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Reference: 2018/118528
Enquiries: Development Assessment

Total Pages: 12

BBF Town Planners
Suite 1, 9 Narrabang Way
BELROSE NSW 2085

Dear Sir/Madam,

NOTICE OF DETERMINATION

Pursuant to Section 81(1)(a) of the *Environmental Planning and Assessment Act 1979*

Development Application No.	190/2012
Proposed Development	Section 96 to modify approved change of use to a Café including courtyard seating and interior signage – Part 2
Land to be developed	SP 91855 53-57 Pittwater Road Manly
Date of Original Determination	20 December 2012
Determination of Modification	Approved by NBIAP
Date of Determination of Modification	14 February 2018

The application was considered by the Northern Beaches Independent Assessment Panel (NBIAP) at its meeting of 14 February 2018 and the decision was:

That pursuant to Section 96(1A) of the Environmental Planning and Assessment Act 1979, the proposed modification to Development Consent No. 190/2012 for Change of use to a Café including courtyard seating and interior signage at 53-57 Pittwater Road Manly be **approved** subject to:

ANS01

No cooking/BBQ facilities are to be installed/operated in the courtyard area at any time.

Reason: To comply with legislation and protect public health.



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ANS02

Prior to any use of the space in the courtyard the courtyard is to be fully enclosed using sound attenuating materials. The courtyard space is to be ventilated by mechanical or convection means in such a way that additional noise is not generated adversely affecting the current amenity of residents of 53-57 Pittwater Road and 51 Pittwater Road. Roofing materials shall be low reflectivity. Details are to be submitted to and approved by Council prior to issue of the Construction Certificate.

Reason: To maintain the visual and acoustic amenity of neighbouring residents

The following Condition No. ANS04 is to be amended as per Section 96(1A) Application – Part 2 – determined on 14 February 2018:

ANS03

An acoustic report prepared by a suitably qualified and practicing acoustic engineer shall be submitted to Council 3 months after the commencement of the modified hours of operation for the premises. This report shall certify that the noise generated by the use of the premises does not exceed 5dBA above ambient background noise levels as measured from the boundaries of the subject site and that the use complies with all conditions of the modified development consent and all relevant acoustical standards so as not to cause an offensive noise as defined by the Protection of the Environment Operations Act 1997 (NSW).

Reason: To protect the acoustic amenity of the neighbourhood.

The following Condition No. ANS04 is to be added as per Section 96(1A) Application – Part 2– determined on 14 February 2018:

ANS04

A plan of management for the operation of the café must be submitted to the certifier prior to issue of an Occupation Certificate. The ongoing operation of the café must be in accordance with the Plan of Management.

The Plan of Management must include, but not be limited to:

- Measures implemented to minimise noise impacts from patrons of the restaurant and entertainment provided on the premises, on surrounding residential premises
- Operational procedures of the restaurant
- Waste management procedures including disposal of glass waste
- Security arrangements
- Method of recording and actioning complaints received directly from affected residents
- Mitigating measures to minimise amenity impacts on the residential units
- Managing noise impacts from the premises



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- Ensuring odours do not become a public nuisance
- The service of alcohol
- Waste management

Reason: This condition has been applied to maintain a reasonable level of amenity to the area.

The following Condition No. ANS05 is to be added as per Section 96(1A) Application – Part 2– determined on 14 February 2018:

ANS05

Recommendations detailed in the Acoustic report prepared by Acoustic works titled Proposed development Shop 1,53-55 Pittwater Road Manly Acoustic report, report no. 1017012 R01A Shop 1 53-55 Pittwater Road Manly ENV dated 3 October 2017, shall be implemented prior to the issue of any Occupation Certificate.

Reason: To maintain a reasonable level of amenity to the area.

GENERAL CONDITIONS

The following Condition No.1 is to be amended as per Section 96(1A) Application – Part 2– determined on 14 February 2018:

1. The development, except where modified by the conditions of this consent, is to be carried out in accordance with the following plans and reference documentation;

Plans affixed with Council's stamp relating to Development Consent No. 190/12

Plan No. / Title	Issue/ Revision & Date	Date Received by Council
Proposed Layout		09/11/12
Kitchenette Layout		09/11/12

Documentation affixed with Council's stamp relating to Development Consent No. 190/12

- Letter of 7th November 2012 from Foundry Fiftythree received by Council 9/11/12 and attachments.

