

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2020/0375
----------------------------	-------------

<b>Responsible Officer:</b>	Penny Wood
<b>Land to be developed (Address):</b>	Lot 8 SP 18046, 8 / 38 - 42 The Corso MANLY NSW 2095
<b>Proposed Development:</b>	Change of Use for a restaurant
<b>Zoning:</b>	Manly LEP2013 - Land zoned B2 Local Centre
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Un Ngut Pty Ltd
<b>Applicant:</b>	Archispectrum

<b>Application Lodged:</b>	20/04/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Commercial/Retail/Office
<b>Notified:</b>	05/05/2020 to 19/05/2020
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	2
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Deferred Commencement Approval

<b>Estimated Cost of Works:</b>	\$ 10,000.00
---------------------------------	--------------

### PROPOSED DEVELOPMENT IN DETAIL

The subject development application proposes the change of use of a premises from a takeaway food premises to a restaurant. The proposal includes a maximum of twenty (20) patrons and six (6) staff.

#### Proposed works

- Reinstatement of mezzanine level as dining area (FFL +12.62)
- Installation of 1 x illuminated projecting wall sign (650mm x 650mm)
- Installation of new handrail on staircase
- Installation of emergency light above staircase

#### Operating Hours

The proposed hours of operation for the restaurant are as follows:

Dining Area:

Monday - Sunday: 11.00am - 9.00pm

Kitchen:

Monday - Sunday 10.00am - 10.00pm

Deliveries

Deliveries are proposed during operational hours, seven days a week. Deliveries will occur in front of the subject tenancy on Darley Road within the designated loading zone.

Signage

The development application proposes a projecting wall sign on common property fronting Darley Road. A visit to the site revealed that this sign has been erected and therefore consent cannot be granted for the retrospective works. A condition to that effect will be imposed in consent stating that the application does not approve the signage and will be subject to a Building Information Certificate for assessment.

**ASSESSMENT INTRODUCTION**

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

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

**SUMMARY OF ASSESSMENT ISSUES**

Manly Development Control Plan - 3.4.2 Privacy and Security  
 Manly Development Control Plan - 3.4.4 Other Nuisance (Odour, Fumes etc.)  
 Manly Development Control Plan - 4.4.3 Signage

**SITE DESCRIPTION**

<b>Property Description:</b>	Lot 8 SP 18046 , 8 / 38 - 42 The Corso MANLY NSW 2095
<b>Detailed Site Description:</b>	The subject property is commonly known as 38-42 The

Corso with the subject tenancy legally identified as Lot 8 within SP18046. The area of the subject site is approximately 100m<sup>2</sup>. The subject tenancy is located on the ground floor of the building of a four (4) storey building fronting Darley Road. At first floor is a commercial premises with residential located on level 3 and level 4. Adjoining the property to the south east is a three (3) storey mixed use building with a commercial premises comprising a Thai restaurant located as ground floor and mezzanine levels, with a residential unit located above.

The site is located in the B2 Local Centre zone pursuant to the Manly Local Environmental Plan 2013. The building is identified as a heritage item (I106) as listed in Schedule 5 Environmental Heritage Part 1 Heritage items of the MLEP 2013. The site is located within the Manly Town Centre Conservation Area.

The site is located within the Manly Town Centre. The site is surrounded by a variety of development including residential and commercial uses.

Map:



## SITE HISTORY

The land has been used for residential and commercial purposes for an extended period of time. A search of Council's records has revealed the following relevant history for the subject tenancy (Lot 8):

- DA142/08 - Shop fitout, new shop facade including new colour scheme and signage and revised hours. Approved 16 June 2008
- DA142/08 (Modification) Shop fitout, new shop facade including new colour scheme and signage and revised hours- Determined 16 February 2009
- DA110/11 - Change of Use from a shop (chicken shop) to a refreshment room incorporating

seating, Approve 20 July 2011.

The modification to the original application approved the mezzanine level to the tenancy with the use of the mezzanine being for seating for 6 patrons and for a separate area for storage. DA110/11 was approved on 20 July 2011 to change the use of the approved chicken shop to a refreshment room (restaurant). A review of Council's records indicate that the consent was never activated and subsequently lapsed on 20 July 2016, hence the subject development application.

