



Northern Beaches Independent Assessment Panel Report

2018/061357

DA #	190/2012
Site Address	53-57 Pittwater Road Manly; Lot 14 SP 91855
Proposal	Section 96 to modify approved change of use to a Café including courtyard seating and interior signage – Part 2
Officer	Ben Price

SUMMARY:

<u>Application Lodged:</u>	26/10/2017
<u>Applicant:</u>	BBF Town Planners
<u>Owner:</u>	Joanne Edwards Custodian Pty Ltd
<u>Estimated Cost:</u>	\$15,000
<u>Zoning:</u>	MLEP, 2013 – B2 Local Centre
<u>Heritage:</u>	Pittwater Road Conservation Area
<u>NSW LEC:</u>	Not applicable
<u>Notification:</u>	31 October 2017 – 16 November 2017
<u>Submissions received:</u>	17 opposed, 1 in support
<u>Site Inspected:</u>	16 January 2017
<u>LEP (4.6) Variations proposed:</u>	Nil
<u>DCP Variations proposed:</u>	Nil
<u>Recommendation:</u>	Approval

Subject Property and surrounding area



The subject property is commonly known as 53-57 Pittwater Road Manly and legally known as Lot 14 in SP 91855. The site is located on the western side of Pittwater Road. The property is irregular in shape and has a frontage of 7m to Pittwater Road and an overall site area of 106m². The site currently contains a two storey mixed use commercial building. The property slopes is generally level.

The surrounding area predominantly consists of residential accommodation including residential flat buildings a hostel and semi-detached dwellings.

Property Burdens and Constraints

There are no burdens or constraints that would preclude the proposed development.

Site History/Background

The following applications are relevant to the site history:

DA175/2011 – for Establishment of use as a convenience store (food shop/ delicatessen) with limited takeaway food, coffee service, outdoor eating in the rear courtyard and shop fitout – Approved on the 8 September 2011.

On the 8 August 2012 a notice of intention to serve an order was issued as the building was being used as a café without development consent.

DA190/2012 – for Change of use to a Café including courtyard seating and interior signage – Approved by the Manly Independent Assessment Panel on the 20 December 2012 subject to conditions – The following conditions are of particular relevance to this application:

“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

16 (6BS01)

The hours of operation of the premises (i.e. hours open for business) must not exceed 7.00am – 7.00pm Monday – Friday and 7.30am – 7.00pm Saturday, Sunday and public holidays 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.”

There is no evidence of a Construction Certificate or Occupation Certificate on the file. Councils Building Surveyor made the following note on the development application file on the 1 February 2016

“A search of Council records has revealed that no Construction certificate was issued for DA190/2012, where an Occupation certificate had been applied for on the 7th July 2015.”

The occupation certificate was not issued and there is no evidence of a Building Certificate being applied for or issued for this property.

DA40/2014 – for Enclosure of the existing ground floor terraces to extend tenancies 1 and 2. This application was approved on the 19 June 2014 subject to conditions. A Final Occupation Certificate was issued on the 16 January 2015.

This development constructed in accordance with DA40/2014 was required in order to achieve compliance with condition ANS02 of development consent 190/2012. It is therefore considered that DA190/2012 achieved physical commencement due to construction of this application.

Description of proposed development

The proposal includes the modification of the approved hours of operation.

The approved hours of operation are:

- 7.00am – 7.00pm Monday – Friday and
- 7.30am – 7.00pm Saturday, Sunday and Public Holidays.

The proposed hours of operation are:

- 7.00am to 10.00pm Sundays to Thursdays and
- 7.00am to 12.00am Fridays and Saturdays

Internal Referrals

Environmental Health

Council's Environmental Health Officer has reviewed the acoustic report and offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

Planning Comments

Environmental Planning & Assessment Act 1979 – Section 79(C)(1)

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) *the provisions of:*
(i) *any environmental planning instrument, and*

Manly Local Environmental Plan 2013

The subject site is located in Zone B2 Local Centre under the Manly LEP 2013. The proposed modifications will maintain the approved use as a *restaurant or café*. The development is considered permissible within the zone with consent. An assessment of the proposal against the objectives of the Zone is included below:

Zone B2 Local Centre

Objectives of zone

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*

The proposal will ensure the premises continues to serve the needs of people who live in, work in and visit the local area.