Except as amended by:

Reference Documentation relating to this Section 96(1A) Application – Part 2:

- **Acoustic Report prepared by Acoustic Works dated 3 October 2017.**

In the event of any inconsistency between the approved plans and supplementary documentation, the plans will prevail.

Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council.



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GENERAL CONDITIONS RELATING TO APPROVAL

1 (1AP04)

Alteration and demolition of the existing building is limited to that documented on the approved plans (by way of notation). No approval is given or implied for removal and/or rebuilding of any portion of the existing building which is not shown to be altered or demolished.

Reason: To ensure compliance with the approved development.

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

2 (2AP01)

Four (4) copies of architectural drawings consistent with the development consent and associated conditions are to be submitted to the Council/Accredited Certifier prior to the issue of the Construction Certificate.

Reason: To comply with the Environmental Planning and Assessment Act 1979.

3 (2BS01)

The fit out of the food premises must comply with the following:

- Food Act 2003,
- Food Regulations 2004,
- Australian Standard AS 4674-2004:Construction and fit out of food premises,
- Australia and New Zealand Food Standards Code 3.2.3: Food Premises and Equipment.

Reason: To ensure compliance with legislation and to protect public health and safety.

Internal Note: This condition is to be imposed in conjunction with 4BS01 and 6BS02.

4 (2CD01)

Pursuant to Section 97 of the Local Government Act, 1993, Council requires prior to the issue of Construction Certificate, or commencement of any excavation and demolition works, payment of a Trust Fund Deposit of \$200. The Deposit is required as security against damage to Council property during works on the site. The applicant must bear the cost of all restoration works to Council's property damaged during the course of this development. All building work must be carried out in accordance with the provisions of the Building Code of Australia.

Note: Should Council property adjoining the site be defective e.g. cracked footpath, broken kerb etc., this should be reported in writing, or by photographic record, submitted to Council at least seven (7) days prior to the commencement of any work on site. This documentation will be used to resolve any dispute over damage to infrastructure. It is in the applicants interest for it to be as full and detailed as possible.



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Where by Council is not the Principal Certifying Authority, refund of the trust fund deposit will also be dependent upon receipt of a final Occupation Certificate by the Principal Certifying Authority and infrastructure inspection by Council.

Reason: To ensure security against possible damage to Council property.

5 (2CD05)

Detailed engineering drawings of all work must be submitted for approval by the Council/Accredited Certifier prior to the release of the Construction Certificate.

Reason: To ensure the provision of public infrastructure of an appropriate quality arising from the development works to service the development.

6 (2FR01)

A Fire Safety Schedule specifying the fire safety measures (both current and proposed) which should be implemented in the building premises must be submitted with the Construction Certificate application, in accordance with Part 9 Clause 168 of the Environmental Planning and Assessment Regulation 2000.

Note: A Construction Certificate cannot be issued until a Fire Safety Schedule is received.

Reason: Compliance with the Environmental Planning and Assessment Act 1979.

7 (2US03)

Payment of contribution in lieu of seventeen (17) car parking spaces which cannot be provided on a site within the Business Zone, under the Manly Local Environmental Plan 1988, shall be made in accordance with the provisions of Council's Section 94 Contributions Plan 2004, pursuant to Section 94 of the Environmental Planning and Assessment Act 1979. The current amount of contribution (2011 – 2012) for each parking space not provided on site is: (i) Balgowlah - \$16,910.79 per space, and (ii) Manly CBD - \$33,453.37 per space. The charges may vary at the time of payment in accordance with Council's Section 94 Contributions plan to effect changes in land values, construction costs and the Consumer Price Index.

Total contribution for this development of Change of use to a Cafe/Bar including courtyard seating and signage at Shop 1/53-57 Pittwater Road, Manly is \$568,707.29. The amount of the payment shall be in accordance with the Section 94 charges as at the date of the payment and must be paid prior to issue of the Construction Certificate.

The calculations for DA 190/2012 are as follows: $17 \times 33,453.37 = \$568,707.29$.

Reason: To enable the provision of public amenities and services required/anticipated as a consequence of increased demand resulting from the development.

8 (2WM02)

A Waste Management Plan is to be submitted with the application prior to a Construction Certificate being issued in accordance with the Manly Development Control Plan for Waste Minimisation and Management 2000.



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The plan should detail the type and estimate the amount of demolition and construction waste and nominate how these materials will be sorted and dealt with. Weight dockets and receipts must be kept as evidence of approved methods of disposal and recycling. All demolition and excess construction materials are to be recycled where ever practicable. It should include consideration of the facilities required for the ongoing operation of the premises' recycling and waste management services after occupation. A template is available from the Manly Council website.

