

---

**Sent:** 19/05/2020 4:59:29 PM  
**Subject:** DA 2020/0375 - Letter of Objection  
**Attachments:** Letter of Objection - DA2020-0375 - 38-42 The Corso Manly.pdf;

Good afternoon,

Please find attached a letter of objection to DA 2020/0375.

I submit this letter on behalf of SHIH No.2 Pty Ltd as owners of Suite 7, 2c Darley Road, Manly (Lot 15, Strata Plan 18046) which is located directly above the property which is making this development application.

Acknowledgement of receipt of this Letter of Objection would be appreciated.

Please don't hesitate to be in contact if you require any further information.

Regards

Paul

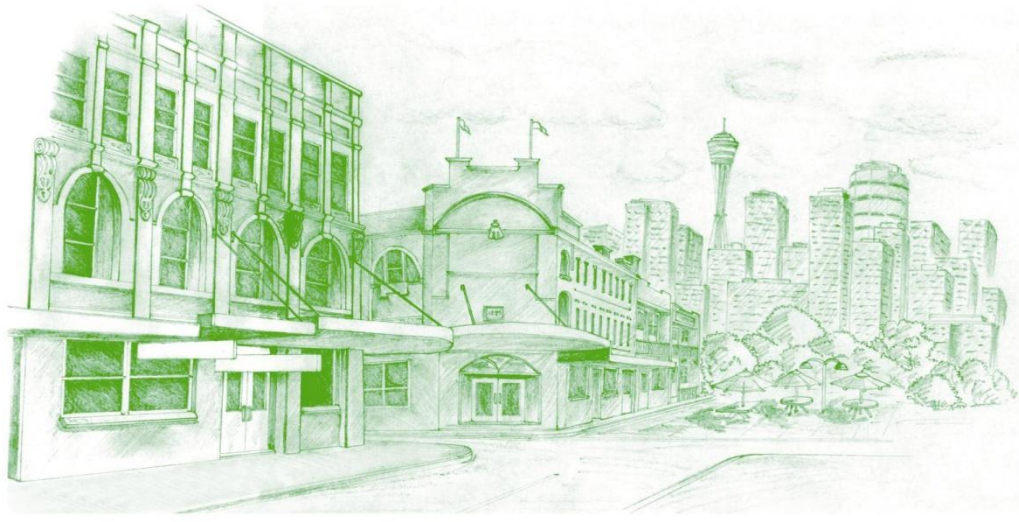
**boxing**  
**clever**

**Paul Wickham, Senior Adviser**

**P:** 0412 398 489 | **E:** [paul@boxingclever.net.au](mailto:paul@boxingclever.net.au) | **W:** [www.boxingclever.net.au](http://www.boxingclever.net.au)

**Blog:** [www.boxingclever.net.au/blog](http://www.boxingclever.net.au/blog)

Boxing Clever acknowledges the traditional owners of country throughout Australia and their continuing connection to land and community. We pay our respect to them and their cultures, and to the elders both past and present.



***Planning Direction Pty. Ltd.***  
***Town Planning & Development Services***

The General Manager,  
Northern Beaches Council

18th May 2020

Att: Penny Wood,

**Re: DA 2020/0375 - Tenancy 8, No 38-42 The Corso Manly  
Proposed Change of use from a Shop to a Restaurant**

Dear Penny,

I refer to the development application for the use of the abovementioned property as a restaurant - 'Fish Bowl'.

*Planning Direction P/L* has been commissioned by the owner of tenancy 7, No 38-42 The Corso Manly - *SHIH No.2 Pty Ltd*, to review the development application submission. Concerns with the application are raised in light of prior unauthorised works conducted at the site; and constant issues with noise disturbance and odour emanating from the site.

Documents viewed via Council's web page includes the site and tenancy plans, the statement of environmental effects and those provided by the applicant, the plan of management and prior approvals issued by Council.

A.B.N 60 074 291 615  
Office Address: Suite 10, 241 – 245 Pennant Hills Road,  
Carlingford NSW 2118  
Telephone: 9871 4988 – Facsimile: 9871 5218  
Email: [admin@planningdirection.com.au](mailto:admin@planningdirection.com.au)

Based on my assessment, I maintain strong objection to the proposal for reasons outlined in this letter.