- *To encourage employment opportunities in accessible locations.*

The proposal will encourage employment opportunities in an accessible area.

- *To maximise public transport patronage and encourage walking and cycling.*

The proposed development is in an accessible location and will encourage public transport patronage, walking and cycling.

- *To minimise conflict between land uses in the zone and adjoining zones and ensure amenity for the people who live in the local centre in relation to noise, odour, delivery of materials and use of machinery.*

The proposed development subject to the recommended conditions of consent will minimise conflict between land uses in the zone and ensure the amenity for the people who live in the local centre.

Part 4 Principal development standards

There are no relevant provisions of Part 4 of the Manly LEP 2013 to consider as part of the assessment.

Part 5 Miscellaneous Provisions

The provisions of the Manly LEP 2013 have been referred to as part of the assessment:

5.	Miscellaneous Provisions	Applies	Complies	Comment
5.10	Heritage Conservation	Yes	Yes	The proposal is for hours of operation only. The proposal complies with the objectives of this clause.

Part 6 Local Provisions

The provisions of the Manly LEP 2013 have been referred to as part of the assessment:

6.	Local Provisions	Applies	Complies	Comments
6.21	Noise impacts – licensed premises	Yes	Yes	The proposal has been assessed in accordance with Clause 3.4.2 Privacy and Security of the Manly DCP 2013. In summary the assessment found that while the proposal is located in the Manly Town Centre the hours of 10pm-12am on Friday and Saturday are not reasonable. This was due to the location of the premises on the outer fringe of the Manly Town Centre and in close proximity to the surrounding residential accommodation and the associated amenity impacts relating to customer activities and associated operational noise created by the use. As such it is recommended to limit the hours on Friday and Saturday to 10pm and not grant approval for a Late Night Venue. A condition of consent is also recommended to require the submitted plan of management to be amended to include the requirements as set out in Condition ANS04. This condition requires sufficient detail to ensure the premises is appropriately managed and does not result in any unreasonable impacts to the locality. The proposal will maintain the use of the premises as a restaurant or café. The consumption of alcohol in accordance with this use will not generate any unreasonable acoustic privacy impacts subject to conditions limiting the hours of operation and a suitable Plan of Management. Furthermore the recommended conditions of consent are appropriate to ensure adequate acoustic privacy for the neighboring residential accommodation. The proposal complies with this Clause.

79C(1)(a)(ii) - any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and

There is no applicable Draft Planning Instrument.

79C(1)(a)(iii) - any development control plan, and

Manly Development Control Plan 2013:

The following is an assessment of the proposal's compliance with the standards of the Development Control Plan. Where a variation is proposed to the standards, an assessment is included in the Planning Comments.

Part 3 General Principles of Development

Issues	Consistent with principle	Inconsistent with principle
Townscape	✓	
Heritage – In Vicinity	✓	
Sunlight Access and Overshadowing	✓	
Privacy and Security	✓	
Maintenance of Views	✓	
Sustainability	✓	
Accessibility	✓	
Stormwater management	✓	
Waste Management	✓	
Mechanical Plant Equipment	✓	

Comment:

3.4.2 Privacy and Security

Objective 1) To minimise loss of privacy to adjacent and nearby development by:

- appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; and*
- mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

The proposal includes the modification of the hours of operation from 7.00am – 7.00pm Monday – Friday and 7.30am – 7.00pm Saturday, Sunday and Public Holidays to 7am to 10pm Sundays to Thursdays and 7am to 12am Fridays and Saturdays.

The site is within the Manly Town Centre however is on the northern fringe of the designated Town centre. The surrounding area is dominated by residential accommodation and the site is located in close proximity to residential accommodation to the east, south and west.

