



northern  
beaches  
council

# MINUTES

## **NORTHERN BEACHES LOCAL PLANNING PANEL MEETING**

electronic determination

**FRIDAY 10 DECEMBER 2021**

## **Minutes of the Northern Beaches Local Planning Panel held on Friday 10 December 2021**

### **ATTENDANCE:**

#### **Panel Members**

Peter Biscoe	Chair
Brian Kirk	Town Planner
Kara Krason	Town Planner
Frank Bush	Community Representative

The Panel have visited all sites personally, or electronically (due to COVID restrictions), and have had regard to the assessment report, all accompanying documentation, submissions from the public and any supplementary reports in determining all applications.

## **1.0 APOLOGIES AND DECLARATIONS OF INTEREST**

Nil

## 4.0 PUBLIC MEETING ITEMS

### 4.3 DA2021/1311 - 1031 BARRENJOEY ROAD, PALM BEACH - USE OF PREMISES AS A CAFE INCLUDING A CHANGE OF HOURS

#### PROCEEDINGS IN BRIEF

The proposal is for the use of the ground floor of the existing building and associated structures for the purpose of a restaurant or cafe with new hours of operation.

#### DETERMINATION OF DEVELOPMENT APPLICATION

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2021/1311 for use of premises as a cafe including a change of hours at Lot A DP 404349, 1031 Barrenjoey Road, Palm Beach, subject to the following conditions:

#### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

##### 1. Approved Plans and Supporting Documentation

The development must be carried out in compliance (except as amended by any other conditions of consent) with the following:

###### a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
2136 DA00 Rev A	15/07/2021	O2 Architecture
2136 DA03 Rev C	07/12/2021	O2 Architecture
2136 DA04 Rev A	07/12/2021	O2 Architecture

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Operational Noise Emission Assessment (Ref: 51261R001.MW.210622)	21/07/2021	Acoustic Dynamics

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

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

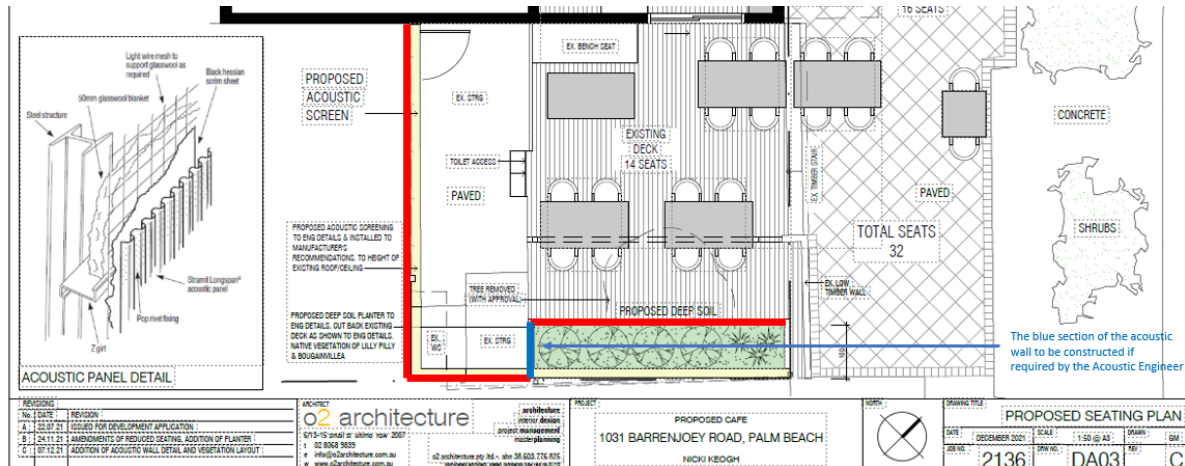
Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

##### 2. Amendments to the approved plans

The following amendments are to be made to the approved plans to the satisfaction of Council's Executive Manager Development Assessment prior to the issue of the Construction

Certificate:

- The roof is to be altered and removed from above the deep soil planting.
- The acoustic screen is to be relocated to between the deep soil landscaping and the deck as illustrated red and blue on the following diagram.
- All works are to be within the boundaries of the subject property.



Reason: To ensure the development minimises unreasonable impacts upon neighbouring property.

### 3. Landscape Planting

The species of plants to be planted in the landscaped area adjacent to the deck shown in the approved plans are to be as approved by Council's Executive Manager Development Assessment prior to the issue of the Construction Certificate with the object of screening the acoustic wall as viewed from the neighbouring property, and are to be properly maintained in perpetuity.

Reason: to improve the amenity of the neighbouring property and the streetscape.

### 4. Approved Land Use

Nothing in this consent shall authorise the use of the tenancy and associated structures as detailed on the approved plans for any land use of the site beyond the definition of a *restaurant or cafe*.

A *restaurant or cafe* is defined as:

"a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, takeaway meals and drinks or entertainment are also provided."

(as defined by the Pittwater Local Environment Plan 2014 Dictionary)

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

Reason: To ensure compliance with the terms of this consent.