### The subject site

The subject site is known as Tenancy 8, No 38-42 The Corso Manly and is legally described as Lot 8 in Strata Plan 18046. Tenancy 8 is part of a prominent 4 storey building situated on the corner of The Corso and Darley Road, Manly.

The subject site is a ground floor tenancy with direct frontage to Darley Road. The building has a local heritage listing and is situated within a conservation area.



**View from Darley Road of the tenancy and operating use**



**A view from the rear of tenancy 8 and the external ventilation system**

### Proposed Use

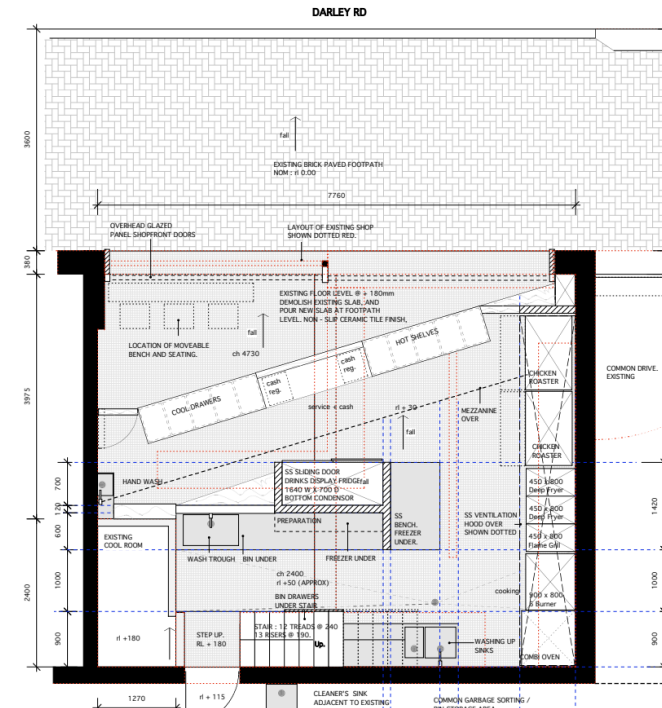
Presently operating from the tenancy is a food shop providing eat-in and take-away food service - known as the 'Fish Bowl'. This use has been operating since early 2017. It is understood that cooking of rice is undertaken from the kitchen and other food offering is pre-cooked off site and brought to the site for sale. Seating on-site is proposed at ground level along the street frontage and proposed in a mezzanine level above the kitchen in lieu of storage.

It is understood that this use has been operating as an unauthorised use and Council does not have a record of a construction certificate and occupation certificate for the fit-out of the tenancy.

### History of Council approvals at the subject site - tenancy 8.

1. DA 142/2008 was approved on the 26th June 2008 for a shop fit-out and use as a take-away chicken shop. A copy of the approved internal layout is provided over the page.

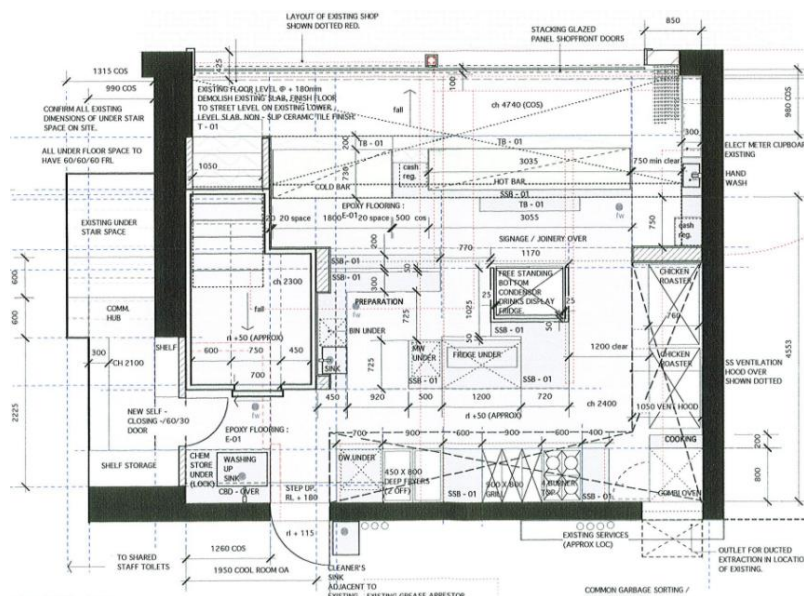




It is noted that a staircase is depicted on the approved plan running along the rear elevation of the tenancy leading to an upper level mezzanine level used for storage.

