

# AGENDA

## **NORTHERN BEACHES INDEPENDENT ASSESSMENT PANEL MEETING**

Notice is hereby given that a Meeting of the Northern Beaches Independent Assessment Panel will be held in the Council Chambers, Civic Centre, Dee Why on

**WEDNESDAY 13 DECEMBER 2017**

Beginning at **1.00PM** for the purpose of considering and determining matters included in this agenda.



**Peter Robinson**  
**Executive Manager Development Assessment**

**Panel Members**

Peter Biscoe	Chair
Sue Hobley	Environmental Expert
Annelise Tuor	Planner

**Quorum**

A quorum is three Panel members

**Conflict of Interest**

Any Panel Member who has a conflict of Interest must not be present at the site inspection and leave the Chamber during any discussion of the relevant Item and must not take part in any discussion or voting of this Item.

## **Agenda for a Meeting of the Northern Beaches Independent Assessment Panel**

**to be held on Wednesday 13 December 2017**

**in the Council Chambers, Civic Centre, Dee Why**

**Commencing at 1.00PM**

<b>1.0</b>	<b>APOLOGIES &amp; DECLARATIONS OF PECUNIARY INTEREST</b>	
<b>2.0</b>	<b>MINUTES OF PREVIOUS MEETING</b>	
2.1	Minutes of Northern Beaches Independent Assessment Panel held 8 November 2017 .....	<b>1Error! Bookmark not defined.</b>
<b>3.0</b>	<b>NORTHERN BEACHES INDEPENDENT ASSESMENT PANEL REPORTS .....</b>	<b>2</b>
3.1	DA0167/2017 - 4-10 Sydney Road, Manly - Change of use to a child care centre including alterations and additions to the existing building. ....	2
3.2	Mod2017/0223 - 43 Booralie Road, Terrey Hills - Modification of Development Consent DA2016/0523 granted for Demolition works and construction of a service station and signage .....	47
3.3	DA0276/2015 - 36-38 South Steyne, Manly - Section 96(2) application to modify alterations and additions to the existing building and change of use to a restaurant – Part 3 .....	65
3.4	DA0154/2016 - 82-88 The Corso, Manly - S96(1A) modification to modify approved change of use to a café and tree removal – Part 3 .....	97
3.5	N0319/17 – 1a Ocean Place, 54-56 Florida Road & 27-28 Ocean Road, Palm Beach - Demolition of an existing dwelling, construction of a new Community Facility building, 30 space carpark, and consolidation of land .....	127
<b>4.0</b>	<b>REVIEW OF DETERMINATIONS</b>	
	Nil	
<b>5.0</b>	<b>PLANNING PROPOSALS</b>	
	Nil	





## **2.0 MINUTES OF PREVIOUS MEETING**

### **2.1 MINUTES OF NORTHERN BEACHES INDEPENDENT ASSESSMENT PANEL HELD 8 NOVEMBER 2017**

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#### **RECOMMENDATION**

That the Panel note that the Minutes of the Northern Beaches Independent Assessment Panel held 8 November 2017 were adopted by the Chairperson and have been posted on Council's website.

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### 3.0 NORTHERN BEACHES INDEPENDENT ASSESMENT PANEL REPORTS

**ITEM 3.1**                      **DA0167/2017 - 4-10 SYDNEY ROAD, MANLY - CHANGE OF USE  
TO A CHILD CARE CENTRE INCLUDING ALTERATIONS AND  
ADDITIONS TO THE EXISTING BUILDING.**

**REPORTING OFFICER**      **Claire Downie**

**TRIM FILE REF**            **2017/491713**

**ATTACHMENTS**            **1 [↓](#) Assessment Report**  
                                     **2 [↓](#) Site Plan and Elevations**

#### **PURPOSE**

To refer the attached application for determination as required under adopted delegations of Council.

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#### **RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT**

That the Northern Beaches Independent Assessment Panel, as the consent authority, **approve** Application No. DA0167/2017 for Change of use to a child care centre including alterations and additions to the existing building at Lot 1 DP 628937, 4-10 Sydney Road, Manly for the reasons outlined in the Assessment Report.

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## Northern Beaches Independent Assessment Panel Report

2017/463790

<b>DA #</b>	167/2017
<b>Site Address</b>	4-10 Sydney Road, Manly; Lot 1 DP 628937
<b>Proposal</b>	Change of use to a child care centre including alterations and additions to the existing building.
<b>Officer</b>	Claire Downie

### **SUMMARY:**

#### **Application Lodged:**

3 August 2017

#### **Applicant:**

Guardian Early Learning Group Pty Ltd

#### **Owner:**

Thousand Miles Pty Ltd

#### **Estimated Cost:**

\$2,700,000

#### **Zoning:**

MLEP, 2013 – B2 Local Centre

#### **Heritage:**

Town Centre Conservation Area, and Item 232 Commercial and residential building (street façade only)

#### **NSW LEC:**

Not applicable

#### **Notification:**

9-28 August 2017

#### **Submissions received:**

Twenty-two (22) (21 against, 1 in support)

#### **Site Inspected:**

27 September 2017

#### **LEP (4.6) Variations proposed:**

Height of Buildings

#### **DCP Variations proposed:**

Car Parking

#### **Recommendation:**

Approval

### **Subject Property and surrounding area**



B1, B2, B6, IN2 & SP3 Zones

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The subject property is commonly known as 4-10 Sydney Road, Manly and legally known as Lot 1 DP 628937. The site is located on the northern side of Sydney Road. The property is irregular in shape and has a frontage of 18.9m to Sydney Road, an average depth of 36.7m and an overall site area of 695m<sup>2</sup>. The property currently contains a three-storey commercial premises. The property is level.

The adjacent property to the east, at 2 Sydney Road, is developed with a two-storey commercial development. The adjacent property to the west, at 12 Sydney Road, is developed with a three-storey commercial development. Development in this area consists of commercial developments, shop top housing, residential flat buildings and pubs.

#### **Property Burdens and Constraints**

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

#### **Site History/Background**

Recent relevant applications on site include:

DA231/2010: Change of use to a temporary Police Station, associated fitout and signage. Approved under delegation 17 August 2010.

DA123/2016: Alterations and additions to an existing commercial building including partial demolition of level two floor, construction of stairs from first floor to second floor, internal reconfiguration, replacement of shop front, and relocation of amenities – NSW Police. Approved by DAU 6 July 2016

CDC130/2016: Alterations and additions to an existing commercial building. Approved by Private Certifier 8 September 2016.

#### **Description of proposed development**

The proposal seeks consent for the following works:

- Internal alterations at existing ground, second and third floors;
- Change of use to a 110-place child care centre
  - 23 staff;
  - 110-children;
  - Hours of operation: 7.30am-6pm Monday to Friday; and
- Changes to the roof including introduction of a skylight and void, and creation of an outdoor play area with shade roof and acoustic screening.

#### **Internal Referrals**

##### **Engineering Comments**

Council's Engineer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

##### **Building Comments**

Council's Building Surveyor offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

##### **Landscaping Comments**

Council's Landscape Officer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

**Heritage Comments**

Council's Heritage Officer has commented on the proposal as follows:

*"It is recommended to reinstate missing features of the main elevation, including colour scheme, and this should be reflected in amended plans to be submitted to Council for a final assessment. An interpretation plan is to be prepared and submitted to Council's approval, including interpretation of site history on the site, within entrance area and accessible to the general public."*

**Assessing Officer's Comment**

No changes are proposed to the heritage-listed façade. Conditions have been applied requiring the preparation of an interpretation strategy for the approval of Council prior to the issue of the Construction Certificate, and its implementation prior to the issue of the Occupation Certificate.

**Waste Comments**

Council's Waste Officer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

**Environmental Health Comments**

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

**Access Comments**

Council's Access Officer has commented on the proposal as follows:

*"The Disability Access Report submitted with this proposal covers everything. Please ensure that the recommendations in the report are put in conditions, especially, the ones required in the CC stage."*

**Assessing Officer's Comment**

Suitable conditions have been included.

**Traffic Comments**

Council's Traffic Engineer has commented on the proposal as follows:

*"Proposed child care centre could not provide any on-site parking facilities or pick up and drop off facilities due to the nature of the site condition. Developer claimed that neighbouring public car parking facilities around the area and public transport can be used. Hence the parking impact can be negligible."*

*However, child care centre operations highly rely on pick up drop off facilities. It will create ongoing impacts. Therefore the proposed development is not suitable at this location."*

**Assessing Officer's Comment**

The existing use as a commercial development requires 44 parking spaces. No parking spaces currently exist on site. No parking spaces are proposed as part of this development application. The proposed use as a part-commercial and part-childcare centre requires 36 parking spaces for the site, plus pick up and drop off zones. As such, the proposed use results in a reduction in parking requirements. Further, the subject site is located in a pedestrian only area, well-served by bus and ferry public transport services, and is within walking distance (400m) from significant residential development in and around the Manly Town Centre consistent with the objectives of the B2 Local Centre zone, so is acceptable in relation to the drop-off and pick-up of children.

**Flooding Comments**

Council's Flooding Officer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.



### **External Referrals**

#### **AUSGRID**

The proposal was referred to Ausgrid. No comments had been received at the time of writing this report.

### **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*

#### **State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017**

The subject development application was lodged on 3 August 2017, prior to the commencement of the *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017* ('the SEPP') on 1 September 2017. However, Schedule 5 of the SEPP provides savings and transitional provisions for applications under assessment at the time of the commencement of the SEPP. The relevant provisions are as follows:

- (1) *This Policy does not apply to or in respect of the determination of a development application made under Part 4 of the Act, but not finally determined before the commencement of this Policy.*
- (2) *Despite subclause (1), before determining a development application referred to in that subclause for development for the purpose of a centre-based child care facility, the consent authority must take into consideration the regulatory requirements and the National Quality Framework Assessment Checklist set out in Part 4 of the Child Care Planning Guideline, in relation to the proposed development.*

Comment: The applicant has provided satisfactory evidence of compliance with the National Quality Framework Assessment Checklist.

Regulations 107 and 108 of the Education and Care Services National Regulations provides that an education and care service premises must provide for every child being educated and cared for within the facility to have a minimum of 3.25sqm of unencumbered indoor play space and 7sqm of unencumbered outdoor play space, respectively. The proposed development requires 357.5sqm of indoor play space and 770sqm of outdoor play space. The proposed development includes 378sqm of indoor play space and 780sqm of outdoor play space. As such, the concurrence of the regulatory authority is not required in this case.

#### **Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005:**

The subject property is located within the Sydney Harbour Catchment therefore the provisions of this plan apply to this development.

An assessment of the proposal against Clause 2(1) (aims of the SREP), Clause 13 (nominated planning principles) and Clause 21 (relating to biodiversity, ecology and environmental protection) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

### Manly Local Environmental Plan 2013

The subject site is located in Zone B2 Local Centre under the Manly LEP 2013. The proposed development (Centre-based child care facilities) is 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 proposed development retains commercial premises at the ground floor and proposes a child care centre to serve the needs of people who live in and work in the local area.

- To encourage employment opportunities in accessible locations.*

The proposed use provides employment opportunities in a highly accessible area.

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

The subject site is well-serviced by bus and ferry public transport services and is the vicinity of a substantial residential population.

- 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 adequately addresses and mitigates amenity impacts. At the first floor, windows on the northern elevation immediately adjacent to the balconies of the residential flat building to the north are not openable and therefore mitigate noise impacts. Openings further from the balconies are fitted with privacy screening to allow for adequate ventilation, while directing noise away from the balconies. Further, at the second floor level, windows are not openable, as with the first floor, to mitigate noise impacts from the outdoor play space. Finally, the uppermost outdoor play area on the roof is fitted with acoustic privacy screening to the north, in order to mitigate noise impacts to the adjacent residential flat building.

### Part 4 Principal development standards

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

4.	Principal Development Standards	Requirement	Proposed	Complies Yes/No	Comments
4.3	Height of buildings	12m	14m	No	See comment below.
4.4	Floor Space Ratio	3:1 2,085m <sup>2</sup>	2.27:1 1,579.23m <sup>2</sup>	Yes	-

#### 4.6 Exceptions to development standards

##### Height of Building

The following assessment of the variation to Clause 4.3 – Height of buildings development standard and is assessed taking into consideration the questions established in Winten Property Group Limited v North Sydney Council (2001) NSW LEC 46.

Requirement	12m
Proposed	14m
Is the planning control in question a development standard?	Yes
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical
If numerical enter a % variation to requirement	16.7% to development standard 5.2% to existing height of building

The proposal must satisfy the objectives of Clause 4.3 – Height of buildings, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the MLEP 2013. The assessment is detailed as follows:

**Is the planning control in question a development standard?**

The prescribed Height of buildings limitation pursuant to Clause 4.3 of the MLEP 2013 is a development standard.

**What are the underlying objectives of the development standard?**

The underlying objectives of the standard, pursuant to Clause 4.3 – ‘Height of buildings’ of the MELP 2013 are:

(1) The objectives of this clause are as follows:

- (a) *to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*

Comment: Roof forms of existing development within the vicinity of the subject site are generally not visible from the streetscape behind existing parapets. The proposed development retains the existing parapet at the street frontage and sets the additional non-compliant building height generally behind the parapet. As such, the proposed works are consistent with and complementary to the existing streetscape.

- (b) *to control the bulk and scale of buildings,*

Comment: The proposed additional non-compliant building height is limited to the lift shaft and the roof of the uppermost outdoor play area. Given the location of these structures, the additional non-compliances do not unreasonably add to the bulk and scale of the building. Further, the proposed development is compliant with the floor space ratio development standard at Clause 4.4 of the Manly LEP 2013, which controls bulk and scale.

- (c) *to minimise disruption to the following:*

- (i) *views to nearby residential development from public spaces (including the harbour and foreshores),*
- (ii) *views from nearby residential development to public spaces (including the harbour and foreshores),*
- (iii) *views between public spaces (including the harbour and foreshores),*

Comment: The proposed development is acceptable in relation to views, as demonstrated in the section of this report relating to Part 3 of the Manly DCP 2013 – General Principles of Development – Maintenance of Views.

- (d) *to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*

Comment: The proposed development is acceptable in relation to solar access, as demonstrated in the section of this report relating to Part 3 of the Manly DCP 2013 – General Principles of Development – Sunlight Access and Overshadowing.

- (e) *to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

Comment: Not applicable. The subject site is zoned B2 Local Centre.

**What are the underlying objectives of the zone?**

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the B2 Local Centre zone.



The underlying objectives of Zone B2 Local Centre

- *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 proposed development retains commercial premises at the ground floor and proposes a child care centre to serve the needs of people who live in and work in the local area.

- *To encourage employment opportunities in accessible locations.*

The proposed use provides employment opportunities in a highly accessible area.

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

The subject site is well-serviced by bus and ferry public transport services and is the vicinity of a substantial residential population.

- *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 adequately addresses and mitigates amenity impacts. At the first floor, windows on the northern elevation immediately adjacent to the balconies of the residential flat building to the north are not openable and therefore mitigate noise impacts. Openings further from the balconies are fitted with privacy screening to allow for adequate ventilation, while directing noise away from the balconies. Further, at the second floor level, windows are not openable, as with the first floor, to mitigate noise impacts from the outdoor play space. Finally, the uppermost outdoor play area on the roof is fitted with acoustic privacy screening to the north, in order to mitigate noise impacts to the adjacent residential flat building.

**Is the variation to the development standard consistent with the objectives of Clause 4.6 of the MLEP 2013?**

(1) The objectives of this clause are as follows:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development.*

Comment: The proposed development provides for an appropriate level of flexibility in applying the height of buildings development standard.

- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Comment: The proposed development results in a better outcome, as it provides an additional well-serviced child care facility in the local area.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

Comment: The applicant has provided the following written request justifying the contravention of the height of building development standard:

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## "1 INTRODUCTION

This 'Request for Clause 4.6 Variation' has been prepared by Jensen Bowers Group Consultants Pty Ltd ("Jensen Bowers") in support of a Statement of Environmental Effects ("SEE") submitted to Northern Beaches Council on 3 August 2017 on behalf of Guardian Early Learning Group. Development consent is sought to use an existing building located at 4-10 Sydney Road, Manly ("the site") for the purposes of a child care centre ("the proposal").

The application proposes:

- A 110-place child care centre with 23 staff;
- Ground Level: Removal of an existing ground floor tenancy, demolition of the existing stairway, lift and reception areas and alterations to accommodate a new lift, stairs and child care reception area, meeting rooms, staffroom, bicycle parking and amenities;
- First Floor: Change of use of the existing commercial space to accommodate the child care centre including internal changes to the first-floor level to create separate rooms, amenities, laundry facilities, and an outdoor play area of 234.3m<sup>2</sup>;
- Second Floor: Reorganisation of internal walls to create indoor/outdoor play areas and provision of amenities for staff and children and kitchen facilities. The outdoor play space comprises 235.11m<sup>2</sup>; and
- Roof: Creation of a play space at roof level which will involve reconfiguration of the roof form to provide sun/weather protection, acoustic treatments and lift/fire stair access.

This Clause 4.6 has been prepared in accordance with the NSW Department of Planning and Infrastructure (DP&I) guideline Varying Development Standards: A Guide, August 2011, and has incorporated as relevant the latest principles on Clause 4.6, contained in the following judgements:

- Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46;
- Wehbe v Pittwater Council [2007] NSWLEC 827;
- Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009 ('Four2Five No 1');
- Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 ('Four2Five No 2');
- Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 248 ('Four2Five No 3');
- Micaul Holdings Pty Limited v Randwick City Council [2015] NSWLEC 1386; and
- Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7.

The principles that stem from the relevant authorities may be summarised as follows:

- The relevant objectives are those stated in the controls not unidentified underlying objectives at [57] in Four2Five No.1;
- That the sufficient environmental planning grounds have to be particular to the circumstances of the proposed development to the site at [60] in Four2Five No. 1; and
- The five methods of establishing that compliance is unreasonable or unnecessary identified by Preston J in Wehbe remain relevant however you need something more than method 1 in Wehbe to satisfy the unreasonable and unnecessary test in Clause 4.6(3)(a) as that test is now encompassed in Clause 4.6(4)(a)(ii) where consistency with the objectives of the standard is a mandatory precondition; and
- Micaul Holdings Pty Ltd v Randwick City Council [2015] and Randwick City Council v Micaul Holdings Pty Ltd [2016] confirms there are four (4) tests set out in Clause 4.6 which need to be satisfied to allow the exception to the development standard.

## **2 DESCRIPTION OF THE PLANNING INSTRUMENT, DEVELOPMENT STANDARD AND PROPOSED VARIATION**

### **2.1 What is the name of the environmental planning instrument that applies to the land?**

*Manly Local Environmental Plan 2013 ("MLEP 2013").*

### **2.2 What is the zoning of the land?**

*The zoning of the land is B2 Local Centre Zone (B2 zone).*

### **2.3 What are the Objectives of the zone?**

*The objectives of the B2 zone are:*

- *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.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage 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.*

### **2.4 What is the development standard being varied?**

*The development standard being varied is the Height of Buildings.*

### **2.5 Under what Clause is the development standard listed in the environmental planning instrument?**

*The development standard is listed under clause 4.3 of MLEP 2013.*

### **2.6 What are the objectives of the development standard?**

*The objectives of clause 4.3 are as follows:*

*(1) The objectives of this clause are as follows:*

- a) *to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*
- b) *to control the bulk and scale of buildings,*
- c) *to minimise disruption to the following:*
  - i. *views to nearby residential development from public spaces (including the harbour and foreshores),*
  - ii. *views from nearby residential development to public spaces (including the harbour and foreshores),*
  - iii. *views between public spaces (including the harbour and foreshores),*
- d) *to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*
- e) *to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

### **2.7 What is the numeric value of the development standard in the environmental planning instrument?**

*Clause 4.3 establishes a maximum building height of 12m for the site.*

### **2.8 What is the proposed numeric value of the development standard in the development application?**

*The application proposes a maximum height of 13.6m.*

**2.9 What is the percentage variation (between your proposal and the environmental planning instrument)?**

The percentage variation from the Building Height control is 13%.

**3 ASSESSMENT OF THE PROPOSED VARIATION****3.1 Overview**

Clause 4.6 Exceptions to Development Standards establishes the framework for varying development standards applying under a local environmental plan.

Objectives of Clause 4.6 at 4.6(1) of MLEP 2013 are as follows:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Clause 4.6(3)(a) and 4.6(3)(b) require that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard."

Clause 4.6(4)(a)(i) and (ii) require that development consent must not be granted to a development that contravenes a development standard unless the:

- (a) the consent authority is satisfied that:
  - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
  - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and"

Clause 4.6(4)(b) requires that the concurrence of the Secretary be obtained and Clause 4.6(5) requires the Secretary in deciding whether to grant concurrence must consider:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
- (b) the public benefit of maintaining the development standard, and
- (c) any other matters required to be taken into consideration by the Secretary before granting concurrence."

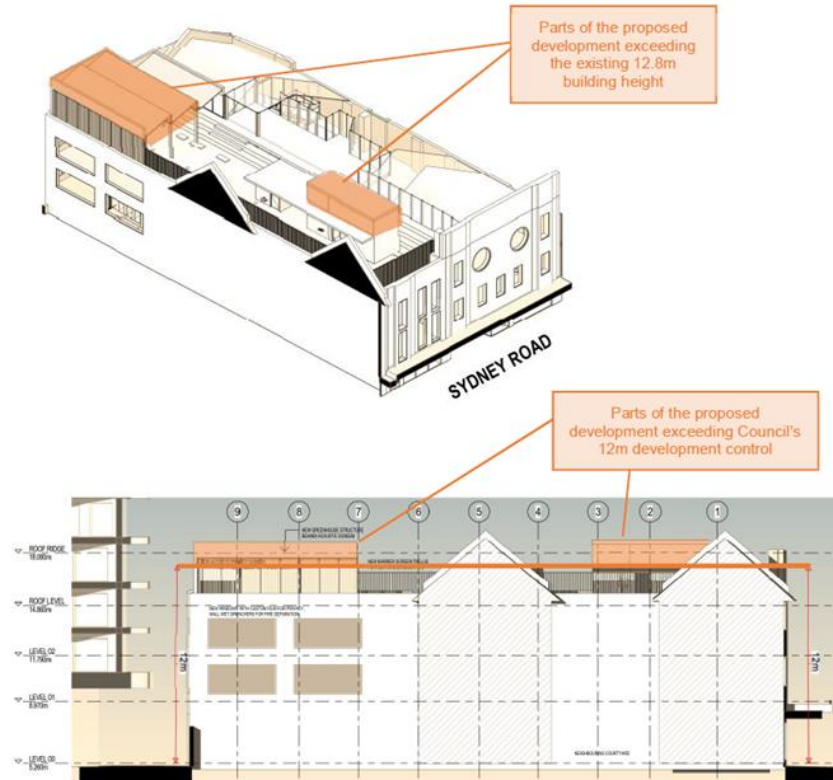
**3.2 Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?**

3.2.1 Is a development which complies with the standard unreasonable or unnecessary in the circumstances of the case?

The circumstances of the proposal are to increase the building height roof top to a maximum height of 13.6m. The additional building height relates to the establishment of a lift overrun/fire stairs and a semi enclosed landscaped greenhouse shelter on part of the rooftop area. In this case the bulk of the existing building will not be altered as the increased building height is setback from the main façade and is contained within the building's curtilage.



The existing heritage listed building (Britannia Theatre) was constructed in 1914 to a height of 12.8m, which exceeds Council's current development standard of 12m. The proposed development increases the existing building height by approximately 0.8m over a very small part of the roof top only. Refer to Figure 1 below.



**Figure 1 - Building Height Exceedances**

The minor increase in the existing building height proposed in this instance is not unreasonable for the following reasons:

- The additional building height results in only a 6% increase to the existing building height (from 12.8m to 13.6m) and a 13% increase in relation to the development standard for a total building area of only 107sqm (55sqm greenhouse area and 52sqm lift overrun/stair/WC area). This equates to approximately only 15% of the entire roofed area.
- The additional height is proposed within the building's curtilage and does not significantly alter the existing bulk or scale of the building
- Given that the lift overrun area is setback from the main façade approximately 4.4m, the additional building height will not be perceptible at street level. There are no changes to the building as viewed from Sydney Road or the wider public domain.
- It will not alter the established low-midrise character of the area nor the heritage significance of the existing building.
- It will facilitate improvement to the visual amenity outcomes for nearby residents given that the existing roofscape will be modernised and improved with landscaping and open areas.

- It will protect the acoustic amenity and privacy of residents both vertically and horizontally through the incorporation of noise barriers, screening and roof treatments.

As detailed in this variation, there are no adverse environmental or amenity impacts that will arise as a result of the variation to the building height standard and the development satisfies the qualitative objective of the relevant control.

The site is located within a highly urbanised and pedestrianised environment well serviced by existing infrastructure and comprises an eclectic mix of land uses including medium to high density residential development and commercial/ retail uses.

The objectives of the Building Height control as stated in its purpose is to control the bulk and scale of development and to help reduce the potential for adverse environmental impacts on adjoining properties and the public domain. The building has been in existence since 1914 and its existing bulk and scale, which is not substantially changing as a result of this application, contributes to defining the existing character of the surrounding area.

In terms of environmental impacts, the proposal will not cause any additional overshadowing, acoustic, privacy or adverse visual impacts as a result of the additional building height on adjoining development or when viewed from within the public domain.

Given the above reasons, it is submitted that it is unreasonable and unnecessary to strictly comply with the standard in the circumstances of this case. The proposal accommodates and meets a significant demand for child care services in Manly and is a suitable and compatible use for the site given the commercial/retail context of the locality.

**3.2.2 Would the underlying objective or purpose be defeated or thwarted if compliance was required?**

The underlying objective or purpose of the standard would not be defeated or thwarted if compliance was required, but the building is existing and the height already exceeds the maximum building height control.

Despite the additional 0.8m height over part of the roof top area, there are no adverse amenity or visual impacts on adjoining properties or on the public domain and accordingly the proposal still meets the underlying objective of the height control.

**3.2.3 Has the development standard been virtually abandoned or destroyed by the Council's own actions in departing from the standard?**

In this case, compliance with the standard has not been virtually abandoned or destroyed by Council's own actions. The original building was approved on the site in 1914 at a time when there was no development standard in respect of building height.

**3.2.4 Is the zoning of the land unreasonable or inappropriate?**

The zoning of the land is appropriate for the site as a child care centre is a permissible use with consent within the B2 Local Centre zone.

**3.3 Are there sufficient environmental planning grounds to justify contravening the development standard?**

Yes, refer to section 3.7 below for details.

**3.4 Is the proposed development in the public interest because it is consistent with the objectives of the particular standard and the objectives for development in the zone?**

**3.4.1 Objectives of the Building Height standard**

The proposal remains consistent with the objectives of the Building Height standard outlined in subclause 4.3(1) despite the non-compliance demonstrated below:

*To provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality*

*The site is situated at the eastern end of Sydney Road within close proximity to The Corso and Manly Beach. This section of Sydney Road is relatively flat and is characterised by a mixture of small commercial and mixed use development. The site fronts Sydney Road and is located adjacent to a three storey mixed use building to the west and a double storey triangular shaped commercial building to the east. A multi-storey short term residential building (8 storeys) is located immediately to the north of the site. Refer to Figure 2 below.*



**Figure 2 - Surrounding streetscape context**

*The streetscape and character of the area is typical of a highly urbanised and pedestrianised environment within the Sydney metropolitan area. The site is located within the visual catchment of a number of heritage buildings including the commercial and residential building at 12 Sydney Street, Hotel Steyne, New Brighton Hotel and groups of commercial buildings along The Corso. The site is also in the transitional area between the lower rise heritage area along The Corso and more intense development with greater building heights (up to 25m) to the north.*

*The proposal involves the establishment at roof level of a greenhouse structure in the northern part of the site that will provide acoustic and privacy screening for the residential neighbours up to a height of approximately 13.6m (0.8m greater than the existing building height). In addition, the proposed roof top works include the establishment of a lift overrun, fire stairs and washroom facilities in the south-western part of the site.*

*The established building height of 12.8m already exceeds Council's development standard. The additional building height of approximately 0.8m (6% increase to the existing building height) over a total area of 107sqm (15% of the whole roofed area) is minor and continues to maintain an appropriate scale and form for the area. The rooftop areas that exceed the development standard will not detract from the heritage character of the building or area. The lift overrun area is located approximately 4.4m from the front elevation and heritage façade of the building with the greenhouse area being located at the rear of the site. The roof top elements will therefore not be readily visible from the streetscape and overall the building will not significantly change from how it appears currently within the streetscape.*

*To control the bulk and scale of buildings*



The 12m height standard is imposed to ensure that the low-mid rise character of the immediate locality is maintained despite the existing building already exceeding this control. The proposal seeks approval for the establishment of outdoor play space for the children at roof level which will involve some reconfiguration of the roof form to provide weather protection and to maximise the acoustic amenity of neighbouring residents.

The additional 0.8m height difference, in the context of the existing building height and the adjoining 8 storey building height, is negligible and does not alter the existing or intended character of the area. The additional height only relates to part of the rooftop area, is setback from the main façade and therefore does not add any perceivable bulk and scale to the existing building.

To minimise disruption to the following:

- i. views to nearby residential development from public spaces (including the harbour and foreshores),
- ii. views from nearby residential development to public spaces (including the harbour and foreshores),
- iii. views between public spaces (including the harbour and foreshores)

The proposal involves the establishment of acoustic screen fencing and a roofed play area in the northern part of the site which is expected to have an impact on the current views obtained from balcony areas of the residential units to the north. This relates primarily to a unit on the fourth storey of the adjacent building as identified in Figure 3 below.



Figure 3 – View Analysis

As shown in Figure 3, the current view from the main affected unit is an unattractive roofed/plant area with exposed air conditioning units. It is understood that there are no scenic or water views captured from this unit given its orientation towards the south and height at this level. In addition, the outlook from this unit is obstructed by nearby building heights which already exceed the 12m development standard.

The proposed greenhouse covered area at the rear of the site has been designed to maximise the amenity outcomes for adjacent residential units. This includes:

- Softening the view by providing a landscape setting i.e. integrated trellis / vertical landscaping



- *Breaking up the rear façade of the building by including additional screened openings*
- *Incorporation of acoustic and privacy screening*

Furthermore, the proposed rooftop spaces exceeding 12m will not be readily visible from public spaces (i.e. the street frontage) given that these areas are setback from the main façade. The covered area associated with the lift overrun and fire stairs is setback approximately 4.4m from the heritage façade. A heritage report has been submitted with the development application that states that the proposal will result in some modification to these views, however, it would not detract from the legibility of the subject site's significance nor the legibility of the heritage items in the vicinity. Therefore, the proposed development would have a neutral impact on the existing views between the nearby heritage items and the subject site.

Accordingly, it is submitted that the proposal achieves the Planning Principle for mixed use development / principles of view sharing as outlined in Tenacity Consulting v Warringah [2004] NSWLEC 140.

*To provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings*

There would be no adverse overshadowing impact on adjoining and nearby properties as a result of the additional building height beyond the 12m development control. The lift overrun/fire stair area is well setback from the front and side boundaries and as such will not cast additional overshadowing outside of the existing boundaries. The adjacent units face south and are therefore not impacted by overshadowing.

Any impact in relation to sunlight penetration is likely to relate only to the balcony areas of the 4<sup>th</sup> storey of the existing 8 storey residential building adjoining the site to the north. In this case however, the additional building height of 1.6m above Council's building height control (0.8m above the height of the existing building) extends along the northern boundary only for a distance of approximately 5.4m being only one third of the length of the rear façade. Given that there is a separation of approximately 3m between the proposed acoustic barrier/covered greenhouse area and the 4th storey balcony areas, it is not expected that the additional building height, beyond the permitted 12m height, will detrimentally impede solar access to these units.

