

## IDAP REPORT

<b>Property:</b>	608-616 Liverpool Road STRATHFIELD SOUTH Lot 1 DP 804490 DA2021/324
<b>Proposal:</b>	Alterations and additions to existing ground floor restaurant, including new external landing and stairs.
<b>Applicant:</b>	L Sleiman
<b>Owner:</b>	Sam Harb Pty Limited
<b>Date of lodgement:</b>	20 December 2021
<b>Notification period:</b>	24 December 2021 – 24 January 2022
<b>Submissions received:</b>	Nil
<b>Assessment officer:</b>	J W Brown
<b>Estimated cost of works:</b>	\$202,400.00
<b>Zoning:</b>	B6-Enterprise Corridor - SLEP 2012
<b>Heritage:</b>	No
<b>Flood affected:</b>	No
<b>RECOMMENDATION OF OFFICER:</b>	<b>APPROVAL</b>

## DECISION

### Development Approval

That Council as the Consent Authority pursuant to Section 4.16(1)(a) Environmental Planning & Assessment Act 1979, grant consent to Development Application No DA2021/324 for the alterations and additions to existing ground floor restaurant, including new external landing and stairs at No 608-616 Liverpool Road STRATHFIELD SOUTH, subject to conditions.



Figure 1: Aerial image of the subject site

## Report in Full

### Proposal

Council has received an application for the alterations and additions to existing ground floor restaurant, including new external landing and stairs. More specifically, the proposal includes a 19.2m<sup>2</sup> extension to the existing restaurant (Massaya Restaurant), with two entry and exit doors to a landing and stairs that lead Gould Lane.

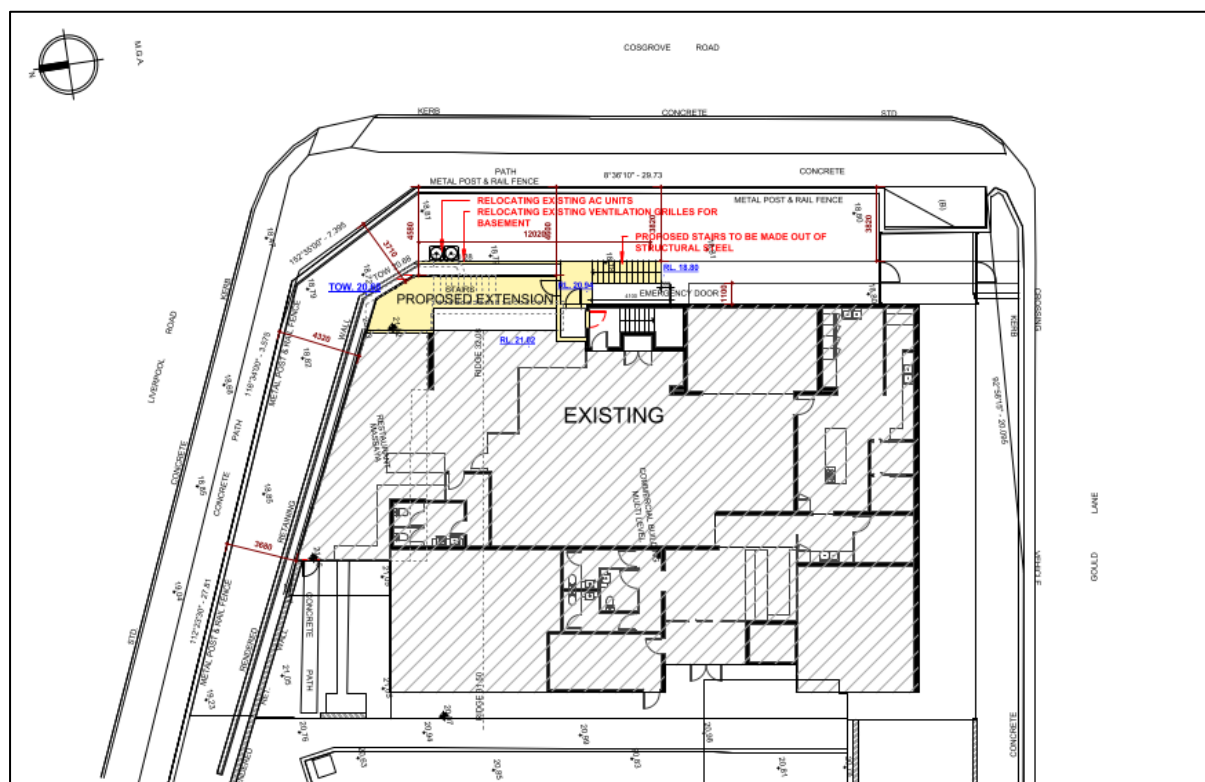


Figure 2: Proposed extension

### The Site and Locality

The subject site is legally described as Lot: 1 DP: 804490 and commonly known as 608 – 616 Liverpool Road, Strathfield South. It is located off the southern side of Liverpool Road and surrounded by Cosgrove Road, Gould Lane and Gould Street.

