hours of operation of an approved food and drink premises and installation of illuminated signage on land at Lot 3 DP 201017, 1 - 7 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 with the endorsed stamped plans and documentation listed below, except as amended by any other condition of consent:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A-303 Rev B Signage Plan	20 February 2023	Vie Studio
A-304 Rev B Shopfront Elevation	20 February 2023	Vie Studio
A-305 Rev B Shopfront Elevation	20 February 2023	Vie Studio
A-301 Rev B Signage Details	20 February 2023	Vie Studio

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
DA Acoustic Assessment - Extension of Hours	22 November 2022	Acoustic Logic
Heritage Impact Statement	Not Dated	Ray Abbas

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. 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 Certifier 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 Certifier 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 Certifier 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.

3. 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 an 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.

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

4. Acoustic Design Recommendations

Prior to the issuing of any Construction Certificate, documentation is to be submitted to the satisfaction of the Principal Certifier that design recommendations within Section 6 of the DA Acoustic Assessment by Acoustic Logic Project ID 2022145.1 have been implemented / incorporated into the design of the premises.

Reason: To prevent noise nuisance by using mitigation measures in design

5. 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 Certifier 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

6. 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.

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

Prior to the issuing of any occupation certificate, certification is to be provided to the Principal Certifier 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.

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

8. Hours of Illumination and External Lighting

The existing lightbox sign and external spot lighting above the 'Messina' sign along the eastern elevation (along Market Place) shall only be illuminated during the following hours:

- Monday to Thursday – 10:00am to 11:00pm
- Friday and Saturday – 10:00am to 11:30pm
- Sunday and Public Holidays – 10:00am to 11:00pm

Reason: To ensure residential premises are not affected by inappropriate or excessive illumination.

9. Hours of Operation (Trial Period 24 Months)

The hours of operation are approved as follows:

- Monday 10:00am to 11:00pm
- Tuesday 10:00am to 11:00pm
- Wednesday 10:00am to 11:00pm
- Thursday 10:00am to 11:00pm
- Friday 10:00am to 11:30pm
- Saturday 10:00am to 11:30pm
- Sunday 10:00am to 11:00pm

These approved hours are limited to a trial period of 24 months from the date of this consent, subject to the following:

a) A Plan of Management, containing a complaints register, is prepared and is to be made available to Council upon request. Further, the Plan of Management is to be kept on-site at all times.

b) In the event condition a) above cannot be complied with, the trial period is to cease.

Note: a modification application may be submitted to Council, to be lodged not more than 3 months prior to the expiration of the 24 month trial period, seeking the continuation of the hours of operation. If a modification application is lodged, the hours of operation will continue to apply until such time as the modification application is determined by Council.

It should be demonstrated that the approved hours of operation have been in effect for a continuous period of at least 6 months prior to the lodgement of any modification application to formalise the operation hours.

The modification application is to be accompanied by a Noise Assessment Report, addressing noise associated with late night trading and any complaints received during the trial period, and how those complaints have been addressed.

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

10. **Acoustic controls - Noise prevention**

All items within Section 6 of the DA Acoustic Assessment by Acoustic Logic Project ID 2022145.1 must be maintained in perpetuity.

Reason: To prevent noise nuisance by using mitigation measures.

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

Signed



Megan Surtees, Planner

The application is determined on 08/03/2023, under the delegated authority of:



Adam Richardson, Manager Development Assessments