The property directly to the north is a shop and above are office premises with the following opening hours:

DA353/2010 - Establishment of Use as offices and fitout including a new mezzanine level – Suites 1 and 2 – 53-57 Pittwater Road – Approved hours of operation 9am to 5.30pm Monday to Friday.

DA92/2016 – Alterations and additions to an existing commercial building (shop) – 53-57 Pittwater Road – Approved hours of operation of 9am-6pm Monday to Wednesday, Thursday 9am-9pm and Saturday-Sunday 9am to 5pm without the prior approval of Council.

The proposal will introduce a late night venue to an area that is highly dominated by residential accommodation and sensitive to impacts on acoustic privacy. The residential buildings to the rear directly open onto the enclosed area of the subject site. The proposed hours from 10pm to 12am will generate conflict between the site and the surrounding residential development. Given the context of the site the proposed hours of 10pm to 12am Friday and Saturday are not reasonable.

The property is located within the zone B2 Local Centre which aims to support retail uses and encourage employment opportunities in accessible locations. The application was supported by an acoustic report that provided recommendations to ensure the premises does not result in any unreasonable impacts to acoustic privacy. Furthermore the enclosure of the rear courtyard and the original conditions of consent are designed to minimise the impacts on acoustic privacy. As such it is recommended the condition of consent be amended to restrict the hours of operation to 7am to 10pm Monday to Sunday inclusive. The recommended condition of consent will sufficiently restrict the hours to ensure an appropriate degree of amenity for the surrounding residents while still allowing the premises to achieve dinner trade. Councils Environmental Health Officer has also recommended a condition of consent requiring a Plan of Management be submitted to the Certifying Authority prior to the issue of the Occupation Certificate. This condition highlights key areas to be addressed in the plan of management. The required plan of management will ensure the premises is operated with no unreasonable impacts to the surrounding area.

The proposed use of the premises will remain as a restaurant or café as defined by the Manly LEP 2013. This proposed use and the hours of operation are reasonable for the area and will not result in any unreasonable impacts on the safety/security of the neighbouring properties.

Objective 2) To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.

The proposal as modified by the recommended conditions of consent will ensure reasonable acoustic privacy to the surrounding residents without compromising access to light and air.

Objective 3) To encourage awareness of neighbourhood security.

The proposal as modified by the recommended conditions of consent will ensure an appropriate awareness of neighbourhood security.

Part 4 - Development Controls

4.2.5.6 Late Night Venues

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.*

The proposal will introduce a late night venue to an area dominated by residential accommodation and sensitive to impacts on acoustic privacy. The residential buildings to the rear directly open onto the enclosed area of the subject site. The proposed hours from 10pm until 12am will generate conflict between the site and the surrounding residential development. Given the context of the site the proposed hours of 10pm to 12am Friday and Saturday are not reasonable. It is recommended the condition of consent be amended to restrict the hours of operation to 7am to 10pm Monday to Sunday inclusive. The recommended condition of consent will sufficiently restrict the hours to ensure an appropriate degree of amenity for the surrounding residents while still allowing the premises to achieve dinner trade.

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 paragraph 2.1) 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.*

The proposal for a late night venue is not supported due to the impacts on the surrounding properties. A condition of consent is recommended to restrict the hours of operation to 7am to 10pm Monday to Sunday inclusive. The recommended condition of consent will sufficiently restrict the hours to ensure an appropriate degree of amenity for the surrounding residents while still allowing the premises to achieve dinner trade.

Part 5 - Special Character Areas and Sites

Special Character Areas and Sites	Applicable	Not Applicable
Conservation Area	✓	
Foreshore Scenic Protection Area		✓
Threatened Species and Critical Habitat		✓
Flood Control Lots		✓
Riparian Land and Watercourses		✓
Road Widening		✓
Gurney Crescent and Clavering Road, Seaforth		✓

Comment:

The proposal will not result in any unreasonable impacts on the Pittwater Road Conservation Area.