The site is rectangular in shape and has an average width of 70m and average depth of 40m with an overall area of 3,269m<sup>2</sup>. The site slopes gradually from west to east but has been levelled by earthworks for the development currently on site.

The proposal is currently within an existing commercial building that has several different uses including a 24-hour gym, mortgage lender and a takeaway premise. A standalone building also on the site houses a food and drink premises (currently Oporto). The current streetscape is characterised by a range of commercial and industrial buildings with residential development on the northern side of Liverpool Road.





Figure 2: Closer image of the site with extension area highlighted in blue



Figure 3: Eastern wall of existing building.





Figure 4: Location of restaurant's extension



Figure 5: Existing restaurant facing east towards proposed extension

## **Background**

2 May 2013	DA2013/038 for the use of existing premises (Unit 1) as a food and drink premises, internal alteration, installation of a mechanical ventilation system and provision of customer parking was approved.
13 April 2018	DA2013/038/01 section 4.55 (1A) modification in relation to alterations to an existing restaurant including provision of a new café area, new amenities, installation of new awning, an increase in internal and external dining numbers and increase in operational hours from 11:30 am to 1:30am Tuesday to Sunday was approved
20 December 2021	The subject application (DA2021/324) was lodged with Council
24 December 2021	The application was publicly exhibited until the 24 January 2022, where no submissions were received.
23 February 2022	The following information was requested: <ul style="list-style-type: none"><li>• Clarification if any changes were to occur to the use of the premises</li><li>• Provide FSR calculations</li><li>• Identify the materials that will be used in the proposal to minimise noise impacts</li><li>• Provide a planter box to retain the landscaping design of the existing building front.</li></ul>
11 March 2022	Applicant provided the following information: <ul style="list-style-type: none"><li>• Updated Architectural Plans</li><li>• Noise Compliance Assessment Report</li></ul>
7 April 2022	The application was reallocated to another planner
28 April 2022	Planner carried out a site visit
28 April 2022	Further information was requested for documentation on the calculation of FSR.
5 May 2022	Additional plans were provided to Council to help with the assessment of FSR.

## **Referrals – Internal and External**

### **Manager of Environmental Services Comments**

Council's Manager of Environmental Services was concerned about the possibility of increase in noise on the property as several noise complaints have been forwarded to Council about the existing restaurant. Due to that, the development is just for the extension of small section of the overall restaurant and nothing within the Statement of Environmental Effects explained any changes to number of patrons, staff or change in hours. The noise

issue is considered a compliance issue with the original consent for the restaurant. The original development application for the use as food and drink premises (DA2013/38) has noise attenuation conditions to mitigate noise. Therefore, as the current development is just for building work and no changes are occurring in the operation of the food and drink premises, the conditions of the original development application are valid in noise control.

### **Senior Building Surveyor Comments**

Council's Building Surveyor had the following concerns:

*No construction certificate was issued for DA2013.038 or DA2013.038.01. I have concerns regarding the buildings overall compliance with the NCC. The commercial awning that was approved under the development consent has been enclosed with glass windows without development consent. The increase in floor area potentially increases the requirements for essential fire services for the entire building. A Building Certificate was applied for in 2018, for the restaurant and the unauthorised enclosure of the terrace, The Building Certificate was issued by Eugene Attard, however there is no evidence that the items listed in the BCA report requiring resolution or the development consent conditions were ever met. I strongly recommend that any consent requires that the building into full compliance with the BCA. I will provide triage recommendations and conditions separately.*

From the concerns above the following recommendation was made by Council's Building Surveyor.

*Due to no construction certificate or occupation certificate being issued on the existing unauthorised modifications to the restaurant, I strongly recommend that the applicant provide evidence of BCA compliance in the form of a compliance certificate issued by a Building Surveyor (all classes of buildings) Unrestricted or a BCA report (from the same) demonstrating that BCA compliance can be achieved. This will ensure that the entire building is protected by adequate fire safety measures and that the existing building and any proposed modifications to the existing building will result in a BCA compliant building. The BCA report will also demonstrate the permissible number of patrons/persons recommended within the building at any one time.*

Conditions have been added within the consent to make sure that the addition and the existing restaurant comply with the BCA.

### **Section 4.15 Assessment**

The following is an assessment of the application with regard to Section 4.15 (1) of the Environmental Planning and Assessment Act 1979.