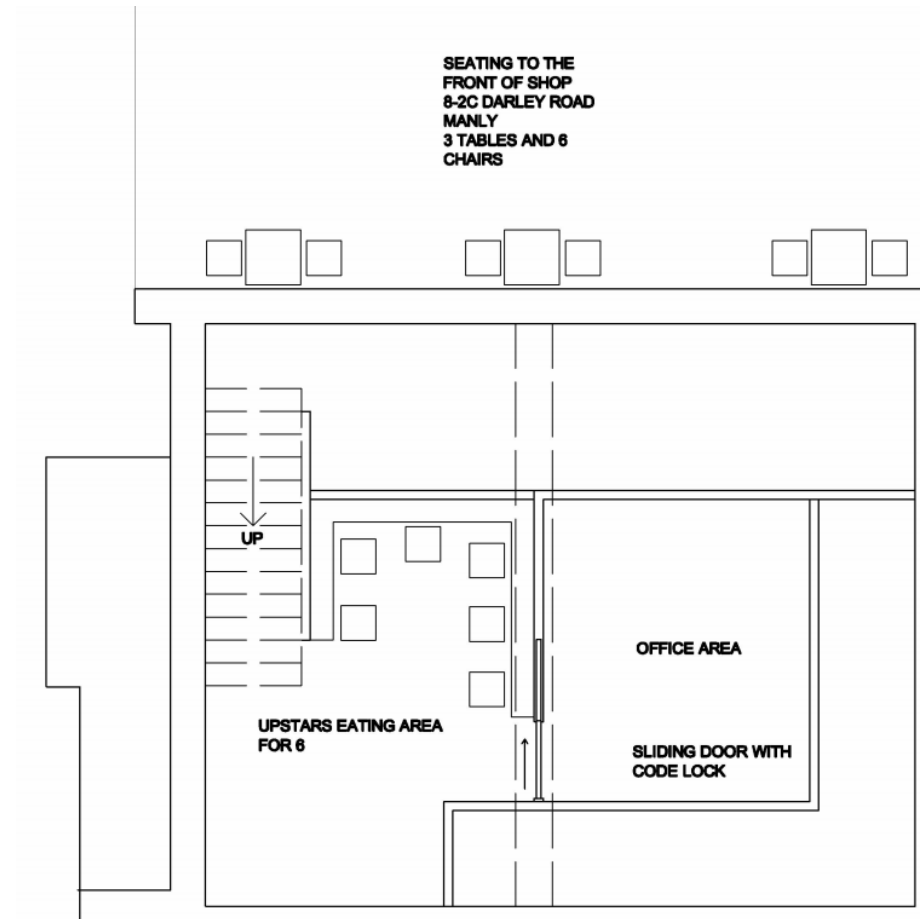
It is understood that a modification application was also approved on the 16th February 2009.

2. Development consent No 110/11 was issued on the 20th July 2011 for a *change of use from a shop (chicken shop) to a refreshment room incorporating seating*. A copy of the approved plans are provided below:



A substantial adjustment to the floor layout appears to be part of this approval with the staircase now provided along the western wall of the tenancy.

Approval was also issued for an office and seating for 6 people on the mezzanine level.