79C(1)(a)(iia)- any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and
No applicable planning agreement.

79C(1)(a) (iv) - the regulations

The proposal is consistent with the applicable regulations.

79C(1)(a)(v) - any coastal zone management plan (within the meaning of the Coastal Protection Act 1979)

There is no Coastal Zone Management Plan applicable for the Manly area.

79C(1) (b) - the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

The proposed development subject to the recommended conditions of consent will ensure no unreasonable impacts on the natural or built environments nor will it result in any unreasonable social or economic impacts in the locality.

79C(1) (c) - the suitability of the site for the development,

The proposal subject to the conditions of consent is suitable for the site.

79C(1) (d) - any submissions made in accordance with this Act or the regulations

The application was notified to nearby and adjoining property owners in accordance with Section 2.3 of Council's Development Control Plan 2013 with 17 submissions opposed and 1 submission in support received from the following objectors raising the following concerns:

Submission and Address	Main Issues raised in the submission	Comments on submission
1. Palk R. 23/51 Pittwater Road Manly	• Privacy and security	• See comments below regarding privacy, noise and security.
2. Confidential	• Privacy and security • Alcohol	• See comments below regarding privacy, noise and security. • The liquor licences that allow the service of Alcohol are issued by the Office of Liquor and Gaming. The noise impacts due to the service of alcohol associated with a restaurant or café will not result in any unreasonable impacts on the locality.
3. Potter J.	• Privacy and security • Service of Alcohol	• See comments below regarding privacy, noise and security. • The liquor licences that allow the service of Alcohol are issued by the Office of Liquor and Gaming. The noise impacts due to the service of alcohol associated with a restaurant or café will not result in any unreasonable impacts on the locality.
4. De Vries C. 18/62-64 Pittwater Road	• Privacy and security. • There is no need for a bar in this area of Pittwater road.	• See comments below regarding privacy, noise and security. • The proposal was approved as a Café. The modification does not include a change of use to a bar.

5. Gatenby S. 14/53-57 Pittwater Road Manly	• Privacy and security • Waste Management • No parking	• See comments below regarding privacy, noise and security. • The proposal is for hours of operation only. The original application assessed the waste facilities. Conditions were imposed to ensure commercial waste was appropriately disposed. • This application is for modification to the hours only and will not generate further parking requirements. Parking was assessed with the original application.
6. O'Brien B. 18/61 - 63 Pittwater Road MANLY 2095	• Privacy and security • Parking	• See comments below regarding privacy, noise and security. • This application is for modification to the hours only and will not generate further parking requirements. Parking was assessed with the original application.
7. Taylor A. 17/61-63 Pittwater Road, Manly NSW 2095	• Privacy and security • Parking	• See comments below regarding privacy, noise and security. • This application is for modification to the hours only and will not generate further parking requirements. Parking was assessed with the original application.
8. Powell S. 3/51 Pittwater Road Manly	• Privacy and security • Smoking on street • Parking	• See comments below regarding privacy, noise and security. • The proposal is for hours of operation. Smoking is restricted by separate legislation • This application is for modification to the hours only and will not generate further parking requirements. Parking was assessed with the original application.

9. Shephard K.	• Privacy and security • Parking	• See comments below regarding privacy, noise and security. • This application is for modification to the hours only and will not generate further parking requirements. Parking was assessed with the original application.
10. Skinner L. 2/60 Pittwater Road Manly	• Privacy and security • Liquor licence	• See comments below regarding privacy, noise and security. • The liquor licences that allow the service of Alcohol are issued by the Office of Liquor and Gaming. The noise impacts due to the service of alcohol associated with a restaurant or café will not result in any unreasonable impacts on the locality.
11. Boschen R. 62-64 Pittwater Road Manly	• Privacy and security	• See comments below regarding privacy, noise and security.
12. Van Gorcom K. 14/51 Pittwater Road Manly	• Privacy and security • The site does not contain a grease trap, mechanical ventilation or waste facilities. • parking	• See comments below regarding privacy, noise and security. • The proposal is for hours only. The original application included conditions to ensure the appropriate fitout and management of waste. • This application is for modification to the hours only and will not generate further parking requirements. Parking was assessed with the original application.
13. Halpin S. & V. 16/53-57 Pittwater Road Manly	• Privacy and security • Waste • Use of fire exit stairs	• See comments below regarding privacy, noise and security. • The original application included conditions to ensure waste was appropriately disposed. • The proposal is for modification to the hours of operation. The use of the fire exit stairs is not relevant to this proposal.