*To ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

*Not applicable – the site is not located in a recreation or environmental protection zone.*

#### 3.4.2 Objectives of the zone

*The objectives of the B2 zone are addressed as follows:*

*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 provides a service which compliments both those who work and live in the locality.*

*To encourage employment opportunities in accessible locations.*

*The proposal provides employment opportunities in a location well accessed by public transport and within proximity to car parking options. The site fronts Sydney Road (shopping mall) and is therefore located within a highly pedestrianised environment.*

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

*The site is well located to Sydney City bus and ferry services, which are readily accessible by foot.*

*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.*

*It has been demonstrated via relevant assessment reports that any potential off site environmental impacts including noise can be effectively managed to acceptable levels.*

### **3.5 Whether contravention of the development standard raises any matter of significance for the State or Regional Environmental Planning?**

*The contravention of the development standard in this case does not raise an issue of State or Regional Planning Significance as it relates to local and contextual conditions. The variation sought is responding to the broad-brush nature of a control applied across an area that supports a variety of built forms that are reflective of the locality's heritage, different height provisions and uses.*

### **3.6 How would strict compliance hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Act?**

*The objects set down in Section 5(a)(i) and (ii) are as follows:*  
*to encourage*

- (i) The proper management, development and conservation of natural and artificial resources, including agricultural land, natural area, forest, mineral, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment.*
- (ii) The promotion and coordination of the orderly and economic use and development of land."*

*Compliance with the standard would not hinder the attainment of the objectives of section 5(a)(i) and (ii) of the Act, which are to encourage development that promotes the social and economic welfare of the community and a better environment, and to promote and coordinate orderly and economic use and development of land.*

*Strict compliance with the development standard would not result in discernible benefits to the amenity of adjoining sites or the public. Further, the proposal satisfies the zone and development standard, and is compatible with the intended scale of development in the locality. The development as proposed is consistent with the provisions of orderly and economic development.*

*Strict compliance with the standard is not required in order to achieve compliance with the objectives.*

### **3.7 Are there sufficient environmental planning grounds to justify contravening the development standard? Give details.**

*Yes. In the circumstances of the case, there are sufficient planning grounds to justify contravening the development standard being:*

- The proposal satisfies the objectives of the B2 zone and the Building Height standard as described in Section 3.4 above;*
- The non-compliance with the standard does not contribute to adverse environmental impacts on neighbouring properties or upon the public domain;*
- The proposal is contained within the curtilage of the existing building and does not impact on the heritage significance of the building; and*

- The site is well suited to a child care centre being well serviced by public transport and nearby to centre activities and recreational facilities. The surrounding area is highly urbanised and the utilisation of the site for a child care centre affords the highest and best use of the land. The proposal provides a service that compliments both those who work and live in the locality and provides employment opportunities in a city centre location. Further, the proposal responds to a community need for child care spaces in the locality without requiring construction of a new building.

### **3.8 Is there public benefit in maintaining the development standard?**

Generally speaking, there is public benefit in maintaining standards. However, in this instance there is no public benefit in maintaining the development standards, instead there is public benefit in maintaining a degree of flexibility. The proposed development results in a better planning outcome for the site and the locality via meeting an established community need and demand for child care placements. This can be achieved without the proposed built form having any adverse amenity or visual impacts.

### **3.9 Is the variation/objection well founded?**

Yes. For reasons outlined in the preceding sections of this submission, the variation to the Building Height control is well founded as compliance with the standard is unreasonable as the development does not contravene the objectives specified within 5(a)(i) and (ii) of the Act and B2 Local Centre zone.

## **4 CONCLUSION**

Whilst the proposed development does not comply with the development standard for Building

Height, per clause 4.3 of MLEP 2013, it nevertheless continues to meet the objectives of the control and the site's zoning.

In addition, Jensen Bowers submits that compliance with the development standard is both unnecessary and unreasonable and there are sufficient environmental grounds to justify contravening the standard, for the reasons stated previously herein. Accordingly, Jensen Bowers submits that this 'Request for Clause 4.6 Variation' is worthy of Council's support."

- (4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

Comment: The applicant's written request has adequately addressed the relevant matters.

- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

Comment: For reasons detailed above, the proposal is considered to be consistent with the objectives of the B2 Local Centre zone in the MLEP 2013.

(b) *the concurrence of the Director-General has been obtained*

Comment: Planning Circular PS 08-003 dated 9 May 2008, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Director-General for the variation to the Height of Buildings Development Standard is assumed.

#### 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 proposed development is consistent with the objectives and provisions of Clause 5.10 of the Manly LEP 2013.

#### 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
6.3	Flood Planning	Yes	Yes	The proposed development is consistent with the objectives and provisions of Clause 6.3 of the Manly LEP 2013.
6.4	Stormwater Management	Yes	Yes	The proposed development is consistent with the objectives and provisions of Clause 6.4 of the Manly LEP 2013.
6.9	Foreshore Scenic Protection Area	Yes	Yes	The proposed development is consistent with the objectives and provisions of Clause 6.9 of the Manly LEP 2013.
6.11	Active street frontages	Yes	Yes	The proposed development is consistent with the objectives and provisions of Clause 6.11 of the Manly LEP 2013.
6.16	Gross floor area in Zone B2	Yes	Yes	A child care centre is a commercial operation. As such, the proposed development is consistent with the objectives and provisions of Clause 6.16 of the Manly LEP 2013.

**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	✓	
Landscaping Design	NA	
Landscape/Tree Preservation	NA	
Sunlight Access and Overshadowing	✓	
Privacy and Security	✓	
Maintenance of Views	✓	
Sustainability	✓	
Accessibility	✓	
Stormwater Management	✓	
Waste Management	✓	
Mechanical Plant Equipment	NA	

#### Comment:

The Landscaping Design and Landscape/Tree Preservation objectives are not relevant in this case, as the subject site is already completely built upon.

#### 3.1 Streetscapes and Townscapes

##### Townscape

*Objective 1) To ensure that all parking provision is designed and sited to respond to and respect the prevailing townscape.*

The subject site currently does not have any parking provision. The proposed development does not introduce any parking.

*Objective 2) To assist in maintaining the character of the locality.*

The proposed development is consistent with the existing character of the locality, in that a business use is retained on site. Further, the proposed development makes no alteration to the existing heritage façade of the building, and minor changes to windows on the rear elevation, so is consistent with the existing streetscape character.

*Objective 3) To recognise the importance of pedestrian movements and townscape design in the strengthening and promotion of retail centres.*

The proposed development makes no amendment to the pedestrian movements surrounding the subject site. The proposed development retains retail uses at the ground floor, in order to achieve pedestrian activation at the street level.

*Objective 4) To minimise negative visual impact, in particular at the arterial road entry points into the Council area and the former Manly Council area, so as to promote townscape qualities.*

The visual impact of the proposed development is minimised, as the proposed works are generally not visible from the street level.

#### 3.2 Heritage Considerations

*Objective 1) To retain and conserve environmental heritage and cultural significance of Manly including:*

- significant fabric, setting, relics and view associated with heritage items and conservation areas;
- the foreshore, including its setting and associated views; and
- potential archaeological sites, places of Aboriginal significance and places of natural significance.

The submitted Statement of Heritage Impact adequately outlines the measures to be employed to retain and conserve the heritage significance of the site. The subject site is not located on the foreshore, and does not contain any potential archaeological sites, places of Aboriginal significance or places of natural significance.

*Objective 2) To ensure any modification to heritage items, potential heritage items or buildings within conservation areas is of an appropriate design that does not adversely impact on the significance of the item or the locality.*

The proposed works are of a form and design so as to appropriately alter the building, without unreasonably impacting upon the item or the locality.

*Objective 3) To ensure that development in the vicinity of heritage items, potential heritage item and/ or conservation areas, is of an appropriate form and design so as not to detract from the significance of those items.*

The proposed works are of a form and design so as to appropriately alter the building, without detracting from its significance.

*Objective 4) To provide infrastructure that is visually compatible with surrounding character and locality/visual context with particular regard to heritage buildings/areas and cultural icons.*

The proposed works will result in the same visual impact and compatibility with the locality as the existing development.

*Objective 5) To integrate heritage management and conservation into the planning development process including incentives for good heritage management, adaptive reuse, sustainability and innovative approaches to heritage conservation.*

The heritage significance of the site has been considered throughout the planning process for this application. The proposed development adequately conserves the heritage value of the subject site and surrounds.

#### 3.4.1 Sunlight Access and Overshadowing

*Objective 1) To provide equitable access to light and sunshine.*

The proposed development provides equitable access to light and sunshine in that the structures proposed (lift overrun and shade roof to the outdoor play area) will only result in additional overshadowing to the adjacent car parking area and roof to the west, and the lane to the east.

*Objective 2) To allow adequate sunlight to penetrate:*

- private open spaces within the development site; and
- private open spaces and windows to the living spaces/ habitable rooms of both the development and the adjoining properties.

The proposal locates the outdoor play spaces for the development towards the north, thereby allowing adequate sunlight access to these spaces. The only private open spaces adjacent to the subject site are located to the north, so are not impacted upon by the proposal.

*Objective 3) To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by:*

- encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and
- maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.

The proposed development retains the existing facades built to the property boundaries, thereby retaining a similar bulk and scale to the existing building. As such, the proposed development would not result in significantly greater overshadowing to adjacent properties than the current building. The development makes best use of solar access by locating the outdoor play spaces to the north of the development.

### 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 proposed development is designed to retain the privacy of adjacent properties, while maintaining adequate access to sunlight and air. The proposed development includes additional window openings to the northern elevation (adjacent to a residential flat building), but includes visual and acoustic privacy screening to these openings. At the first floor, windows on the northern elevation immediately adjacent to the balconies of the residential flat building to the north are not openable and therefore mitigate noise impacts. Openings further from the balconies are fitted with privacy screening to allow for adequate ventilation, while directing noise and views away from the nearby residential flat building. Further, at the second floor level, windows are not openable, as with the first floor, to mitigate noise impacts from the outdoor play space. Finally, the uppermost outdoor play area on the roof is fitted with acoustic privacy screening to the north, in order to mitigate noise impacts to the adjacent residential flat building. As such, the loss of privacy (both acoustic and visual) is minimised.

*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 proposed development provides adequate privacy without compromising access to light and air. Sufficient acoustic and visual privacy screening is provided to the northern elevations of the outdoor play spaces, in order to mitigate overlooking and noise impacts. The outlook and views from habitable rooms and the indoor and outdoor play spaces are balanced in that overlooking is minimised, but views from the subject site are still available.

*Objective 3) To encourage awareness of neighbourhood security.*

The proposed development retains existing window openings at the southern elevation and introduces new window openings at the northern elevation. As such, the proposed development encourages awareness of neighbourhood security through passive surveillance.

### 3.4.3 Maintenance of Views

*Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.*

The proposed development does not unreasonably impact upon views to, from or across the subject site or adjacent sites.

*Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).*

The proposed development does not unreasonably impact upon views from adjacent and nearby development, and to and from public spaces, including to icons, landmarks and buildings.

*Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.*

The proposed development does not result in unreasonable view creep.

### 3.5 Sustainability

*Objective 1) To ensure the principles of ecologically sustainable development are taken into consideration within a consistent and integrated planning framework that achieves environmental, economic and social sustainability in the short, medium and long term.*

The proposed development ensures the principles of ecologically sustainable development are taken into consideration during construction and ongoing use of the premises through the adherence to the submitted waste management plan. This aims to achieve satisfactory environmental, economic and social sustainability.

*Objective 2) To encourage the retention and adaptation of existing dwellings including a preference for adaptive reuse of buildings rather than total demolition. Where retention and adaption is not possible, Council encourages the use of building materials and techniques that are energy efficient, non-harmful and environmentally sustainable.*

The proposal requires internal reconfiguration. Where possible, the proposal incorporates the reuse and recycling of building waste during construction in order to achieve greater energy efficiency and encourage environmental sustainability.

*Objective 3) To minimise waste generated by development and embodied in the building materials and processes through demolition.*

The proposed development demonstrates responsible waste procedures in the waste management plan, which incorporates reuse and recycling where possible during construction and ongoing use of the premises.

*Objective 4) To encourage the use of recycled materials in landscape construction works.*  
As above at Objective 3.

*Objective 5) To encourage the establishment of vegetable gardens and the planting of fruit trees.*  
Not applicable. The subject site is currently wholly built upon.

*Objective 6) To encourage energy efficient building design, construction and practices, that reduce energy consumption (primarily for heating and cooling), reduce the use of non-renewable fossil fuels, minimise air pollution, greenhouse gas emissions and reduce energy bills.*

As above at Objective 3. Further, the proposed development maximises solar access by locating the outdoor play areas to the north, thereby reducing the need for heating and lighting.

*Objective 7) To require that residential site planning and building design optimise solar access to land and buildings.*

The proposed development optimises solar access to the building by locating the outdoor play spaces to the north.

*Objective 8) To site and design development to optimise energy conservation and sustainability in accordance with BASIX legislation and encourage development to exceed requirement particularly to ensure energy efficient use of energy for internal heating and cooling.*

Not applicable.

*Objective 9) To site and design development to optimise energy conservation (in accordance with the energy hierarchy) and sustainability to which BASIX does not apply.*

The proposed development maximises solar access by locating the outdoor play areas to the north, thereby reducing the need for heating and lighting.



*Objective 10) To ensure non-residential development involving a gross total floor area of greater than 500 sqm set and meet criteria for energy efficiency/conservation through an Energy Performance Report.*

As required by conditions of consent, the proposed development is to demonstrate its compliance with energy efficiency and conservation criteria through an Energy Performance Report.

*Objective 11) To ensure non-residential development complies with the Building Code of Australia energy efficiency provisions.*

As required by the prescribed conditions of consent, the proposed development must comply with all relevant Building Code of Australia provisions.

### 3.6 Accessibility

*Objective 1) To ensure equitable access within all new developments and ensure that any refurbishments to existing buildings provide improved levels of access and facilities for people with disabilities.*

As detailed in the submitted Disability Access Report, the proposed development ensures equitable access and provides improved levels of access and facilities for people with disabilities.

*Objective 2) To provide a reasonable proportion of residential units that should be designed to be adaptable and easily modified to promote 'ageing in place' and for people with disabilities.*

Not applicable.

*Objective 3) To highlight consideration of access issues early in the development design process.*

Access issues have been adequately considered during the assessment process.

*Objective 4) To continue improving understanding and awareness of access issues for people with disabilities through a commitment to implementation of best practice.*

As detailed in the comments provided by Council's Access Officer, the proposed development is compliant with all access requirements and therefore provides a commitment to best practice in relation to access.

*Objective 5) To ensure that the public domain, including public domain in new developments provides connectivity, legibility, flexibility and consistency to allow for equitable and safe access for all people.*

The proposed development ensures that the public domain provides connectivity, legibility and consistency, to allow for equitable and safe access for all people.

### 3.7 Stormwater Management

*Objective 1) To manage urban stormwater within its natural catchments and within the development site without degrading water quality of the catchments or cause erosion and sedimentation.*

The proposed development demonstrates that all storm water will be collected and disposed of via the existing Council drainage infrastructure.

*Objective 2) To manage construction sites to prevent environmental impacts from stormwater and protect downstream properties from flooding and stormwater inundation.*

The Stormwater Management Plan demonstrates satisfactory measures to prevent environmental impacts from stormwater and protect downstream properties from flooding and stormwater inundation.

*Objective 3) To promote ground infiltration of stormwater where there will be no negative (environmental) impacts and to encourage on-site stormwater detention, collection and recycling.*

The proposed development is currently wholly built upon, containing no pervious land. The submitted Stormwater Management Plan demonstrates adequate collection measures.

*Objective 4) To make adequate arrangements for the ongoing maintenance of stormwater facilities.*

The Stormwater Management Plans demonstrate adequate arrangements for the ongoing maintenance of storm water facilities.

### 3.8 Waste Management

*Objective 1) Minimise overall environmental impacts of waste in accordance with regional waste plans and Federal and State Government waste minimisation targets.*

The submitted waste management plan demonstrates appropriate waste minimisation measures in accordance with waste minimisation targets.

*Objective 2) Encourage environmentally protective waste management practices on construction and demolition sites which include:*

- *sorting of waste into appropriate receptors (source separation, reuse and recycling) and ensure appropriate storage and collection of waste and to promote quality design of waste facilities;*
- *provision of design standards that complement waste collection and management services offered by Council and private service providers;*
- *building designs and demolition and construction management techniques which maximises avoidance, reuse and recycling of building materials and which will minimise disposal of waste to landfill; and*
- *appropriately designed waste and recycling receptors are located so as to avoid impact upon surrounding and adjoining neighbours and enclosed in a screened off area.*

The proposed development encourages environmentally protective waste management practices, with the inclusion of waste sorting, reuse and recycling where possible, thereby minimising disposal of waste to landfill. The proposed waste management plan demonstrates design standards that are complementary to the relevant waste collection and management services.

*Objective 3) Encourage the ongoing minimisation and management of waste handling in the future use of premises.*

The submitted waste management plan demonstrates appropriate waste minimisation, management and handling measures.

*Objective 4) Provide advice to intending applicants on:*

- *matters to be considered when assessing the waste implications of DAs;*
- *sound waste management practices and requirements for the preparation of waste management plans; and*
- *the reduction and handling of waste during the demolition and construction phase.*

The proposal demonstrates sound waste management practices within its waste management plan, detailing measures used to reduce and appropriately handle waste during demolition and construction.

### 3.9 Mechanical Plant Equipment

No objectives to consider as part of this assessment. However, the proposed development meets the relevant controls under Clause 3.9 of the MDCP 2013.

#### Part 4 - Development Controls

Site Area: 695m <sup>2</sup>	Permitted/ Required	Proposed	Complies Yes/No
General Location Considerations	a) Sites located within busier non-residential area require additional considerations of the safety and amenity of the children.	The subject site is located in a relatively busy part of Manly. However, the subject site is located on and access via the pedestrianised portion of Sydney Road. As such, the location of the site does not pose any unreasonable safety risks.	Yes
	b) Preference will be given to sites which form part of or adjacent to established churches, primary schools or community facilities, provided that it can satisfy the traffic and parking requirements.	The subject site is currently used as a three-storey commercial development. The proposed development is acceptable in relation to parking for the reasons detailed below.	Yes
	c) Sites adjoining fewer residential properties will reduce the negative amenity impact on the neighbourhood in terms of noise and loss of privacy. Semi-detached dwellings are generally not preferred. Units within residential flat buildings are not suitable for child care centres.	The subject site and adjoining sites to the east and west do not contain any residential dwellings. The nearest residential dwellings are contained within the residential flat building to the north across a laneway. This is detailed in the section of this report relating to Part 3 of the Manly DCP 2013 – General Principles of Development – Privacy and Security.	Yes
	d) Site should be located close to public transport services due to the potential for lowering the demand onsite parking and reducing traffic congestion.	The subject site is located within walking distance of ferry and bus services.	Yes
	e) Sites should be flat or gently sloping from the road.	The subject site is level.	Yes
	f) Where possible, the child care centre should have a north to northeast aspect to allow maximum solar access.	The subject site has a north-south orientation.	Yes
	g) Sites on arterial roads or at busy intersections should be avoided.	The subject site is located on the pedestrianised portion of Sydney Road.	Yes.
Car Parking and Access	a) Pedestrian access must be segregated from vehicular access with clearly defined paths to and from the centre.	The subject site does not contain vehicular access. No vehicular access is proposed.	Yes
	b) A child care centre in a cul-de-sac is not preferred.	The subject site is not located on a cul-de-sac.	Yes

Site Area: 695m <sup>2</sup>	Permitted/ Required	Proposed	Complies Yes/No
	c) 1 parking space per employee, plus pick-up and drop-off points.	The proposed development does not include any parking.	No. See comment below.
Built Form and Building Appearance	a) Child care centres must comply with the same standards for built form controls as other development permissible in the LEP zone.	See Development Controls (Manly Town Centre) below.	Yes
	b) The design and layout of the child care centres must respond to the character of the existing neighbourhood and streetscape. Existing residential character of the locality must be maintained through the use of appropriate finishes material, landscaping, fencing and plantings.	The proposed development is consistent with and complementary to the existing built form and character of the area. The physical works proposed are minor in relation to the appearance of the building on the streetscape. The subject site is not within a residential setting.	Yes
	c) Fences of child care centres should be designed to minimise noise transmission and loss of privacy for adjoining area, and complement the predominated streetscape.	The child care centre is predominantly contained within the existing building. As such, no external fencing is provided.	Yes
Indoor Play Areas	a) Appropriate indoor space area should be provided within the child care centre.	The proposed development provides two outdoor play areas and one indoor area with fixed open windows (screened for privacy and safety).	Yes
	b) Layout of the building, especially the playroom areas, should be designed to allow easy supervision of children.	The layout of the indoor play area allows for easy supervision of children.	Yes
	c) Building layout should be designed to minimise the need to access function areas via children's play rooms as this reduces the overall size, safety and functionality of the play space.	Function areas of the child care centre can be accessed without passing through the indoor play area.	Yes
	d) The layout must be appropriately designed to minimise the noise impact to adjoining properties. Noise generating areas such as playgrounds or playrooms should be oriented away from neighbouring bedrooms.	The indoor play area is located to the north, next to the adjacent residential flat building. However, the fixed open windows are screened for acoustic privacy.	Yes

Site Area: 695m <sup>2</sup>	Permitted/ Required	Proposed	Complies Yes/No
	e) Double glazing and/or appropriate location of windows should be used where necessary to reduce noise impact from the centre.	The acoustic report provided with the application demonstrates compliance with the relevant noise criteria.	Yes
	f) Direct overlooking of adjoining internal living areas, bedrooms and private open spaces should be minimised through appropriate building layout and suitably located pathways, windows and doors.	Play areas are adequately screened to prevent overlooking.	Yes
Outdoor Play Areas	g) Appropriate outdoor play area should be provided within the child care centre.	The proposed development provides two outdoor play areas and one indoor area with fixed open windows (screened for privacy and safety).	Yes
	h) Outdoor play areas should have a north or north east orientation to allow maximum solar access.	The two outdoor play areas are orientated towards the north and north east.	Yes
	i) Outdoor play area should not be occupied by any motor vehicles or used for any other purposes during operating hours.	The outdoor play areas are not occupied by any motor vehicles or used for any other purposes during operating hours.	Yes
	j) The layout of the outdoor play area should be designed to allow constant supervision and access to children.	The outdoor play areas allow for constant supervision and access to children.	Yes
	k) Outdoor play areas should be located away from neighbouring properties to minimise noise impact to adjoining properties.	The outdoor play area at Level 2 is set away from the adjacent residential flat building. The outdoor play area on the roof provides acoustic privacy screening to the adjacent residential flat building.	Yes
	l) Appropriate hedging should be planted along the fence lines to create a playground buffer between adjoining properties.	As the child care centre is generally contained within the existing building, no external fencing is provided.	Yes
	m) Appropriate fencing should be provided to segregate outdoor play area and other activities of the child care centre.	Outdoor play areas and general areas within the childcare centre are distinguished with appropriate walls and doors.	Yes



**Comment:**

**4.4.6.2 Car Parking and Access**

Clause 4.4.6.2 and Schedule 3 of the Manly DCP 2013 requires that the subject site provide one parking space for each staff member and designated pick up and drop off zones. The proposed development does not propose any parking. As Clause 4.4.6.2 does not have related objectives, the general Car parking, Vehicular Access and Loading objectives at Clause 4.2.4 have been addressed in relation to the non-compliance as follows:

*Objective 1) To ensure there is adequate provisions for car parking access and loading in future development and redevelopment in all business zones.*

The existing commercial development would require 44 parking spaces, as per the rates at Schedule 3 of the Manly DCP 2013. The subject site does not currently contain any parking. The proposed development in combination with the existing commercial floor space to be retained would require 36 parking spaces (23 spaces for child care centre staff and 13 spaces for existing retained commercial floor space), plus pick up and drop off zones. As such, the proposed development presents a reduction in the parking requirements for the subject site. Further, the subject site is well-served by public transport (bus and ferry). As such, the proposed use results in a reduction in parking requirements. Further, the subject site is located in a pedestrian only area, well-served by bus and ferry public transport services, and is within walking distance (400m) from significant residential development in and around the Manly Town Centre, consistent with the objectives of the B2 Local Centre zone.

*Objective 2) To minimise conflicts between pedestrian and vehicular movement systems within the business areas.*

The subject site is located on the pedestrianised portion of Sydney Road. As such, conflicts between vehicles and pedestrians accessing the site are minimised.

**Hours of Operation**

The proposed hours of operation of the child care centre are 7.30am to 6pm Monday to Friday. The proposed hours of operation are generally consistent with other childcare centres in the locality and are therefore acceptable.

**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 proposed development is consistent with the Special Character Areas and Sites objectives and provisions in relation to the Town Centre Conservation Area and the Foreshore Scenic Protection Area. The proposed development shall have minimal impact on the heritage significance and visual aesthetic amenity of the 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 planning agreement has been entered into in relation to the proposed development.

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

The relevant prescribed regulations contained within the *Environmental Planning and Assessment Regulations 2000* are addressed through the imposition of suitable conditions.

**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 will not result in any unreasonable impact on the natural and built environments or any unreasonable social and economic impacts in the locality.

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

The proposed development 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 twenty-two submissions (twenty-one against and one in support) received from the following objectors and supporters:

Submission and Address	Main Issues raised in the submission
1. F. M. de Morentin 508/9-15 Central Avenue, Manly	<ul style="list-style-type: none"> <li>Inadequate outdoor play space</li> <li>Noise impacts</li> <li>Pedestrian and vehicular safety concerns</li> </ul>
2. J. O'Shea 43-45 North Steyne, Manly	<ul style="list-style-type: none"> <li>Pedestrian and vehicular safety concerns</li> <li>Noise impacts</li> <li>Lack of parking, and pick up and drop off zones</li> </ul>
3. J. Stanley 205B/9-15 Central Avenue, Manly	<ul style="list-style-type: none"> <li>Visual privacy impacts from proposed new windows</li> </ul>
4. D. Ward Hotel Steyne	<ul style="list-style-type: none"> <li>Lack of parking, and pick up and drop off zones</li> </ul>
5. M. O'Donnell, on behalf of: Owners Corporation SP61139 9-15 Central Avenue, Manly	<ul style="list-style-type: none"> <li>Traffic and parking impacts</li> <li>Noise impacts</li> <li>Visual privacy impacts</li> <li>Inappropriate location</li> <li>Inconvenience during construction phase</li> </ul>
6. G. Brown 806/9-15 Central Avenue, Manly	<ul style="list-style-type: none"> <li>Traffic and parking impacts</li> <li>Noise impacts</li> <li>Visual privacy impacts</li> <li>Inappropriate location</li> <li>Inconvenience during construction phase</li> </ul>
7. M. & A. Layton 9/43-45 North Steyne, Manly	<ul style="list-style-type: none"> <li>Traffic and parking impacts</li> <li>Noise impacts</li> </ul>
8. D. & F Glading 507/9-15 Central Avenue	<ul style="list-style-type: none"> <li>Traffic and parking impacts</li> <li>Pedestrian and vehicular safety concerns</li> </ul>
9. R. Stone 704/9-15 Central Avenue, Manly	<ul style="list-style-type: none"> <li>Traffic and parking impacts</li> <li>Pedestrian and vehicular safety concerns</li> <li>Noise impacts</li> <li>Inappropriate location</li> <li>Inconvenience during construction phase</li> </ul>
10. S. Ferrara 4/43-45 Central Avenue, Manly	<ul style="list-style-type: none"> <li>Traffic and parking impacts</li> <li>Noise impacts</li> </ul>
11. A. & L. Ferrara	<ul style="list-style-type: none"> <li>Traffic and parking impacts</li> </ul>
12. S. & G. Stow 505/9-15 Central Avenue, Manly	<ul style="list-style-type: none"> <li>Noise impacts</li> <li>Visual privacy impacts</li> </ul>

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	<ul style="list-style-type: none"> <li>• Traffic and parking impacts</li> <li>• Health impacts for children in the centre</li> <li>• Pedestrian and vehicular safety concerns</li> <li>• Inappropriate location</li> <li>• Impacts to heritage façade</li> <li>• Inconvenience during construction phase</li> </ul>
13. P. & D. Lever 2/43-45 North Steyne, Manly	<ul style="list-style-type: none"> <li>• Traffic and parking impacts</li> <li>• Pedestrian and vehicular safety concerns</li> <li>• Noise impacts</li> <li>• Health impacts for children in the centre</li> <li>• Inappropriate location</li> <li>• Inconvenience during construction phase</li> </ul>
14. P. & Z. Dybac 509/ 9-15 Central Avenue, Manly	<ul style="list-style-type: none"> <li>• Lack of parking, and pick up and drop off zones</li> <li>• Inappropriate location</li> <li>• Noise impacts</li> </ul>
15. R. Wallace, on behalf of: Owners Corporation SP 69470 43-45 North Steyne, Manly	<ul style="list-style-type: none"> <li>• Traffic and parking impacts</li> <li>• Visual privacy impacts</li> <li>• Noise impacts</li> </ul>
16. E. Wallace 11/43-45 North Steyne, Manly	<ul style="list-style-type: none"> <li>• Traffic and parking impacts</li> <li>• Inappropriate location</li> <li>• Visual privacy impacts</li> <li>• Noise impacts</li> </ul>
17. E. & P. Martinez de Morentin 703/9-15 Central Avenue, Manly	<ul style="list-style-type: none"> <li>• Traffic and parking impacts</li> <li>• Visual privacy impacts</li> <li>• Noise impacts</li> <li>• Inappropriate location</li> <li>• Inconvenience during construction phase</li> </ul>
18. V. & D. Westacott	<ul style="list-style-type: none"> <li>• Traffic and parking impacts</li> <li>• Noise impacts</li> </ul>
19. C. Goodmanson 705/9-15 Central Avenue, Manly	<ul style="list-style-type: none"> <li>• Traffic and parking impacts</li> <li>• Pedestrian and vehicular safety concerns</li> <li>• Noise impacts</li> <li>• Health impacts for children in the centre</li> <li>• Inappropriate location</li> <li>• Inconvenience during construction phase</li> </ul>
20. P. Kelly 3/43-45 North Steyne, Manly	<ul style="list-style-type: none"> <li>• Traffic and parking impacts</li> <li>• Visual privacy impacts</li> <li>• Noise impacts</li> </ul>
21. M. Lindsay 605/9-15 Central Avenue, Manly	<ul style="list-style-type: none"> <li>• Noise impacts</li> <li>• Visual privacy impacts</li> <li>• Traffic and parking impacts</li> <li>• Health impacts for children in the centre</li> <li>• Inappropriate location</li> <li>• Impacts to heritage façade</li> </ul>
22. L. Moore Address Unknown	<ul style="list-style-type: none"> <li>• The centre is well-designed</li> <li>• The location is appropriate, being the Manly CBD, close to schools, shops, the beach</li> <li>• The centre will have little impact on parking and traffic</li> <li>• The centre will promote the local economy</li> </ul>

**Comment**Inadequate Outdoor Play Space

The proposed development includes 536.61sqm of outdoor play space, and another 234.3sqm of indoor/outdoor play space. The proposed development satisfies the requirements of the Manly DCP 2013 in relation to indoor and outdoor play spaces for child care centres.

Noise / Acoustic Privacy Impacts

The proposed development is acceptable in relation to noise and acoustic privacy for the reasons detailed in the section of this report relating to Part 3 of the Manly DCP 2013 – General Principles of Development – Privacy and Security. Further, adequate conditions have been applied to the consent to ensure the proposed development does not result in 'offensive noise' as defined by the Protection of the Environment Operations Act 1997.

Visual Privacy Impacts

The proposed development is acceptable in relation to visual privacy for the reasons detailed in the section of this report relating to Part 3 of the Manly DCP 2013 – General Principles of Development – Privacy and Security.

Pedestrian and Vehicular Safety / Traffic Impacts / Construction Traffic

The existing use as a commercial development requires 44 parking spaces. No parking spaces currently exist on site. No parking spaces are proposed as part of this development application. The proposed use as a part-commercial and part-childcare centre requires 36 parking spaces for the site, plus pick up and drop of zones. As such, the proposed use results in a reduction in parking requirements. Further, the subject site is well-served by bus and ferry public transport services, consistent with the objectives of the B2 Local Centre zone, so is acceptable in relation to the drop-off and pick-up of children. As such, the proposed use results in a reduction in parking requirements. Further, the subject site is located in a pedestrian only area, well-served by bus and ferry public transport services, and is within walking distance (400m) from significant residential development in and around the Manly Town Centre, consistent with the B2 Local Centre zone objectives.