#### **(1) Matters for consideration – general**

***In determining an 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 provision of:**
- (i) any environmental planning instrument,**

## **STATE ENVIRONMENTAL PLANNING POLICY (BIODIVERSITY AND CONSERVATION) 2021**

### **Chapter 2 – Vegetation in non-rural areas**

The intent of this Chapter within the SEPP is related to the protection of the biodiversity values of trees and other vegetation on the site.

The proposed development does not result in the removal or loss of any trees subject to the provision of this SEPP. A small amount of vegetation will be cleared for the construction of the extension but will have minimal impact to the biodiversity value of the site.

The aims and objectives outlined within the SEPP are considered to be satisfied.

## **STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021**

### **Chapter 4 – Remediation of land**

Chapter 4 applies to the land and pursuant to Section 4.15 is a relevant consideration.

A review of the available history for the site gives no indication that the land associated with this development is contaminated. There were no historic uses that would trigger further site investigations.

The objectives outlined within Chapter 4 of the SEPP are considered to be satisfied

### **Local Environmental Plan**

The development site is subject to the Strathfield Local Environmental Plan 2012

### **Part 2 – Permitted or Prohibited Development**

#### **Clause 2.1 – Land Use Zones**

The subject site is zoned B6-Enterprise Corridor and the proposal is a permissible form of development with Council's consent.

### **Part 4 – Principal Development Standards**

Applicable SLEP 2012 Clause	Development Standards	Development Proposal	Compliance/ Comment
4.4 Floor Space Ratio	1.5:1 (4,903,5m <sup>2</sup> )	Existing 0.62:1 (2,037.8m <sup>2</sup> )  Increase 19.2m <sup>2</sup> 0.63:1 (2,057m <sup>2</sup> )	Yes

The FSR has been calculated with information provided by the applicant, which did not provide the first and second floor of the commercial building. A search through Council's records provided no plans showing these two floors either. Thus, the calculation was made by estimating the two floors above by using the ground floor as the base for the calculation. The result is an overestimation of the true FSR. The above shows that the increase is well within the requirements of the development standard. Thus the calculation is considered acceptable and still compliant the development standard.

## **Part 5 – Miscellaneous Provisions**

There are no provisions under this part, which are relevant to the application.

## **Part 6 – Additional Local Provisions**

### **Acid Sulfate Soils**

The subject site is identified as having Class 5 Acid Sulfate Soils and is located within 500m of a Class 4 soils but no excavation will occur below 5 metres Australian Height Datum. Therefore, Development Consent under the provisions of this section is not required and as such an Acid Sulfate Soils Management Plan is not required.

### **Earthworks**

Any excavation for the extension is considered to be minor and will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

### **Essential Services**

Clause 6.4 of the SLEP 2012 requires consideration to be given to the adequacy of essential services available to the subject site. The subject site is located within a well serviced area and features existing water and electricity connection and access to Council's stormwater drainage system. As such, the subject site is considered to be adequately serviced for the purposes of the proposed development

It is considered that the proposed development satisfies the aims, objectives and development standards, where relevant, of the Strathfield LEP 2012.

- (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, and***

There are no draft planning instruments that are applicable to this site.

- (iii)     *any development control plan,***

The proposed development is subject to the provisions of the Strathfield Consolidated Development Control Plan 2005. The following comments are made with respect to the proposal satisfying the objectives and controls contained within the DCP.

## **Part I – Provision of Off-Street Parking Facilities**

As there is no change to the operation of the existing food and drink premises, in regards to patrons, number of employees or hours of operation. The existing parking arrangements are acceptable and no further parking is required.



## Part Q – Urban design controls

### Objectives of Part Q

1.4	Objectives	Satisfactory
1.	<i>To establish built form guidelines that encourage high quality urban design outcomes for all development types.</i>	Yes
2.	<i>To encourage best practice sustainable urban transformation.</i>	Yes
3.	<i>To strengthen the relationship between people, places and buildings.</i>	Yes
4.	<i>To make the public environment safer, attractive and more liveable.</i>	Yes
5.	<i>To create more efficient, sustainable and inspiring places to live that support the social, cultural, economic and environmental well-being of the community.</i>	Yes
6.	<i>To deliver the highest standard of architectural, urban and landscape design.</i>	Yes

The small extension of the existing restaurant will provide better accessibility to the building and restaurant and improve the overall façade to Cosgrove and Liverpool Road. Overall, the proposed extension will improve the visual appearance of the existing building and provide better interface between the public domain and private property.

### PART H – Waste Management (SCDCP 2005)

A Waste Management Plan was not accompanied with the development application. To ensure waste is managed in accordance with the required standards under Part H of the SCDCP 2005, a condition is recommended to ensure the preparation and use of Waste Management Plan.