14. Confidential	Privacy and security	See comments below regarding privacy, noise and security.
15. Hanson S. 6/51 Pittwater Road Manly	Privacy and security	See comments below regarding privacy, noise and security.
16. Friedman J. & J. 76 Pittwater Road Manly	Privacy and security	See comments below regarding privacy, noise and security.
17. Blakemore K. 10 and 20/53-57 Pittwater Road Manly	- Privacy and security - Cooking Smells and smoke.	- See comments below regarding privacy, noise and security. - The proposal is for hours only. The original application included conditions to ensure the fitout of the food premises was appropriately completed and cooking smells/smoke does not result in any unreasonable impacts on neighboring properties.
18. Moss A. 51 Pittwater Road Manly	In support.	Noted

Privacy – Acoustic

The proposal has been assessed above with regards to Clause 3.4.2 Privacy and Security. In summary the assessment found that the proposal will achieve an adequate level of privacy, safety and security subject to compliance with the conditions of consent, the submitted acoustic report and Plan of Management. Councils Environmental Health Officer has assessed the Acoustic Report and raised no objection to the findings and recommendations.

79C(1) (e) - the public interest.

The proposal as modified by the recommended conditions of consent is not contrary to the the public interest.

S94 Contribution towards provision or improvement of amenities or services

This part of the Act relates to the collection of monetary contributions from applicants for use in developing key local infrastructure. The Act reads as follows:

- '(1) If a consent authority is satisfied that development for which development consent is sought will or is likely to require the provision of or increase the demand for public amenities and public services within the area, the consent authority may grant the development consent subject to a condition requiring:*
- (a) the dedication of land free of cost, or*
- (b) the payment of a monetary contribution,*
- or both.*
- (2) A condition referred to in subsection (1) may be imposed only to require a reasonable dedication or contribution for the provision, extension or augmentation of the public amenities and public services concerned.'*

Comments:

In this case, the contributions imposed on the original application, as indexed with CPI, are applicable to the development.

Section 96 (1A) of the Environmental Planning and Assessment Act 1979

(1A) Modifications involving minimal environmental impact

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and
- (c) it has notified the application in accordance with:
 - (i) the regulations, if the regulations so require, or
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.

Subsections (1), (2) and (5) do not apply to such a modification.

With regard to the above it is considered that the proposed modifications to the original consent, will result in substantially the same development for which consent was originally granted. The modifications requested were notified in accordance with Council's Manly DCP with 17 submissions opposed and 1 in support received. All matters relating to the proposed modifications in terms of impact on have been considered. On balance, the proposed modifications are considered to be satisfactory for approval, subject to conditions.

CONCLUSION:

The application has been assessed having regard to Section 79C and Section 96 of the Environmental Planning and Assessment Act 1979, the Manly Local Environmental Plan 2013 and the Manly Development Control Plan 2013 and is considered to be satisfactory for approval, subject to conditions.

This report is referred to the Manager of Development Assessment for determination in accordance with the delegations granted by the General Manager.

RECOMMENDATION

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.

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

ANS03

An acoustic report be submitted to Council verifying that the noise emissions from the premises shall not be greater than 5DBA above the background noise level as required by Noise Control Act.

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:

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
- 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:

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:

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.

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.

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.

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.
- 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.

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:

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.

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.

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 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.

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.

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.