Location and Health Impacts

The subject site is located in the B2 Local Centre zone, which permits child care centres, with consent of Council. The subject site is also well-served by public transport (bus and ferry). The hours of operation for the childcare centre are 7.30am to 6pm Monday to Friday. As such, children will not be accessing the centre at times where antisocial behaviour is a risk. Further, Council's Environmental Health Officer has reviewed the application and raised no objections to the location of the childcare centre, including its proximity to pubs and restaurants.

Heritage Facade

The proposed development does not propose any alteration to the existing heritage façade of the building.

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

The proposed development is in 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 proposed development results in a reduction in commercial floor space and parking requirements on the site. As such, no contributions are payable in relation to this development application.

**CONCLUSION:**

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

**RECOMMENDATION**

In consideration of the written request made by the applicant pursuant to Clause 4.6 of the Manly Local Environmental Plan 2013, the consent authority is satisfied that compliance with the development standard contained in Clause 4.3 (Height of Buildings) of the Manly Local Environmental Plan 2013 is unreasonable or unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify contravening the development standard.

That Development Application No. 167/2017 for change of use to a child care centre including alterations and additions to the existing building at 4-10 Sydney Road, Manly be **Approved** subject to the following conditions:-

**GENERAL CONDITIONS**

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;

*Drawings affixed with Council's 'Development Consent' stamp relating to Development Consent No. 167/2017:*

Plan No. / Title	Issue/ Revision & Date	Prepared By
AR-A-07 Site Plan – Proposed	Issue B 31 May 2017	BVN
AR-B-01 Ground Floor and Level 1 Floor Plan	Issue E 31 May 2017	BVN
AR-B-02 Level 2 and Roof Plan	Issue E 31 May 2017	BVN
AR-C-02 Proposed Elevations	Issue B 31 May 2017	BVN
AR-D-01 Sections Sheet 01	Issue D 31 May 2017	BVN
AR-D-02 Sections Sheet 02	Issue C 31 May 2017	BVN
2017.0504DA1-1	Issue A 18 May 2017	TGS Landscape Architects
2017.0504DA1-2	Issue A 18 May 2017	TGS Landscape Architects
2017.0504DA1-3	Issue A 18 May 2017	TGS Landscape Architects

*Reference Documentation relating to Development Consent No. 167/2017:*

- Acoustic Report prepared by Wood & Grieve Engineers dated 31 May 2017
- Parking Impact Assessment prepared by Impact dated 2 June 2017
- Disability Access Report prepared by Cheung Access dated 22 May 2017
- BCA Capability Statement prepared by Concise Certification dated 23 May 2017

- Design Intent Statement - Hydraulic & Fire Protection Services prepared by Erbas dated 19 May 2017
- Plan of Management prepared by Guardian Early Learning Group dated 16 May 2017
- Statement of Heritage Impact prepared by Heritage 21 dated June 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

## 2. Prescribed Conditions

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

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- (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 (DACPLB09)

#### **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**

##### **ANS01**

The child care centre is to accommodate no more than one hundred and ten (110) children at any one time, without prior consent of Council.

Reason: To ensure compliance with this consent.

##### **ANS02**

A detailed Construction Traffic Management Plan (CTMP) for the proposed development is to be prepared, prior to the issue of the Construction Certificate. The CTMP will address the overall management of the site and nearby roads within the Manly Town Centre during the construction process, including truck delivery routes, any traffic control arrangements, anticipated truck numbers accessing the site during demolition, excavation and construction stages and parking arrangements for worker vehicles throughout the project.

Reason: To ensure equitable access to users of the Manly Town Centre and to manage traffic as a result of the construction of the proposed development.

##### **ANS03**

Prior to the issue of the Construction Certificate, an Energy Performance Report is to be prepared to the satisfaction of the Certifying Authority.

Reason: To demonstrate its compliance with energy efficiency and conservation criteria

##### **ANS04**

Prior to the issue of the Construction Certificate, an Interpretation Strategy for the site must be submitted to and approved by Council's Heritage Advisor. The Interpretation Strategy should include, but is not limited to, the provision of details, of public art interpretation through design and/or the display of selected artefacts and/or appropriate signage and/or other material appropriate to the education of the public in the history and significance of the site.

Reason: To reveal the cultural significant aspects of the place as a historical record.

##### **2 (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.

##### **3 (2CD07)**

A Certificate of Adequacy signed by a practising structural engineer stating the existing structure is capable of supporting the proposed additions, is to be submitted to the Council/Accredited Certifier prior to the issue of the Construction Certificate.

Reason: The existing building must be able to support proposed additional loading.

#### 4 (2DS01)

A detailed stormwater management plan is to be prepared to fully comply with Council's Specification for On-site Stormwater Management 2003 and Specification for Stormwater Drainage 2003 and must be submitted to Council prior to issue of the Construction Certificate. The stormwater management plan and designs are to be prepared by a suitably qualified engineer with experience in hydrology and hydraulics.

Reason: To ensure appropriate provision is made for the disposal and management of stormwater generated by the development, and to ensure that infrastructure reverting to Council's care and control is of an acceptable standard.

#### 5 (2FR02)

The person who benefits from this consent is to engage the services of an Accredited Certifier, Building Grade 1 or 2 (NSW or equivalent) to carry out a Building Code of Australia audit that is based upon inspections of the building in terms of the deemed-to-satisfy fire safety provisions.

The audit must specifically cover all clauses within Section C, D and E of the Building Code of Australia (as per the most recent amendments) nominating 'compliance', 'non-compliance' or 'not applicable' as appropriate. The audit (checklist) is to accompany the report.

The results of the audit are to be incorporated into a report and strategy to overcome the non-compliant provisions either by performance solution or adherence to deemed-to-satisfy provisions by satisfying the fire safety objectives of Sections C, D and E of the Building Code of Australia. The standard of satisfying the fire safety objectives of Sections C, D and E as contained within the Building Code of Australia is the specified standard for the purposes of Section 121P(1)(a) of the Act.

A schedule of existing (if applicable) and the proposed Essential Fire Safety Measures, including their standard of performance must be included in this strategy. The report and strategy must be submitted to Council for written approval prior to issue of any Construction Certificate.

Reason: To ensure an adequate level of fire safety is provided within the premises for the life safety of building occupants.

#### 7 (2LD01)

Details must be submitted to the Council/Accredited Certifier prior to issue of the Construction Certificate indicating the proposed method of water proofing and drainage of the concrete slabs over which landscaping is being provided.

Reason: To ensure the appropriate type of water proofing is carried out and descriptive information about drainage is provided.

#### 8 (2NL01)

Details are to be submitted to the Council/Accredited Certifier indicating the method of sound attenuation and/or acoustic treatments for all roof terraces, decks and balconies in compliance with the Building Code of Australia, prior to issue of the Construction Certificate.

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

#### 9 (2NL02)

Any air conditioning unit on the site must be installed and operated at all times so as not to cause "Offensive Noise" as defined by the Protection of the Environment Operations Act 1997. Domestic air conditioners must not be audible in nearby dwellings between 10:00pm to 7:00am on Monday to Saturday and 10:00pm to 8:00am on Sundays and Public Holidays.

Details of the acoustic measures to be employed to achieve compliance with this condition must be prior to the issue of the Construction Certificate.

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



## 10 (2NL05)

Mechanical plant situated on the roof area of the premises must be acoustically treated to ensure noise emissions are not audible at the nearest residential premises. Details are to be submitted to the Council/Accredited Certifier prior to the issue of the Construction Certificate.

Council may require the owner or occupier of the premises to engage the services of a suitably qualified professional to undertake an acoustic assessment of the premises in the event concerns regarding the emission of 'offensive noise' are raised and/or justified by Council.

Reason: To protect the acoustic amenity of neighbouring properties.

## 11 (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 2013.

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.

## 12 (2WM03)

Garbage rooms or grease arrester rooms must be constructed of solid material: cement rendered and steel trowelled to a smooth even surface. The door to the garbage room is to be designed and constructed to ensure the room is vermin proof and can be opened from the inside at all times. The garbage room is to be ventilated to the external air by natural ventilation or an approved air handling exhaust system.

Reason: To keep garbage rooms in a clean and sanitary condition to protect public health.

**CONDITIONS TO BE SATISFIED PRIOR TO COMMENCEMENT**

## 13 (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.

## 14 (3CD02)

Demolition must be carried out by a registered demolition contractor. Documentary evidence of registration must be submitted to Council prior to the commencement of demolition work.

Reason: To ensure demolition is carried out in an appropriate manner that is non-disruptive to the locality and the public.

## 15 (3CD03)

An adequate security fence is to be erected around the perimeter of the site prior to commencement of any excavation or construction works, and this fence is to be maintained in a state of good repair and condition until completion of the building project.

Reason: To protect the public interest and safety.

## CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND CONSTRUCTION

### ANS05

All new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed and/or located above the Probable Maximum Flood Level of 5.6m AHD. All existing electrical equipment and power points located below the Probable Maximum Flood Level of 5.6m AHD must have residual current devices installed that turn off all electricity supply to the property when flood waters are detected.

Reason: In order for the proposed development to be compatible with the flood hazard and reduce the risks and cost of flooding to the area.

### ANS06

New works must be designed and constructed to ensure structural integrity up to the Probable Maximum Flood Level of 5.6m AHD taking into account the forces of floodwater, wave action, flowing water with debris, buoyancy and immersion. Structural certification shall be provided confirming the above.

Reason: In order for the proposed development to be compatible with the flood hazard and reduce the risks and cost of flooding to the area.

### ANS07

New works below the Probable Maximum Flood Level of 5.6m AHD shall be designed and constructed as flood compatible buildings in accordance with Reducing Vulnerability of Buildings to Flood Damage: Guidance on Building in Flood Prone Areas, Hawkesbury-Nepean Floodplain Management Steering Committee (2006).

Reason: In order for the proposed development to be compatible with the flood hazard and reduce the risks and cost of flooding to the area.

### 16 (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.

### 17 (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) All waste must be contained entirely within the site.

- 11) 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.
- 12) 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.
- 13) 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.
- 14) 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.
- 15) 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.
- 16) Building operations such as brick-cutting, 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.
- 17) 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.
- 18) 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.

#### 18 (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 (including works undertaken by external contractors). 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.

#### 19 (4CD03)

Toilet facilities are to be provided at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 person or part of 20 persons employed at the site, by effecting either a permanent or temporary connection to the Sydney Water's sewerage system or by approved closets.

Reason: To maintain sanitary conditions on building sites.

#### 20 (4CD06)

All construction works must be strictly in accordance with the Reduced Levels (RLs) as shown on the approved drawings. A copy of approved drawings should be kept at site. Certification from a registered surveyor is to be submitted to the Principal Certifying Authority during construction to confirm floor and finished ridge levels.

Reason: To ensure compliance with the consent.

#### 21 (4CD07)

Anyone who removes, repairs or disturbs bonded or a friable asbestos material must hold a current removal licence from Workcover NSW. Before starting work, a work site-specific permit approving each asbestos project must be obtained from Workcover NSW. A permit will not be granted without a current Workcover licence.

All removal, repair or disturbance of or to asbestos material must comply with the following:

- The Work Health and Safety Act 2011.
- The Work Health and Safety Regulation 2011.
- How to Safely Remove Asbestos Code of Practice – WorkCover 2011.

The owner or occupier of the premises must consult an appropriately qualified and Australian Institute of Occupational Hygienists registered professional to undertake an assessment of the site to determine the potential for contamination. The owner or occupier must develop a management plan and be issued with Clearance Certificate before the commencement of any work.

Reason: To ensure the health of site workers and the public.

#### CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE

##### ANS08

Details must be submitted to the Council/Accredited Certifier prior to issue of the Occupation Certificate that all proposed water play features, following installation comply with the safety requirements and water quality levels included in relevant Australian Standards.

Reason: To ensure the appropriate safety and water quality levels of the proposed water play feature.

##### ANS09

Details must be submitted to the Council/Accredited Certifier prior to issue of the Occupation Certificate that all play equipment, following installation comply to relevant Australian Standards.

Reason: To ensure the appropriate development, installation, inspection, maintenance and operation of any equipment.

##### ANS10

Details must be submitted to the Council/Accredited Certifier prior to issue of the Occupation Certificate that all play area softfall treatments, following installation comply to relevant Australian Standards.

Reason: To ensure the appropriate safe fall treatment for play activities.

##### ANS11

Prior to the issue of the Occupation Certificate, the applicant is to provide certification from a suitably qualified person that all the recommendations detailed in Wood & Grieve Engineers Acoustic report dated 31 May 2017 have been complied with.

Reason: To ensure environmental compliance.

##### ANS12

The approved Interpretation Strategy must be implemented prior to the issue of the Occupation Certificate.

Reason: To reveal the cultural significant aspects of the place as a historical record.

##### 22 (5DS01)

Stormwater drainage from the proposed addition/extension must be disposed of to the existing drainage system. All work is to be carried out in accordance with Council standards and specifications for stormwater drainage. Work is to be completed prior to the issue of the Occupation Certificate.

Reason: To ensure appropriate provision is made for the disposal and management of stormwater generated by the development, and to ensure infrastructure reverting to Council's care and control is of an acceptable standard.



**23 (5LD01)**

A qualified Landscape Consultant is to submit a Certificate of Practical Completion to the Principal Certifying Authority prior to the issue of the Occupation Certificate, stating the work has been carried out in accordance with the approved Landscape Drawing and a maintenance program has been established.

Reason: This is to ensure the landscaping is planted in accordance with the drawing and maintained appropriately

**24 (5LD02)**

Evidence of an agreement for the maintenance of all plants for a period of twelve (12) months from the date of practical completion of the building is to be provided to the Principal Certifying Authority prior to issue of the final Occupation Certificate.

Reason: To ensure landscaping will be appropriately maintained.

**25 (5NL01)**

An Acoustic Compliance Report, prepared by a qualified and experienced acoustical consultant, must be submitted certifying noise levels emitted from the (building's/premises) (services, equipment, machinery and ancillary fittings) does not exceed 5dBA above the background level in any octave band from 63.0 Hz centre frequencies, inclusive at the boundary of the site.

Note: This method of measurement of sound must be carried out in accordance with Australian Standard AS 1055.1-1997.

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

**26 (5WM02)**

Prior to issue of an Occupation Certificate, the owner must provide evidence of a contract with a licensed contractor for the removal of all trade waste.

Reason: Responsible disposal management of trade waste.

**ONGOING CONDITIONS RELATING TO THE OPERATION OF THE PREMISES OF DEVELOPMENT****ANS13**

Bins are to be serviced from within private property via a pull-out pull-in service and may not be presented for collection in Henrietta Lane, Sydney Road or any other public street/footpath. Bins and waste are to be stored within private property with service doors closed at all times.

Reason: To ensure adequate waste management.

**ANS14**

All sound producing plant, equipment, machinery or fittings shall not emit noise exceeding 5 dB(A) above the background level (LA90) when measured at the property boundary.

Reason: To ensure that noise generated from the development does not result in offensive noise to any other party.

**ANS15**

Hazardous or potentially polluting materials shall not be stored below the Flood Planning Level of 5.6m AHD unless adequately protected from floodwaters in accordance with industry standards.

Reason: In order to reduce the risks to humans, the environment and cost of flooding to the area.

**ANS16**

Goods, materials or other products which may be highly susceptible to water damage are to be located/stored above the Flood Planning Level of 5.6m AHD.

Reason: In order for the proposed development to be compatible with the flood hazard and reduce the risks and cost of flooding to the area.

27 (6BS01)

The hours of operation of the premises (i.e. hours open for business) must not exceed 7.30am-6pm Monday to Friday 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.

28 (6LP03)

Landscaping is to be maintained in accordance with the approved Landscaping Drawing.

Reason: This is to ensure that landscaping is maintained appropriately.

29 (6LP04)

Leighton Green Cypress Cupressocyparis leylandii or any of its cultivars, must not be planted on the site for the life of the development. In the event of any inconsistency between this condition and the development application documents, this condition will prevail to the extent of the inconsistency.

Reason: To reduce the potential for adverse amenity effects such as overshadowing, loss of views, and loss of plant diversity.

30 (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.

31 (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.

32 (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.

33 (6NL06)

Any air conditioning unit on the site must be installed and operated at all times so as not to cause 'offensive noise' as defined by the Protection of the Environment Operations Act 1997. Domestic air-conditioners must not be audible in nearby dwellings between 10:00PM to 7:00AM Monday to Friday, and 10:00PM to 8:00AM on Saturdays, Sundays and public holidays.

Reason: To ensure compliance with legislation and to protect the acoustic amenity of neighbouring properties.

34 (6WM02)

Deliveries and waste collection must only occur during the following hours:

- Weekdays – 7:00am – 8:00pm
- Weekends and Public Holidays – 8:00am – 8:00pm

Reason: To minimise disruption to neighbouring properties.

35 (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.

36 (6WM05)

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

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



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NO.	DATE	DESCRIPTION
A	18.05.17	ISSUED FOR TENDERS
B	27.07.17	ISSUED FOR TENDERS

**PACIFIC WAVES  
APARTMENTS**

**SERVICE  
LANE**

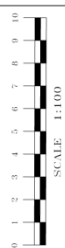
**HENRIETTA LANE**

**12 ADJACENT COMMERCIAL BUILDING**

**4 10**

**2 ADJACENT COMMERCIAL  
BUILDING**

**SYDNEY ROAD**



**TRUE NORTH**  
PROJECT NORTH



**1:100000  
STATUS  
SCHEMATIC DESIGN  
DRAWING**

**SITE PLAN PROPOSED  
DATE  
AR A.07  
B**

**TOWN PLANNER JENSEN BOWERS**  
TEL 02 9289 9000  
ACUSTIC ENGINEER WOOD AND GREVE  
TEL 02 9448 7000  
CONSULTANT  
IMPACT TRAFFIC ENGINEERING  
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PROJECT MANAGER  
JENKINS  
TEL 02 9333 8805  
CLIENT

**CHANDAN**  
CLIENT NUMBER  
PROJECT

**GBC MANLY**  
10 SYDNEY ROAD, MANLY NSW  
BNV PROJECT NUMBER  
1700002  
DRAWING SET





<b>ITEM 3.2</b>	<b>MOD2017/0223 - 43 BOORALIE ROAD, TERREY HILLS - MODIFICATION OF DEVELOPMENT CONSENT DA2016/0523 GRANTED FOR DEMOLITION WORKS AND CONSTRUCTION OF A SERVICE STATION AND SIGNAGE</b>
<b>REPORTING OFFICER</b>	<b>Adam Mitchell</b>
<b>TRIM FILE REF</b>	<b>2017/492281</b>
<b>ATTACHMENTS</b>	<b>1 <a href="#">↓</a> Assessment Report</b>

**PURPOSE**

To refer the attached application for determination as required under adopted delegations of Council.

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**RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT**

That the Northern Beaches Independent Assessment Panel, as the consent authority, **approve** Application No. Mod2017/0223 for Modification of Development Consent DA2016/0523 granted for Demolition works and construction of a service station and signage at Lot 1 DP 545812, 43 Booralie Road, Terrey Hills for the reasons outlined in the Assessment Report.

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## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2017/0223
<b>Responsible Officer:</b>	Adam Mitchell
<b>Land to be developed (Address):</b>	Lot 1 DP 545812, 43 Booralie Road TERREY HILLS NSW 2084
<b>Proposed Development:</b>	Modification of Development Consent DA2016/0523 granted for Demolition Works construction of a service station and signage
<b>Zoning:</b>	LEP - Land zoned IN2 Light Industrial
<b>Development Permissible:</b>	No
<b>Existing Use Rights:</b>	Yes
<b>Consent Authority:</b>	Northern Beaches Development Assessment Panel – Central
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Eastden Pty Limited
<b>Applicant:</b>	S.H.A Premier Constructions Pty Ltd
<b>Application lodged:</b>	30/08/2017
<b>Integrated Development:</b>	No
<b>Concurrence Required:</b>	No
<b>State Reporting Category:</b>	Commercial/Retail/Office
<b>Notified:</b>	15/09/2017 to 12/10/2017
<b>Advertised:</b>	16/09/2017
<b>Submissions Received:</b>	5
<b>Recommendation:</b>	Approval

### ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant

- Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

#### **SUMMARY OF ASSESSMENT ISSUES**

Warringah Development Control Plan - D3 Noise  
Warringah Development Control Plan - D23 Signs

#### **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 1 DP 545812 , 43 Booralie Road TERREY HILLS NSW 2084
<b>Detailed Site Description:</b>	<p>The site is located on a corner allotment on the south eastern corner of Booralie Road and Tepko Road.</p> <p>The site is irregular in shape (trapezoidal) and has a surveyed area of 1088m<sup>2</sup> with a street frontage to Booralie Road of 31.1m and to Tepko Road of 45.3m.</p> <p>Presently the site accommodates a self-service petrol station with a canopy structure, signage and an older style building on the southern edge of the site.</p> <p>The site is upon land zoned for IN2 Light Industrial and is bound by similarly zoned land to the south and west. North and east of the site is land zoned for R2 Low Density Residential development and accommodates residential accommodation of varying forms. A narrow strip of land zoned for RE1 Public Recreation runs along the eastern edge of the site and connects to Myoora Road. This strip of land provides a landscaped buffer between the residential and industrial zones.</p> <p>The allotment is generally flat with no topographical features and does not have any significant or noteworthy vegetation.</p>

Map:





## SITE HISTORY

A review of Council records has revealed that the subject site has operated as a service station and associated uses over the past 30+ years.

A Pre-Lodgement Meeting (**PLM2016/0024**) was held with Council on 17 March 2016 to discuss the development of this site by means of utilising existing use rights.

Generally Council supported the proposal subject to design amendments and suitable operating hours.

Subsequent to this meeting, **Development Application No. 2016/0523** was lodged with Council for demolition works and construction of a service station and signage.

This application sought for operating hours between 6.00am and 12.00pm, 7 days a week, however during the assessment of the application, Council considered these hours unreasonable for the following reasons:

*The application seeks development consent to operate the service station from 6.00 am to 12.00pm, 7 days a week.*

*An Operational Noise, Construction Noise & Vibration Management Plan dated 2 May 2016 prepared by Rodney Stevens Acoustics was submitted with the application. The report has found that the noise impact has been predicted to exceed the 'noise affected' management level at the majority of considered receiver locations. In this regard, the report recommends the construction of a 1.5-metre high solid Colorbond barrier to be installed around the perimeter of the south/east boundaries of the proposed service station and a 1.2-metre high solid Colorbond barrier be installed around the air conditioning unit on the rooftop of the proposed service station.*

*Notwithstanding the findings of the Acoustic Report, it is considered the proposed operating hours are excessive and would cause unreasonable disturbance to neighbouring properties. Whilst the mitigation measures outlined in the acoustic report may reduce noise impacts from vehicles, the report does not consider noise caused by the opening and closing of car doors, the voices of customers using the*

*service station, car radios etc. all of which may vary in intensity. Given that the site is located in a locality that is primarily for residential purposes, the proposed hours of operation are considered unreasonable and the impacts on adjoining residential occupiers would be detrimental to their amenity.*

*As such, it is recommended a condition be imposed so that the hours of operation be reduced to between 6.00 am to 10.00 pm (Monday to Friday) and 7.00am - 9.00pm (Saturday, Sunday, and public Holidays) . Further, a condition shall also be imposed restricting deliveries and garbage collection to between 7.00 am and 8.00 pm, 7 days a week.*

Given the public interest in the application, a determination was made by the Northern Beaches Development Assessment Panel following a public meeting on Wednesday 12 October 2016 to endorse the recommendations of Council's report.

**Modification Application No. MOD2017/0324**

A modification application pursuant to Section 96 of the Environmental Planning and Assessment Act 1979 was lodged with Council on 9 December 2016 and sought to change the approved hours of operation and signage illumination approved under DA2016/0523.

The application proposed the following hours of operation:

**• Monday - Sunday and Public Holidays - 6:00 am to 12:00 midnight**

Council was unsatisfied with the application and requested (on 14 February 2017) that an Operational Management Plan (OMP) be submitted to accompany the development application. Council advised the Applicant that if the OMP was unsatisfactory, then support for extended hours would not be granted.

Council received the OMP from the Applicant on 16 February 2017 which proposed new operating hours (noting that no formal request to change the proposed hours was received). The new hours were:

- **Monday to Friday - 5:00 am - 11:00 pm;**
- **Saturday - 6:00 am - 11:00 pm; and**
- **Sunday and Public Holidays - 7:00am - 10:00pm**

Council was not satisfied with the OMP and subsequently recommended the refusal of the application. The application was refused by the Northern Beaches Development Assessment Panel on 8 March 2017 as per Council recommendation.

The minuted proceedings in brief from the Panel reads:

*This is a modification application to consent DA2016/0523 granted for demolition works, the construction of a service station and associated signage at 43 Booralie Road Terrey Hills. This site benefits from existing use rights.*

*DA2016/0523 was approved by the Northern Beaches Development Assessment Panel on 12 October 2016 at its meeting at which the Panel endorsed the council planner's recommendation that the operating hours of the development be limited to 6 am. to 10 pm. Monday to Friday and 7 pm. to 9 pm. Saturday, Sunday and public holidays.*

*The application before the panel seeks to extend the approved hours as follows:*

- *Monday to Sunday and public holidays 6 am to 12 midnight and the application also sought to amend condition No. 37 which relates to the hours of the illumination of the signage on the site.*

*The Panel took a view of the site and at the public meeting which followed heard from two residents who live nearby to the site and two representatives of the Applicant.*

*The level of information provided to the panel was inadequate and did not justify any change to be approved hours of operation. The applicant did not satisfactorily respond to questions by the Panel in relation to concerns raised.*

*The resolution of the Panel was therefore that the modification application be refused.*

## **PROPOSED DEVELOPMENT IN DETAIL**

This modification application pursuant to Section 96 of the Environmental Planning and Assessment Act 1979 seeks to amend Condition No. 36 *Hours of Operation* which reads:

### **36. Hours of Operation**

*The hours of operation are to be restricted to*

- *Monday to Friday - 6am to 10pm (inclusive)*
- *Weekends and Public Holidays - 7am to 9pm (inclusive)*

*Upon expiration of the permitted hours, all services to customers shall immediately cease, no patrons shall be permitted to entry and all customers on the premises shall be required to leave within the following 10 minutes. Once customers have vacated the site, the external lighting is to be extinguished except that required for security purposes.*

*Reason: Information to ensure that amenity of the surrounding locality is maintained. (DACPLG08)*

This current application seeks to amend these hours as follows:

- **Monday to Friday - 5am to 11pm (inclusive)**
- **Saturday - 6am to 11pm (inclusive)**
- **Sunday and Public Holidays 7am to 10pm (inclusive)**

The modifications propose an additional 14 hours of trading atop of the approved development.

The application is accompanied by a Noise Impact Assessment and an Operational Noise Management Plan.

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment C.

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

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:  
The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;



- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2016/0523, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 96(2) of the Environmental Planning and Assessment Act, 1979, are:

<b>Section 96(2) - Other Modifications</b>	<b>Comments</b>
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 development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2016/0523.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA2016/0523 did not require concurrence from the relevant Minister, public authority or approval body.
(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 under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Warringah Local Environment Plan 2011 and Warringah Development Control Plan.
(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.	See discussion on "Public Exhibition" in this report.

#### **Section 79C Assessment**



In accordance with Section 96(3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 79C(1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act, 1979, are:

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 79C (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 79C (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 79C (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No Additional information was requested.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p>
Section 79C (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built	<p><b>(i) Environmental Impact</b></p> <p>The environmental impacts of the proposed development on the natural and built environment are addressed under</p>

Section 79C 'Matters for Consideration'	Comments
environment and social and economic impacts in the locality	<p>the Warringah Development Control Plan section in this report.</p> <p><b>(ii) Social Impact</b> The development is not considered to give rise to any unreasonable or detrimental social impacts on the locality considering the nature of the existing land use.</p> <p><b>(iii) Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 79C (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Public Exhibition" in this report.
Section 79C (1) (e) – the public interest	This assessment has found the proposal to be consistent with the relevant requirement(s) of the WLEP 2011 and WDCP 2011 and will not result in a development that would give rise to unreasonable amenity impacts or be contrary to the public interest.

#### EXISTING USE RIGHTS

The use of the land as a 'Service Station' as per the WLEP 2011 is a prohibited land use and as such, the development is reliant upon Existing Use Rights as per Cl. 107 of the Environmental Planning and Assessment Act 1979.

The parent development application (Assessment Report by Northern Beaches Council) established that the site does in fact benefit from Existing Use Rights and reads:

*Council's record reveals that a Service Station was approved on the site under Consent No. 70/246, dated 20 December 1970. The applicant has provided evidence in the form of day sheet records which reveals that the use of the land commenced as a lawful purpose and has now ceased operation since 17 November 2015, prior to the coming into force of Warringah Local Environmental Plan 2011 on 9 December 2011.*

And

*The applicant has provided evidence in the form of day sheet records which reveals that the use of the land was carried out since its original approval in 1970's, however, the site ceased operation on 17 November 2015, which is within one year from the date on which the provision having the effect of prohibiting the use commenced.*

It is further noted that this development consent from 1970 did not include any conditions which restricted

the hours of operation.

#### **NOTIFICATION & SUBMISSIONS RECEIVED**

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and Warringah Development Control Plan.

As a result of the public exhibition process council is in receipt of 5 submission/s from:

<b>Name:</b>	<b>Address:</b>
Diana Rita Del Principio	11 / 32 Booralie Road TERREY HILLS NSW 2084
Terrey Hills Progress Association	22 Myoora Road TERREY HILLS NSW 2084
Mr Daniel Gary Samuel Cook	37 Booralie Road TERREY HILLS NSW 2084
Mrs Diana Wendy Pecar	37 Burruga Avenue TERREY HILLS NSW 2084
Mr Peter Geoffrey Addison	2 Wanari Road TERREY HILLS NSW 2084

During the public notification period of this s96 application, Council received 5 submissions against the proposed development.

#### **Acoustic Impact**

Each submission received noted that the proposed additional operating hours would give rise to acoustic impacts upon adjoining properties. The submissions detail previous operation of the site (from the 1970's onwards) and the more recent operation of the site as a 24/7 self-serve and unmanned service station (which is not approved by the parent development consent of this s96 application).

Therefore it is considered that the predominant concern of acoustic impact is because the facility is a staff-less operation.

Accordingly, this report recommends that approval be granted subject to a 12 month trial period which will require the site to be operated in a manner that does not give rise to adverse amenity impacts upon adjoining land, otherwise consent may not be granted again for these hours.

#### **Traffic**

The additional hours proposed are not during peak hours and, given the location of the site, the hours are not considered to give rise to any unreasonable traffic and parking impacts in the vicinity of the area.

Accordingly, this matter does not warrant the refusal of the application.

#### **Antisocial Behaviour**

The submissions raise concern about the additional hours giving rise to 'antisocial behaviour'.

No evidence or justification has been provided as to how the additional operating hours could create unreasonable or detrimental antisocial behaviour.

Accordingly, this matter does not warrant the refusal of the application.

#### **Current operation of the site**

The current operation of the site is not for consideration under this application. It is noted that the site

presently operates as a 24/7 unmanned operation which has not been approved by the parent development application of this s96 application.

Council has received numerous complaints about the operation of this site with regards to supervision and delivery hours, as is further detailed in the submissions received for this current application.

Whilst this current operation does not hold determining weight for this application, Council is of the opinion that the approved development has been reasonably conditioned to ensure that future operations of the site will have a lesser impact on adjoining residents.

## **MEDIATION**

No requests for mediation have been made in relation to this application.

## **REFERRALS**

<b>Internal Referral Body</b>	<b>Comments</b>
Environmental Investigations (Industrial)	<p><i>Environmental Health has reviewed the acoustic report titled Noise Impact Assessment Proposed Service Station 43 Booralie Road Terry Hills dated 14 August 2017 report no. R160175R1 and the addition information provided by RPS dated 1 November 2017.</i></p> <p><i>Environmental Health is satisfied that the proposed service station and extended hours will not create intrusive noise; however, there is a significant issue with the general noise generated from the on-going use of the business particularly during the evening and night period (between the 10pm – 6am period) which may create offensive noise.</i></p> <p><i>To address the concerns of the likelihood of offensive noise being generated Environmental Health has provided a number of conditions as included in the recommendation of this report.</i></p>
Traffic Engineer	<i>No objection is raised on the proposed extended hours of operation on traffic grounds.</i>

<b>External Referral Body</b>	<b>Comments</b>
Ausgrid: (SEPP Infra.)	Ausgrid has reviewed the proposal and raises no objections, subject to conditions which can be found in the recommendation of this report.