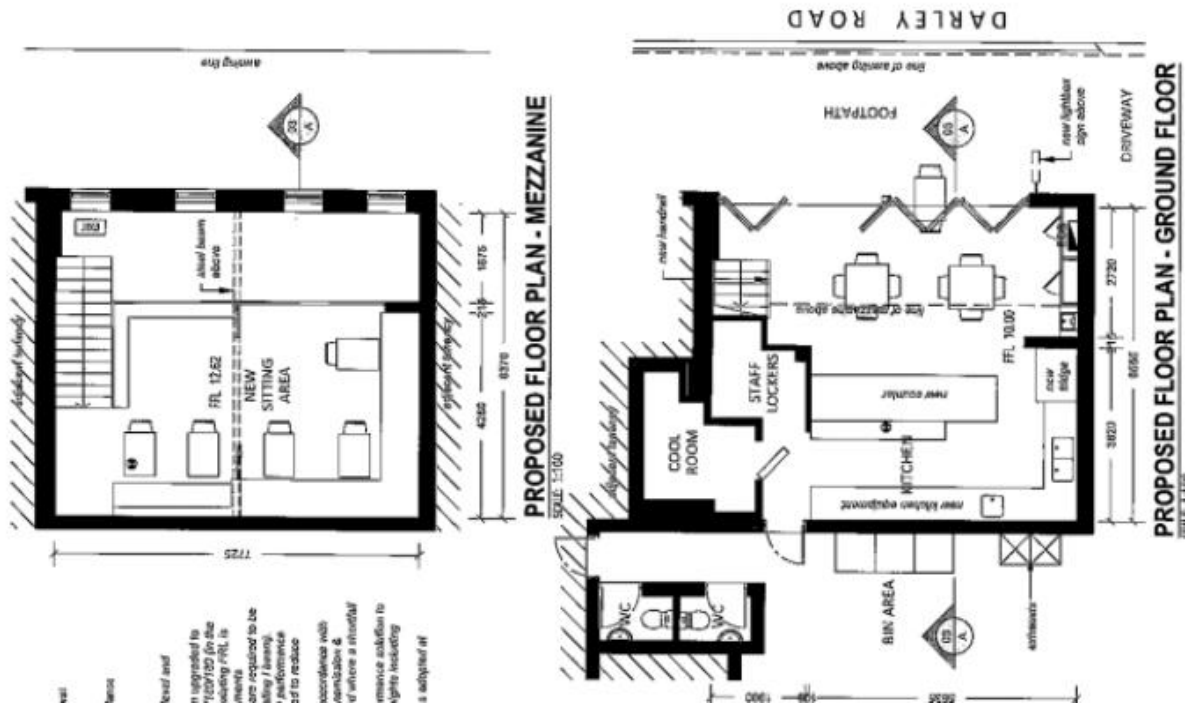
Details relating to the submission of a construction certificate to undertake the approved works has not been sited. Council is requested to review its files and confirm that fit-out works have been authorised in accordance with the approved plans.

Concern is raised that this development consent may not have been properly enacted and that the development consent lapsed on the 20th July 2016.

The works undertaken converting the tenancy from a chicken shop to a refreshment room may well have occurred without the issuance of an occupation certificate. If so, a building certificate application would be

needed to gain acknowledgement of the 'as-built' works. Such is important given the heritage implications of the site.

3. The subject application proposes the following plan layouts:



### Proposed Works/Use

Based on the available plans on Council's website, it is evident that there has been substantial structural changes to the internal layout of the tenancy since its use as a chicken shop.

The approved chicken shop fit-out has effectively been gutted and a new layout constructed as indicated in the proposed plans above.

The use involves a degree of cooking on-site and an offering of an assortment of meals.

The applicant proposes to encourage dining on the premises with up to 20 seats and associated tables provided on the ground floor and the entire mezzanine level.

There is no reference to approval sought for the playing of music on-site in association with the use.

## Issues arising from the assessment of the proposal

### Noise disturbance

Since opening in mid-2017 there has been constant noise and vibration generated by the playing of music coming from 'Fish Bowl' use on an almost daily basis, causing disturbance to the commercial tenancy directly above - '*Boxing Clever*'. Please note that the DA incorrectly states that '*Boxing Clever*' is located on the ground floor adjacent to the 'Fish Bowl'.

In 2017 an acoustic engineer was engaged to review the level of noise disturbance. The acoustic engineer confirmed that the music/bass that was being played at 'Fish Bowl' was deemed to be 'offensive noise' under the relevant Act. The music and high level of bass created a vibration which could be felt in the floor of the upper level tenancy. The combination of the high volume of music and bass has caused much disturbance to the tenancy directly above the 'Fish Bowl'. It is understood that the volume of the music varied dependent of the staff working at the 'Fish Bowl' at the time.