A review of the history of the subject tenancy indicates that the current use (Fish Bowl) has been operating since 2017. A number of noise complaints have been received by Council in regard to the level of noise (music) emanating from the tenancy. The tenancy is also subject to a current Building Information Certificate (BC2020/0076) currently under review with Council for unauthorised works which do not form part of the proposed use.

An email from Strata managing Agents of SP1806 (38-42 The Corso) was received on 13 May 2020 raising concern with the no Company Seal being authorised for the proposed works. This issue was investigated and given the nature of the proposal being for the use only and therefore no works being carried out to common property, consent from the Owner's Corporation was not required to proceed with assessment of the development application. Owners consent for the tenancy has been provided.

Concern was raised from Council's Environmental Health Team as no acoustic report was submitted with the DA. Given the intensification of the use and the numerous noise complaints received by Council in relation to noise, an acoustic report was received on 6 July 2020 and referred to Council's Environmental Health Team for comment. This is discussed in the body of the report.

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for commercial purposes for an extended period of time. The proposed development retains the commercial use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development

Section 4.15 Matters for Consideration'	Comments
Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 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 93 and/or 94</u> of the EP&amp;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&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> 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) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> 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	See discussion on “Notification & Submissions Received” in this

Section 4.15 Matters for Consideration'	Comments
submissions made in accordance with the EPA Act or EPA Regs	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 05/05/2020 to 19/05/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Mr Paul Robert Jules Gilet	12 / 38 - 42 The Corso MANLY NSW 2095
Boxing Clever	15 / 38 - 42 The Corso MANLY NSW 2095

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

- Noise;
- Odour Disturbance;
- Unauthorised use;
- Non compliance with BCA in regard to:
  - Floor to ceiling height of mezzanine;
  - Fire Safety;
  - Toilets
- Increase to Floor Space Ratio.

The matters raised within the submissions are addressed as follows:

- Noise  
Comment:  
 Concern has been raised in the submissions in regard to the level of noise (amplified music) generated from the use. Environmental Health raised concern with the proposal as an acoustic report was not submitted with the development application. The applicant was advised of this and an acoustic report was submitted to Council on 6 July and referred to Environmental Health. The acoustic report (carried out by Koikas Acoustics Pty Ltd dated 22 June 2020) found that the current noise levels emanating from the subject restaurant are of a level that are considered

offensive and require noise mitigation measures to be implemented. The acoustic report recommends that this can be achieved with the installation of an RMS compressor limiter and a security cage be installed to minimise the potential unauthorised personnel to tamper with those settings. To ensure compliance with the recommendations of the acoustic report Council's Environmental Health Team has imposed on-going conditions to provide a Noise Management Plan and Noise Assessment to be submitted to Council.

- Odour Disturbance

Comment:

Concern is raised in regard to odours emanating from the current use. Mechanical ventilation is not proposed as part of the application. Given the nature of the concerns raised, the application was referred to Council's Environmental Health Team for comment. To ensure odours do not impact on the amenity of the neighbouring properties, a condition was imposed in relation to food preparation equipment which prohibits deep frying without externally exhausted mechanical ventilation. The design, construction and fit out of the kitchen is to be compliant with the requirements of AS 4674 Design, construction and fit-out of food premises.

- Unauthorised use and building works

Comment:

Concern has been raised in the submissions relating to the unauthorised use and unauthorised works within the subject tenancy. Approval was granted for the subject tenancy for a shop fit out and use as a takeaway chicken shop on 26 June 2008 (DA142/2008). A modification to the application was approved on 16 February 2009, which approved the mezzanine level for seating and storage. The approved plans show the mezzanine level to be divided by a sliding door with half this space being used for seating and half of this space used as storage. The modification development shows the access stairs to the mezzanine level located along the western side of the tenancy. A review of Council's records indicate that a Construction Certificate (22 May 2009) and Final Occupation Certificate (17 September 2012).

An application (DA110/2011) for change of use from a shop (chicken shop) to a refreshment room incorporating seating was approved on 20 July 2011. This application approved six (6) seats on the ground floor and on the mezzanine level providing six (6) seats and utilising the approved storage area as an office. Concern was raised in the submission that a construction certificate (CC) and occupation certificate (OC) was not issued and that the consent was never activated. A review of Council's records indicate no CC or OC was issued for DA110/2011, hence the current development application for the Change of use to a restaurant.