## **ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\***

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.



As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

#### **State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)**

##### **SEPP (Infrastructure) 2007**

###### Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

###### Comment:

The proposal was referred to Ausgrid. Ausgrid has reviewed the proposal and raises no objections, subject to conditions.

#### **Warringah Local Environment Plan 2011**

Is the development permissible?	No
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

###### Compliance Assessment

Clause	Compliance with Requirements
6.4 Development on sloping land	Yes

#### **Warringah Development Control Plan**

###### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
D3 Noise	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D8 Privacy	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D20 Safety and Security	Yes	Yes
D23 Signs	Yes	Yes

#### Detailed Assessment

#### **D3 Noise**

The s96 application to extend the hours of operation is resultant of Council's previous concerns regarding the acoustic impacts upon adjoining residential properties which has subsequently lead to the refusal of applications/modification of applications.

This current application is accompanied by:

- Noise Impact Assessment - by Rodney Stevens Acoustics; and
- Operational Noise Management Plan - by Rodney Stevens Acoustics.

The applicant has satisfactorily demonstrated to Council that the development can comply with the relevant noise policies and will not create intrusive noise. However, Council's Environmental Health Officers and Planners raise concern that the on-going operation of the site during early morning and evening periods will be unmanageable in regards to offensive noise created by patrons including slamming car doors, loud radios etc.

Accordingly, this report recommends the approval of the application subject to a number of additional conditions including a reduction to the proposed operating hours and that the hours be subject to a 12 month trial period.

#### **Reduction in proposed hours**

The application seeks for an additional 14 hours of trading atop of what has already been approved on the site. The Statement of Environmental Effects accompanying the development application indicates that the hours are *'to better suit the needs of customers, while causing no additional impact to surrounding residential properties'*.

The site is bound by residential properties to both the north and east and these residents, among others in the Terrey Hills community, have raised significant concern about the proposed operating hours and the current operation of the site (which is not for consideration under this application).

The recommendation of this report reduces the proposed opening hours on Monday to Friday from 5:00am to 6:00am.

The operation of the site at 5:00am on a weekday morning is considered unreasonable adjacent to the low density residential area given the potential unmanageable noise created by patrons and the arrival of staff members at 4:00am (approximately) to set up for the day. Accordingly, the changes to the hours are considered to be a reasonable compromise to provide a level of amenity for surrounding neighbours whilst

not unreasonably restricting the trading hours of the business.

#### **12 month trial period**

As evident by the recommendation of approval of this s96 application, it is considered that the development can co-exist in harmony with the surrounding residential community if the operation and management of the site is done in accordance with all the requirements of the accompanying reports and conditions of consent enforced. However, if the development is not managed appropriately then the impacts upon surrounding properties could be adverse or detrimental.

Accordingly, it is recommended that the approval of the operating hours as above be subject to a 12 month trial period with a rigorous reporting schedule back to Council to ensure that the development has no unreasonably or adverse impact upon the amenity of surrounding owners. The condition requires that the applicant proceed to lodge another s96 application in the future to make these hours permanent, otherwise they will revert back to the previously approved hours under the parent development application.

#### **D23 Signs**

The parent development application approved illuminated signage with hours consistent with the operating hours of the development.

This s96 application has not sought the extension of these hours of illumination in conjunction with the operating hours.

It is considered that the illumination of such signage could give rise to adverse amenity impacts on adjoining residential properties, and no information has been provided on how these impacts will be managed or mitigated.

Accordingly, no extension to the hours of signage illumination is granted under this consent.

#### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

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

#### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

#### **POLICY CONTROLS**

##### **Warringah Section 94A Development Contribution Plan**

Section 94 contributions were levied on the Development Application.

#### **CONCLUSION**

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

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

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

The section 96 application for extended operating hours at an approved service station has been consequent of several previous applications and on-going correspondence with Council. The acoustic impact of the extended operating hours upon neighbouring residents has been of continuous concern to both Council and the community, as evident through previous determinations by the NBIAP panel.

The documentation submitted to accompany the application detail that the proposal is compliant with all relevant acoustic legislation and that all reasonable noise mitigation methodologies have been employed into the design and operational management plan of the site to ensure the development has the least possible impact on surrounding properties.

Council is of the opinion that, if well managed, the site can operate in harmony with the surrounding residential properties and that the extended hours will not be of any detriment to neighbourhood amenity. Council is similarly of the opinion that if the site is not well managed, that the development could create unreasonable amenity impacts upon adjoining residential properties.

Accordingly, the recommendation of this report requires the implementation of a 12-month "trial period" with rigorous reporting requirements to the Northern Beaches Council per quarter. The condition (which requires a future section 96 application to be lodged to make the hours permanent) is enforced with the intent to encourage the service station operators and developers to manage the site with best practice to; (a) create harmony within the community through preserved amenity; and (b) provide the applicant the additional operating hours.

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



## RECOMMENDATION

THAT Northern Beaches Development Assessment Panel – Central as the consent authority grant approval Modification Application No. Mod2017/0223 for Modification of Development Consent DA2016/0523 granted for Demolition Works construction of a service station and signage on land at Lot 1 DP 545812,43 Booralie Road, TERREY HILLS, subject to the conditions printed below:

### **Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:**

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

#### a) Modification Approved Plans

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Noise Impact Assessment Report no. 160175R1	14 August 2017	Rodney Stevens Acoustics
Operational Noise Management Plan no. 160175R1	9 August 2017	Rodney Stevens Acoustics

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

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans. (DACPLB01)

### **Modify Condition No. 2 - Compliance with Other Department, Authority or Service Requirements - to read as follows:**

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	eServices Reference	Dated
Ausgrid	Ausgrid Referral Response	26 September 2017
NSW Police Force	Response NSW Police Referral	27 June 2016

(NOTE: For a copy of the above referenced document/s, please see Council's 'E-Services' system at [www.warringah.nsw.gov.au](http://www.warringah.nsw.gov.au))

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other Department, Authority or Body's. (DACPLB02)

### **Modify Condition No. 36 - Hours of Operation - to read as follows:**

The hours of operation of:

- Monday to Friday - 6:00am to 11:00pm
- Saturday - 6:00am to 11:00pm
- Sunday and Public Holidays - 7:00am to 10:00pm

are approved subject to a 12 month trial period from the date of this determination.

At the end of the 12 month trial period if the applicant wishes to make the hours of operation permanent, the applicant must lodge a Section 96 Modification Application together with supporting documentation (including details of the reports referred to below) to the Northern Beaches Council on or before 2 months prior to the end of this 12 month period.

During the 12 month trial period the applicant is to provide to the Northern Beaches Council every 3 months an acoustic report which details:

- A daily log of the number of vehicles entering and leaving the property between the hours of 10pm and 11pm;
- Compliance with the noise criteria in the NSW EPA Industrial Noise Policy;
- All complaints received from the date of operation to present, details of the complaint and details of what action has been taken;
- Certification from an acoustic consultant that the recommendations and requirements of the two reports referenced above in Condition No. 1A have been satisfied.

Upon cessation of the 12 month trial period, the hours of operation are to revert to the following:

- Monday to Friday - 6:00am to 10:00pm
- Saturday, Sunday and Public Holidays - 7:00am to 9:00pm

In accordance with the approved development consent DA2016/0523.

Reason: To protect the amenity of residential properties. (DACPLG11).

**Add condition No. 36A - Hours of Operation - Air Compressor - to read as follows:**

The site's air compressor is not to be used between the hours of 8:00pm to 7:00am on any day.

Reason: To ensure reasonable amenity to surrounding residential properties. (DACPLB02).

**Add condition No.36B - Phone Hotline - to read as follows:**

A 24 hour hotline phone number is to be distributed to all surrounding residential properties and is to be manned at all times.

Complaints received through the hotline are to be logged and provided to an acoustic consultant for potential corrective action. The log is to detail who made the call, at what time/date, what the complaint was and what action has been taken.

The log is to be made available to Council upon request and will be considered in future Section 96 applications.

Reason: To ensure development minimises unreasonable impacts in accordance. (DACPLB02).

**Add condition No. 36C - Offensive Noise - to read as follows:**

Where implementation of these recommendations are met and complaints about "offensive noise" are received and justified, action is to be taken by the applicant to review any potential nuisance and implement any additional assessment and measures necessary to prevent the occurrence of offensive noise.

Reason: To protect the amenity of the neighbourhood. (DACHPGOG6).

**ITEM 3.3**

**DA0276/2015 - 36-38 SOUTH STEYNE, MANLY - SECTION 96(2)  
APPLICATION TO MODIFY ALTERATIONS AND ADDITIONS TO  
THE EXISTING BUILDING AND CHANGE OF USE TO A  
RESTAURANT – PART 3**

**REPORTING OFFICER** Thomas Prosser

**TRIM FILE REF** 2017/492331

**ATTACHMENTS**  
1 [↓](#) Assessment Report  
2 [↓](#) Site Plan and Elevations

**PURPOSE**

To refer the attached application for determination as required under adopted delegations of Council.

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**RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT**

That the Northern Beaches Independent Assessment Panel, as the consent authority, **approve** Application No. DA0276/2015 for Section 96(2) application to modify alterations and additions to the existing building and change of use to a restaurant – Part 3 at Lot 5 DP 39426, 36-38 South Steyne, Manly for the reasons outlined in the Assessment Report.

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## Northern Beaches Independent Assessment Panel Report

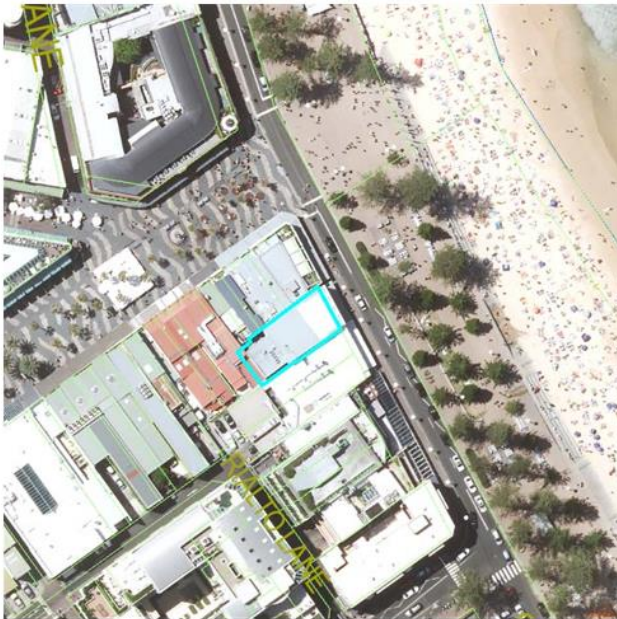
2017/452370

<b>DA No.</b>	276/2015
<b>Site Address</b>	36-38 South Steyne, Manly; Lot 5 DP 39426.
<b>Proposal</b>	Section 96(2) application to modify alterations and additions to the existing building and change of use to a restaurant.
<b>Officer</b>	Tom Prosser

### **SUMMARY:**

<b>Application Lodged:</b>	6 October 2017
<b>Applicant:</b>	Jason Sun
<b>Owner:</b>	Australia Investment Holding Group Pty Ltd.
<b>Estimated Cost:</b>	\$1,480,000 (as existing)
<b>Zoning:</b>	MLEP, 2013 – B2 Local Centre
<b>Heritage:</b>	Town Centre Conservation Area
<b>Notification:</b>	11 October 2017 to 27 October 2017.
<b>Submissions received:</b>	10
<b>Site Inspected:</b>	14 October 2017
<b>LEP (4.6) Variations proposed:</b>	Building Height.
<b>DCP Variations proposed:</b>	-
<b>Recommendation:</b>	Approval

### **Subject Property and surrounding area**



R1, R2, R3, E3 & E4 Zones – S96

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The subject property is commonly known as 36-38 South Steyne, Manly and legally known as Lot 5 in DP 39426. The site is located on the western side of South Steyne, Manly. The property is irregular in shape and contains a three storey building. The site is irregular in shape and has frontage of 13.24sqm to South Steyne and has length of 25.87m along the southern boundary, 28.97m along the northern side and 11.53m at the rear with an overall area of 340.3sqm

The surrounding area includes mix of uses which are predominantly commercial and retail with residential use increasing along the rear. Opposite the site is Heritage listed Beach reserve – Manly Beach.

The site is located within the Manly Town Centre area and adjacent The Corso which is a Heritage Item.

#### **Property Burdens and Constraints**

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

#### **Site History/Background**

Various development applications relating to the use of site as a restaurant and nightclub. In recent times, these applications and events can be summarised as follows:

- DA209/2010- Refurbishment and signage of the existing three (3) level licensed venue.
- Application ID 181.2013.00000195.001- Cease Trading of Shore club Hotel.
- DA69/2016- Alterations and additions to an existing food premises.

#### **Description of proposed development**

Note: The original application proposed hours that included opening until 2am (and as a result the proposal was given a description that included these proposed hours). Consent was not ever granted for these originally proposed hours as the following condition was included in the development consent No. 276/2015:

##### ***ANS01***

*The hours of operation of the premises (i.e. hours open for business) must not exceed 10am to midnight seven (7) days per week, without the prior approval of Council. Upon expiration of the permitted hours of operation, all restaurant service shall immediately cease and all patrons on premises shall be required to leave within the following half hour and staff by 1:00am.*

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

This current application does not seek to modify the above condition.

The application has been submitted under Section 96(2) of the act as a modification to the existing consent for DA276/2015 (Part 3) and involves the following:

- Widening of entry step at ground level entry
- Addition of window at north/western corner
- Removal of approved roof access ladder and addition of roof hatch in staff area.
- Infill of ventilation louvre to the rear of building at second floor level
- Modification of mechanical equipment on the roof including acoustic barriers. The proposed RL for the acoustic screen is 17.45. As such, the proposed RL for the top most part of the acoustic barrier (and all works on the roof) is RL.17.925. The approved RL to the top of the Mechanical equipment is RL18.200.

### **Internal Referrals**

#### **Engineering Comments**

Council's Engineer has commented on the proposal as follows:

*"The application proposed some changes on the plant on the roof and internal structures. Development Engineer has no objection to release the application. No additional engineering condition is required."*

#### **Building Comments**

Council's Building Surveyor offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

#### **Heritage Comments**

Council's Heritage Officer has commented on the proposal as follows:

*"The application is a S.96, substantially the same as the originally approved DA. Therefore, it is fair to assess that impact of the current proposal will be closely similar to the impact of the previously approved DA. Based on the above, I have no objection to this proposal from heritage perspective and deem heritage conditions not required."*

#### **Waste Comments**

Council's Waste Officer has commented on the proposal as follows:

*"Conditions provided 4/12/2015 MC/15/159993 apply. Please ensure modifications do not result in any reduction in waste/bin storage capacity."*

#### **Assessing officer comment**

There are no changes proposed to any waste/bin storage area in this application.

#### **Environmental Health**

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

#### **Lease Administration Comments**

Council's lease Administration officer has commented on the proposal as follows:

*"Plans do not indicate any modification works are proposed within Council owned land."*

*As such, no additional conditions from Administration are necessary."*

### **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**

#### Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005:

The subject property is located within the Sydney Harbour Catchment therefore the provisions of this plan apply to this development.

An assessment of the proposal against Clause 2(1) (aims of the SREP), Clause 13 (nominated planning principles) and Clause 21 (relating to biodiversity, ecology and environmental protection) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

#### Manly Local Environmental Plan 2013

The subject site is located in Zone B2 Local Centre under the Manly LEP 2013. The proposed modification 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 provides a food and drink premises which would serve people who live in, work in or visit the area.

- To encourage employment opportunities in accessible locations.*

The proposed development would provide employment opportunities in the local area.

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

The site does not provide car parking facilities and as a result public transport for patrons would be encouraged.

- 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.*

Pursuant to conditions, the proposed modification will minimise conflict in relation to noise, odour, and delivery of materials and use of machinery. In particular, the conditioned restriction on times use of the will allow a reasonable level of amenity for people who live in the local centre.

#### Part 4 Principal development standards

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

4.	Principal Development Standards	Requirement	Approved	Proposed	Complies	Comments
4.3	Height of buildings	10m	11.45m (14.5% variation)  (Existing building on the site has a maximum height of 11.76m – variation of 17% - 1.7m)	12.7m	No.	The proposed height of the mechanical equipment on the roof is 0.275m lower than the height of the existing approved flue.

4.4	Floor Space Ratio	2.50:1 Approx.854.25 m <sup>2</sup>	Existing - 754 sqm- 2.2:1 No change to existing	As existing.	Yes.	There is no change to the floor space ratio with the proposed modification.
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#### 4.6 Exceptions to development standards

This application has been made under Section 96 of the Environmental Planning and Assessment (EP&A) Act 1979, which is a free standing provision which in itself authorises the development to be approved notwithstanding any breach of development standards. Section 96 is subject to its own stand-alone tests (such as substantially the same test and consideration of all relevant s.79C matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application.

Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 96 modification applications.

The modification provides for mechanical equipment including barriers to meet acoustical treatment requirements of Council and these works are at a level lower than the existing approved flue. This provides development that is substantially the same and in so maintains an appropriate amenity outcome and sufficiently reduces visual impact, subject to conditions.

#### 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	Comments
5.10	Heritage Conservation	Yes	Yes	Council's Heritage Officer provides no objection to the proposed modification.

#### 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
6.1	Acid Sulphate Soils	Yes	Yes	The proposal does not involve excavation and complies with the Clause.
6.2	Earthworks	No	N/A	
6.3	Flood Planning	No	N/A	
6.4	Stormwater Management	Yes	Yes	Subject to conditions.
6.5	Terrestrial Biodiversity	No	N/A	
6.6	Riparian land and watercourses	No	N/A	
6.7	Wetlands	No	N/A	
6.8	Landslide Risk	No	N/A	
6.9	Foreshore Scenic Protection Area	Yes	Yes	The proposed mechanical equipment and associated barrier would be at level that is lower than the existing approved flue. The location and

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				extent of the works would also be substantially the same as approved and as such not cause any unreasonable impact on visual aesthetic amenity or views.
6.11	Active street frontages	Yes	Yes	The modification will retain the active street frontage along South Steyne.
6.12	Essential services	Yes	Yes	Subject to conditions and existing services.
6.16	Gross floor area in Zone B2	Yes	Yes	The proposal is consistent with Clause 6.16(3) and 6.16(4).

**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 controls	Inconsistent with controls
Townscape	✓ See comment.	
Heritage – In Vicinity	✓	
Landscaping Design	✓	
Landscape/Tree Preservation	✓	
Sunlight Access and Overshadowing	✓	
Privacy and Security	✓ See comment.	
Maintenance of Views	✓	

**Comment:**

**Streetscape/Townscape**

The proposed modification maintains consistency with the objectives for Townscape under Clause 3.1 as follows:

*Objective 4) To ensure that all parking provision is designed and sited to respond to and respect the prevailing townscape.*

The site does not currently have potential for on-site parking.

*Objective 5) To assist in maintaining the character of the locality.*

The changes to the approved works include modifications to works on the roof and the addition windows to the north and south elevation. The proposed windows are to the rear of the site and are appropriately minimised in extent so as to be complementary with the surrounding area and have no unreasonable visual impact.



*Objective 6) To recognise the importance of pedestrian movements and townscape design in the strengthening and promotion of retail centres.*

The proposed modifications will contribute appropriately to the local centre by providing a restaurant which encourages pedestrian movements and promotes the local centre.

*Objective 7) To minimise negative visual impact, in particular at the arterial road entry points into the Council area and the former Manly Council area, so as to promote townscape qualities.*

The modifications to the exterior of the building will minimise the visual impact of the building from the Corso and South Steyne. This is a result of being appropriately setback to the rear of the site to minimise visual impact when viewed from the street and Corso.

### 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 involves windows to the rear of the site at the north and south elevation. The location and extent of these windows would ensure there is appropriate physical separation between buildings and no unreasonable overlooking.

Conditions remain regarding the acoustical treatment for appropriate acoustical privacy regarding the proposed modifications for the mechanical equipment on the roof.

*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 proposed barrier for acoustic privacy is at a lower level than the existing approved flue. This provides an appropriate compromise between privacy and views.

*Objective 3) To encourage awareness of neighbourhood security.*

Not applicable.

## Part 4 - Development Controls

### Comment:

The proposal includes the modification of mechanical works on the roof, the addition of a window, and change to access areas and internal works in a local centre zone. As such, there are no controls under Part 4 that are pertinent in this situation.

## Part 5 - Special Character Areas and Sites

Special Character Areas and Sites	Applicable	Not Applicable
Conservation Area	✓ Complies with provisions.	
Foreshore Scenic Protection Area	✓ Complies with provisions.	
Threatened Species and Critical Habitat		✓
Flood Control Lots		✓
Riparian Land and Watercourses		✓
Road Widening		✓

### Development Control Plan for Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 Sydney Harbour Foreshores & Waterways Areas:

The proposed development is consistent with the relevant controls of Clauses 2.2, 3.4, 4.2, 4.4 and 4.5 of the Sydney Harbour Foreshores & Waterways Areas Development Control Plan for Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

**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 planning agreement has been entered into in relation to the proposed development.

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

The proposed development has been assessed having regard to the Manly Local Environmental Plan 2013 and the Manly Development Control Plan 2013 and is considered to be satisfactory.

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

There is no applicable Coastal Zone Management Plan.

**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 as modified by the conditions of consent is not considered to have any detrimental impact on the natural and built environments and is accordingly recommended for approval.

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

The proposed development as modified by the conditions of consent is considered to be 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 Council's Development Control Plan 2013 Section 2.3 with 9 submissions received from the following objectors raising the following concerns:

Submission and Address	Main Issues raised in the submission	Comments on submission
1.J. Kaklamanis	<ul style="list-style-type: none"> <li>Extended trading hours and noise.</li> </ul>	<ul style="list-style-type: none"> <li>There are no change to hours proposed in this application.</li> </ul>
2. J. West.	<ul style="list-style-type: none"> <li>Operation hours</li> </ul>	<ul style="list-style-type: none"> <li>There are no change to hours proposed in this application.</li> </ul>
3. J. Mulhall.	<ul style="list-style-type: none"> <li>The proposal to trade after midnight.</li> <li>Impact on privacy. The use of retractable roof and enlargement of windows.</li> <li>Music above ground floor.</li> <li>Noise.</li> </ul>	<ul style="list-style-type: none"> <li>There are no change to hours proposed in this application.</li> <li>Subject to existing conditions, there will be appropriate measures taken for privacy including noise.</li> </ul>
4. R, Dawson, 25 Wentworth Street.	<ul style="list-style-type: none"> <li>Proposed hours of operation.</li> <li>Exhaust outlet on roof</li> <li>Noise.</li> </ul>	<ul style="list-style-type: none"> <li>There are no change to hours proposed in this application.</li> <li>Subject to existing conditions, there will be appropriate measures taken for privacy including noise and impact of exhaust.</li> </ul>

5. P & B Fitzgerald, 25 Wentworth Street.	<ul style="list-style-type: none"> <li>Proposed hours of operation.</li> </ul>	<ul style="list-style-type: none"> <li>There are no change to hours proposed in this application.</li> </ul>
6. P & P Berents, 25 Wentworth Street.	<ul style="list-style-type: none"> <li>Understand there is no request to change of hours. Opposed to any change if there was.</li> </ul>	<ul style="list-style-type: none"> <li>There are no change to hours proposed in this application.</li> </ul>
7. L. Fortescue	<ul style="list-style-type: none"> <li>Objection to works on the roof</li> <li>Request for internal investigation into how so much machinery was deemed permissible.</li> </ul>	<ul style="list-style-type: none"> <li>The modifications to the works on the roof are considered to be reasonable in terms of visual impact and amenity.</li> <li>The original DA (276/2015) and the Section 96 modification (Part 2) were both determined by an Independent Assessment Panel.</li> </ul>
8. E. Young, 25 Wentworth Street, Manly.	<ul style="list-style-type: none"> <li>Hours of operation including 2am closing and associated noise.</li> <li>Structures on roof</li> </ul>	<ul style="list-style-type: none"> <li>There are no change to hours proposed in this application.</li> <li>The modifications to the works on the roof are considered to be reasonable in terms of visual impact and amenity.</li> </ul>
9. K, Kuligowski, 25-27 South Steyne.	<ul style="list-style-type: none"> <li>Extension of trading hours</li> <li>Noise.</li> <li>Doubt of compliance with fire regulations.</li> </ul>	<ul style="list-style-type: none"> <li>There are no change to hours proposed in this application.</li> <li>Subject to existing conditions, there will be appropriate measures taken for privacy including noise.</li> <li>The development may require changes for compliance with fire regulations, prior to a construction certificate.</li> </ul>
10. J E M Lloyd, 25 Wentworth Street.	<ul style="list-style-type: none"> <li>The height of mechanical equipment and its impact on view.</li> <li>Doubt of compliance with fire regulations.</li> </ul>	<ul style="list-style-type: none"> <li>The modifications to the works on the roof are considered to be reasonable in terms of visual impact and amenity.</li> <li>The development may require changes for compliance with fire regulations, prior to a construction certificate.</li> </ul>

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

The proposed development as modified by the conditions of consent is not considered to have an adverse impact on 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 proposal does not involve the addition of any dwellings and as a result contributions are not applicable.

**Section 96(2) of the Environmental Planning and Assessment Act 1979**

**(2) Other modifications**

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 development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, 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 the period prescribed by the regulations or provided by the development control plan, as the case may be.

Subsections (1) and (1A) do not apply to such a modification.

- (3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application.
- (4) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.

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 9 submissions 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.

#### **RECOMMENDATION**

That pursuant to Section 96 (2) of the Environmental Planning and Assessment Act 1979, the proposed modification to Development Consent No. DA276/2015 for Section 96(2) application to modify approved change of use to a restaurant at 36-38 South Steyne be **approved** subject to:

1. The original conditions of consent as approved by MIAP on 17 March 2016.
2. As modified by the Section 96(2) Application – Part 2 – involving the modification of Condition No. DA1 and ANS04, the addition of Condition No's ANS10 to ANS20 and the deletion of Condition No's ANS02 and 42 (6MS06).
3. As modified by the Section 96(2) Application – Part 3 – involving the modification of Condition No. DA1 and ANS20.

#### **ANS01**

The hours of operation of the premises (i.e. hours open for business) must not exceed 10am to midnight seven (7) days per week, without the prior approval of Council. Upon expiration of the permitted hours of operation, all restaurant service shall immediately cease and all patrons on premises shall be required to leave within the following half hour and staff by 1:00am.

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

The following Condition No. ANS02 is to be deleted as per Section 96(2) Application – Part 2 – determined on 15 December 2016:

#### **ANS02**

DELETED

#### **ANS03**

The premises shall comply with the following:

- (a) The LA<sub>10</sub>\* noise level emitted from the premises shall not exceed the background noise level (LA<sub>90</sub>) in any Octave Band Centre Frequency (31.5Hz-8kHz inclusive) by more than 5dB between 7:00am and 12 midnight at the boundary of any affected residence
- (b) The LA<sub>10</sub>\* noise level emitted from the premises shall not exceed the background noise level (LA<sub>90</sub>) in any Octave Band Centre Frequency (31.5Hz-8kHz inclusive) between 12 midnight and 7:00am at the boundary of any affected residence
- (c) Notwithstanding compliance with the above, the noise level from the premises shall not be audible within any habitable room in any residential premises between the hours of 12 midnight and 7:00am
- (d) The LA<sub>10</sub> noise level emitted from the premises shall not exceed the background noise level (LA<sub>90</sub>) in any Octave Band Centre Frequency (31.5Hz-8kHz inclusive) by more than 3dB when assessed indoors at any occupied commercial premises whilst that premises in in operation

\*(for the purposes of this condition, the LA<sub>10</sub> can be taken as the average maximum deflection of the noise emission from the premises).

Reason: To protect the acoustic amenity of neighbouring properties.



**The following Condition No. ANS04 is to be amended as per Section 96(2) Application – Part 2 – determined on 15 December 2016:**

**ANS04**

All music and amplified sound whether live or recorded must be controlled by a noise limiter. The limiter shall be set by an acoustic expert so that noise emissions comply with the noise criteria specified in condition ANS03. Certification must be submitted to Council twenty-eight (28) days from issuing the Occupation Certificate certifying the limiter has been installed in accordance with condition ANS03.

Reason: To protect the acoustic amenity of neighbouring properties.

**ANS05**

The LA<sub>eq</sub> noise level emanating from mechanical plant situated on the premises must not exceed the background level (LA<sub>90</sub>) by more than 5dB as measured at the boundary of any affected residence.

Reason: To protect the acoustic amenity of neighbouring properties.

**ANS06**

Within twenty-eight (28) days from the issue of any Occupation Certificate, a report prepared by an accredited acoustic consultant must be submitted to Council assessing compliance with Conditions ANS03 and ANS05 of this consent. Any recommendations made by the consultant must be implemented in order to achieve compliance with noted conditions of this consent.

Reason: To protect the acoustic amenity of neighbouring properties.

**ANS07**

No consent is granted to any new signage or modification to any existing signage. A separate application is to be submitted for Council for consideration.

Reason: To ensure consistent forms of signage within the Conservation Area.

**The following Condition No. ANS08 is to be amended as per Section 96(2) Application – Part 2 – determined on 15 December 2016:**

**ANS08:**

This consent does not approve any ground floor outdoor eating/seating area proposed as part of this development application. Plans are to be amended to exclude any ground floor outdoor eating/seating area, prior to the issue of any Construction Certificate. A separate application for Outdoor Eating Area Approval shall be submitted to Council in accordance with the requirements of Section 125 of the Roads Act 1993.

Reason: To ensure consistency between any development consent and outdoor eating licence.

**ANS09**

The retractable roof on the top level shall be closed by 10:00pm every night.

Reason: To protect the acoustic amenity of neighbouring properties.

**The following Condition No. ANS10 is to be added as per Section 96(2) Application – Part 2 – determined on 15 December 2016:**

**ANS10 (2AQ01)**

A report prepared by an air pollution control consultant specifying odour control and other air impurity control methods is to be submitted to the Council/Accredited Certifier for approval, prior to the issue of the Construction Certificate. All works required must be implemented prior to the use commencing.

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

**The following Condition No. ANS11 is to be added as per Section 96(2) Application – Part 2 – determined on 15 December 2016:**

**ANS11 (6AQ01)**

The use of the premises must not give rise to air impurities in contravention of the *Protection of the Environment Operations Act 1997* and must be controlled in accordance with the requirements of this Act.

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

The following Condition No. ANS12 is to be added as per Section 96(2) Application – Part 2 – determined on 15 December 2016:

**ANS12**

Mechanical plant situated on the roof area of the premises must be acoustically treated to ensure noise emissions do not exceed more than 5dB(A) above the background noise level at the nearest residential premises. Details are to be submitted to the Council/Accredited Certifier prior to the issue of the Construction Certificate.

Reason: To ensure compliance with legislation and to protect the acoustic amenity of neighbouring residential premises.

**The following Condition No. ANS13 is to be added as per Section 96(2) Application – Part 2 – determined on 15 December 2016:**

**ANS13**

Within twenty-eight (28) days from the issue of the Occupation Certificate, a report prepared by an accredited acoustic consultant must be submitted to Council assessing compliance with noted noise conditions of this consent. Any recommendations made by the consultant must be implemented in order to achieve compliance with this consent.

Reason: To protect the acoustic amenity of neighbouring properties

**The following Condition No. ANS14 is to be added as per Section 96(2) Application – Part 2 – determined on 15 December 2016:**

**ANS14**

The operation of solid fuel appliances must not cause a nuisance to neighbouring premises through the emission of air impurities or offensive odours as defined under the *Protection of the Environment Operations Act 1997* (the Act). The solid fuel appliance must not be used in such a manner as to permit the emission of excessive smoke as defined under the Act.

Reason: To protect the amenity of neighbouring properties.