Reason: To plan for waste minimisation, recycling of building waste and on-going waste management.

CONDITIONS TO BE SATISFIED PRIOR TO ANY COMMENCEMENT

9 (3CD01)

Building work, demolition or excavation must not be carried out until a Construction Certificate has been issued.

Reason: To ensure compliance with statutory provisions.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

10 (4AP02)

A copy of all stamped approved drawings, specifications and documents (including the Construction Certificate if required for the work incorporating certification of conditions of approval) must be kept on site at all times so as to be readily available for perusal by any officer of Council or the Principal Certifying Authority.

Reason: To ensure the form of the development undertaken is in accordance with the determination of Council, public information and to ensure ongoing compliance.

11 (4BS01)

The construction of the food premises must comply with the following:

- Food Act 2003,
- Food Regulations 2004,
- Australian Standard AS 4674-2004: Construction and fit out of food premises,
- Australia and New Zealand Food Standards Code 3.2.3: Food Premises and Equipment.

Reason: To ensure compliance with legislation and to protect public health and safety.

Internal Note: This condition is to be imposed with 2BS01 and 6BS02.

12 (4CD01)

All of the following are to be satisfied/complied with during demolition, construction and any other site works:

- 1) All demolition is to be carried out in accordance with Australian Standard AS 2601-2001.
- 2) Demolition must be carried out by a registered demolition contractor.



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- 3) A single entrance is permitted to service the site for demolition and construction. The footway and nature strip at the service entrance must be planked out.
- 4) No blasting is to be carried out at any time during construction of the building.
- 5) Care must be taken during demolition/ excavation/ building/ construction to prevent any damage to adjoining buildings.
- 6) Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.
- 7) Any demolition and excess construction materials are to be recycled wherever practicable.
- 8) The disposal of construction and demolition waste must be in accordance with the requirements of the Protection of the Environment Operations Act 1997.
- 9) All waste on the site is to be stored, handled and disposed of in such a manner as to not create air pollution (including odour), offensive noise or pollution of land and/or water as defined by the Protection of the Environment Operations Act 1997. All excavated material should be removed from the site in an approved manner and be disposed of lawfully to a tip or other authorised disposal area.
- 10) Section 143 of the Protection of the Environment Operations Act 1997 requires waste to be transported to a place which can lawfully accept it. All non-recyclable demolition materials are to be disposed of at an approved waste disposal depot in accordance with legislation.
- 11) All materials on site or being delivered to the site are to generally be contained within the site. The requirements of the Protection of the Environment Operations Act 1997 must be complied with when placing/stockpiling loose material, disposing of concrete waste, or other activities likely to pollute drains or water courses.
- 12) Details as to the method and location of disposal of demolition materials (weight dockets, receipts, etc.) should be kept on site as evidence of approved methods of disposal or recycling.
- 13) Any materials stored on site must be stored out of view or in such a manner so as not to cause unsightliness when viewed from nearby lands or roadways.
- 14) Public footways and roadways adjacent to the site must be maintained and cleared of obstructions during construction. No building materials, waste containers or skips may be stored on the road reserve or footpath without prior separate approval from Council, including payment of relevant fees.
- 15) Building operations such as brickcutting, washing tools or paint brushes, and mixing mortar not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
- 16) All site waters during excavation and construction must be contained on site in an approved manner to avoid pollutants entering into waterways or Council's stormwater drainage system.
- 17) Any work must not prohibit or divert any natural overland flow of water.

Reason: To ensure that demolition, building and any other site works are undertaken in accordance with relevant legislation and policy and in a manner which will be non-disruptive to the local area.



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13 (4CD02)

In order to maintain the amenity of adjoining properties, audible site works must be restricted to between 7.00am and 6.00pm, Monday to Friday and 7.00am to 1.00pm Saturday. No site works can be undertaken on Sundays or public holidays.

Unless otherwise approved within a Construction Traffic Management Plan, construction vehicles, machinery, goods or materials must not be delivered to the site outside the approved hours of site works.

Reason: To prevent disturbance to the surrounding community.

14 (4MS01)

Should you appoint Council as the Principal Certifying Authority (PCA) to undertake inspections during the course of construction, then the following inspection/certification are required:

- Final inspection.

The cost of these inspections by Council is \$290. (being \$290 per inspection inclusive of GST). Payment of the above amount is required prior to the first inspection. Inspection appointments can be made by contacting the Environmental Services Division on 9976 1414.