A Building Information Certificate (BC2020/0076) was lodged with Council on 30 April 2020 and is currently under assessment for unauthorised works to the tenancy. As the proposed DA is just for the use, the unauthorised works do not form part of the DA.

- Non-compliance with the BCA

Comment:

Concern was raised in regard to non-compliance with the floor to ceiling height of the mezzanine level. This was approved as part of the the modification application and will be assessed under the current building information certificate (BC2002/0076).

Fire Safety issues were raised as part of the subject development application. These were in relation to the location of the mezzanine over the existing kitchen and possible inadequate fire separation between tenancies and evacuation measures in case of a fire. The application was referred to Council's Building Assessment section for comment. In the absence of sufficient information demonstrating that the proposal is capable of complying with relevant aspects of the

BCA a Deferred Commencement Consent is recommended.

Concern was raised in regard to the standard of the two WC facilities. The facilities are common property and therefore it is not the responsibility of the individual tenancy under Section 106 of the Strata Management Act which requires the owners corporation to maintain and repair common property and, where necessary, to renew or replace any fixtures or fittings in that common property.

- Increase to Floor Space Ratio

Comment:

Concern is raised in regard to the increase in floor area due to the use of the mezzanine. This has been addressed in the previous approval of the mezzanine level and is not a matter for consideration as part of the subject development application.

**REFERRALS**

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	The application has been reviewed and aspects relevant to the Building Code of Australia (BCA) and Fire Safety considered. In the absence of sufficient information demonstrating that the proposal is capable of complying with relevant aspects of the BCA a deferred Commencement Consent is recommended. Accordingly, there are no objections to granting Consent to the application subject to upgrading conditions being included to address legislative requirements appropriate to health, safety and amenity of tenancy / building occupants.
Environmental Health (Food Premises, Skin Pen.)	<p><u>Planners Comment:</u></p> <p>Comments were also received from Environmental Health in relation to the Food Safety given the use of the premises. No objections were raised subject to conditions.</p>
Environmental Health (Food Premises, Skin Pen.)	<p><b>General Comments</b></p> <p>This application seeks to change the approved use of the premises to that of a food and drink premise - Restaurant.</p> <p>The applicant had initially not supplied an acoustic report with the application documentation and there is very little reference in the Statement of Environmental Effects as to how noise from the premises is going to be managed.</p> <p>The provisions of, and strict compliance with, an acoustic report from a qualified acoustic consultant is crucial to the success of this application as the subject site has been the subject of several noise complaints relating to the generation of amplified music</p> <p>Accordingly, as a result of this omission approval of this application was not supported.</p> <p><b>Additional Review - New Information Received</b></p> <p>Update - On 9 July 2020 Environmental Health was advised that an Acoustic Report had been lodged and now formed a part of the</p>



Internal Referral Body	Comments
	<p>application documentation.</p> <p>The Acoustic report appears to adequately address previous noise issues at the premises. Accordingly, conditions will be imposed to maintain the amenity of the surrounding neighbours.</p> <p><b>Recommendation</b></p> <p>APPROVAL - Subject to conditions</p> <p><u>Planner Comment:</u> The acoustic report (carried out by Koikas Acoustics Pty Ltd dated 22 June 2020) found that the current noise levels emanating from the subject restaurant are of a level that are considered offensive and require noise mitigation measures to be implemented. The acoustic report recommends that this can be achieved with the installation of an RMS compressor limiter and a security cage be installed to minimise the potential unauthorised personnel to tamper with those settings. To ensure compliance with the recommendations of the acoustic report Council's Environmental Health Team has imposed on-going conditions to provide a Noise Management Plan and Noise Assessment to be submitted to Council.</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 residential / 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 Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential / commercial land use.

### SEPP 64 - Advertising and Signage

The development application proposes an illuminated projecting wall sign to be fixed along the front of the tenancy facing Darley Road. A visit to the site revealed that this sign has been installed and cannot be granted retrospective approval as part of the subject application. An assessment of the proposed signage against SEPP 64 - Advertising and Signage is therefore not required.