The proposed development satisfies the relevant objectives and controls the SCDCP 2005.

**(iv) Any matters prescribed by the regulations, that apply to the land to which the development application relates,**

Not applicable.

**(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 is of a scale and character that is in keeping with other developments being constructed in the locality. Accordingly, the proposal is not considered to have a significant impact on the natural and built environment or any negative social or economic impacts on the locality.

**(c)     *the suitability of the site for the development,***

It is considered that the proposed development is of a scale and design that is suitable for the site having regard to its size and shape, its topography, vegetation and relationship to adjoining developments.

**(d)     *any submissions made in accordance with this Act or the regulations,***

In accordance with the provisions of Councils Community Participation Plan, the application was placed on neighbour notification for a period of fourteen (14) days where adjoining property owners were notified in writing of the proposal and invited to comment. No submissions were received.

**(e)     *the public interest.***

The proposed development is of a scale and character that does not conflict with the public interest.

### **Local Infrastructure Contributions**

Section 7.13 of the EP&A Act 1979 relates to the collection of monetary contributions from applicants for use in developing key local infrastructure. This section prescribes in part as follows:

A consent authority may impose a condition under section 7.11 or 7.12 only if it is of a kind allowed by, and is determined in accordance with, a contributions plan (subject to any direction of the Minister under this Division).

#### **STRATHFIELD DIRECT SECTION 7.11 CONTRIBUTIONS PLAN**

Section 7.11 Contributions are applicable to the proposed development in accordance with the Strathfield Direct Development Contributions Plan 2010-2030 as follows:

Provision of Community Facilities	\$0
Provision of Major Open Space	\$2,381.59
Provision of Local Open Space	\$524.39
Provision Roads and traffic Management	\$0
Administration	\$43.70
<b>TOTAL</b>	<b>\$2,949.68</b>

## Conclusion

The application has been assessed having regard to the Heads of Consideration under Section 4.15 (1) of the Environmental Planning and Assessment Act 1979, the provisions of the SLEP 2012 and SCDCP 2005.

Following detailed assessment it is considered that Development Application No. DA2021/324 should be approved subject to conditions.

Signed:



**J W Brown  
Planner**

**Date: 3/06/2022**

- ☒ I confirm that I have determined the abovementioned development application with the delegations assigned to my position;
- ☒ I have reviewed the details of this development application and I also certify that Section 7.11/7.12 Contributions are applicable to this development and have been levied accordingly;

Report and recommendations have been peer reviewed and concurred with.

Signed:



**Patrick Santos  
Senior Planner**

**Date: 7/06/2022**



The following conditions of consent are imposed for the following reasons:

- (a) To ensure compliance with the terms of the relevant Environmental Planning Instrument and/or Building Code of Australia and/or Council's codes, policies and specifications.
- (b) To protect the environment.
- (c) To ensure that there is no unacceptable impact on the amenity of the area, or to private and public property.
- (d) It is in the public interest.

## DEVELOPMENT DETAILS

### 1. Approved Plans & Documentation

The development must be implemented in accordance with the approved plans and supporting documentation listed below which have been endorsed by Council's approved stamp, except where marked up on the plans and/or amended by conditions of this consent:

Description	Reference No.	Date	Revision	Prepared by
Site Analysis	DA02	5/05/2022	03	Design Formation Architecture Studio
Site/Ground Floor	DA03	5/05/2022	03	Design Formation Architecture Studio
Existing Ground Floor Plan	DA04	5/05/2022	03	Design Formation Architecture Studio
Proposed Ground Floor Plan	DA05	5/05/2022	03	Design Formation Architecture Studio
East Elevation	DA06	5/05/2022	03	Design Formation Architecture Studio
North Elevation	DA07	5/5/2022	03	Design Formation Architecture Studio

## SEPRARATE APPROVALS REQUIRED UNDER OTHER LEGISLATION

### 2. Section 138 Roads Act 1993 and Section 68 Local Government Act 1993

Unless otherwise specified by a condition of this consent, this Development Consent does not give any approval to undertake works on public infrastructure.

Separate approval is required under Section 138 of the [Roads Act 1993](#) and/or Section 68 of the [Local Government Act 1993](#) for any of the following activities carried out in, on or over a public road (including the footpath) listed below.