**The following Condition No. ANS15 is to be added as per Section 96(2) Application – Part 2 – determined on 15 December 2016:**

**ANS15**

A Plan of Management for the operation of the restaurant must be entered into with Council prior to issue of an Occupation Certificate. The ongoing operation of the restaurant 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
- A list of residences which contact telephone numbers of hotel management staff are to be provided. Any subsequent contact from residents who have concerns will be addressed promptly and courteously.
- Method of recording and actioning complaints received directly from affected residents

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- Management procedures relating to the service of alcohol
- Recommendations from an accredited acoustic consultant

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

**The following Condition No. ANS16 is to be added as per Section 96(2) Application – Part 2 – determined on 15 December 2016:**

**ANS16**

The use of amplified sound equipment and public address systems is not permitted, unless located inside the restaurant and used in such a manner that noise cannot be heard in any habitable room of any residential premises.

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

**The following Condition No. ANS17 is to be added as per Section 96(2) Application – Part 2 – determined on 15 December 2016:**

**ANS17**

DELETED

**The following Condition No. ANS18 is to be added as per Section 96(2) Application – Part 2 – determined on 15 December 2016:**

**ANS18**

All mechanical plant on the roof area of the premises must be acoustically treated to ensure the noise level emanating from the equipment does not exceed more than 5dB(A) above the background level as measured at the boundary of the premises.

*Reason: To protect the acoustic amenity of neighbouring properties*

**The following Condition No. ANS19 is to be added as per Section 96(2) Application – Part 2 – determined on 15 December 2016:**

**ANS19**

DELETED

**The following Condition No. ANS20 (3MS01) is to be amended as per Section 96(2) Application – Part 3:**

**ANS20 (3MS01)**

Works in connection with any Section 96 modification are not to be commenced/carried out until a new Construction Certificate is issued.

*Reason: The Environmental Planning and Assessment Act 1979 requires a new updated Construction Certificate to cover any or all approved Section 96 modifications involving changes in the design of the development.*

**The following Condition No. DA1 is to be amended as per Section 96(2) Application – Part 2 – determined on 15 December 2016:**

**DA1**

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

*Plans affixed with Council's stamp relating to Development Consent No. DA276/2015*

Plan No. / Title	Issue/ Revision & Date	Date Received by Council
DA 1201- Proposed Ground Floor	Rev A dated Nov 2015	11/2/2016
DA 1301- Proposed First Floor	Rev B dated Jan 2016	11/2/2016
DA 1302- Proposed Second Floor	Rev B dated Jan 2016	11/2/2016
DA 1401- Roof Plan	Rev A- dated Nov 2015	11/2/2016
DA 1501- Proposed Elevation	Rev B dated Jan 2016	11/2/2016
DA 1601- Proposed Sections	Rev B dated Jan 2016	11/2/2016

*Documentation affixed with Council's stamp relating to Development Consent No. DA276/2015*

- Statement of Environmental Effects prepared by Design Collaborative Pty Ltd by dated Nov 2015 and received by Council on 23/12/2015
- Plan of Management prepared by Design Collaborative Pty Ltd by dated Nov 2015 and received by Council on 23/12/2015
- Social Impact Statement Effects prepared by Design Collaborative Pty Ltd by dated Nov 2015 and received by Council on 23/12/2015

**Except as amended by:**

*Drawings affixed with Council's 'Development Consent' stamp relating to this Section 96(2) Application – Part 2:*

Plan No. / Title	Issue/ Revision & Date	Date Received by Council
WD1201- Proposed Plan Ground Floor	Issue A2- 15.09.2016	September 2016
WD1301- Proposed First Floor Plan	Issue A2- 15.09.2016	September 2016
WD1302- Proposed Plan Second Floor	Issue A2- 15.09.2016	September 2016
WD1501- Proposed East Elevation	Issue A2- 15.09.2016	September 2016
WD1502- Proposed North Elevation	Issue A2- 15.09.2016	September 2016
WD1401- Proposed Plan Roof	Issue A2- 15.09.2016	September 2016
WD1601- Proposed Section 01	Issue A2- 15.09.2016	September 2016

*Reference Documentation affixed with Council's stamp relating to this Section 96(2) Application – Part 2:*

- Statement of Environmental Effects prepared by Design Collaborative dated September 2016 and received by Council on 26 September 2016.

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.*

Except as amended by:

*Drawings affixed with Council's 'Development Consent' stamp relating to this Section 96(2) Application – Part 3:*

Plan No. / Title	Issue/ Revision & Date	Prepared By
DA04- Site Plan.	Issue A1- 14.09.2017	Snell
WD1201- Ground Floor Plan	Issue A3- 14.09.2017	Snell
WD1301- First Floor Plan	Issue A4- 14.09.2017	Snell
WD1302- Second Floor Plan	Issue A3- 14.09.2017	Snell
WD1401- Roof Plan	Issue A3- 14.09.2017	Snell
W1501- East Elevation	Issue A5- 14.09.2017	Snell
W1502- North Elevation	Issue A6- 28.11.2017	Snell
W1505- South Elevation	Issue A1- 14.09.2017	Snell
WD1506- West Elevation	Issue A1- 25.10.2017	Snell
W1601- East- West Section	Issue A1- 14.09.2017	Snell

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.*

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

##### 1 (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.*

##### 2 (2BS01)

Detailed plans and specifications must be provided prior to the issue of the Construction Certificate complying with the requirements of Australian Standard 4764-2004 (Design, Construction and Fit-out of a Food Premises) and Food Safety Standard 3.2.3 (Food Premises and Equipment).

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

##### 3 (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 as per the current rates in Council's Fees and Charges. 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 applicant's 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.

4 (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.

5 (2DS01)

A detailed stormwater management plan is to be prepared to fully comply with Council's Specification for On-site Stormwater Management 2003 and Specification for Stormwater Drainage 2003 and must be submitted to Council prior to issue of the Construction Certificate. The stormwater management plan and designs are to be prepared by a suitably qualified engineer with experience in hydrology and hydraulics.

Reason: To ensure appropriate provision is made for the disposal and management of stormwater generated by the development, and to ensure that infrastructure reverting to Council's care and control is of an acceptable standard.

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 (2HT03)

A schedule of external signage, complete with details regarding illumination, is to be submitted to Council's satisfaction, prior to the issue of Construction Certificate. The proposed signage and illumination is to be complementary to the surrounding character of the Conservation Area/ Heritage item.

Reason: To ensure that the proposed signage is appropriate to the character and style of the Conservation area/ Heritage item.

8 (2HT07)

A schedule of external colours is to be submitted to Council's satisfaction prior to the issue of Construction Certificate. The external colour schemes of new buildings are to be in keeping with the original character of the heritage buildings on the site. On the heritage buildings the external colour scheme for surfaces intended for painting is to be based, where possible, on physical and documentary evidence in keeping with the architectural style and period of the buildings.

Reason: To ensure the proposed colour scheme is appropriate to the type and style of the building and the surrounding area

9 (2HT11)

A simple photographic record is to be made of all the existing buildings and structures prior to commencement of works or any demolition works. This should include photographs of all elevations, interiors and key features (including garden, fences, architectural details such as windows, joinery etc.), as well as a number of contextual shots, depicting the site's surrounding environment.

This should be compiled into a single hard copy document which also includes the exiting plans of the building (Floor Plans and Elevations), and should be submitted with a digital version of the photos to Council's Heritage Advisor, prior to the issue of Construction Certificate. Written confirmation that the Council reserves the right to use the photographs for its own purposes and genuine research purposes is also to be included.

Reason: To provide a historic record of heritage significant works on the site for archival purposes.

10 (2MS07)

DELETED

11 (2NL01)

Details are to be submitted to the Council/Accredited Certifier indicating the method of sound attenuation and/or acoustic treatments for all roof terraces, decks and balconies in compliance with the Building Code of Australia, prior to issue of the Construction Certificate.

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

12 (2NL03)

Details of the proposed mechanical exhaust systems, detailing compliance with the relevant requirements of Clause F4.12 of the Building Code of Australia and Australian Standard 1668 Parts 1 and 2 are to be submitted to Council or the Principal Certifying Authority for approval prior to the issue of a Construction Certificate.

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

13 (2NL05)

Mechanical plant situated on the roof area of the premises must be acoustically treated to ensure noise emissions are not audible at the nearest residential premises. Details are to be submitted to the Council/Accredited Certifier prior to the issue of the Construction Certificate.

Council may require the owner or occupier of the premises to engage the services of a suitably qualified professional to undertake an acoustic assessment of the premises in the event concerns regarding the emission of 'offensive noise' are raised and/or justified by Council.

Reason: To protect the acoustic amenity of neighbouring properties.

14 (2WM03)

Garbage rooms or grease arrester rooms must be constructed of solid material: cement rendered and steel trowelled to a smooth even surface. The door to the garbage room is to be designed and constructed to ensure the room is vermin proof and can be opened from the inside at all times. The garbage room is to be ventilated to the external air by natural ventilation or an approved air handling exhaust system.

Reason: To keep garbage rooms in a clean and sanitary condition to protect public health.

#### CONDITIONS TO BE SATISFIED PRIOR TO ANY COMMENCEMENT

15 (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.

16 (3CD03)

An adequate security fence is to be erected around the perimeter of the site prior to commencement of any excavation or construction works, and this fence is to be maintained in a state of good repair and condition until completion of the building project.

Reason: To protect the public interest and safety.

## CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

### 17 (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.

### 18 (4BS01)

The construction and 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.

### 19 (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) All waste must be contained entirely within the site.
- 11) 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.
- 12) 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.
- 13) 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.
- 14) 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.
- 15) 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.

16) Building operations such as brick-cutting, 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.

17) 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.

18) 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.

#### 20 (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 (including works undertaken by external contractors). 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.

#### 21 (4CD03)

Toilet facilities are to be provided at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 person or part of 20 persons employed at the site, by effecting either a permanent or temporary connection to the Sydney Water's sewerage system or by approved closets.

Reason: To maintain sanitary conditions on building sites.

#### 22 (4CD07)

Anyone who removes, repairs or disturbs bonded or a friable asbestos material must hold a current removal licence from Workcover NSW. Before starting work, a work site-specific permit approving each asbestos project must be obtained from Workcover NSW. A permit will not be granted without a current Workcover licence.

All removal, repair or disturbance of or to asbestos material must comply with the following:

- The Work Health and Safety Act 2011.
- The Work Health and Safety Regulation 2011.
- How to Safely Remove Asbestos Code of Practice – WorkCover 2011.

The owner or occupier of the premises must consult an appropriately qualified and Australian Institute of Occupational Hygienists registered professional to undertake an assessment of the site to determine the potential for contamination. The owner or occupier must develop a management plan and be issued with Clearance Certificate before the commencement of any work.

Reason: To ensure the health of site workers and the public.

#### 23 (4CD10)

Noise arising from the works must be controlled in accordance with the requirements of the Protection of the Environment Operations Act 1997 and guidelines contained in the New South Wales Environment Protection Authority Environmental Noise Control Manual.

Reason: To ensure compliance with legislation and to prevent disturbance to the surrounding community.



24 (4HT01)

The proposed works are to be carried out in a manner which minimises any demolition, alteration, new penetrations/fixing or irreversible damage to the significant fabric of the existing buildings which are listed as heritage items in Schedule 5 – Environmental Heritage of the Manly Local Environmental Plan 2013. Particular care must be taken to minimise damage to the significant fabric of the building during the carrying out of the internal fit out and any electrical or plumbing works.

Reason: To ensure the heritage significance of the site is not adversely affected and best practice for heritage conservation is undertaken.

25 (4HT04)

Should any potentially historic relics be discovered on the site during excavation, all excavation or disturbance to the area is to stop immediately and the Heritage Division of the NSW Department of Environment and Heritage should be informed in accordance with Section 146 of the Heritage Act 1977. "Relics" are any deposit, artefact, object or material evidence that relates to the settlement of the area that comprises New South Wales, not being Aboriginal settlement, and are of State or local heritage significance.

Should any potentially significant Aboriginal material be discovered on the site, all excavation or disturbance of the area is to stop immediately and the Heritage Division of the NSW Department of Environment and Heritage is to be informed in accordance with Section 91 of the National Parks and Wildlife Act 1974.

Reason: To ensure the proper management and preservation of potentially significant archaeological material.

26 (4HT07)

Alterations to, and demolition of, the existing building shall be limited to that documented on the approved plans (by way of notation) or conditioned in this consent. No approval is given or implied for removal and/or rebuilding of any portion of the existing building which is shown to be retained.

Should any portion of the existing building which is indicated on the approved plans to be retained, be damaged for whatever reason, all the works in the area of this damaged portion are to cease and written notification given to Council.

No work is to resume until the written approval of Council is obtained.

Reason: To ensure that all matters relating to significant fabric and spaces are resolved using best practice for heritage conservation.

27 (4HT08)

Should any concealed building remnants or architectural features, not previously noted in the DA documentation, be discovered during demolition or building works, all works are to cease immediately and Council's Heritage Advisor is to be contacted for advice.

Reason: To ensure the protection and conservation of Manly's significant heritage resources.

28 (4NL01)

Noise arising from demolition and construction works must be controlled in accordance with the requirements of the Protection of the Environment Operations Act 1997 and guidelines contained in the New South Wales Environment Protection Authority Environmental Noise Control Manual.

Reason: To prevent disturbance to the surrounding community during construction.

29 (4WM04)

Garbage rooms or grease arrester rooms must be constructed of solid material: cement rendered and steel trowelled to a smooth even surface. The door to the garbage room is to be designed and constructed to ensure the room is vermin proof and can be opened from the inside at all times. The garbage room is to be ventilated to the external air by natural ventilation or an approved air handling exhaust system.

Reason: To keep garbage rooms in a clean and sanitary condition to protect public health.



**CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE****30 (5BS02)**

Prior to the issue of the Occupation Certificate, the proprietor of the food business must notify their business operations to Council. If the food business is licensed business (such as a butcher shop, dairy producer, or seafood processor) a license application with the NSW Food Authority must be lodged.

Reason: To ensure compliance with legislation and the Australia and New Zealand Food Standards Code.

**31 (5MS01)**

At the completion of the installation of the mechanical exhaust ventilation system, a certificate from a practising mechanical engineer shall be submitted to Council or the Principal Certifying Authority prior to the issue of the Occupation Certificate indicating compliance with Australian Standard AS 1668.

Reason: To ensure the mechanical exhaust ventilation system complies with Australian Standard AS1668.

**32 (5NL01)**

An Acoustic Compliance Report, prepared by a qualified and experienced acoustical consultant, must be submitted certifying noise levels emitted from the (building's/premises) (services, equipment, machinery and ancillary fittings) does not exceed 5dBA above the background level in any octave band from 63.0 Hz centre frequencies, inclusive at the boundary of the site.

Note: This method of measurement of sound must be carried out in accordance with Australian Standard AS 1055.1-1997.

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

**33 (5NL02)**

Prior to the issue of a Construction Certificate, the Certifying Authority must be satisfied that all outdoor lighting is designed and positioned to minimise any detrimental impact upon the amenity of other premises and adjacent dwellings and that the outdoor lighting complies with the relevant provisions of Australian Standard 1558.3:2005 Pedestrian area (Category P) lighting – Performance and design requirements and Australian Standard 4282:1997 Control of the obtrusive effects of outdoor lighting.

Reason: To protect public health and amenity.

**34 (5WM01)**

The applicant must contact Sydney Water (Tel.- 131110) to determine whether a Trade Waste Permit is required before discharging any trade waste to the sewerage system.

Reason: To comply with legislation.

**35 (5WM02)**

Prior to issue of an Occupation Certificate, the owner must provide evidence of a contract with a licensed contractor for the removal of all trade waste.

Reason: Responsible disposal management of trade waste.

**36 (5WM03)**

The premises must have adequate holding facilities for waste oil to meet Australian Standards for bunding and provide evidence of a current contract for the waste oil's recycling to the Principal Certifying Authority prior to the issuing of the Occupation Certificate.

Reason: To ensure responsible disposal of waste oil.

**ONGOING CONDITIONS RELATING TO THE OPERATION OF THE PREMISES OR DEVELOPMENT**

37 (6AP04)

All towers, ventilation/ducting, exhaust fan structures, chillers and condensers for air-conditioning and any other structures on the roof are to be the subject of a separate Development Application.

Reason: To maintain the amenity of the surrounds.

38 (6AQ01)

The use of the premises must not give rise to air impurities in contravention of the Protection of the Environment Operations Act 1997 and must be controlled in accordance with the requirements of this Act.

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

39 (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.

40 (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.

41 (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. 42 (6MS06) is to be deleted as per Section 96(2) – Part 2 – determined on 15 December 2016:**

**42 (6MS06)**

**DELETED**

43 (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.

44 (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.

45 (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.

46 (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.

47 (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.

48 (6NL07)

Noise associated with any entertainment within the premises including but not limited to live music, amplified music, background acoustic music, recording, comedy, dance, artistic expression or otherwise must not be audible within any residential habitable room at any time.

Reason: To minimise noise disturbance to neighbouring residential properties.

49 (6NL08)

All outdoor lighting must not detrimentally impact upon the amenity of other premises and adjacent dwellings and must comply with where relevant, Australia Standard AS 1158.3:2005 Lighting for roads and public spaces – Pedestrian Area (Category P) lighting – Performance and design requirements and Australian Standard AS 4282:1997 Control of the obtrusive effects of outdoor lighting.

Reason: To protect the amenity of adjoining properties.

50 (6NL09)

Patron noise must be controlled so as not to disturb or intrude upon the surrounding residential community. Noise arising from patrons located within the grounds of the premises whether indoors, in the courtyard or within any approved outdoor dining area must not be audible within any residential habitable room at any time.

Reason: To minimise noise disturbance to neighbouring residential properties.

51 (6NL10)

The construction and ongoing use of the premises, building services, equipment, machinery and ancillary fittings shall not give rise to air pollution. All works shall ensure air quality controls are in place and all activity is in accordance with the Protection of the Environment Operations Act 1997 and Protection of the Environment Operations (Clean Air) Regulation 2002.

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

52 (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.

## 53 (6WM02)

Deliveries and waste collection including grease trap waste must only occur during the following hours:

- Weekdays – 7:00am – 8:00pm
- Weekends and Public Holidays – 8:00am – 8:00pm

Reason: To minimise disruption to neighbouring properties.

## 54 (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.

## 55 (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.

## 56 (6WM06)

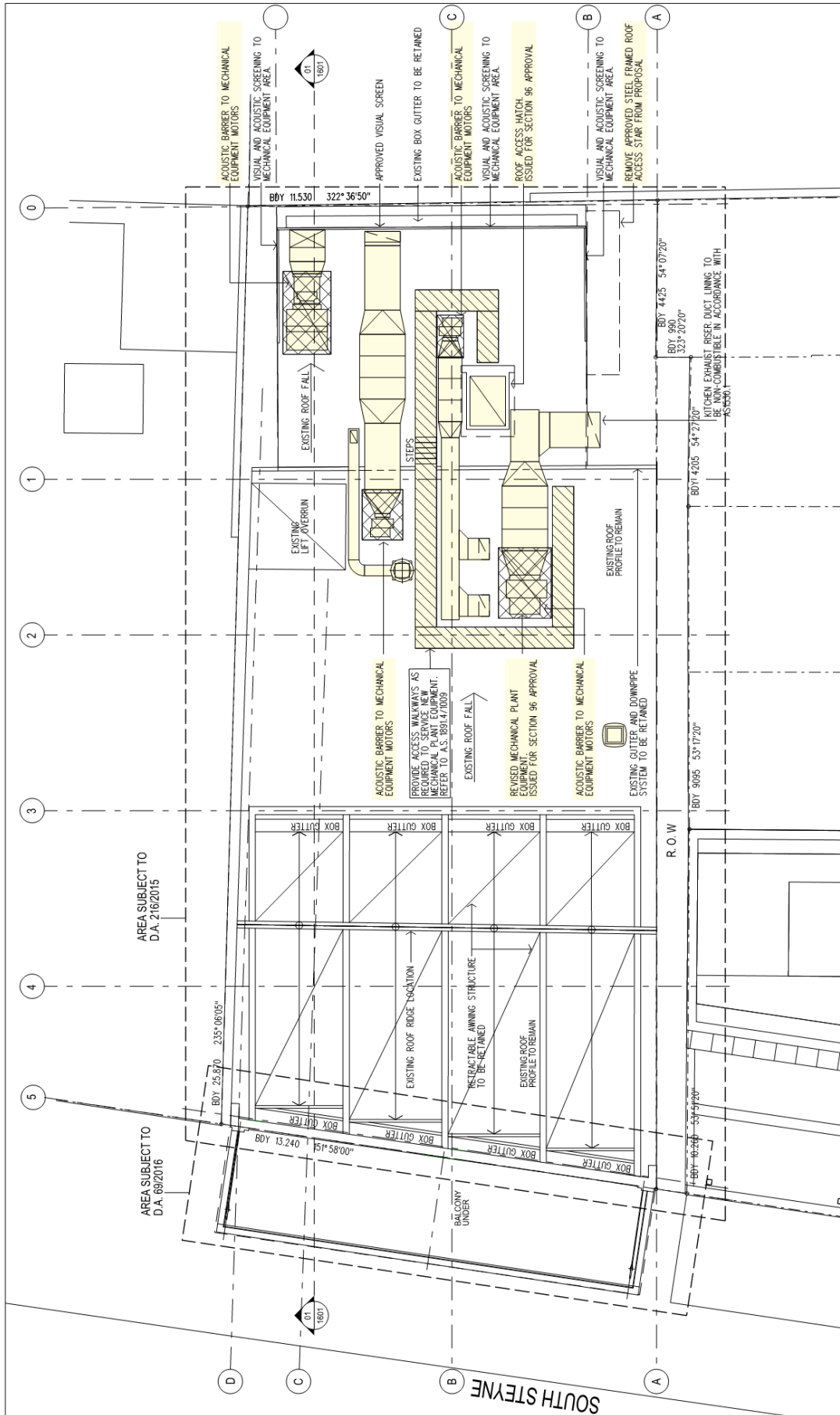
Signage on the correct use of the waste management system and materials to be recycled must be posted in the communal waste storage cupboard/room or bin bay prior to receiving an occupation certificate. Signs are available from Manly Council's Customer Service.

Reason: To ensure all residents are aware of Council's waste and recycling system with regard to their dwelling.

## 57 (6WM10)

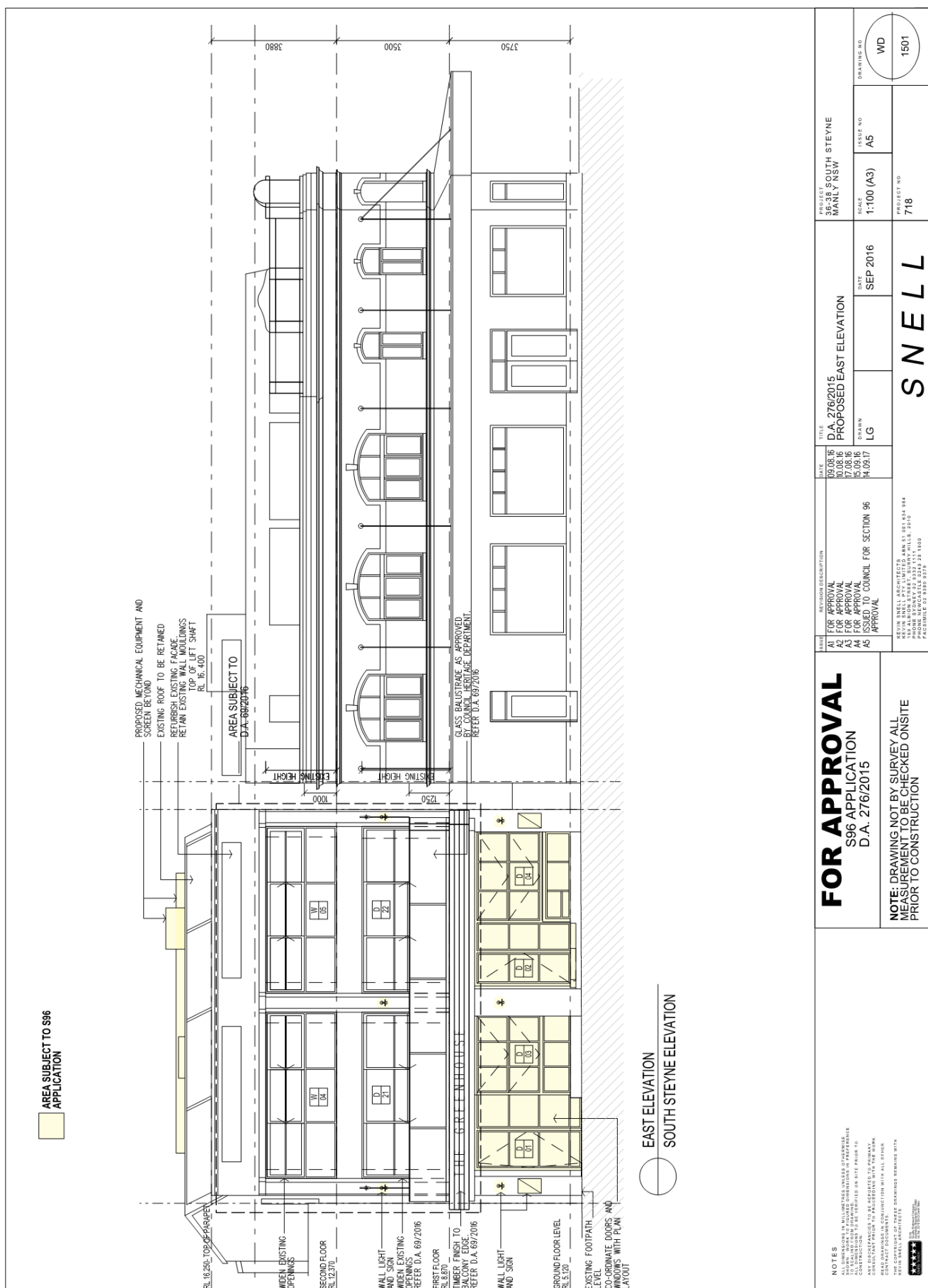
The operation of the premises must be conducted in a manner that does not pollute waters as defined by the Protection of the Environment Operations Act, 1997.

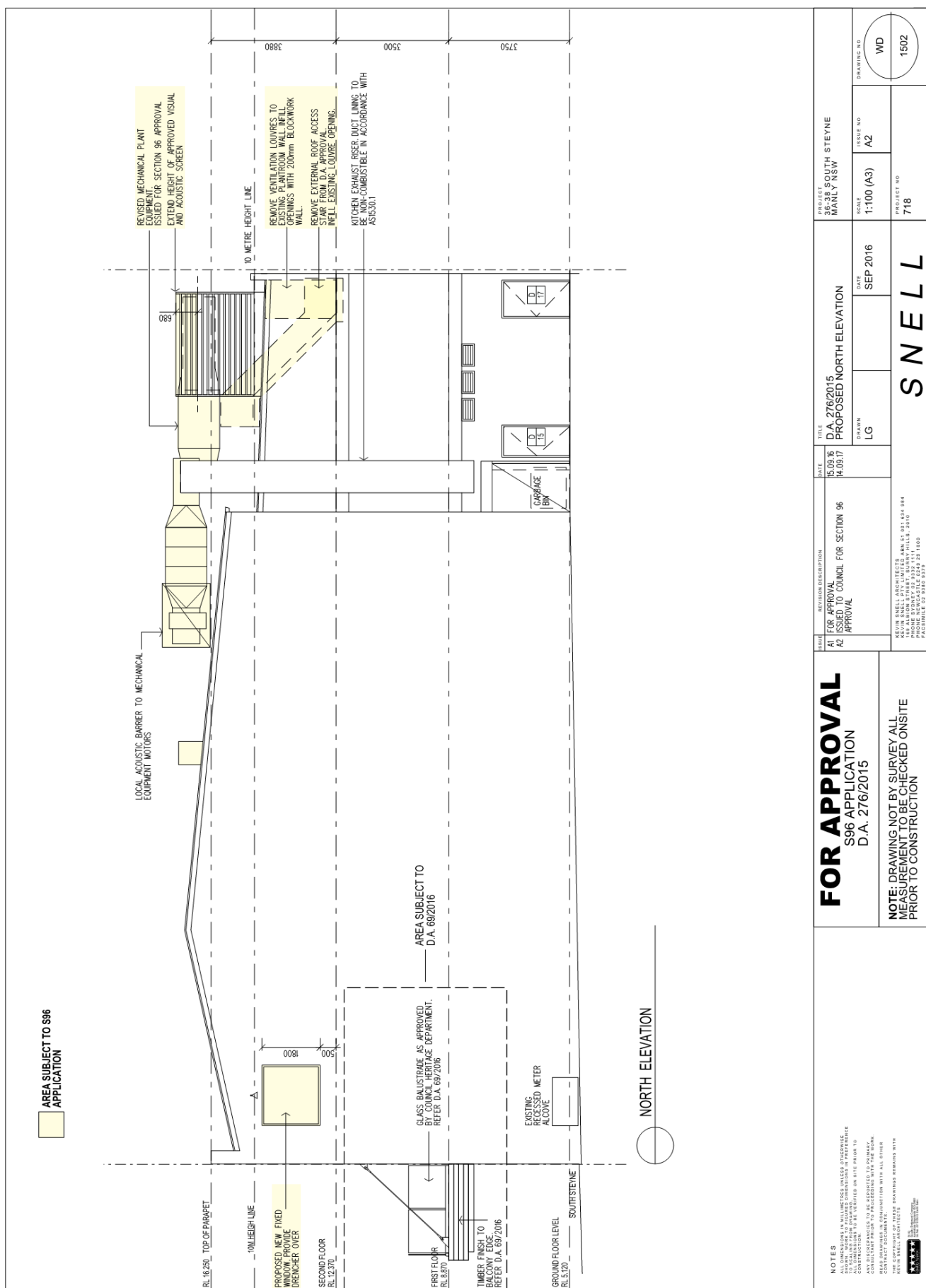
Reason: To ensure compliance with legislation and to protect public health and amenity.