## SEPP (Infrastructure) 2007

### Ausgrid

Clause 45 of the SEPP 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. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

## 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

There are no principal development standards under Part 4 of the Manly LEP to consider as part of this assessment.

### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
5.10 Heritage conservation	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes

Clause	Compliance with Requirements
6.9 Foreshore scenic protection area	Yes
6.11 Active street frontages	Yes
6.12 Essential services	Yes
Schedule 5 Environmental heritage	Yes

## Manly Development Control Plan

### Built Form Controls

There are no development control under Manly DCP to consider as part of this assessment.

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
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
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.2 Development in Business Centres (LEP Zones B1 Neighbourhood Centres and B2 Local Centres)	Yes	Yes
4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor	Yes	Yes
4.2.5 Manly Town Centre and Surrounds	Yes	Yes
4.2.5.4 Car Parking and Access	Yes	Yes
4.4.3 Signage	No	No
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.1.1 General Character	Yes	Yes
5.1.2 The Corso	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

### Detailed Assessment

#### 3.4.2 Privacy and Security

The development application proposes the following hours of operation:

#### Kitchen:

Monday - Sunday: 10.00am - 10.00pm.

Dining Area:

Monday - Sunday: 11.00am - 9.00pm.

The proposed hours of operation are considered acceptable given the nature of the use and surrounding uses within the Manly Town Centre.

**3.4.4 Other Nuisance (Odour, Fumes etc.)**

Given the nature of the food served at the premises, it is not envisaged that mechanical ventilation is required. The application was referred to Council's Environmental Health Officer for comment with no objection raised subject to conditions.

**4.4.3 Signage**

The development application proposes an illuminated projecting wall sign fixed to the wall of the tenancy fronting Darley Road. A visit to the site revealed that the sign has been installed without development consent.

A condition will be imposed within the consent recommending the existing signage does not form part of the consent.

**THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

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

**CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

**POLICY CONTROLS**

**Northern Beaches Section 7.12 Contributions Plan 2019**

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

**CONCLUSION**

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any

unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## RECOMMENDATION

### DEFERRED COMMENCEMENT APPROVAL

A. THAT Council as the consent authority grant a Deferred Commencement Development Consent being subject to a two (2) year time frame for Deferred Commencement Consents detailed within Section 95 of the EP&A Regulation 2000 to DA2020/0375 for Change of Use for a restaurant on land at Lot 8 SP 18046,8 / 38 - 42 The Corso, MANLY, subject to the conditions printed below:

B. THAT once the matters detailed within the Deferred Commencement Development Consent conditions are satisfactorily addressed then an operational development consent be issued subject to the time frames detailed within Part A of this recommendation.

## DEFERRED COMMENCEMENT CONDITIONS

### 1. **Building Code of Australia - Fire Safety requirements**

A 'Building Code of Australia (BCA) Assessment Report' from an appropriately qualified *Accredited Certifier*\* is required to be submitted to Council for review prior to activation of this Consent.

The report is to detail the extent to which the existing tenancy, does or does not comply with the deemed-to satisfy provisions of BCA, Parts C (Fire Safety within the tenancy and spread of fire matters), D (Egress from the tenancy), and E (Services and Equipment within the Tenancy). The report is to provide recommendations with respect to the existing tenancy and detail what works are required (within the tenancy), to ensure that the specified components, measures and equipment contained, including any modifications to be made by the proposed development, are appropriate for its intended use to:

i) restrict the spread of fire from the tenancy to other tenancies within the building,  
and

ii) protect persons using the tenancy to the degree necessary, and to facilitate their egress from the tenancy in the event of fire, and

*\*To be regarded as an "appropriately qualified accredited certifier", the certifier must hold the*

*relevant level of accreditation that would have enabled the certifier to issue a construction certificate for the subject building.*

The BCA assessment report / 'Fire Audit Report' is to be submitted to Council for consideration prior to activation of this Consent.

**Reason:** To ensure adequate provision is made for Fire safety within the tenancy for occupant health and safety

Evidence required to satisfy the deferred commencement condition/s must be submitted to Council within two (2) years of the date of this consent, or the consent will lapse in accordance with Section 95 of the Environmental Planning and Assessment Regulation 2000. This evidence is to be submitted along with a completed 'Deferred Commencement Document Review Form' (available on Council's website) and the application fee, as per Council's Schedule of Fees and Charges.