An application is required to be lodged and approved prior to the commencement of any of the following works or activities;

- (a) If any excavation is to be supported by the use of below ground (cable) anchors that are constructed under Council's roadways/footways.
- (b) Swinging or hoisting goods over any part of a public road by means of a lift, crane or the like;
- (c) Establishing a "works zone";
- (d) Placing or storing materials or equipment;
- (e) Placing or storing waste containers or skip bins;
- (f) Stormwater & ancillary to public infrastructure on private land
- (g) Erecting a structure or carrying out work

These separate activity approvals (a)-(g) must be obtained and evidence of the approval provided to the Certifying Authority prior to the issue of the Construction Certificate.

- (h) Pumping water from the site into the public road;
- (i) Constructing a vehicular crossing or footpath;
- (j) Digging up or disturbing the surface of a public road (e.g. Opening the road for the purpose of connections to utility providers);
- (k) Stormwater & ancillary works in the road reserve; and
- (l) Pumping concrete from a public road;

These separate activity approvals must be obtained and evidence of the approval provided to the Certifying Authority prior to the activities commencing.

The relevant Application Forms for these activities can be downloaded from Council's website [www.strathfield.nsw.gov.au](http://www.strathfield.nsw.gov.au). For further information, please contact Council's Customer Service Centre on (02) 9748 9999.

### 3. **Building – Hoarding Application**

Prior to demolition of the buildings on the site, or the commencement of work above ground level, a separate application for the erection of an 'A class' (fence type) or a 'B class' (overhead type) hoarding or 'C type' scaffold, in accordance with the requirements of SafeWork NSW, must be erected along that portion of the footways/roadway where the building is within 3 metres of the street boundary.

An application for this work under Section 68 of the [Local Government Act 1993](#) and the Roads Act 1993 must be submitted for approval to Council.

The following information is to be submitted with a Hoarding Application under Section 68 of the [Local Government Act 1993](#) and Section 138 of the [Roads Act 1993](#):

- (a) A site and location plan of the hoarding with detailed elevation, dimensions, setbacks, heights, entry and exit points to/from the site, vehicle access points, location of public utilities, electrical overhead wire protection, site management plan and builders sheds location; and
- (b) Hoarding plan and details that are certified by an appropriately qualified engineer; and
- (c) The payment to Council of a footpath occupancy fee based on the area of footpath to be occupied and Council's Schedule of Fees and Charges (available at [www.strathfield.nsw.gov.au](http://www.strathfield.nsw.gov.au)) before the commencement of work; and
- (d) A Public Risk Insurance Policy with a minimum cover of \$20 million in relation to the occupation of and works within Council's road reserve, for the full duration of the proposed works, must be obtained a copy provided to Council. The Policy is to note Council as an interested party.

### **PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE**

#### 4. **Fees to be Paid**

The fees listed in the table below must be paid in accordance with the conditions of this consent and Council's adopted Fees and Charges applicable at the time of payment (available at [www.strathfield.nsw.gov.au](http://www.strathfield.nsw.gov.au)).

Payments must be made prior to the issue of the Construction Certificate or prior to the commencement of work (if there is no associated Construction Certificate).

Please contact council prior to the payment of s7.11 or s7.12 Contributions to determine whether the amounts have been indexed from that indicated below in this consent and the form of payment that will be accepted by Council.



A summary of the fees to be paid are listed below:

Fee Type	Fee
<b>GENERAL FEES</b>	
Long Service Levy (to Long Service Corporation)  Or, provide evidence of Payment direct to the Long Service Corporation. See <a href="https://longservice.force.com/bci/s/levy-calculator">https://longservice.force.com/bci/s/levy-calculator</a>	\$708.00
Security Damage Deposit	\$5,250.00
Administration Fee for Damage Deposit	\$130

<b>DEVELOPMENT CONTRIBUTIONS</b>	
Strathfield Section 94 Development Contributions - Roads and Traffic Management	\$0
Strathfield Section 94 Development Contributions – Local Open Space	\$524.39
Strathfield Section 94 Development Contributions – Major Open Space	\$2,381.59
Strathfield Section 94 Development Contributions – Community Facilities	\$0
Strathfield Section 94 Development Contributions - Administration	\$43.70

### General Fees

The fees and charges above are subject to change and are as set out in the version of Council's Schedule of Fees and Charges or as required by other Government Authorities, applicable at the time of payment.

### Development Contributions

The Section 7.11 contribution (s94) is imposed to ensure that the development makes adequate provision for the demand it generates for public amenities and public services within the area pursuant to the Strathfield Direct Development Contributions Plan 2010-2030.

A Section 7.12 contribution (s94A) has been levied on the subject development pursuant to the Strathfield Indirect Development Contributions Plan.

### Indexation

The above contributions will be adjusted at the time of payment to reflect changes in the cost of delivering public amenities and public services, in accordance with the indices provided by the relevant Development Contributions Plan.