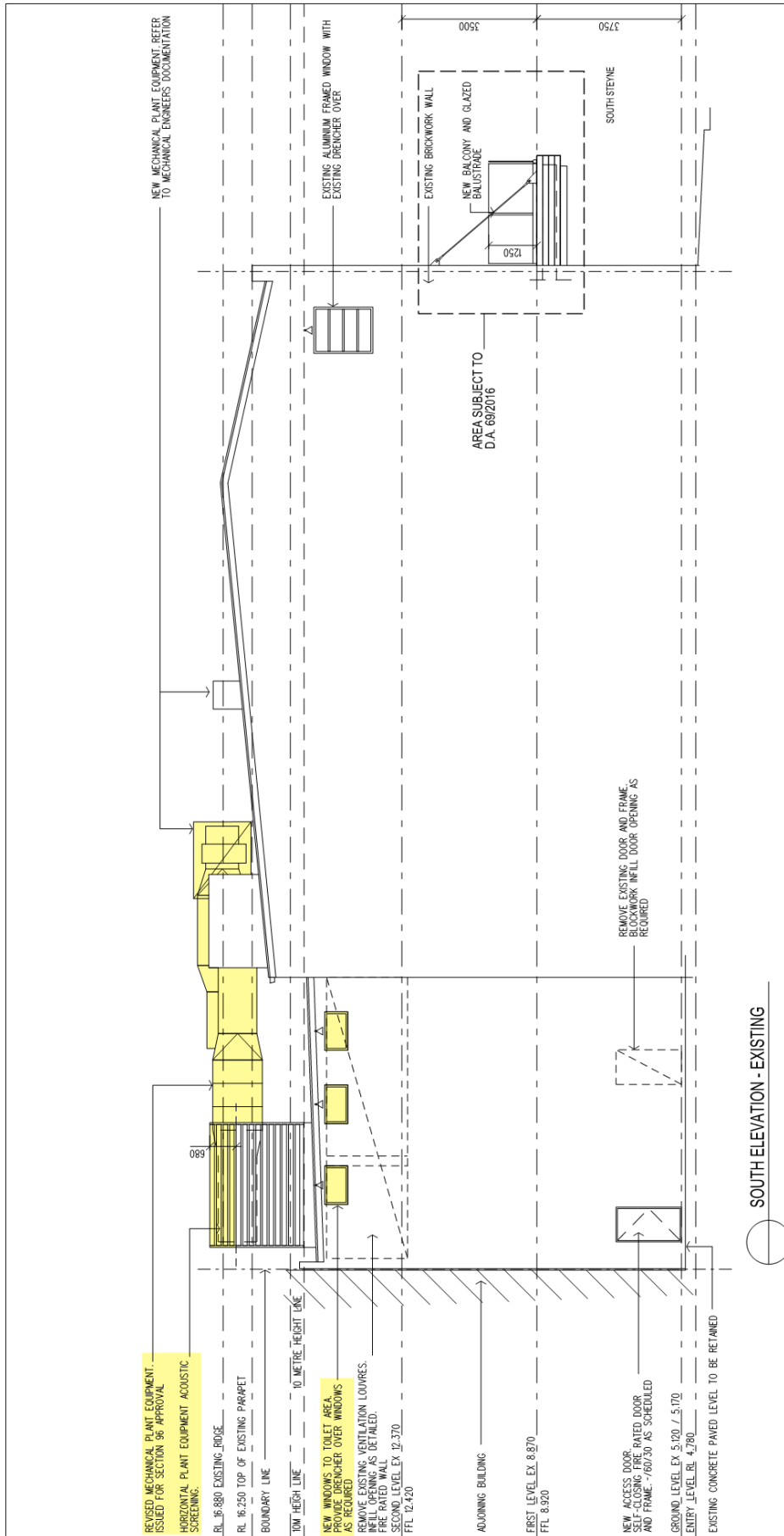


<p><b>NOTES</b></p> <p>1. ALL DIMENSIONS ARE IN METRES UNLESS OTHERWISE SPECIFIED.</p> <p>2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.</p> <p>3. ALL DIMENSIONS ARE TO BE VERIFIED ON SITE PRIOR TO CONSTRUCTION.</p> <p>4. ANY DISCREPANCY TO BE REPORTED TO THE ARCHITECT IMMEDIATELY.</p> <p>5. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS.</p> <p>6. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS.</p> <p>7. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS.</p> <p>8. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS.</p> <p>9. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS.</p> <p>10. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS.</p>	<p><b>FOR APPROVAL</b></p> <p><b>S96 APPLICATION</b></p> <p><b>D.A. 276/2015</b></p>	<p><b>REVISION DESCRIPTION</b></p> <p>A1 ISSUED TO COUNCIL FOR SECTION 96 APPROVAL</p>	<p><b>DATE</b></p> <p>14.09.17</p>	<p><b>TITLE</b></p> <p>D.A. 276/2015 SITE PLAN</p>	<p><b>PROJECT NO</b></p> <p>718</p>	<p><b>PROJECT NO</b></p> <p>718</p>
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SOUTH ELEVATION - EXISTING

**FOR APPROVAL**  
S96 APPLICATION  
D.A. 276/2015

NOTE: DRAWING NOT BY SURVEY ALL  
MEASUREMENT TO BE CHECKED ONSITE  
PRIOR TO CONSTRUCTION

NOTES  
1. ALL DIMENSIONS ARE IN METRES UNLESS OTHERWISE STATED.  
2. ALL DIMENSIONS TO FACE UNLESS OTHERWISE STATED.  
3. ALL DIMENSIONS TO BE VERIFIED ON SITE PRIOR TO  
CONSTRUCTION.  
4. ANY DISCREPANCY TO BE RESOLVED TO FAVOR OF  
THE CLIENT.  
5. HEAD DIMENSIONS IN CONFORMANCE WITH ALL OTHER  
CONTRACT DOCUMENTS.  
6. REVISIONS TO BE NOTED ON DRAWING SHEETS WITH  
DATE AND BY WHOM.

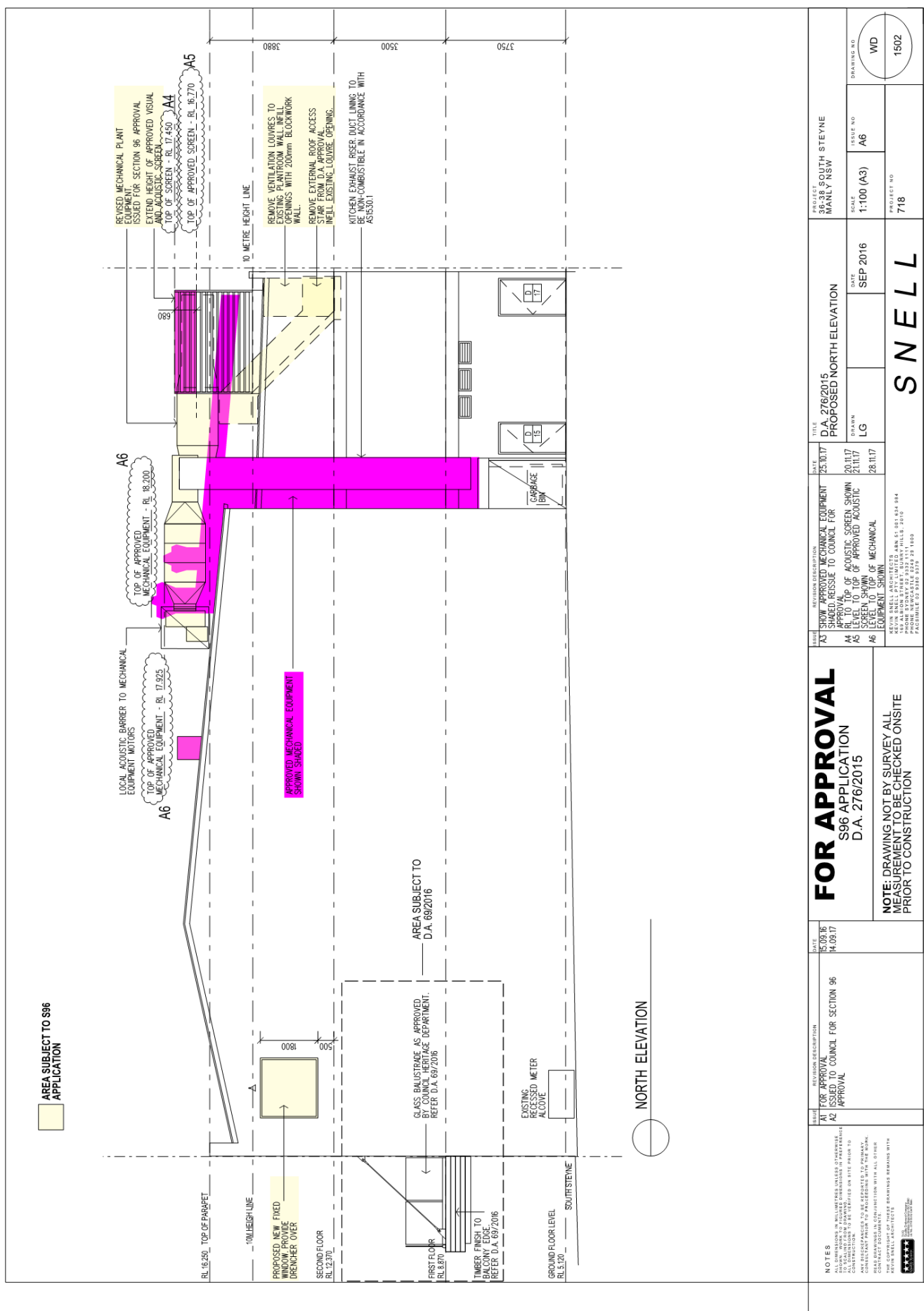
PROJECT NO 718	SCALE 1:100 (A3)	ISSUE NO A1	DRAWING NO WD 1505
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TITLE D.A. 276/2015 SOUTH ELEVATION	DATE 14.09.17	REVISION DESCRIPTION ISSUED TO COUNCIL FOR SECTION 96 APPROVAL	DATE 14.09.17	DRAWN LG	DATE SEPT 2016	ISSUE NO A1	PROJECT NO 718
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KEVIN SNELL ARCHITECTS  
KEVIN SNELL ARCHITECTS  
10/111 HILLS ROAD  
PHILLIPS RIVER VIC 3176  
PHONE 03 9357 1111  
FACSIMILE 03 9357 1100

**Snell.**







ITEM 3.4	DA0154/2016 - 82-88 THE CORSO, MANLY - S96(1A) MODIFICATION TO MODIFY APPROVED CHANGE OF USE TO A CAFÉ AND TREE REMOVAL – PART 3
REPORTING OFFICER	Benjamin Price
TRIM FILE REF	2017/492359
ATTACHMENTS	1 <a href="#">↓</a> Assessment Report 2 <a href="#">↓</a> Site Plan and Elevations

### PURPOSE

To refer the attached application for determination as required under adopted delegations of Council.

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### RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Independent Assessment Panel, as the consent authority, **approve** Application No. DA0154/2016 for S96(1A) modification to modify approved change of use to a café and tree removal – Part 3 at Lot 1 DP 34016, 82-88 The Corso Manly for the reasons outlined in the Assessment Report.

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northern  
beaches  
council

## Delegated Authority Report

2017/403470

<b>DA #</b>	154/2016
<b>Site Address</b>	82-88 The Corso Manly; Lot 1 DP 34016
<b>Proposal</b>	S96(1A) modification to modify approved change of use to a café and tree removal – Part 3
<b>Officer</b>	Ben Price

### **SUMMARY:**

<b>Application Lodged:</b>	5 September 2017
<b>Applicant:</b>	Baxter and Jacobson Architects
<b>Owner:</b>	Athas Holdings Pty Ltd C and I Koutsos
<b>Estimated Cost:</b>	\$50,000
<b>Zoning:</b>	MLEP, 2013 – B2 Local Centre
<b>Heritage:</b>	Town Centre Conservation Area and I106 Group of commercial buildings
<b>NSW LEC:</b>	Not applicable
<b>Notification:</b>	12 September 2017 – 28 September 2017
<b>Submissions received:</b>	Five (5)
<b>Site Inspected:</b>	19 October 2017
<b>LEP (4.6) Variations proposed:</b>	Nil
<b>DCP Variations proposed:</b>	4.4.3 Signage
<b>Recommendation:</b>	Approval

### **Subject Property and surrounding area**



B1, B2, B6, IN2 & SP3 Zones – S96

1 of 26

The subject property is commonly known as 82-88 The Corso and legally known as Lots 1-4 in DP 34016. The site is located on the southern side of The Corso. The property is rectangular in shape and has a frontage of 20.5m to The Corso and an average depth of 41.5m and an overall site area of 858.3m<sup>2</sup>. The property currently contains a two-storey retail premises. The property is relatively level.

The adjacent property to the east, at 90 The Corso, is developed with a two-storey retail premises. The adjacent property to the west, at 80 The Corso, is developed with two-storey retail and commercial premises. Development in this area of the Corso consists of a mix of commercial and retail premises and a pedestrian walkway (The Corso).

#### **Property Burdens and Constraints**

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

#### **Site History/Background**

The original development application 154/2016 included:

- Change of use from a loading dock and garbage storage to a café with seating in the existing courtyard;
- Fitout;
- New garbage bin enclosures;
- Changes to windows;
- New sliding door; and
- Tree removal.

The application was approved by the Northern Beaches Independent Assessment Panel on the 18 August 2016 subject to the recommended conditions of consent. In particular the following condition was included:

#### **ANS01**

*The Norfolk Island Pine located in the rear courtyard is to be retained. Plans demonstrating compliance with this condition shall be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.*

*Reason: To preserve the existing significant vegetation on the subject site.*

Development application 154/2016 was subject to a S96(1A) application to modify the development which included the following modifications:

- Increasing the area of the café from 22m<sup>2</sup> to 29m<sup>2</sup> with an equivalent reduction of the retail tenancy.
- Changes to the internal layout of the café and inclusion of a "dough preparation" room.
- Changes to the configuration of the servery in the boundary wall between 84 and 86.
- Relocation of the garbage room to the existing garbage area to the rear of 88 including an internal wall to divide retail and café garbage.
- Addition of a unisex staff toilet for the café in the rear courtyard of 88
- Changes to the retail storage area to the rear of 86 including extending the skillion roof over the storage area and passage.
- Relocation of the egress door to the rear of 88 and reconfiguration of the Rialto lane boundary wall and sliding gates.
- Addition of a grease trap within the courtyard
- Deletion of condition 8:

*"8 (2NL04)*

*Prior to the issue of the Construction Certificate, a Noise and Vibration Management Plan is to be prepared by a suitably qualified person addressing the likely noise and vibration from demolition, excavation and construction of the proposed development and provided to Council or the Principal Certifying Authority.*

*The Plan is to identify amelioration measures to ensure the noise and vibration levels will be compliance with the relevant legislation and Australian Standards. The report*

*that itemises equipment to be used for excavation works. The Plan shall address, but not limited to, the following matters:*

- *Identification of activities carried out and associated noise sources*
- *Identification of potentially affected sensitive receivers, including residences, churches, commercial premises, schools and properties containing noise sensitive equipment*
- *Determination of appropriate noise and vibration objectives for each identified sensitive receiver Noise and vibration monitoring, reporting and response procedures*
- *3 of 28*
- *Assessment of potential noise and vibration from the proposed demolition, excavation and construction activities, including noise from construction vehicles*
- *Description of specific mitigation treatments, management methods and procedures to be implemented to control noise and vibration during construction*
- *Construction timetabling to minimise noise impacts including time and duration restrictions, respite periods and frequency*
- *Procedures for notifying residents of construction activities likely to affect their amenity through noise and vibration*
- *Contingency plans to be implemented in the event of non-compliances and/or noise complaints. A register should be kept of complaints received, and the action taken to remediate the issue.*

*Reason: To protect acoustic amenity of surrounding properties and the public."*

This application was approved by the NBIAP on the 15 June 2017 subject to the retention of condition 8(2NL04).

#### **Description of proposed development**

The proposed modification includes:

- the removal of the tree located in the rear courtyard and deletion of the following condition:

#### **ANS01**

*The Norfolk Island Pine located in the rear courtyard is to be retained. Plans demonstrating compliance with this condition shall be are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.*

*Reason: To preserve the existing significant vegetation on the subject site.*

- minor changes to plan configuration
- modifying courtyard block wall detail
- adding retractable awning over courtyard
- large door to Rialto Lane changes from sliding door back to roller shutter
- details of signage on outside wall facing Rialto Lane

#### **Internal Referrals**

##### **Engineering Comments**

Council's Engineer offered no objections to the proposal.

##### **Building Comments**

Council's Building Surveyor offered no objections to the proposal.

### Landscaping Comments

Council's Landscape Officer has commented on the proposal as follows:

*"No Objection to removal of the referred Norfolk Island Pine. The species in fact is a Cook Pine (Araucaria columnaris). Under the Northern Beaches Council Tree Management Policy 'Removing and Pruning Trees on Private Land', removal is permitted without Council Consent, as worded: The removal of a tree, where the base of the trunk of the tree at ground level, is located within two metres of an existing approved building (not including decks, pergolas, sheds, patios or the like, even if they are attached to a building)."*

### Planning Comments

The Manly DCP 2013 was amended on the 28 August 2017 to specify Council's consent is not required for the removal of a tree, where the base of the trunk of the tree at ground level, is located within 2m of an existing approved building (not including decks, pergolas, sheds, patios or the like, even if they are attached to a building).

### Heritage Comments

Council's Heritage Officer offered no objections to the proposal.

### Environmental Health

Council's Environmental Health Officer offered no objections to the proposal.

### 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*

#### State Environmental Planning Policy No. 64 (Advertising and Signage)

An assessment of the proposed development in response to the criteria at Schedule 1 of SEPP 64 is as follows:

Criteria	Response
<b>Character of the Area</b>	
Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	The proposal is consistent with the existing and desired character of the area.
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	There is no particular theme for outdoor advertising in the vicinity of the proposed development. As such the proposal will not result in the disruption of any themes within the locality.
<b>Special areas</b>	
Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	The proposal does not detract from the amenity or visual quality of the heritage item or heritage conservation area.



<b>Views and vistas</b>	
Does the proposal obscure or compromise important views?	The proposed signage will not obscure important views.
Does the proposal dominate the skyline and reduce the quality of vistas?	The proposed signage will not dominate the skyline or reduce the quality of vistas.
Does the proposal respect the viewing rights of other advertisers?	The proposed signage will not impact on any nearby advertising.
<b>Streetscape, setting or landscape</b>	
Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	The proposed signage is of an appropriate scale and form for the streetscape and setting.
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	The proposal contributes to the visual interest of the streetscape and setting.
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	There is no existing advertising on the site.
Does the proposal screen unsightliness?	No
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	No
Does the proposal require ongoing vegetation management?	No
<b>Site and building</b>	
Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	The proposal is consistent with the character of the area.
Does the proposal respect important features of the site or building, or both?	The proposal will not obscure or detract from any important features of the building.
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	The proposal has adequate regard to the site surrounds and the building.
<b>Associated devices and logos with advertisements and advertising structures</b>	
Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	There are no devices, platforms or logos associated with the signage.
<b>Illumination</b>	
Would illumination result in unacceptable glare?	Not applicable.
Would illumination affect safety for pedestrians, vehicles or aircraft?	Not applicable.
Would illumination detract from the amenity of any residence or other form of accommodation?	Not applicable.
Can the intensity of the illumination be adjusted, if necessary?	Not applicable.
Is the illumination subject to a curfew?	Not applicable.

<b>Safety</b>	
Would the proposal reduce the safety for any public road?	The proposal is adequately designed to ensure no unreasonable safety impacts to the laneway.
Would the proposal reduce the safety for pedestrians or bicyclists?	The proposal will not reduce the safety for pedestrians and bicyclists.
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	The proposal will not obscure sightlines.

The proposed development is consistent with State Environmental Planning Policy No. 64 (Advertising and Signage).

**Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005:**

The subject property is located within the Sydney Harbour Catchment therefore the provisions of this plan apply to this development.

An assessment of the proposal against Clause 2(1) (aims of the SREP), Clause 13 (nominated planning principles) and Clause 21 (relating to biodiversity, ecology and environmental protection) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

**Manly Local Environmental Plan 2013**

The subject site is located in Zone B2 Local Centre under the Manly LEP 2013. The proposed 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 retain the existing commercial use that currently serves the needs of people who live in, work in and visit the local area.

- To encourage employment opportunities in accessible locations.*

The development provides employment opportunities in an accessible location.

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

The proposal is in an accessible location with good access to public transport. The proposed modifications will not alter the areas public transport patronage.

**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:

<b>5.</b>	<b>Miscellaneous Provisions</b>	<b>Applies</b>	<b>Complies</b>	<b>Comment</b>
5.10	Heritage Conservation	Yes	Yes	The proposal complies with 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
6.2	Earthworks	Yes	Yes	The proposal complies with this clause.
6.9	Foreshore Scenic Protection Area	Yes	Yes	The proposal complies with this clause.
6.16	Gross floor area in Zone B2	Yes	Yes	No proposed change to gross floor area. 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:

#### 3.1 Streetscapes and Townscapes

##### Townscape

**Objective 4) To ensure that all parking provision is designed and sited to respond to and respect the prevailing townscape.**

The proposal does not require the provision of additional parking.

**Objective 5) To assist in maintaining the character of the locality.**

The proposed modifications will maintain the existing character of the laneway.

**Objective 6) To recognise the importance of pedestrian movements and townscape design in the strengthening and promotion of retail centres.**

The proposal will not result in any unreasonable impacts on pedestrian movements within the locality.

*Objective 7) To minimise negative visual impact, in particular at the arterial road entry points into the Council area and the former Manly Council area, so as to promote townscape qualities.*

The proposed modifications are of an appropriate form and design to ensure no unreasonable negative visual impact.

### 3.3.1 Landscaping Design

*Objective 1) To encourage appropriate tree planting and maintenance of existing vegetation.*

The Manly DCP 2013 was amended on the 28 August 2017 to not require development consent for the removal of a tree, where the base of the trunk of the tree at ground level, is located within 2m of an existing approved building (not including decks, pergolas, sheds, patios or the like, even if they are attached to a building). The proposed tree removal has been identified as exempt from development consent by the Manly DCP 2013. The proposed modification has also been supported by an arborist report and Councils Landscape Officer. The proposal is consistent with Council policies and there is no requirement by Council policies or Landscape Officer to provide further tree planting on the site.

*Objective 2) To retain and augment important landscape features and vegetation remnant populations of native flora and fauna.*

The arborist report found that the tree is growing in too small a space and if the tree is not removed damage to structures shall exacerbate and new structures cannot be installed without severely damaging the root systems. Furthermore the Manly DCP 2013, as amended on the 28 August 2017, specifies that Councils consent is not required for the removal of a tree, where the base of the trunk of the tree at ground level, is located within 2m of an existing approved building (not including decks, pergolas, sheds, patios or the like, even if they are attached to a building). For the above reasons the removal of the tree is considered to be satisfactory. The proposed tree is not a significant species and does not form part of a remnant population of native flora. The tree removal will not result in any unreasonable impacts within the locality.

### 3.3.2 Preservation of Trees and Bushland Vegetation

*Objective 1) To protect and enhance the urban forest of the Northern Beaches.*

The proposed tree removal is consistent with the Manly DCP 2013 and has been supported by an arborist report and Councils Landscape Officer. The tree is located in a rear laneway of the Local Centre and its removal will not result in any unreasonable impacts on the urban forest of the Northern Beaches.

*Objective 2) To effectively manage the risks that come with an established urban forest through professional management of trees.*

The existing tree is resulting in structural damage to the nearby buildings. The proposed tree removal has been supported by an arborist report, engineer's Limited Condition Report and Council's Landscape Officer. The tree removal is appropriate in this circumstance to manage the risks associated with its continued growth.

*Objective 3) To minimise soil erosion and to improve air quality, water quality, carbon sequestration, storm water retention, energy conservation and noise reduction.*

The proposal will not result in any unreasonable soil erosion or an unreasonable impact on air quality, water quality, carbon sequestration, storm water retention, energy conservation and noise.

*Objective 4) To protect and enhance bushland that provides habitat for locally native plant and animal species, threatened species populations and endangered ecological communities.*

The tree removal is not likely to result in a significant reduction of habitat for locally native plant and animal species, threatened species populations and endangered ecological communities.



*Objective 5) To promote the retention and planting of trees which will help enable plant and animal communities to survive in the long term.*

The proposed tree removal has been identified as exempt from development consent by the Manly DCP 2013, as amended on the 28 August 2017. The proposed modification has also been supported by an arborist report and Councils Landscape Officer. The proposal is consistent with the Manly DCP 2013 and there is no requirement for the provision of further tree planting on the site by Councils policies or Landscape Officer. The tree is located in a rear laneway of the local centre and its removal will not result in any unreasonable impacts on the plant or animal communities in the locality.

*Objective 6) To protect and enhance the scenic value and character that trees and/or bushland vegetation provide.*

The arborist report found that the tree is growing in too small a space and if the tree is not removed damage to structures shall exacerbate and new structures cannot be installed without severely damaging the root systems. Furthermore the Manly DCP 2013, as amended on the 28 August 2017, specifies that Councils consent is not required for the removal of a tree, where the base of the trunk of the tree at ground level, is located within 2m of an existing approved building (not including decks, pergolas, sheds, patios or the like, even if they are attached to a building). For the above reasons the removal of the tree is considered to be reasonable. The tree is located in a rear laneway and is not visually prominent from high pedestrian areas. The proposed tree removal will not result in any unreasonable impacts on the scenic value of the locality.

#### **Part 4 - Development Controls**

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

Site Area: 858.3m <sup>2</sup>	<b>Permitted/ Required</b>	<b>Proposed</b>	<b>Complies Yes/No</b>
Signage - Number of signs -Size of signs	2 signs	1 wall sign and 1 Projecting Wall sign (horizontal)	See comments below regarding signage design.

#### 4.4.3.3 Controls for Particular Development Types

##### h) Flush wall sign

- i) where illuminated, must be at least 2.6m above the ground;
- ii) must not extend laterally beyond the wall of the building to which it is attached;
- iii) must not project above the top of the wall to which it is attached;
- iv) unless the council otherwise approves, where of a skeleton letter type, must not have an advertising area greater than 4.6 times the distance (to the nearest whole metre) between the lowest part of the sign and the ground; and
- v) unless the council otherwise approves, where not of a skeleton letter type, must not have an advertising area, in square metres, greater than 3 times the distance (to the nearest whole metre) between the lowest part of the sign and the ground.

Comments: The proposed flush wall sign is consistent with this clause. In particular, it is not illuminated, does not extend laterally or vertically beyond the wall to which it is attached and has an advertising area of 3.2m<sup>2</sup> which is less than the maximum 4.8m<sup>2</sup> permitted by the Manly DCP 2013.

##### m) Projecting wall sign (horizontal)

Where the height of a projecting wall sign is less than its width, the projecting wall sign must:

- i) be erected at right-angles to the wall of the building to which it is attached;
- ii) be at least 2.6m above the ground;
- iii) have its maximum height determined in accordance with the following scale:



<i>Lowest part of sign above ground level:</i>	<i>Maximum height:</i>
• 2.6m and not more than 3.7m -	0.5m
• Exceeding 3.7m and not more than 6.1m -	1.0m
• Exceeding 6.1m -	1.2m
<i>iv) not project beyond a point within 0.6m of the vertical projection of the kerb alignment.</i>	

Comments: The proposal is at a right angle to the wall and is 4.5m above the street level. The proposal is 600mm in height and is compliant with the maximum height control in part iii). The proposal does not comply with part iv). An assessment with regard to the objectives of the control has been conducted below.

#### 4.4.3 Signage

*Objective 1) To ensure that advertising does not detract from the scenic beauty and amenity of the Municipality; harmonises with its surroundings and the buildings to which they are attached.*

The proposed signage is within a laneway and will not result in any unreasonable impacts on the scenic beauty and amenity of the municipality. The proposal is appropriately designed to harmonise with the surroundings and the building to which it is attached.

*Objective 2) To minimise the visual impact by encouraging fewer more effective signs that may otherwise degrade the existing and likely future quality of residential environments or result in excessive, unnecessary signage, visual clutter and confusion caused by a proliferation of signs in local and neighbourhood centres.*

The proposal includes only two signs and will not result in excessive signage.

*Objective 3) To permit building and business identification signs which communicate the facilities (including tourist facilities), amenities, goods and services in local and neighbourhood centres which do not interfere with the streetscape or amenity of residents.*

The proposed signage does not interfere with the streetscape or amenity of the residents.

*Objective 4) Signs should enhance the distinctive urban character and scenic amenity of the Municipality and contribute to the atmosphere of the streets in local and neighbourhood centres and should be designed in sympathy with both the building to which it is attached and any adjoining buildings, taking into account the architectural styles and finishes of buildings in local and neighbourhood centres.*

The proposed signage is of an appropriate form and design to ensure no unreasonable impacts on the urban character and scenic amenity of the locality.

*Objective 5) To prevent signage from impacting on the presentation of the heritage item or area to the general public on heritage items and conservation areas.*

The proposed signage is to the rear of the heritage item and will not result in any unreasonable impacts on the presentation of the heritage item and conservation area. Furthermore the proposal was assessed by Councils heritage officer and was found to be satisfactory.

*Objective 6) To ensure all signage is of high standards of graphic and textural content.*

The proposal is of an adequate design to ensure it does not result in any unreasonable impacts in the locality.

*Objective 7) To encourage co-ordinated advertising in the Industrial Zone by the use of appropriately sized street numbers and complex names, and the use of directory boards to identify multiple unit complexes, so as to reduce adverse impact on the streetscape and confusion to traffic.*

Not applicable.

## 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:

#### 5.1 Manly Town Centre Heritage Conservation Area and The Corso

The proposal has been assessed by Council's Heritage Officer and was found to be satisfactory. The proposal is consistent with this clause.

#### 5.4.1 Foreshore Scenic Protection Area

The proposed tree removal has been found to be satisfactory. The proposal is consistent with the additional matters for consideration within clause 5.4.1 of the Manly DCP 2013.

**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 and this recommendation 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 proposal will not result in any unreasonable impacts on the built or natural environment 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 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 five (5) submissions received from the following objectors raising the following concerns:

Submission and Address	Main Issues raised in the submission	Comments on submission
1. P & P Berents The Peninsula Building Wentworth Street Manly	• Tree removal	• The existing tree is resulting in structural damage to the nearby buildings. The proposed tree removal has been supported by an arborist report, an engineer's Limited Condition Report and Council's Landscape
2. West J. The Peninsula Building Wentworth Street, Manly		
3. Young L. The Peninsula Building Wentworth Street Manly		

<p>4. Fortescue L. The Peninsula Building Wentworth Street Manly</p>		<p>Officer. The Manly DCP 2013 was amended on the 28 August 2017 to not require development consent for the removal of a tree, where the base of the trunk of the tree at ground level, is located within 2m of an existing approved building (not including decks, pergolas, sheds, patios or the like, even if they are attached to a building). The proposed tree removal has been identified as exempt from development consent by the Manly DCP 2013. Furthermore the above assessment has found the tree removal to be appropriate in this circumstance.</p>
<p>5. Dawson B. The Peninsula Building Wentworth Street Manly</p>	<ul style="list-style-type: none"> <li>• Traffic</li> <li>• Noise impacts</li> <li>• Smell from cleaning waste traps.</li> </ul>	<ul style="list-style-type: none"> <li>• The change of use to a food and drink premises was approved on the 18 August 2016 and has subsequently been modified on the 15 June 2017. This proposed modification is for minor changes to the approved development. The existing conditions of consent restrict delivery and waste collection hours to the mornings and are not subject to change with this application.</li> <li>• This application will not result in any unreasonable impacts to acoustic privacy.</li> <li>• This application does not include any changes to waste traps.</li> </ul>

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

The proposal is consistent with 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:**

The proposal will not change the approved gross floor area. As such the existing condition of consent ANS04 requiring contributions remain applicable to the development. It is recommended the condition be amended to be consistent with the 2017/2018 contribution rate as indexed by the consumer price index.

**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 and are of minimal environmental impact. The modifications requested were notified in accordance with Council's Manly DCP with five (5) submissions 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. 154/2016 for change of use from a loading dock and garbage storage to a café with seating in the existing courtyard, fitout, new garbage bin enclosures, changes to windows, new sliding door and tree removal – Part 3 at 82-88 The Corso Manly be **approved** subject to:

The following Condition No. ANS01 is to be deleted as per Section 96(1A) Application – Part 3

**ANS01**  
**DELETED**

**ANS02**  
**DELETED**

#### ANS03

Bins are not to be stored/presented kerbside for collection. A commercial contractor is to be engaged to provide a “pull out – put in” service. Waste and recycling bins must be permanently stored within the building and service doors must be kept closed at all times. All waste and recycling bins must be labelled with the business name, address and contact number.

Reason: To ensure adequate waste storage and removal practices are adhered to.

The following Condition No. ANS04 is to be amended as per Section 96(1A) Application – Part 3

#### ANS04

A contribution is to be paid for the provision, extension or augmentation of traffic and parking, environmental programs, streetscape and landscaping, community facilities and administration that will, or are likely to be, required as a consequence of development in the area.

Total contribution for this development for change of use from a loading dock and garbage storage to a café with seating in the existing courtyard, fitout, new garbage bin enclosures, changes to windows and new sliding door is currently \$8,556.69. The amount of the payment shall be in accordance with the Section 94 charges as at the date of the payment. 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.

This contribution shall be paid to Council prior to the release of the Construction Certificate and the amount payable shall be in accordance with Council's adopted Section 94 Contributions Plan effective July 2009;

The calculations for DA154/2016 part 3 are as follows:

Additional Floor Area = 30.52m<sup>2</sup>  
\$28,036.34 divided by 100 x 30.52m<sup>2</sup>  
= \$8,556.69

Total Section 94 Contribution applicable = \$8,556.69

**Note:** Section 94 Contribution fees are adjusted on the 1st July each year and are based on the March CPI figures.

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

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**ANS05**

The cooking appliances require an approved air handling system designed in accordance with AS1668.1 -The Use of Mechanical Ventilation and Air conditioning in Buildings – Fire and Smoke Control in Multi-compartment Buildings and AS1668.2 - The Use of Ventilation and Air-conditioning in Buildings – Mechanical Ventilation in Buildings, and must incorporate the following:

- (i) The discharge exhaust air must be directed in a way that will not create a nuisance to surrounding amenities.
- (ii) The cooking appliances must not burn any charcoal, wood or other solid fuel.
- (iii) Details of the proposed system must be submitted to and approved by Council's Health and Building Unit in writing prior to the issue of a Construction Certificate.