The level of noise and vibration disturbance has had an ongoing negative impact on the ability of staff of '*Boxing Clever*' to conduct teleconferences, video-conferences and meetings with clients, as well as undertake 'every-day' work. The latter includes in-depth telephone interviews, reading research reports and writing strategy documents and content for clients.

The use of the mezzanine level by patrons of the 'Fish Bowl', which sits directly underneath the office of '*Boxing Clever*' transmits through the separating floor, which includes loud conversations (as people speak loudly to be heard over the music) and the shifting and dragging of chairs and tables.

### Odour Disturbance

The food cooked, stored and served on the premises gives rise to a distinct odour nuisance. It is acknowledged that the 'Fish Bowl' benefits from an exhaust extraction vent located at the rear of the tenancy, however concern is raised as to whether the mechanical ventilation system is operable or functioning properly. Concerns re odour can be readily resolved with the proper installation/use of the exhaust extraction system.



### Suitability of the mezzanine use

In the first instance Council approved the mezzanine level for storage use only. This would have been because of the inadequate head clearance height of 2m and less offered within this level.

In addition there are floor space implications, which may require the payment of a Section 94 contribution in lieu of providing car parking on-site. There are also Building Code of Australia compliance implications. Non-compliance occurs with head clearance, fire separation given that the mezzanine is situated above a kitchen, inadequate fire separation between tenancies, evacuation measures for the mezzanine level in the event of a fire in the kitchen (only one access point is provided) and no reasonable provision of disabled access to this mezzanine level. Should rectification works be required to meet fire separation and acoustic standards, then a further reduction in the head height is likely.

### The need for proper WC facilities to service a refreshment room

The proposed restaurant is reliant on the use of two common WCs external of the tenancy as depicted on the development plans.

These WCs are not readily accessible from the tenancy being only accessible from the kitchen. One WC is not functioning. Both WCs are in gross condition and are under sized to cater for disabled patrons. The path of travel to the WCs from the tenancy includes steps and level changes which are also not appropriate for use by a disabled person. Refer to photos below:



**The functioning WC**



**The not so functioning WC.**

The refreshment room should not be allowed to function given the condition and inadequacy of the support WCs.

#### Cost of Works

I note that the new DA is only for minor work (\$10,000) and does not reference the unauthorised renovation that was undertaken in 2017. In the absence of a construction certificate and occupation certificate for the 2011 development consent - No 110/11, it would appear that this consent has lapsed.

Accordingly, the subject application is effectively the first formal application since the approval issued for development application No DA 142/2008.

The applicant should be required to submit a building certificate application seeking approval for the structural works undertaken to the tenancy before this current development application can be determined. Such is more important given the significance of the building as a heritage listed property.

A proper BCA assessment is necessary confirming the adequacy of fire rating between tenancies and between the mezzanine level and the kitchen; the level of acoustic treatment needed to protect adjoining tenancy, proper installation of smoke detectors and fire safety circumstances and proper installation and operation of the mechanical exhaust extraction system servicing the tenancy.

The above is imperative information Council needs before arriving at a determination of the application for use and signage.

The fee quoted for the DA of \$10,000.00 is appropriate for the use and signage works proposed, however the actual fit-out cost for the conversion of the shop to a refreshment room needs to be applied in the absence of an occupation certificate relating back to development consent No 110/11.

It is recommended that all music played at the tenancy cease until such time as full compliance is achieved with BCA, fire safety and acoustic requirements.

Should Council arrive at the view that the application can be approved, it is recommended that a condition be imposed preventing the playing of music from the tenancy. The reason for the imposition of the condition is to protect the amenity of other users in the building.

As the application stands there are inadequacies with the current application which need to be addressed before a favourable consideration of the application can be contemplated.

Please advise of any additional information submitted by the applicant.

Thank you for your consideration of matters raised in this objection.

Yours Sincerely

A handwritten signature in cursive script, appearing to read 'Nigel White', with a stylized flourish at the end.

Nigel White  
Bachelor of Applied Science (Environmental Planning)