### Timing of Payment

The contribution must be paid and receipted by Council:

- Prior to the release of the Construction Certificate.

### Further Information

A copy of the *current Development Contributions Plans* may be inspected at Council's Customer Service Centre at 65 Homebush Road, Strathfield or on Council's website [www.strathfield.nsw.gov.au](http://www.strathfield.nsw.gov.au).

## **5. Damage Deposit – Minor Works**

In order to insure against damage to Council property the following is required:

- (a) Pay Council, before the issue of the Construction Certificate, a damage security deposit for the cost of making good any damage caused to any Council property as a result of the development: \$5,250.
- (b) Pay Council, before the issue of the Construction Certificate, a non-refundable administration fee to enable assessment of any damage and repairs where required: \$130
- (c) Submit to Council, before the commencement of work, a photographic record of the condition of the Council nature strip, footpath and driveway crossing, or any area likely to be affected by the proposal.

At the completion of work Council will inspect the public works, and the damage deposit will be refunded in full upon completion of work where no damage occurs. Otherwise the amount will be either forfeited or partly refunded according to the amount of damage.

## **6. Fire Safety Measures**

Prior to the issue of a construction certificate a list of the existing and proposed essential fire safety measures that are to be provided in relation to the land and any building on the land as a consequence of the building work must accompany an application for a construction certificate, which is required to be submitted to either Council or a Principal Certifier. Such list must also specify the minimum standard of performance for each essential fire safety measure included in the list. The Council or Principal Certifier will then issue a Fire Safety Schedule for the building.

## **7. Structural Details**

Engineer's details prepared by a practising Structural Engineer being used to construct all reinforced concrete work, structural beams, columns & other structural members. The details are to be submitted to the Principal Certifying Authority for approval prior to construction of the specified works.

A copy shall be forwarded to Council where Council is not the Principal Certifier.

8. **Engineer's Certificate**

A certificate from a professional Engineer specialising in structural engineering certifying the structural adequacy of the existing structure, to support all proposed additional superimposed loads shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

9. **Waste Management Plan**

A Waste Management Plan incorporating all requirements in respect to all provisions relating to the construction of the approved development in this consent, as required in Part H of the Strathfield Consolidated Development Control Plan 2005, be submitted to the Certifying Authority prior to the issue of any Construction Certificate.

10. **Site Management Plan**

**Minor Development**

A Site Management Plan detailing all weather access control points, sedimentation controls, waste management plans, fencing, builder's site sheds office, amenities, materials storage and unloading arrangements must be submitted with the application for the Construction Certificate.

11. **Access for Persons with a Disability**

Access and sanitary facilities for persons with disabilities must be provided to the premises/building in accordance with the requirements of the Premises Standards, the Building Code of Australia, and AS 1428.1. Details must be submitted with the Construction Certificate Application for approval.

12. **Commonwealth Disability (Access to Premises) Standard**

The Commonwealth Disability (Access to Premises - Buildings) Standards 2010 (the Premises Standards) applies to all applications (i.e. Construction Certificate). This requires any new building, part of a building and the affected part of the existing building to comply with the Premises Standards, the Building Code of Australia and AS 1428.

13. **Alternative Means of Compliance with the BCA– Clause 62 and 64 EP& A Regulation 2021**

Pursuant to Clause 62 OR 64 of the [Environmental Planning and Assessment Regulation 2021](#), the existing buildings must be brought into **total** conformity with the Building Code of Australia. In this regard, construction plans that demonstrate compliance with the Building Code of Australia must be submitted to the Certifying Authority with the Construction Certificate application for approval.



Alternatively, if it is found that full compliance cannot be achieved due to the age and/or construction of the existing building, and to achieve full compliance will involve major and costly structural alterations having to be carried out to the existing building, a fire assessment report, to determine an alternative and/or partial compliance with the BCA, must be prepared by an appropriately qualified and accredited fire safety engineer, justifying the non-compliances and detailing an alternative method of compliance with the Building Code of Australia. The report must also detail the measures contained in the building to protect persons using the building, to facilitate their egress in the event of fire as well as protection of fire brigade personnel during firefighting operations, and measures to restrict the spread of fire from the building to other buildings nearby.

## **DURING CONSTRUCTION**

### **14. Hours of Construction for Demolition and Building Work**

Any work activity or activity associated with the development consent that requires the use of any tools (including hand tools) or any power operated plant and machinery that creates noise on or adjacent to the site shall not be performed, or permitted to be performed, except between the hours of 7.00 am to 5.00 pm, Monday to Friday and 8:00am to 1:00pm on Saturdays. No work or ancillary activity is permitted on Sundays, or Public Holidays.