Reason: To ensure compliance with relevant standards.

**ANS06**

- a) Details of any proposed mechanical exhaust systems, detailing compliance with the relevant requirements of Clause F4.12 of the BCA and Australian Standard AS1668 Parts 1 & 2 (including exhaust air quantities and discharge location points) are to be submitted to Council or the Principal Certifying Authority for approval prior to the issue of a Construction Certificate.
- b) At the completion of the installation of the mechanical exhaust system, a certificate from the installer shall be submitted to Council or the Principal Certifying Authority indicating the following:-
  - i) inspection, testing and commissioning details,
  - ii) date of inspection testing and commissioning,
  - iii) the name and address of the individual who carried out the test, and
  - iv) a statement that the service has been designed, installed and is capable of operating to the above standard.
- c) In the event of Council receiving complaints resulting from the mechanical exhaust system, the owner/occupier shall at their own cost provide a report from a Air Quality Consultant specifying the proposed methods for the control of odour and other air impurities discharging from the premises.
- d) Any discharge to the atmosphere from the subject development shall not result in any odour or other air impurity being detected outside the boundaries of the property.
- e) Noise and vibration from the use of the mechanical exhaust and/or ventilation system shall not exceed the background noise level by more than 5dB (A) and shall not be audible in any premises of a neighbouring occupancy.
- f) Ensure that the ventilation provided to any car park is where necessary controlled by a carbon monoxide monitoring sensor or equivalent.

Reason: To ensure compliance with relevant standards.

**ANS07**

The storage of garbage containers, containers for recyclable material and compacters are to be located in an external area of the food premises or in a room specifically for that purpose.

Garbage rooms or grease arrester rooms must be constructed of solid material: cement rendered and steel trowelled to a smooth even surface. The door to the garbage room is to be designed and constructed to ensure the room is vermin proof and can be opened from the inside at all times. The garbage room is to be ventilated to the external air by natural ventilation or an approved air handling exhaust system.

Reason: To keep garbage rooms in a clean and sanitary condition to protect public health

#### ANS08

You must contact Sydney Water (Tel- 131110) to determine what trade waste provisions you are required to provide to your food premises. Should a grease trap be required by Sydney Water, it must be located in an area that is easily accessible for the removal of waste water and must not be installed in any kitchen, food preparation or food stage area. The design and location of the grease trap should also not impede on any commercial right of way or pedestrian access

Reason: To ensure waste water generated as part of the kitchen activities is adequately treated when required and that access is not impeded by the design and installation of the grease trap.

#### ANS09

The ongoing use of the premises, building services, equipment, machinery and ancillary fittings shall not give rise to air pollution. All works shall ensure air quality controls are in place and all activity is in accordance with the Protection of the Environment Operations Act 1997 and Protection of the Environment Operations (Clean Air) Regulation 2002.

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

#### ANS10

The hours of operation of the premises must not exceed 7am-6pm Monday to Sunday without the prior approval of Council. No external activities such as cleaning, waste removal, table/chair put out and customer service are permitted before 7am Monday to Sunday.

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

The following Condition No. ANS11 (3MS01) is to be added as per Section 96(1A) Application – Part 3

#### ANS11 (3MS01)

Works in connection with this Section 96 modification are not to be commenced/carried out until a new Construction Certificate is issued.

Reason: The Environmental Planning and Assessment Act 1979 requires a new updated Construction Certificate to cover any or all approved Section 96 modifications involving changes in the design of the development.

#### GENERAL CONDITIONS

The following Condition No.1 is to be amended as per Section 96(1A) Application – Part 3:

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;

*Drawings affixed with Council's 'Development Consent' stamp relating to Development Consent No. DA154/2016:*

Plan No. / Title	Issue/ Revision & Date	Date Received by Council
DA-00 Site & Location Plan	Issue A 2 June 2016	17 June 2016
DA-01 Ground Floor Plan	Issue A 2 June 2016	17 June 2016
DA-02 South Elevation	Issue A 2 June 2016	17 June 2016
DA-03 Section AA, BB, CC & DD	Issue A 2 June 2016	17 June 2016
DA-04 Signage	Issue A 2 June 2016	26 July 2016

*Reference Documentation affixed with Council's stamp relating to Development Consent No. DA154/2016:*

- Statement of Environmental Effects prepared by Baxter and Jacobson Architects Pty Ltd dated 10 June 2016 and received by Council on 14 June 2016
- Heritage Assessment prepared by Baxter & Jacobson Architects Pty Ltd dated December 2001 and received by Council 14 June 2016

16 of 26

Except as amended by:

*Drawings affixed with Council's 'Development Consent' stamp relating to this Section 96(1A) Application – Part 2:*

Plan No. / Title	Issue/ Revision & Date	Date Received by Council
S96-00 Site and Location Plan	Issue B, dated 24 March 2017	24 March 2017
S96-02 South Elevation	Issue B, dated 24 March 2017	24 March 2017
S96-03 Section AA,BB,CC+DD	Issue C, dated 28 April 2017	28 April 2017
S96-01 Ground Floor Plan	Issue C, dated 28 April 2017	28 April 2017

*Reference Documentation affixed with Council's stamp relating to this Section 96(1A) Application – Part 2:*

- Statement of Environmental Effects prepared by Baxter and Jacobson Architects dated 23 March 2017 and submitted to Council on the 24 March 2017.

Except as amended by:

*Drawings affixed with Council's 'Development Consent' stamp relating to this Section 96(1A) Application – Part 3:*

Plan No. / Title	Issue/ Revision & Date	Prepared By
S96-00 Site and Location Plan	Issue A, dated 1 September 2017	Baxter and Jacobson Architects
S96-01 Ground Floor Plan	Issue A, dated 1 September 2017	Baxter and Jacobson Architects
S96-03 Section AA, BB, CC and DD	Issue A, dated 1 September 2017	Baxter and Jacobson Architects
S96-02 South Elevation	Issue A, dated 1 September 2017	Baxter and Jacobson Architects
CD610 Signage Details	Revision 1, dated 31 August 2017	Assemble Design Studio

*Reference Documentation relating to this Section 96(1A) Application – Part 3:*

- Arborist Report prepared by Arbor Consultancy dated 16 July 2016.
- Limited Condition Report at 82-88 The Corso Manly, prepared by Northern Beaches Consulting Engineers P/L and dated 29 May 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.

1A (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)**

Detailed plans and specifications must be provided prior to the issue of the Construction Certificate complying with the requirements of Australian Standard 4764-2004 (Design, Construction and Fit-out of a Food Premises) and Food Safety Standard 3.2.3 (Food Premises and Equipment).

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

**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 as per the current rates in Council's Fees and Charges. 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 (2FR02)**

The person who benefits from this consent is to engage the services of an Accredited Certifier, Building Grade 1 or 2 (NSW or equivalent) to carry out a Building Code of Australia audit that is based upon inspections of the building in terms of the deemed-to-satisfy fire safety provisions.

The audit must specifically cover all clauses within Section C, D and E of the Building Code of Australia (as per the most recent amendments) nominating 'compliance', 'non-compliance' or 'not applicable' as appropriate. The audit (checklist) is to accompany the report.

The results of the audit are to be incorporated into a report and strategy to overcome the non-compliant provisions either by performance solution or adherence to deemed-to-satisfy provisions by satisfying the fire safety objectives of Sections C, D and E of the Building Code of Australia. The standard of satisfying the fire safety objectives of Sections C, D and E as contained within the Building Code of Australia is the specified standard for the purposes of Section 121P(1)(a) of the Act.



A schedule of existing (if applicable) and the proposed Essential Fire Safety Measures, including their standard of performance must be included in this strategy. The report and strategy must be submitted to Council for written approval prior to issue of any Construction Certificate.

Reason: To ensure an adequate level of fire safety is provided within the premises for the life safety of building occupants.

#### 7 (2MS01)

Where construction or excavation activity requires the disturbance of the soil surface and existing vegetation, details including drawings and specifications must be submitted to Council accompanying the Construction Certificate, which provide adequate measures for erosion and sediment control. As a minimum, control techniques are to be in accordance with Manly Council Guidelines on Erosion and Sediment Control, or a suitable and effective alternative method. The Sediment Control Plan must incorporate and disclose:

- 1) all details of drainage to protect and drain the site during the construction processes,
- 2) all sediment control devices, barriers and the like,
- 3) sedimentation tanks, ponds or the like,
- 4) covering materials and methods, and
- 5) a schedule and programme of the sequence of the sediment and erosion control works or devices to be installed and maintained.

Details from an appropriately qualified person showing these design requirements have been met must be submitted with the Construction Certificate and approved by the Council/Accredited Certifier prior to issuing of the Construction Certificate.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

#### 8 (2NL04)

Prior to the issue of the Construction Certificate, a Noise and Vibration Management Plan is to be prepared by a suitably qualified person addressing the likely noise and vibration from demolition, excavation and construction of the proposed development and provided to Council or the Principal Certifying Authority.

The Plan is to identify amelioration measures to ensure the noise and vibration levels will be compliance with the relevant legislation and Australian Standards. The report that itemises equipment to be used for excavation works. The Plan shall address, but not limited to, the following matters:

- Identification of activities carried out and associated noise sources
- Identification of potentially affected sensitive receivers, including residences, churches, commercial premises, schools and properties containing noise sensitive equipment
- Determination of appropriate noise and vibration objectives for each identified sensitive receiver
- Noise and vibration monitoring, reporting and response procedures
- Assessment of potential noise and vibration from the proposed demolition, excavation and construction activities, including noise from construction vehicles
- Description of specific mitigation treatments, management methods and procedures to be implemented to control noise and vibration during construction
- Construction timetabling to minimise noise impacts including time and duration restrictions, respite periods and frequency
- Procedures for notifying residents of construction activities likely to affect their amenity through noise and vibration
- Contingency plans to be implemented in the event of non-compliances and/or noise complaints. A register should be kept of complaints received, and the action taken to remediate the issue.

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



9 (2PT02)

All driveways, car parking areas and pedestrian paths are to be suitably surfaced. Details of the treatment to these areas are to be submitted to the Council/Accredited Certifier prior to issue of the Construction Certificate.

*Reason: To provide suitable stormwater disposal and to prevent soil erosion and runoff.*

10 (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 2013.

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.*

11 (2WM03)

Garbage rooms or grease arrester rooms must be constructed of solid material: cement rendered and steel trowelled to a smooth even surface. The door to the garbage room is to be designed and constructed to ensure the room is vermin proof and can be opened from the inside at all times. The garbage room is to be ventilated to the external air by natural ventilation or an approved air handling exhaust system.

*Reason: To keep garbage rooms in a clean and sanitary condition to protect public health.*

**CONDITIONS TO BE SATISFIED PRIOR TO ANY COMMENCEMENT**

12 (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.*

13 (3CD02)

Demolition must be carried out by a registered demolition contractor. Documentary evidence of registration must be submitted to Council prior to the commencement of demolition work.

*Reason: To ensure demolition is carried out in an appropriate manner that is non-disruptive to the locality and the public.*

14 (3CD03)

An adequate security fence is to be erected around the perimeter of the site prior to commencement of any excavation or construction works, and this fence is to be maintained in a state of good repair and condition until completion of the building project.

*Reason: To protect the public interest and safety.*

15 (3LD03)

Where trees greater than 5 metres in height which are not within the proposed footprint (i.e. not directly affected by the development) and are proposed for removal, a tree permit is required subject to the Tree Preservation Order 2001 criteria.

*Reason: Retain the number of existing trees on site which are protected by the Tree Preservation Order and not directly in the way of development.*

16 (3PT01)

In accordance with the Roads Act 1993, written consent from Council must be obtained and must be in hand prior to any track equipped plant being taken in or onto any roadway, kerb & gutter, footway, nature strip, or other property under Council's control.

Reason: To ensure appropriate protection of public infrastructure and facilitate access for public and vehicular traffic.

17 (3PT02)

Applications for a construction zone on a local road require 28 days notice to Council indicating location and length. All construction zones require the approval of the Manly Traffic Committee.

Reason: To ensure Council and the Traffic Committee have sufficient time and information to assess the traffic and access implications of a proposed construction zone and to develop appropriate responses to those implications.

**CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**

18 (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.

19 (4BM01)

All materials and finishes of the proposed additions are to match, as closely as possible the material and finish of the existing building.

Reason: To enhance the visual quality of the development and the streetscape.

20 (4BS01)

The construction and 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.

21 (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) All waste must be contained entirely within the site.
- 11) 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.
- 12) 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.
- 13) 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.
- 14) 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.
- 15) 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.
- 16) Building operations such as brick-cutting, 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.
- 17) 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.
- 18) 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.

#### 22 (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 (including works undertaken by external contractors). 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.

#### 23 (4CD03)

Toilet facilities are to be provided at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 person or part of 20 persons employed at the site, by effecting either a permanent or temporary connection to the Sydney Water's sewerage system or by approved closets.

Reason: To maintain sanitary conditions on building sites.

#### 24 (4CD07)

Anyone who removes, repairs or disturbs bonded or a friable asbestos material must hold a current removal licence from Workcover NSW. Before starting work, a work site-specific permit approving each asbestos project must be obtained from Workcover NSW. A permit will not be granted without a current Workcover licence.

All removal, repair or disturbance of or to asbestos material must comply with the following:

- The Work Health and Safety Act 2011.
- The Work Health and Safety Regulation 2011.
- How to Safely Remove Asbestos Code of Practice – WorkCover 2011.

The owner or occupier of the premises must consult an appropriately qualified and Australian Institute of Occupational Hygienists registered professional to undertake an assessment of the site to determine the potential for contamination. The owner or occupier must develop a management plan and be issued with Clearance Certificate before the commencement of any work.

Reason: To ensure the health of site workers and the public.

25 (4LD03)

The felling, lopping, topping, ringbarking, wilful destruction or removal of any tree/s unless in conformity with this approval or subsequent approval is prohibited.

Reason: To prohibit the unnecessary damage or removal of trees without permission from Council during any construction.

26 (4LD04)

The following precautions must be taken when working near trees to be retained:

- harmful or bulk materials or spoil must not be stored under or near trees,
- prevent damage to bark and root system,
- mechanical methods must not be used to excavate within root zones,
- topsoil from under the drip line must not be added and or removed,
- ground under the drip line must not be compacted, and
- trees must be watered in dry conditions.

Reason: This is to ensure no damage is caused to trees from various methods of possible damage.

27 (4LD05)

Trees and shrubs liable to damage (including, but not limited to street trees) are to be protected with suitable temporary enclosures for the duration of the works. These enclosures are to only be removed when directed by the Principal Certifying Authority.

The enclosures are to be constructed out of F62 reinforcing mesh 1800mm high wired to 2400mm long star pickets, driven 600mm into the ground and spaced 1800mm apart at a minimum distance of 1000mm from the tree trunk.

Reason: To ensure protection of the trees on the site which could be damaged during any development works and to outline the type of protection.

28 (4LD06)

All disturbed surfaces on the land resulting from the building works authorised by this approval must be revegetated and stabilised to prevent erosion either on or adjacent to the land.

Reason: To prevent/contain erosion.

29 (4MS04)

An approved Erosion and Sediment Management plan is to be implemented from the commencement of works and maintained until completion of the development.

The design and controls addressed in the Sediment and erosion management plan must comply with the criteria identified in:

- Manly Development Control Plan 2013, Amendment 8, and
- Manly Councils Guidelines for Sediment and Erosion Controls on building sites, 2005, and
- The document "Managing Urban Stormwater: Soils and Construction" Volume 1, 2004.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

30 (4NL01)

Noise arising from demolition and construction works must be controlled in accordance with the requirements of the Protection of the Environment Operations Act 1997 and guidelines contained in the New South Wales Environment Protection Authority Environmental Noise Control Manual.

Reason: To prevent disturbance to the surrounding community during construction.



31 (4PT02)

All construction vehicles associated with the development must obtain a permit from Council on a daily basis, for access onto The Corso and Sydney Road Plazas.

Reason: To manage and minimise disruption to the area.

**CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE**

32 (5WM01)

The applicant must contact Sydney Water (Tel. 131110) to determine whether a Trade Waste Permit is required before discharging any trade waste to the sewerage system.

Reason: To comply with legislation.

33 (5WM02)

Prior to issue of an Occupation Certificate, the owner must provide evidence of a contract with a licensed contractor for the removal of all trade waste.

Reason: Responsible disposal management of trade waste.

34 (5WM03)

The premises must have adequate holding facilities for waste oil to meet Australian Standards for bunding and provide evidence of a current contract for the waste oil's recycling to the Principal Certifying Authority prior to the issuing of the Occupation Certificate.

Reason: To ensure responsible disposal of waste oil.

**ONGOING CONDITIONS RELATING TO THE OPERATION OF THE PREMISES OR DEVELOPMENT**

35 (6AP04)

All towers, ventilation/ducting, exhaust fan structures, chillers and condensers for air-conditioning and any other structures on the roof are to be the subject of a separate Development Application.

Reason: To maintain the amenity of the surrounds.

36 (6AQ01)

The use of the premises must not give rise to air impurities in contravention of the Protection of the Environment Operations Act 1997 and must be controlled in accordance with the requirements of this Act.

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

37 (6BS01)

DELETED

38 (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.

39 (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.



40 (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.

41 (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.

42 (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.

43 (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.

44 (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.

45 (6NL09)

Patron noise must be controlled so as not to disturb or intrude upon the surrounding residential community. Noise arising from patrons located within the grounds of the premises whether indoors, in the courtyard or within any approved outdoor dining area must not be audible within any residential habitable room at any time.

Reason: To minimise noise disturbance to neighbouring residential properties.

46 (6PT03)

Loading and unloading of vehicles and delivery of goods to the land must be carried out within the site. The car parking area shown on the approved drawings must be used for vehicle parking only. Any loading or unloading of materials of potential environmental damage must be appropriately bunded with adequate spill response equipment in place to ensure nil runoff from the site.

Reason: To ensure the safety and amenity of the general public using public streets, and to ensure the protection of the environment from spillage of materials.

47 (6PT04)

Delivery vehicles associated with the completed development are only permitted to drive, stand or park on The Corso and Sydney Road Plazas between the hours of 5am 11am Mondays to Fridays. There is no access on weekends or Public Holidays.

Reason: Compliance with Council's expectations within a pedestrianised area.

48 (6WM02)

Deliveries and waste collection must only occur during the following hours:

- Weekdays – 7:00am – 8:00pm
- Weekends and Public Holidays – 8:00am – 8:00pm

Reason: To minimise disruption to neighbouring properties.

## 49 (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.

## 50 (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.

## 51 (6WM10)

The operation of the premises must be conducted in a manner that does not pollute waters as defined by the Protection of the Environment Operations Act, 1997.

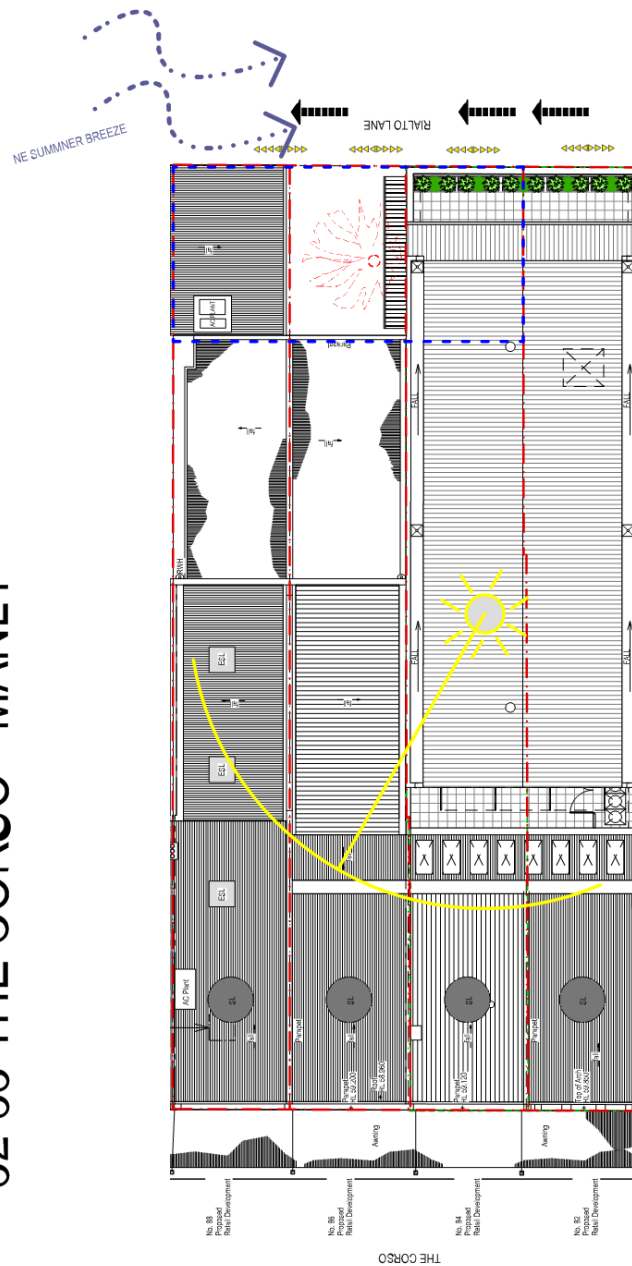
Reason: To ensure compliance with legislation and to protect public health and amenity.

# S96(1A) - APPLICATION

## 82-88 THE CORSO - MANLY

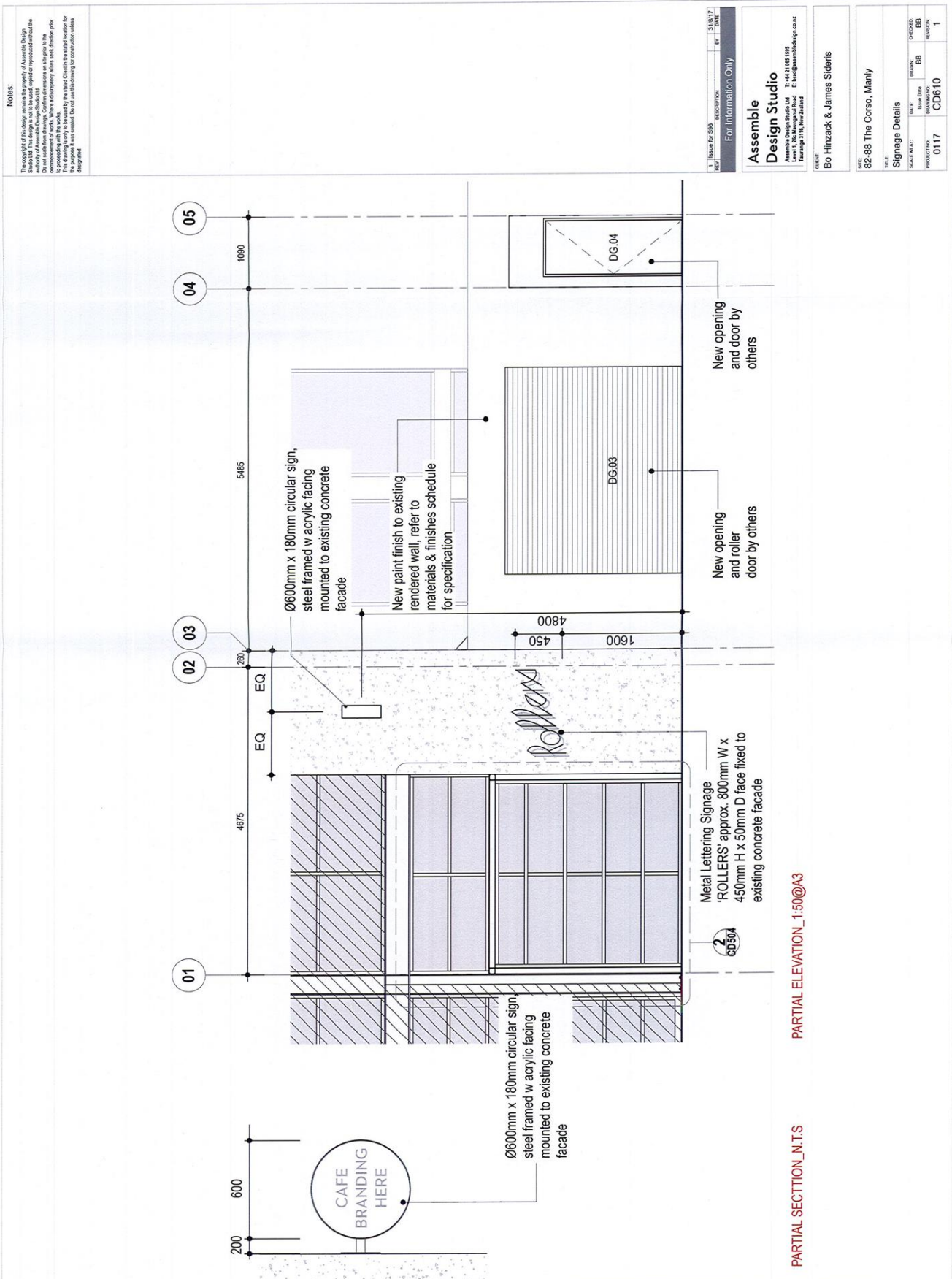
### DRAWING LIST:

S96-00 SITE & LOCATION PLAN  
S96-01 GROUND FLOOR PLAN  
S96-02 SOUTH ELEVATION  
S96-03 SECTIONS AA,BB,CC+DD



CLIENT	Athas Holdings	BAXTER & JACOBSON ARCHITECTS PTY LTD	
PROJECT	CAFE - TREE REMOVAL	LM 2, 37-39 The Corso Manly NSW 2095 T: 02 9977 7448 F: 02 9977 0295 info@bj.net.au W: bj.net.au Notified Architect David Jacobson NSW A&B Reg No. 4259 A&B 1928 8949	
ADDRESS	82 - 88 The Corso, Manly		
DRAWING	SITE & LOCATION PLAN		
SCALE	NA @A3	DRAWN SP	
PROJECT NO	201-32	DWG NO	S96-00

[illegible]





**ITEM 3.5**                      **N0319/17 – 1A OCEAN PLACE, 54-56 FLORIDA ROAD & 27-28 OCEAN ROAD, PALM BEACH - DEMOLITION OF AN EXISTING DWELLING, CONSTRUCTION OF A NEW COMMUNITY FACILITY BUILDING, 30 SPACE CARPARK, AND CONSOLIDATION OF LAND**

**REPORTING OFFICER**      **Rebecca Englund**

**TRIM FILE REF**              **2017/492378**

**ATTACHMENTS**            1 [↓](#) **Assessment Report**  
                                     2 [↓](#) **Site Plan and Elevations**

### **PURPOSE**

To refer the attached application for determination as required under adopted delegations of Council.

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### **RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT**

That the Northern Beaches Independent Assessment Panel, as the consent authority, **approve** Application No. N0319/17 for Demolition of an existing dwelling, construction of a new Community Facility building, 30 space carpark, and consolidation of land at Lots A, B & C DP 384885 and Lots 76 & 77 DP 6746, 1a Ocean Place, 54-56 Florida Road & 27-28 Ocean Road, Palm Beach for the reasons outlined in the Assessment Report.

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N0319/17 – 1a Ocean Place, 54-56 Florida Road & 27-28 Ocean Road, Palm Beach

Demolition of an existing dwelling, construction of a new Community Facility building, 30 space carpark, and consolidation of land

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**SUMMARY OF RECOMMENDATION:**      **APPROVAL**

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<b>APPLICATION SUBMITTED ON:</b>	21 July 2017
<b>APPLICATION SUBMITTED BY:</b>	Palm Beach Surf Life Saving Club Ocean Road Palm Beach NSW 2108
<b>OWNER:</b>	Palm Beach Surf Life Saving Club
<b>COST OF WORKS:</b>	\$2,628,988.00
<b>NO. OF SUBMISSIONS:</b>	3
<b>DETERMINATION LEVEL:</b>	Independent Assessment Panel

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**1.0 SITE DETAILS**

The application proposes works over five (5) separate allotments, being 1a Ocean Place (Lot A DP 384885), 27 Ocean Road (Lots 76 DP 6746), 28 Ocean Road (Lots 77 DP 6746), 54 Florida Road (Lot C DP 384885) and 56 Florida Road (Lot B DP 384885) in Palm Beach ('the site').

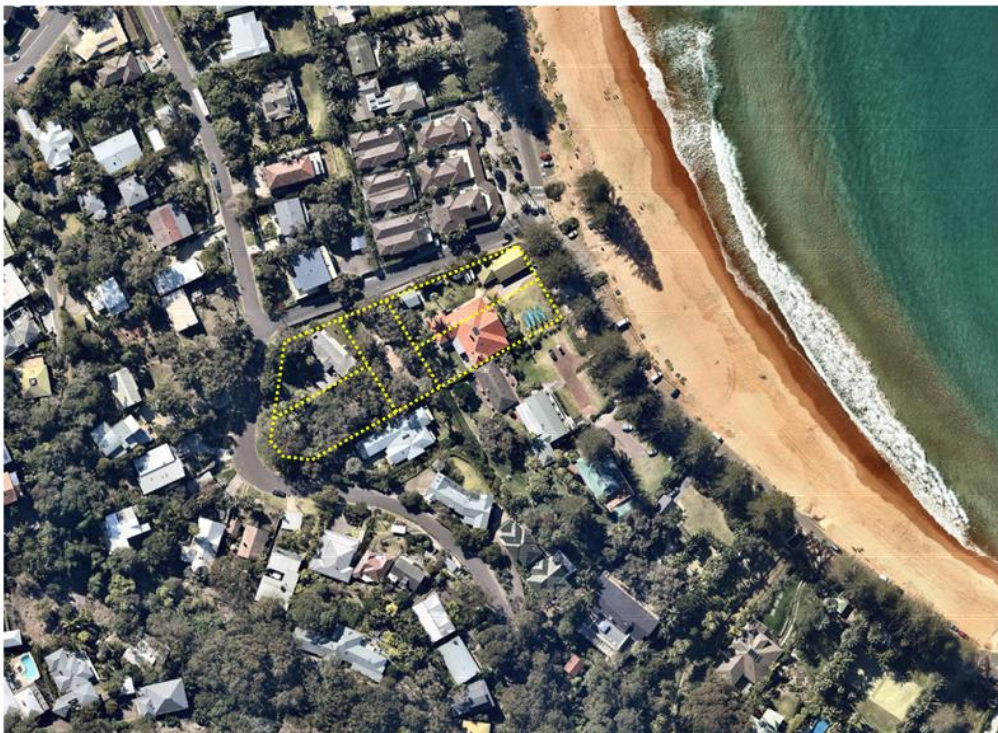


Figure 1 - Aerial Image with lot boundaries in yellow  
Source: NearMap

27 Ocean Road is trapezoidal in shape, with frontages to both Ocean Road to the east and Ocean Place to the north, and an area of approximately 1279.4m<sup>2</sup>. 28 Ocean Road is rectangular in shape, with a frontage to Ocean Road to the east, and an area of approximately 1227.5m<sup>2</sup>. The existing Palm Beach Surf Life Saving Club ('**Palm Beach SLSC**') facilities buildings are located at 27-28 Ocean Road, with pedestrian and vehicular access gained via Ocean Road. The existing Palm Beach SLSC building is identified as an item of local heritage significance, and 27-28 Ocean Road also forms part of the Ocean Road Heritage Conservation Area.

1a Ocean Place is trapezoidal in shape, with a frontage to Ocean Place to the north, and a total area of approximately 986.4m<sup>2</sup>. 1a Ocean Place contains a number of existing canopy trees, and is used as a carpark for the Palm Beach SLSC.

54 Florida Road is irregular in shape, with a frontage Florida Road to the west, and an area of approximately 1182m<sup>2</sup>. 54 Florida Road contains a number of existing established canopy trees and is free of development.