At least 24 hours notice should be given for a request for an inspection and submission of the relevant inspection card. Any additional inspection required as a result of incomplete works will incur a fee of \$160.

Reason: To ensure that the development is completed in accordance with the terms of the development consent and with the Building Code of Australia.

ONGOING CONDITIONS RELATING TO THE OPERATION OF THE PREMISES OR DEVELOPMENT

15 (6MS02)

No person shall use or occupy the building or alteration which is the subject of this approval without the prior issue of an Occupation Certificate.

Reason: Statutory requirement, Environmental Planning and Assessment Act 1979.

The following Condition No.16 (6BS01) is to be amended as per Section 96(1A) Application – Part 2– determined on 14 February 2018:

16(6BS01)

The hours of operation of the premises (i.e. hours open for business) must not exceed 7.00am – 10.00pm Monday – Sunday without the prior approval of Council.

Reason: To ensure amenity of the surrounding locality is maintained and hours of operation are consistent with those in surrounding locality.



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17 (6BS02)

The ongoing operation and fit out of the premises must be maintained in accordance with the following requirements:

- Food Act 2003
- Food Regulations 2004
- Australian Standard AS4674-2004: Construction and fit out of food premises
- Australia and New Zealand Food Standards Code 3.2.3: Food Premises and Equipment
- Australia and New Zealand Food Standards Code 3.2.2: Food Safety Practices and General Requirements

Reason: To ensure compliance with legislation and to protect public health and safety.

Internal Note: this condition is to be imposed in conjunction with 2BS01 and 4BS01.

18 (6BS05)

All potentially hazardous food must be kept under temperature control. Adequate equipment must be provided for the storage of such food, in addition, a Food Safety Plan shall be developed to manage temperature control on a daily basis.

A food safety program must be made available to Council upon request.

Reason: To ensure compliance with legislation and to protect public health.

19 (6BS06)

All food contact surfaces including but not limited to; glasses, plates, cutlery, chopping boards, preparation benches and wipe clothes are to be cleaned and sanitised whenever they are a likely source of contamination. Sanitising can be achieved through heat or chemical and is the second step after cleaning. Adequate facilities must be provided and include a double bowl sink for manual cleaning and sanitising or a mechanical dishwasher. Machines used for sanitising are to operate on a sanitising rinse cycle at the manufacturers recommended temperature and time. Preparation benches and dishwash cloths are to be first cleaned to remove any dirt or food debris then rinsed with a food grade sanitiser to disinfect and minimise bacteria present to a safe level in accordance with the Food Standards Code.

Reason: To ensure compliance with legislation and to protect public health.

20 (6BS07)

The premises must prevent access to pests including but not limited to; insects and rodents. Insect and pest proofing will include mesh screening to prevent access and the use of insect devices that should be placed away from work areas where food may be contaminated. Holes and inaccessible spaces are to be sealed.

Reason: To ensure compliance with legislation and to protect public health.



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21 (6BS08)

Saturated and Trans Fats - General

To minimise the risk of cardiovascular disease to the community, the ongoing operation of the premises shall be in accordance with Council's Saturated and Trans Fats Reduction Policy.

Reason: To comply with Council Policy in minimising saturated and trans fats in the retail food industry in the interest of public health and safety.

22 (6BS09)

Saturated and Trans Fats - Foodservice Industry

Cooking oils containing trans fats cannot be used when preparing or cooking food in order to minimise the risk of cardiovascular disease to the community.

Reason: To comply with Council Policy in minimising saturated and trans fats in the retail food industry in the interest of public health and safety.

23 (6BS10)

The designated handwash basin(s) are to be located no greater distance than 5m from any food preparation area and used for solely for the purpose of washing all food handlers hands, arms or face. Appropriate signage is to be installed and maintained in a prominent position stating "HANDS ONLY" and the handwash basin(s) must be accessible at all times. Handwash basin(s) must not be used for any purpose other than to wash hands and each hand basin must be provided with warm water out of a single spout and supplied with soap and paper towel.

Reason: To ensure compliance with legislation and to protect public health.

24 (6FP01)

No sandwich boards, goods or the like are to be placed on Council's footpath.

Reason: To ensure pedestrian safety.

25 (6NL01)

Glare from internal lighting is not permitted to extend beyond the limits of the building authorised by this approval.

Reason: To ensure there is no glare from internal lighting to neighbouring properties and land.