Where the development involves the use of jack hammers/rock breakers and the like, or other heavy machinery, such equipment may only be used between the hours of 7:00am to 5:00pm Monday to Friday only.

**Note:** A penalty infringement notice may be issued for any offence.

## **PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE**

### **15. Fire Safety Certificate before Occupation or Use**

In accordance with Clause 41 of the [Environmental Planning and Assessment \(Development Certification and Fire Safety\) Regulation 2021 - NSW Legislation](#), on completion of building works and prior to the issue of an Occupation Certificate, the owner must cause the issue of a Final Fire Safety Certificate in accordance with Clause 83 of the aforesaid Regulation. The Fire Safety Certificate must be in the form or to the effect of Clause 86 of the [Environmental Planning and Assessment \(Development Certification and Fire Safety\) Regulation 2021 - NSW Legislation](#). In addition, in relation to each essential fire or other safety measure implemented in the building or on the land on which the building is situated, such a Certificate is to state:

- (a) That the measure has been assessed by a person (chosen by the owner of the building) who is properly qualified to do so.

A copy of the certificate is to be given by the applicant to the Commissioner of Fire & Rescue NSW and a further copy is to be displayed in a frame and fixed to a wall inside the building's main entrance.

## 16. Slip Resistance

At completion of work an in-situ (on-site) test, in wet and dry conditions, must be carried out on the pedestrian floor surfaces used in the foyers, public corridors/hallways, stairs and ramps as well as the floor surfaces in wet rooms in any commercial/retail/residential units to ascertain the actual slip resistance of such surfaces taking into consideration the effects of grout, the gradients of the surface and changes from one material to another. The in-situ test must be carried out in accordance with AS/NZS 4663:2002. Proof of compliance must be submitted with the application for the Occupation Certificate for approval.

## 17. Maximum Number of Seating

A sign must be displayed in a prominent position in the building stating that the maximum number of seating for persons that are permitted in the building and the outdoor seating area shall not exceed 108 persons.

Note: Approved capacity comes from DA2013/038 and subsequent modifications.

## 18. Maximum Number of Persons

Pursuant to clause 73(2) of the [Environmental Planning and Assessment Regulation 2021 - NSW Legislation](#), a sign must be displayed in a prominent position in the building stating that the maximum number of persons that are permitted in the building. The sign must not exceed the following capacity as specified in the schedule below:

Description of Building Portion "Scheduled Area(s)"	Approved Capacity/Patronage
Private Dining Room	30 persons
General Dining Area	90 Persons
Staff	6 persons
Total	126 persons

The manager on duty shall ensure that the approved capacity as scheduled above is not exceeded and checked by either ticket sale, counting machine, invitation schedule or other approved method. On request by an authorized officer such as the Council, Police or Fire Brigade, the duty manager shall provide evidence of the number of person's occupying each scheduled area.

Note: Approved capacity comes from DA2013/038 and subsequent modifications.

## **OPERATIONAL CONDITIONS (ON-GOING)**

### **19. Annual Fire Safety Statement**

The owner of the building premises must ensure the Council is given an annual fire safety statement in relation to each essential fire safety measure implemented in the building. The annual fire safety statement must be given:

- (a) Within 12 months after the date on which the fire safety certificate was received.
- (b) Subsequent annual fire safety statements are to be given within 12 months after the last such statement was given.
- (c) An annual fire safety statement is to be given in or to the effect of Clause 92 of the [Environmental Planning and Assessment \(Development Certification and Fire Safety\) Regulation 2021 - NSW Legislation](#).
- (d) A copy of the statement is to be given to the Commissioner of Fire & Rescue NSW, and a further copy is to be prominently displayed in the building.

## **OPERATIONAL REQUIREMENTS UNDER THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979**

### **20. Requirement for a Construction Certificate**

The erection of a building must not commence until a Construction Certificate has been issued.

### **21. Appointment of a Principal Certifier**

Building and/or demolition works must not commence until the applicant has:

- (a) appointed a Principal Certifier for the building work; and
- (b) if relevant, advised the PCA that the work will be undertaken as an Owner -Builder.

If the work is not going to be undertaken by an Owner - Builder, the applicant must:

- (c) appoint a Principal Contractor to undertake the building work. If residential building work (within the meaning of the [Home Building Act 1989](#)) is to be undertaken, the Principal Contractor must be a holder of a contractor licence; and
- (d) notify the Principal Certifier of the details of any such appointment; and
- (e) notify the Principal Contractor of any critical stage inspections or other inspections that are required to be carried out in respect of the building work.

**22. Notification of Critical Stage Inspections**

No later than two days before the building work commences, the Principal Certifier must notify:

- (a) the consent authority and the Council (if not the consent authority) of his or her appointment; and
- (b) the applicant of the critical stage inspections and other inspections that are to be carried out with respect to the building work.