### 5. Prescribed Conditions

- All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- BASIX affected development must comply with the schedule of BASIX

commitmentsspecified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);

- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
  - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:
    - A. the name and licence number of the principal contractor, and
    - B. the name of the insurer by which the work is insured under Part 6 of that Act,
  - (ii) in the case of work to be done by an owner-builder:
    - A. the name of the owner-builder, and
    - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
  - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
  - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
  - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative requirement.

## 6. General Requirements

- (a) Unless authorised by Council:  
Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to

approved waste/recycling centres.

- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

- (k) Prior to the commencement of any development onsite for:

- i) Building/s that are to be erected
- ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
- iii) Building/s that are to be demolished
- iv) For any work/s that is to be carried out
- v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWorkNSW Codes of Practice.

- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited to) to:

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.



- (2) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewerage areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (3) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

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

### **7. Boundary Identification Survey**

A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent as amended by these conditions of consent.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of any Construction Certificate.

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

### **8. Compliance with Standards**

The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure the development is constructed in accordance with appropriate standards.

### **9. Garbage Area**

A garbage area must be provided for the development. Such area is not to be located within the outside dining area, nor within direct view from a public place. The garbage area is to be fully separate from food deliveries and food handling areas.

The garbage area must be constructed so it is easy to clean, prevents the ingress or harbouring of vermin and where spills or wastewater will not be able to be directed to stormwater drains. The waste area must be able to accommodate the storage of waste oil containers and recyclable materials.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of a Construction Certificate.

Reason: Health and safety.

**CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE  
OCCUPATION CERTIFICATE****10. Mechanical Ventilation certification**

Certification is to be provided from the installer of the mechanical ventilation system that the design, construction and installation of the mechanical ventilation system is compliant with the requirements of *AS1668 The use of mechanical ventilation*.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To ensure that the mechanical ventilation system complies with the design requirements.

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

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 prior to the issue of any Occupation Certificate.

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

**12. Compliance with acoustic report**

An acoustic assessment is to be undertaken by a suitably qualified professional such as an acoustic engineer to determine acoustic treatments are in accordance with the recommendations within Section 5 of the Acoustic Report prepared by Acoustic Dynamics dated 21 July 2021 (Reference 51261R001.MW.210622) as amended by these conditions of consent.

Any design recommendations made by the consultant must be implemented prior to issue of the Occupational Certificate in order to achieve compliance with noted conditions of this consent.

Details demonstrating compliance are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To maintain amenity of the surrounding area.

**13. Sanitary Facilities**

Sanitary facilities within the premises must comply with Part F of the Building Code of Australia.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To ensure adequate sanitary facilities are provided.

**14. Survey Certificate**

A survey certificate is to be prepared by a Registered Surveyor at completion of all works to the roof, deck and acoustic screen demonstrating that the roof, deck and acoustic structures do not extend into the adjoining property at 1029 Barrenjoey Rd, Palm Beach. The survey certificate is to be submitted to the Principal Certifying Authority prior to the issue of any

Occupation Certificate.

Reason: To establish that there is no encroachment onto the adjoining property.

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

#### **15. Outdoor Dining**

Outdoor footpath dining is not approved under this consent.

Applications for outdoor dining and modifications to existing outdoor dining areas must be made to Council on the Outdoor Dining Application form available on Council's website.

Reason: To ensure outdoor dining complies with the requirements of the Roads Act 1993.

#### **16. Hours of Operation**

The hours of operation are to be restricted to:

- i Monday to Thursday – 6:30am to 5:00pm
- i Friday – 6:30am to 9:00pm
- i Saturday – 7:00am to 9:00pm
- i Sunday and Public Holidays – 7:00am to 6:00pm

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.

#### **17. Patron Capacity**

The maximum capacity of the tenancy is limited to sixteen (16) patrons, including no more than fourteen (14) patrons on the outdoor deck on the southeastern side of the building at any one time.

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

#### **18. Commercial Waste Collection**

Waste and recyclable material, generated by this premises, must not be collected between the hours of 9pm and 6am on any day.

Reason: To protect the acoustic amenity of surrounding properties.

#### **19. Deliveries**

No deliveries, loading or unloading associated with the premises are to take place between the hours of 9pm and 6am on any day.

Reason: To protect ensure the acoustic amenity of surrounding properties.

#### **20. Mechanical Plant Noise**

No noise nuisance shall be caused through the operation of any plant or equipment at the

premises. Noise is considered a nuisance when it exceeds 5dB(A) above the background noise level.

Reason: To protect residential amenity.

## **21. Food Standards**

The premises must comply with all relevant requirements of the Australia New Zealand Food Standards Code and NSW Food Authority.

Reason: Food safety.

### **REASONS FOR DETERMINATION:**

The Panel agrees generally with the assessment report and the above conditions of consent.

Vote: 4/0

## **1.0 NON PUBLIC MEETING ITEMS**

Nil

This is the final page of the Minutes comprising 13 pages  
numbered 1 to 13 of the Northern Beaches Local Planning Panel meeting  
held on Friday 10 December 2021.