Upon satisfaction of the deferred commencement condition/s, the following conditions apply:

## DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

### 2. **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

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
A3 DA01 Revision A - Existing and Proposed Floor Plans	2 April 2020	Archispectrum
A3 DA03 Revision A - Section A-A	2 April 2020	Archispectrum
A3 DA04 Revision A - Site Plan	2 April 2020	Archispectrum

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
Acoustic Report	22 June 2020	Koikas Acoustics Pty Ltd

b) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

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

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

<b>Waste Management Plan</b>

Drawing No/Title.	Dated	Prepared By
Northern Beaches Waste Management Plans	January 2020	Archispectrum

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.

### 3. **Change of Use**

This consent is limited to the use of the premises. No consent is granted for the projecting wall sign proposed under this development application.

Reason: To ensure no approval is granted for unauthorised works.

## FEES / CHARGES / CONTRIBUTIONS

### 4. **Security Bond**

A bond (determined from cost of works) of \$1,000 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](http://www.northernbeaches.nsw.gov.au)).

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

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

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

Prior to the issuing of any interim / final occupation certificate, certification is to be provided from a person who is eligible as a 'Member' of Environmental Health Australia (EHA) that the design, construction and fit out of food premises kitchen is compliant with the requirements of AS 4674 Design, construction and fit out of food premises.

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

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

6. **Noise from Amplified Music**

Settings for the required RMS compressor limiter shall be set by a suitably qualified person to the requirements of the acoustic report by Koikas Acoustics.

Reason: To ensure noise limitation equipment is correctly installed with correct settings.

7. **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 Fire and Rescue NSW.

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 Fire and Rescue NSW, 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.

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

8. **Compliance with Acoustic Report**

Full compliance is required with all recommendations outlined in the acoustic report by Koikas Acoustics Pty Ltd dated 22 June 2020

Reason: To preserve the amenity of surrounding properties.

9. **Noise assessment**

An noise assessment by a suitably qualified acoustic consultant must be done and submitted to the Certifier and a copy to Council (for its records).

This report must demonstrate that recommendations made in the acoustic report by Koikas Acoustics Pty Ltd dated 22 June 2020 have been complied with.

Reason: To preserve the amenity of surrounding properties

10. **Noise Management Plan**

A Noise Management Plan is to be prepared and kept of site which shall include:

All musical input devices must be connected to the RMS compressor limiter.

The RMS compressor limiter must be installed between the audio system and the speakers to reduce the discrete frequency band (125 Hertz).

The RMS compressor limiter should be caged and padlocked to ensure unauthorised personnel do not tamper with the settings.

Reason: To ensure ongoing noise management by operational staff.



11. **Food preparation equipment**

All individual apparatuses used for cooking or re-heating of food must not exceed 8kW electrical power input or 29MJ/h gas power input.

Collectively the total power input of all cooking or re-heating apparatuses within the food premises must not exceed:

- 0.5 kW electrical power; or
- 1.8 MJ gas, per m<sup>2</sup> of floor area of the room or enclosure.

Deep frying is not permitted without externally exhausted mechanical ventilation in accordance with AS1668.2.

Reason: To protect the health, safety and well-being of patrons and staff in addition to the odour amenity of neighbouring properties, prevent breaches of the Food Standards Code and comply with the National Construction Code.

12. **Hours of Operation**

The hours of operation are to be restricted to:

- Monday to Friday – 10.00am - 10.00pm
- Saturday – 10.00am - 10.00pm
- Sunday and Public Holidays – 10.00am - 10.00pm

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.

13. **Maximum Patrons**

A maximum of 20 patrons are permitted on the premises at any one time.

Reason: To maintain the amenity of the locality.

14. **Noise from waste collection and deliveries**

Deliveries and waste collection services (including trade waste) must only occur during the following hours:

- Weekdays - 6.30am - 8.00pm
- Weekends and Public Holidays - 8.00am - 8.00pm

Reason: To minimise disruption to neighbouring properties.

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

**Signed**



**Penny Wood, Planner**

The application is determined on 04/09/2020, under the delegated authority of:



**Anna Williams, Manager Development Assessments**