**23. Notice of Commencement**

The applicant must give at least two days notice to the Council and the Principal Certifier of their intention to commence the erection or demolition of a building.

**24. Critical Stage Inspections**

The last critical stage inspection must be undertaken by the Principal Certifier. The critical stage inspections required to be carried out vary according to Building Class under the Building Code of Australia and are listed in Clause 61 of the [Environmental Planning and Assessment \(Development Certification and Fire Safety\) Regulation 2021 - NSW Legislation](#).

**25. Notice to be Given Prior to Critical Stage Inspections**

The principal contractor for a building site, or the owner-builder, must notify the Principal Certifier at least 48 hours before each required inspection needs to be carried out.

**26. Occupation Certificate**

A person must not commence occupation or use of the whole or any part of a new building unless an Occupation Certificate has been issued in relation to the building or part.

**PRESCRIBED CONDITIONS**

**27. Clause 70 – Erection of Signs**

Requires the erection of signs on site and outlines the details which are to be included on the sign. The sign must be displayed in a prominent position on site and include the name and contact details of the Principal Certifier and the Principal Contractor.

**28. Clause 69 – Building Code of Australia & Home Building Act 1989**

Requires all building work to be carried out in accordance with the Building Code of Australia. In the case of residential building work to which the [Home Building Act 1989](#) relates, there is a requirement for a contract of insurance to be in force before any work commences.

**29. Clause 72 - Entertainment Venues**

If the development/building is to be used as an Entertainment Venue, Clause 72(2) – (11) of the [Environmental Planning and Assessment Regulation 2021 - NSW Legislation](#) outlines the prescribed conditions which apply to Entertainment Venues.

30. **Clause 73 – Erection of sign for maximum number of persons**

This prescribed condition applies to entertainment venues, function centres, pubs, registered clubs and restaurants. This condition requires the erection of a sign which states the maximum number of persons (as specified in the consent) that are permitted in the building.

---

## **ADVISORY NOTES**

### **1. Review of Determination**

Section 8.2 of the Environmental Planning and Assessment Act confers on an applicant who is dissatisfied with the determination of the application the right to lodge an application with Council for a review of such determination. Any such review must however be completed within 6 months from its determination. Should a review be contemplated sufficient time should be allowed for Council to undertake public notification and other processes involved in the review of the determination.

Note: review provisions do not apply to Complying Development, Designated Development, State Significant Development, Integrated Development or any application determined by the Sydney East Planning Panel or the Land & Environment Court.

### **2. Appeal Rights**

Division 8.3 (Reviews and appeals) Part 8 of the Environmental Planning and Assessment Act 1979 confers on an applicant who is dissatisfied with the determination of the application a right of appeal to the Land and Environment Court of New South Wales.

### **3. Lapsing of Consent**

This consent will lapse unless the development is physically commenced within 5 years from the Date of Operation of this consent, in accordance with Section 4.53 of the Environmental Planning and Assessment Act 1979 as amended.

### **4. Long Service Levy**

The Long Service Corporation administers a scheme which provides a portable long service benefit for eligible workers in the building and construction industry in NSW. All benefits and requirements are determined by the Building and Construction Industry Long Service Payments Act 1986. More information about the scheme and the levy amount you are required to pay to satisfy a condition of your consent can be found at <http://www.longservice.nsw.gov.au>.

The required Long Service Levy payment can be direct to the Long Service Corporation via their web site <https://online.longservice.nsw.gov.au/bci/levy>. Payments can only be processed on-line for the full levy owing and where the value of work is between \$25,000 and \$6,000,000. Payments will be accepted for amounts up to \$21,000, using either MasterCard or Visa.



## **5. Disability Discrimination Act**

This application has been assessed in accordance with the [Environmental Planning and Assessment Act 1979](#). No guarantee is given that the proposal complies with the [Disability Discrimination Act 1992](#). The applicant is responsible to ensure compliance with this and other anti-discrimination legislation. The [Disability Discrimination Act 1992](#) covers disabilities not catered for in the minimum standards called up in the Building Code of Australia which refers to AS1428.1-Design for Access and Mobility.

## **6. Site Safety Fencing**

Site fencing must be erected in accordance with SafeWork Guidelines, to exclude public access to the site throughout the demolition and/or construction work, except in the case of alterations to an occupied dwelling. The fencing must be erected before the commencement of any work and maintained throughout any demolition and construction work.

A demolition licence and/or a high risk work license may be required from SafeWork NSW (see [www.SafeWork.nsw.gov.au](http://www.SafeWork.nsw.gov.au)).