26 (6NL02)

All lights used to illuminate the exterior of the buildings or site must be positioned and/or fitted with cut off luminaires (baffles) so as to prevent the emission of direct light onto adjoining roadways, adjoining land, dwellings and waterways.

Reason: To protect the amenity of neighbours and limit the obtrusive effects of outdoor lighting in public places.

27 (6NL03)

The ongoing use of the premises/property must not give rise to 'offensive noise' as defined under the provisions of the Protection of the Environment Operations Act 1997.

Reason: To ensure compliance with legislation and to protect public health and amenity.



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28 (6NL04)

External sound amplification equipment or loud speakers must not be used for the announcement, broadcast, playing of music (including live music) or similar purposes.

Reason: To protect the acoustic amenity of neighbouring properties and the public.

29 (6NL05)

The use of amplified sound equipment and public address systems is not permitted, unless located entirely within the shop and used in such a manner that the noise cannot be heard in any public place.

Reason: To ensure compliance with legislation and to protect public health and amenity.

30 (6WM01)

Activities must not detrimentally affect impact existing and future amenity of the adjoining occupations and the neighbourhood in general by the emission of noise, smoke, dust, fumes, grit, vibration, smell, vapour, steam, soot, ash, waste water, waste products, oil, electrical interference or otherwise.

Reason: To protect existing and future amenity of the adjoining occupations from excessive waste emissions.

31 (6WM02)

Waste collection from the premises must not occur between the hours of 10:00pm and 7:00am Monday to Sunday, without the prior approval of Council.

Reason: To minimise disruption to neighbouring properties.

32 (6WM03)

Waste bins used for commercial premises are to be left on public footpaths for the minimum time necessary for waste collection and then promptly removed. Lids should be closed to prevent littering.

Reason: To ensure waste and bins are promptly removed from public places following collection; to limit obstruction of footpaths or roads; and to minimise public amenity impacts.

33 (6WM04)

All non-recyclable waste from commercial premises must be presented for collection in a lidded receptacle. Waste receptacles are not to be stored in public spaces such as footpaths.

Reason: Public amenity and litter minimisation.

34 (6WM05)

No waste generated on site from any commercial operation is to be placed in public place bins. Commercial operators must maintain their commercial waste bins in an organised, clean and sanitary condition, preventing potential for litter from overflowing bins.

Reason: To communicate policy regarding illegal trade waste dumping in public bins; and maintenance of trade waste bins.



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35 (6WM08)

This commercial premises should investigate opportunities to compost food waste wherever practicable and recycle commonly recycled (non-putrescible) items such as paper and cardboard, steel and aluminium cans and recyclable plastic containers.

Reason: To promote waste minimisation in accordance with Manly Council's waste policies, the Waste Avoidance and Resource Recovery Act 2001 and the Manly Development Control Plan for Waste Minimisation and Management 2000.

WARNING: Failure to obtain a Construction Certificate prior to the commencement of any building works is a serious breach of Section 81A(2) of the *Environmental Planning & Assessment Act 1979*. It is also a criminal offence which attracts substantial penalties and may also result in action in the Land and Environment Court and orders for demolition.

Please note that all building work must be carried out fully in accordance with this development consent and conditions of approval. It is an offence to carry out unauthorised building work or building work that is not in accordance with this consent.

In accordance with Clause 284 of the *Environmental Planning and Assessment Regulation 2000*, non-compliance with the above conditions may result in Council issuing a Penalty Notice which may incur a fine.

Notes:

If you are dissatisfied with this decision, Section 97AA of the *Environmental Planning and Assessment Act 1979* gives the applicant the right to appeal to the Land and Environment Court of New South Wales (their address being Level 4, 225 Macquarie Street, Sydney NSW 2000).

Should you have any questions in relations to the matter, please contact Council's Planning, Place & Community, on (02) 9976 1414, during business hours.

Signed below on behalf of the consent authority.

Yours faithfully,

Date: 16 February 2018

Rodney Piggott
Planning Assessment Manager
Northern Beaches Council

t 1300 434 434
e council@northernbeaches.nsw.gov.au
northernbeaches.nsw.gov.au
PO Box 1336 Dee Why
ABN 57 284 295 198

Dee Why Office:
725 Pittwater Road
Dee Why NSW 2099
DX 9118 Dee Why
f 02 9971 4522

Mona Vale Office:
1 Park Street
Mona Vale NSW 2103
DX 9018 Mona Vale
f 02 9970 1200

Manly Office:
1 Belgrave Street
Manly NSW 2095
f 02 9976 1400