56 Florida Road is irregular in shape, with frontages to both Florida Road to the west and Ocean Place to the north, and an area of approximately 935.8m<sup>2</sup>. 56 Florida Road contains an existing single storey dwelling house, with vehicular and pedestrian access via Florida Road. A number of existing canopy trees are also scattered on the lot.

The site experiences a slight slope, from RL 19m AHD at the Florida Road frontage down to RL 5m AHD at the Ocean Road frontage. Ocean Road is a shared zone, with no formal kerb and guttering. Large, established Norfolk Island Pines are located within the western side of the road reserve, adjacent to the site, and are identified as items of local heritage significance. Ocean Place is a one way road (eastward direction only), with no on-street parking and a Sydney Buses bus stop on the northern side of the street. Florida Road is a two-way local road, with some parking restrictions in the vicinity of the site.

The site is predominantly surrounded by low-density residential development, with a mixed use commercial and residential development to the north (24-26 Ocean Road), and the Pacific Club (29-30 Ocean Road) and the Cabbage Tree Club (31-32 Ocean Road) located to the south. Both the Pacific Club and the Cabbage Tree Club are owned by Palm Beach SLSC.

## 2.0 PROPOSED DEVELOPMENT

The application seeks consent for the following development to the site;

- Consolidation of 1a Ocean Place, 54 and 56 Florida Road, to form one lot with an area of 3112.7m<sup>2</sup>,
- Tree removal,
- Demolition of the existing dwelling at 56 Florida Road,
- Provision of an at-grade 30 space car park, generally within the existing boundaries 56 Florida Road,
- Construction of a 2 storey building, referred to as "the Conroy Building", generally within the existing boundaries of 1a Ocean Place, comprising:
  - Training room at ground level,
  - 3 bunk rooms over 2 levels, providing beds for 43 for female staff,
  - Bathrooms on both levels, and
  - Storage,
- Removal of 23 of the 71 beds from within the existing Palm Beach SLSC building, resulting in a total of 91 beds across the total site, and
- Landscaping.

### 3.0 LEGISLATION, PLANS AND POLICIES

The following planning legislation, environmental planning instruments, development control plans and policies are relevant to the subject application:

- Environmental Planning and Assessment Act 1979 ('the EP&A Act')
- Environmental Planning and Assessment Regulation 2000 ('the EP&A Regulations')
- Pittwater Local Environmental Plan 2014 ('PLEP 2014')
  - Zoning Map – E4 Environmental Management
  - Height of Buildings Map – 8.5m
  - Acid Sulphate Soils – Class 5
  - Geotechnical Hazard Map – H1 (part site only)
  - Minimum Lot Size Map – 700m<sup>2</sup>
  - Heritage Map – Individual items and Heritage Conservation Area
- Pittwater 21 Development Control Plan ('P21 DCP')
  - Palm Beach Locality
  - Landscaped Area 1
- State Environmental Planning Policy No. 71 – Coastal Protection ('SEPP 71')
- Draft State Environmental Planning Policy – Coastal Management ('Draft Coastal SEPP')
- Public Health Regulation 2012
- Charities Act 2013
- NSW EPA Industrial Noise Policy
- NSW EPA Noise Policy for Industry

### 5.0 PERMISSIBILITY

The site is zoned E4 Environmental Living under the provisions of PLEP 2014. The applicant has nominated that the development is for the purpose of a 'community facility', which is permissible with consent within this zone.

However, it is noted that the definition of proposal is disputed in submissions received from and on behalf of adjoining and nearby property owners. This is discussed in more detail, in the discussion section, below.

### 6.0 BACKGROUND

On 30 January 2017, a prelodgement meeting was undertaken with Council staff.

On 21 July 2017, the subject application was lodged with Council and was subsequently referred to Council's Development Engineer, Natural Environment Officer, Flood Engineers, Health Officer, and Strategic Planning Department (Heritage) for comments and/or recommendations.

On 19 October 2017, correspondence was sent to the applicant identifying a number of issues preventing the approval of the application and requesting that the application be withdrawn. The issues included:

- Impacts upon canopy trees.
- Acoustic impacts.
- Consistency with the Public Health Regulations, and
- Heritage Impact.

On 2 November 2017, the applicant responded to Council's correspondence, and requested the opportunity to address the concerns with the provision of additional information.



On 15 November 2017, additional information was provided to Council, specifically:

- An amended arboricultural impact assessment report,
- Amended stormwater management plans (consistent with the amended arboricultural impact assessment report),
- An acoustic impact assessment report,
- An amended Plan of Management,
- A statement addressing the Public Health Regulations, and
- An amended landscape plan to address concerns relating to a potential heritage impact.

## 7.0 ADVERTISEMENT AND NOTIFICATION

The application was notified for a period of 14 days from 31 July through to 14 August 2017 in accordance with Council's Notification Policy and the EP&A Regulations. During this time, three (3) submissions were received, as follows:

- A submission from the adjoining property owners of 52 Florida Road, in conditional support of the proposal, subject to:
  - The use of the new building being limited to the surf club members and not hired out for private use,
  - The restriction of hours of use and noise levels, and
  - The consideration of views with regard to any replanting of compensatory vegetation.
- A submission on behalf of the property owner of 89-91 Florida Road, in objection to the proposal on the basis of:
  - The definition of the proposal and permissibility,
  - The use of the proposed new building for residential purposes,
  - The lack of an acoustic impact assessment report,
  - The impacts associated with the relocated carpark, and
  - The retention of the existing driveway to Florida Road.
- A submission on behalf of unknown residents, in objection to the proposal on the basis of:
  - The definition of the proposal and permissibility,
  - The extent of beds provided within the new building,
  - Overdevelopment of the site, specifically non-compliances in relation to:
    - Building envelope,
    - Side and rear setbacks,
  - Potential scope for commercial usage, and
  - Lack of a thorough tree impact assessment and non-compliance with clause 7.10 of PLEP 2014.

## 8.0 KEY ASSESSMENT ISSUES

The key issues that arise as a result of the proposal relate to the following;

- **Permissibility**
- **Use**
- **Acoustic Impact**

These issues, and other areas of concern and/or non-compliance, are identified in the following compliance tables and are discussed in greater detail further in the report.



## 9.0 COMPLIANCE TABLE

T - Can the proposal satisfy the technical requirements of the control?

O - Can the proposal achieve the control outcomes?

N - Is the control free from objection?

Control	Standard	Proposal	T	O	N
<b>Pittwater Local Environmental Plan 2014</b>					
Zone E4 Environmental Living		See discussion.	Y	Y	N
4.3 Height of Buildings	8.5m above ground	6.8m above ground	Y	Y	Y
5.5 Development within the coastal zone			Y	Y	Y
5.10 Heritage conservation		See discussion.	Y	Y	Y
7.1 Acid sulphate soils			Y	Y	Y
7.2 Earthworks			Y	Y	Y
7.7 Geotechnical hazards			Y	Y	Y
7.10 Essential services			Y	Y	Y
<b>Pittwater 21 Development Control Plan</b>					
A1.7 Considerations before consent is granted		See discussion.	Y	Y	N
A4.12 Palm Beach Locality			Y	Y	Y
A5.1 Exhibition, Advertisement and Notification			Y	Y	Y
B1.1 Heritage Conservation – Heritage Items		See discussion.	Y	Y	Y
B1.2 Heritage Conservation - Vicinity		See discussion.	Y	Y	Y
B1.4 Aboriginal Heritage Significance			Y	Y	Y
B3.6 Contaminated Land and Potentially Contaminated Land			Y	Y	Y
B3.19 Flood Hazard – Flood Category 1 – High Hazards – Other Development		See discussion.	Y	Y	Y
B4.3 Flora and Fauna Habitat Enhancement Category 2 Land		See discussion.	Y	Y	N
B5.1 Water Management Plan			Y	Y	Y
B5.7 Stormwater Management – On-site Detention			Y	Y	Y
B5.9 Stormwater Management – Water Quality			Y	Y	Y
B5.10 Stormwater Discharge into the Public Drainage System			Y	Y	Y
B6.1 Access Driveways and Works in the Public Road Reserve		See discussion.	Y	Y	N
B6.2 Internal Driveways			Y	Y	Y
B6.3 Off-Street Vehicle Parking Requirements		See discussion.	Y	Y	Y
B8.1 Construction and Demolition - Excavation and Landfill			Y	Y	Y
B8.2 Construction and Demolition - Erosion and Sediment Management			Y	Y	Y
B8.3 Construction and Demolition - Waste Minimisation			Y	Y	Y
B8.4 Construction and Demolition - Site Fencing and Security			Y	Y	Y
B8.5 Construction and Demolition - Works in the Public Domain			Y	Y	Y
C5.1 Landscaping			Y	Y	Y
C5.2 Safety and Security			Y	Y	Y
C5.4 View Sharing		See discussion.	Y	Y	Y
C5.5 Accessibility			Y	Y	Y
C5.7 Energy and Water Conservation			Y	Y	Y

Control	Standard	Proposal	T	O	N
C5.8 Waste and Recycling Facilities			Y	Y	Y
C5.9 Signage	Area: 0.75m <sup>2</sup>	Area: 0.75m <sup>2</sup> One wall sign on eastern elevation.	Y	Y	Y
C5.10 Protection of Residential Amenity			Y	Y	Y
C5.15 Undergrounding of Utility Services			Y	Y	Y
C5.16 Building Facades			Y	Y	Y
C5.17 Pollution Control	Compliance with the <i>NSW EPA Industrial Noise Policy.</i>	See discussion.	Y	Y	N
C5.18 Public Road Reserve – Landscaping and Infrastructure			Y	Y	Y
C5.20 Liquor Licensing Applications		See discussion.	-	-	-
C5.21 Plant, Equipment Boxes and Lift Over-run			Y	Y	Y
D12.1 Character as viewed from a public place			Y	Y	Y
D12.3 Building Colours and Materials			Y	Y	Y
D12.5 Front Building Line	Florida Road: 6.5m Ocean Place: 6.5m	Florida Road: >40m Ocean Place: 10.25m	Y	Y	Y
D12.6 Side and Rear Building Line	Sides: 1m & 2.5m Rear: 6.5m	East: 2.1m South: 7.3m See discussion.	Y	Y	N
D12.8 Building Envelope		See discussion.	N	Y	N
D12.9 Landscaped Area - General		See discussion.	-	-	N
D12.10 Landscaped Area – Environmentally Sensitive Land	60% minimum	1972m <sup>2</sup> or 63.3% See discussion.	Y	Y	Y
D12.12 Fences – Flora and Fauna Conservation Areas			Y	Y	Y
D12.13 Construction, Retaining Walls, Terracing and Undercroft Areas			Y	Y	Y
D12.14 Scenic Protection Category One Areas			Y	Y	Y
SEPP No.71 Coastal Protection			Y	Y	Y
Draft Coastal Management SEPP			Y	Y	Y

## 10.0 DISCUSSION OF ISSUES

### Permissibility

#### • Zone E4 Environmental Living of PLEP 2014

The application seeks consent for the construction of a new 'community facility' building, to be used as an extension of the existing Palm Beach SLSC. Under the provisions of the land use table of PLEP 2014, development for the purpose of community facilities is permitted with consent. However, submissions have been received which question the appropriateness of this characterisation of use, and suggest that the proposal should be considered as a 'registered club', which would be prohibited within the E4 zoning.

'Community facility' is defined by PLEP 2014, as follows:

**community facility** means a building or place:

- a. owned or controlled by a public authority or non-profit community organisation, and
- b. used for the physical, social, cultural or intellectual development or welfare of the community,

but does not include an educational establishment, hospital, retail premises, place of worship or residential accommodation.

The 3 components of the 'community facility' definition are considered individually, as follows:

#### Is Palm Beach SLSC a non-profit community organisation?

The application was supported by documentation that demonstrates that Palm Beach SLSC is a charity registered by the Australian Charities and Not-for-Profits Commission. Under the provisions of clause 5 of the *Charities Act 2013*, a charity is defined as an entity that is a not-for-profit entity, all the purposes of which are charitable purposes that are for the public benefit or purposes that are incidental or ancillary to, and in furtherance or in aid of, such charitable purposes.

#### Is the Palm Beach SLSC building used for the physical, social, cultural or intellectual development or welfare of the community?

The submissions received on behalf of nearby residents suggest that the proposed development does not fit the definition of a 'community facility', as the building itself is not available for use by the public and is not associated with the services that Palm Beach SLSC provides to the community. Whilst the submissions endorse and support the services that the Palm Beach SLSC provides to the public off-site (at the beach), the submissions disagree that the proposed members only training and accommodation facility building will be used for the physical, social, cultural or intellectual development or welfare of the community.

However, it is considered that the proposed building can be reasonably considered as a community facility for several reasons:

Firstly, the term 'community', which is not defined by PLEP 2014, is quite broad and should not necessarily be limited to being the 'general public' or that associated with 'public purposes'. As defined by the Macquarie Dictionary, the term 'community' can include:

1. All the people of a specific locality or country,
2. A particular locality, considered together with its inhabitants,
3. A group of people within a society with a shared ethnic or cultural background, especially within a larger society,

4. *A group of people with a shared profession,*

...  
10. *The public.*

With this definition in mind, the members and visitors of Palm Beach SLSC could themselves be considered a 'community', and the proposed training and accommodation building can be said to be used for the physical, social, cultural or intellectual development and welfare of the Palm Beach SLSC community.

Secondly, the definition does not require the building to be able to be used or accessible by the general public, or suggest that access cannot be restricted to those associated with the community facility. As an example, a seniors centre is a community facility that is limited to seniors, with some services provided in association with the payment of fees. Similarly, a youth centre is limited to use by youths, with some centres and services restricted to its members.

Finally, whilst there is no dispute that Palm Beach SLSC provides an invaluable service to the community, there is no reason to assume that this is limited to the service that is provided on the beach. Palm Beach SLSC is reliant upon space and facilities at the subject site to manage and coordinate the service that they provide, including offices and staff/volunteer amenities. The service provided on the beach is also reliant upon regular and on-going training of the volunteers, a significant portion of which occurs away from the beach.

Palm Beach SLSC is also somewhat unique in that a number of its members do not live within the area, and as such, the club has a history of providing sleeping accommodation for its members on site. A vast number of properties in and around Palm Beach are holiday houses, and membership is difficult to source from the comparably low full-time residential population in the area. With this in mind, and noting that the Palm Beach SLSC is a voluntary service, the provision of sleeping accommodation is essential to the life saving service that they provide, in order to attract people to Palm Beach SLSC from out of the area.

The amenities, training facilities and accommodation provided within the new building for members/volunteers of Palm Beach SLSC is ancillary to the key service that Palm Beach SLSC provides and as such, the building can be said to be used for the physical, social, cultural or intellectual development or welfare of the community.

Is the building proposed to be used for the purpose of an educational establishment, hospital, retail premises, place of worship or residential accommodation?

The proposed development is not to be used for the purpose of an educational establishment, hospital, retail premises, place of worship or residential accommodation, as it does not meet the relevant definitions of PLEP 2014, as follows:

- The proposed development cannot be considered as an educational establishment, as it is not a government or non-government school as defined by the *Education Act 1990*, or a tertiary institution by or under an Act.
- The proposal is not a hospital as it does not provide professional health care services to people admitted as in-patients.
- The proposed development is not a retail premises as it does not sell items by retail or hire, or display items for sale.
- The proposal is not a place of worship as it is not used for the purpose of religious worship by a congregation or religious group.

- The proposal is not appropriately defined as residential accommodation as defined by PLEP 2014, as the building is not used predominantly as a place of residence, and cannot be defined as:
  - A 'boarding house' as it does not provide lodgers with accommodation for 3 months or more and does not provide kitchen facilities, or
  - A 'hostel' as the premises are not staffed by social workers or support providers and cooking, dining, laundering, cleaning and other shared facilities are not provided, or
  - 'backpackers accommodation' as the accommodation is not provided on a commercial basis, or
  - Any other type of residential accommodation.

By comparison, 'registered club' is defined by PLEP 2014, as follows:

***registered club*** means a club that holds a Liquor Licence under the Liquor Act 2007.

Whilst the word 'club' forms part of the name of the organisation proposing the works, and whilst Palm Beach SLSC may hold a liquor licence, the term 'registered club' it is not necessarily the best fit definition or the most appropriate characterisation of the purpose of the development. The term is very broad, and could be used in conjunction with a whole range of differing land uses.

Furthermore, it is important to note that registered clubs are not only prohibited on the subject site but also on land zoned RE1 Public Recreation. With this in mind, the application of the 'registered club' definition for surf clubs would in turn prohibit surf clubs throughout the entire former Pittwater LGA, noting that all beaches and adjoining public reserves are zoned RE1 Public Recreation.

The suggestion in the submissions that the use is best defined as a 'registered club' appears to be on the basis that former applications at the site, processed under the now superseded PLEP 1993, defined development associated with Palm Beach SLSC as being for the purpose of a 'club'. However, the definitions and the land use characterisations under PLEP 1993 are different to those in PLEP 2014, and in particular there was no definition akin to 'community facility' and 'club' was defined by PLEP 1993, as follows;

***club*** means a building used by persons associated, or by a body incorporated, for social, literary, political, sporting, athletic or other lawful purposes whether of the same or a different kind and whether or not the whole or a part of such building is the premises of a club registered under the Registered Clubs Act 1976.

At the time that previous approvals at the site were considered, the term 'club' may have been the best fit and most appropriate characterisation of the purpose of the development. However, in light of the current definitions in PLEP 2014, the term 'community facility' is considered to most appropriately define the works, and is permitted with consent.

### **Residential Accommodation**

- **Clause A1.7 (Considerations before consent is granted) of P21 DCP**

Submissions have been received which question the amount and extent of residential accommodation provided as a result of the proposed development, and suggest that there is no nexus between the weekend patrol service provided by Palm Beach SLSC and the need for the 43 female beds proposed, and in turn the 91 beds provided across the site.

Palm Beach SLSC has approximately 280 active members, and a considerable proportion of members are not residents of Palm Beach or the nearby suburbs. Given the proportion of members that commute to the locality, overnight accommodation is available to members who participate in weekend patrols and when major events occur at the site, typically up to 6 times



per year. The applicant has identified that the current provision of accommodation on site is not ideal, with instances where the demand for accommodation has exceeded that which is currently provided on site.

The submissions suggest that the amount of beds provided on site results in the overdevelopment of the site for residential purposes. Whilst not a standard component of surf clubs across NSW, the provision of onsite accommodation is considered to be an essential component of Palm Beach SLSC, to entice volunteers from out of the area to patrol Palm Beach and provide surf life saving services on weekends. The provision of overnight accommodation and the amount of beds proposed is not considered a separate dominant land use, and does not alter the characterisation of the proposed use or the purpose for which the development serves.

Furthermore, the amount of beds proposed is not considered to result in an overdevelopment of the site, and whilst the built form is considered in more detail in respect to individual development controls, the development is considered to be compatible with surrounding development and the desired future character of the locality.

#### **Use of the facility for commercial purposes**

- **Clause A1.7 (Considerations before consent is granted) of P21 DCP**

Concern has been raised in submissions received in relation to the potential use of the site for commercial purposes. In particular, one submission suggests that the amount of beds proposed will facilitate the provision of accommodation to non-members at commercial rates and another suggests that the training room will be used for functions and events.

The application does not seek consent for the use of the site for commercial purposes, and the application has been supported by a Plan of Management that clearly stipulates the intended use of the training room and accommodation within the new facilities building proposed. Conditions of consent are recommended to ensure consistency with the Plan of Management, with additional conditions confirming that the use of overnight accommodation is to be limited to that by members of Palm Beach SLSC.

#### **Heritage Conservation**

- **Clause 5.10 (Heritage conservation) of PLEP 2014**
- **Clause B1.1 (Heritage Conservation – Heritage Items) of P21 DCP**
- **Clause B1.2 (Heritage Conservation – Vicinity) of P21 DCP**

Council's Strategic Planning Team provided the following comments with respect to the heritage significance of the site:

*The application proposes for the demolition of the existing building, the consolidation of three lots and the construction of a new two storey building and carpark. The building is understood to be used as a dormitory for female members of the club with some additional ancillary spaces such as a training room.*

*Directly to the east of the site at 27-28 Ocean Road sits the heritage listed Palm Beach Surf Club building. The Ocean Road Heritage Conservation Area extends along this frontage. Further to the east of the club are the heritage listed street trees and the heritage listed toilet block. The toilet block and street trees are not considered to be impacted by the proposal.*

*To the west sit the remaining heritage items and the Florida Road Heritage Conservation Area. The items to the west are considered to be in proximity to the subject site, but there is adequate distances and physical separation between, given the Florida Road reserve and sloping character of the locality. There are no concerns raised in relation to these heritage items.*

*The proposal was referred to Council's external heritage advisor for further comment. The advisor noted:*

- As we have discussed, it is the unrelieved length of the simple overall form of the building which causes me concern from a bulk and scale issue ; this is emphasised by the long eaves line and roof form, which is certainly "low profile" but does not talk to the existing building in any way. I note that the roof is broken at the rear by two indents.
- The modernity of the building's design is not an issue, but there could be some more comprehensible relationship between new and old rather than just adjacency. Mr. Oultram cites the use of concrete as a correspondence between the buildings, but we have no real appreciation of the character of the concrete proposed.
- The extent of glazing in the context could be problematic in terms of light loss at night, and further emphasis to the scale of the building in context. Given the dormitory use there will probably be blinds for privacy and these may in part address the issue.
- The photo-montage images indicate the helpful degree of screening to the building provided by vegetation and setting. This should be an objective of new landscaping on the site, helping to balance the scale of the building which is approaching the limits of what might be considered to be comparable to the houses in its vicinity.

*Strategic Planning (Heritage) retains the concerns of Council's external heritage advisor. The unbroken length of the eastern elevation of the proposed building may stand out in contrast to the eastern elevation of the surf club with its pitched roof form. This concern is exacerbated when viewing the new and proposed buildings from Ocean Road. This is not helped by the elongated length of the building. It would be beneficial if there is some articulation to the roof form, but that it retains a low profile and defers to the heritage item.*

*In regards to the loss of the paper bark trees, it is considered that their retention would be a better outcome as it would help to give an edge of vegetation between the roof profiles of the new and old buildings. The trees that are to be removed that are of concern are noted as T13-T22. The Arborist Report has recommended their removal but notes that they are in fair to average condition.*

*No new vegetation has been proposed to replace the loss of the paper barks. It is considered that a condition of consent be imposed that locally native trees be planted within the area the paper barks are proposed to be removed from. This vegetation should be able to grow to a reasonable height to help screen the view between the roof of the proposed building and the existing when viewed from Ocean Road. This will help to ameliorate the extent of the new building's projecting roof form.*

*The relocation of the cabbage tree palms in the western portion of the site due to the carpark is supported by Strategic Planning (Heritage) as cabbage tree palms are important characteristic of the Palm Beach locality.*

*In regards to the extensive glass elevations on the eastern elevation of the new building, the concern with light spill at night is also concurred. In this regards, there is an opportunity for the building to be conditioned with blinds. This will help at night to avoid light pollution from the building detracting from the heritage item.*

*The proposed works are considered to impact upon the heritage item and the conservation area. However, on balance, the proposal is not considered harmful enough on the heritage items to recommend refusal on these grounds and is therefore supported with conditions to help to soften the impacts.*

*Replacement trees to be planted within the area the paper barks are proposed to be removed from that grow to a minimum of 7m height to help form a green edge between the buildings.*

*Extendable or retractable blinds be installed to the inside of the proposed new building and retained in perpetuity for the life of the development. The blinds should be affixed to the inside of the proposed glass windows in the upper portion of the eastern elevations to minimise light spill at night.*

The comments regarding the landscaping were passed on to the applicant, who has subsequently provided an amended landscape plan demonstrating the incorporation of 6 *Tristanopsis laurina* (watergums) along the eastern façade of the proposed new building. Within a garden setting, watergums typically reach between 4.5m-9m in height, consistent with the recommendations of Council's Strategic Planning Team.

### **Acoustic Impacts**

- **Clause A1.7 (Considerations before consent is granted) of P21 DCP**
- **Clause C5.17 (Pollution Control) of P21 DCP**
- **Clause C5.20 (Liquor Licensing Applications) of P21 DCP**

The proposed development comprises dormitory style accommodation, an outdoor parking lot and a training room with large doors opening onto a communal outdoor BBQ area, all of which have the potential to impact upon the acoustic amenity of adjoining and nearby residences. Concerns relating to this potential impact have been raised in submissions, including that received from the nearest residential receiver at 52 Florida Road. These concerns were initially shared by Council, particularly in the absence of an acoustic impact assessment report and noting that the application sought consent for the use of the new facilities until midnight daily.

An acoustic report has been subsequently submitted and was accompanied by an amended Plan of Management to further iterate the intended use of each of the relevant spaces in accordance with the findings and recommendations of the acoustic assessment. The acoustic report was prepared in consideration of the *Industrial Noise Policy* and the *Noise Policy for Industry*. Whilst the names of these policies are slightly misleading, the policies are used to determine and assess noise levels associated with development, including those in residential environments.

In consideration of background noise monitoring undertaken at the site (adjacent to 52 Florida Road) between 3-10 November 2017, the acoustic report provides the following recommendations to ensure that the proposal will not attribute to offensive or unreasonable acoustic impacts upon adjoining residential receivers:

- When in use between 6:00pm and 10:00pm, all but one of the doors on the eastern elevation of the training room must be shut,
- When in use between 10:00pm and 8:00am, all windows and doors of the training room must be shut,
- No music (amplified or live) is to be played within the training room,
- Hours of use of the carpark are limited to 6:45am to 10:00pm,

The report concludes that:

*Noise emissions from the use of the proposed Conroy Building and associated carpark have been assessed in accordance with the NPfI [Noise Policy for Industry](which supersedes the INP). Subject to management controls on the use of the Training Room, the subject uses would not exceed any of the NPfI Trigger levels.*

This information was subsequently reviewed by Council's Health Officer who provided the following commentary:

*Environmental Health has reviewed acoustic assessment, the report states the noise generated from general operation from the property will not exceed the noise amenity criteria outlined in the Industrial Noise Policy (or the Noise Policy for Industry) and has no objections to the proposal subject to the following recommended conditions:*

- 1. Details and recommendations made by the consultant in the acoustic report titled Conroy Building and Carpark noise Emission Assessment dated 13 November 2017 Doc Ref: TK07601F02 must be implemented to ensure compliance is met.*
- 2. Where implementation of these recommendations are met and complaints about "offensive noise" are received and justified, action is to be taken by the applicant to review any potential nuisance and implement any additional assessment and measures necessary to prevent the occurrence of offensive noise*

The concerns relating to acoustic impact were also linked with the concerns that the training room would be used for weddings and events, with amplified music, live bands and the service of alcohol. The acoustic impact assessment confirms that the training room is proposed to be used for training purposes including seminars, training courses and board meetings between the hours of 7am and 10pm. The space may be used by women staying overnight outside these hours, but only on the proviso that no music is played and all windows are closed.

Additional concern has been raised by objectors in relation to the use of the outdoor BBQ area adjacent to the training room, which is to be redesigned/rearranged as part of the proposed works. The acoustic report does not address the use of this BBQ area. However, if music is considered to be inappropriate within the proposed enclosed training room, it can be inferred that music would also be inappropriate within the unenclosed adjacent outdoor space. The same can also be said for the use of the outdoor area past 10pm, when any people left at the site should be moved inside.

Subject to conditions reinforcing the recommendations of the acoustic report and applying the same recommendations to the use of the outdoor space, the proposal is not considered result in any adverse impacts upon adjoining properties, and is consistent with the aims and requirements of clause C5.17 of P21 DCP.

Whilst clause C5.20 of P21 DCP is not technically applicable (as consent is not sought in relation to a liquor licence), a further precautionary condition is recommended to ensure against the service of alcohol within the training room.

#### **Light pollution**

- **Clause A1.7 (Considerations before consent is granted) of P21 DCP**

In addition to acoustic concerns associated with the carpark, concern has also been raised in a submission relating to light pollution associated with the carpark. Whilst lighting is not proposed by the application, a condition of consent is recommended to ensure that any lighting of the carpark shall be limited in accordance with the hours of use.



### **Vehicular Access and Parking**

- **Clause B6.1 (Access Driveways and Works in the Public Road Reserve) of P21 DCP**

The proposal seeks to retain the existing driveway entrance on Ocean Place as the primary entrance to the proposed carpark, with the existing driveway to Florida Road maintained for emergency vehicle access only. A submission has been received in this regard, objecting to the retention of the Florida Road access driveway, although no reasoning is provided as to why the continued presence of the existing driveway is of concern.

Clause B6.1 of P21 DCP provides that a second driveway may be permitted on sites with dual street frontages or where the frontage exceeds 30m, subject to a merit assessment by Council. The existing driveway to Florida Road is to be used in emergencies only, with access restricted at all other times. This access arrangement has been reviewed by Council's Development Engineer and is supported in this regard.

### **Parking**

- **Clause B6.3 (Off-Street Vehicle Parking Requirements) of P21 DCP**

There is no specific requirement for off-street parking associated with a community facility or a surf life saving club within the provisions of clause B6.3 of P21 DCP or the RMS Traffic Generating Development Guidelines. The application was supported by a traffic and parking assessment report, confirming that the proposed provision of 30 off-street parking spaces adequately accommodates the associated demand. This report was reviewed and supported by Council's Development Engineer.

Submissions were received in objection to potential acoustic impacts associated with the use of the carpark. As discussed in relation to Acoustic Impacts, the use of the carpark is not considered to result in any unreasonable acoustic impacts upon adjoining properties, subject to a restriction upon the hours of use.

### **Flood Hazard**

- **Clause B3.19 (Flood Hazard – Flood Category 1 – High Hazards – Other Development) of P21 DCP**

Council's Specialist Floodplain Engineer provided the following comments:

*The property at 1A Ocean PI has a very small amount of medium flood risk precinct mapped towards the north, with no depth greater than 0.2m in the 1% AEP flood event. The portion of the medium flood precinct mapped which has a depth of more than 0.15m is just under 100m<sup>2</sup>, and "puddles" less than 100m<sup>2</sup> should actually have been filtered out by the Consultant during the mapping process. As it is, this small "puddle" will not impact on the building - there is solid wall at this location with no doorways so water would not be able to enter the building. Also, the flood affectation is so small that the building would not create any noticeable impact on flooding. Also, the part of the building which is located where the medium flood risk precinct has been mapped is "non-habitable" at the ground floor level, containing only toilets, showers and washrooms.*



### View Sharing

- **Clause C5.4 (View Sharing) of P21 DCP**

The adjoining site at 52 Florida Road currently enjoys views of Barrenjoey Headland across the subject site. A view Impact analysis was provided at lodgement and height poles were erected on the site, to confirm that the proposed built form would not impact upon these highly valued views. Whilst no submissions were received in relation to the impact of views associated with the proposed built form, a submission was received from the owners of 52 Florida Road requesting that any proposed new canopy trees be sited to minimise impacts upon existing views.

The revised landscape plan proposes replacement trees (watergums) along the eastern edge of the new building to compensate for those to be removed from that part of the site. The proposed watergums will grow to a height of between 4.5m-9m, consistent with the paperbarks currently on site. In consideration of the potentially conflicting concerns raised by the adjoining property owner and Council's Strategic Planning team, a condition is recommended to ensure that once mature, the proposed watergums are maintained in line with the height of eastern edge of the roof of the proposed new building.

### Impacts upon Vegetation

- **Clause B4.3 (Flora and Fauna Habitat Enhancement Category 2 Land) of P21 DCP**
- **Clause D12.9 (Landscaped Area – General) of P21 DCP**
- **Clause D12.10 (Landscaped Area – Environmentally Sensitive Land) of P21 DCP**

At the time of lodgement, the arborist report provided failed to address impacts to trees associated with the construction of the carpark and proposed underground infrastructure. This deficiency was highlighted in a submission received on behalf of a nearby resident, who suggested that the lack of information results in failure to achieve the outcomes of clause D12.9 of P21 DCP with respect to the conservation of natural vegetation and biodiversity.

An amended arboricultural impact report has since been provided to address the extent of works proposed, and its findings and recommendations are supported by Council's Natural Environment Officer. Furthermore, whilst clause D12.9 of P21 DCP does not apply in relation to the subject site, both the extent of landscaping and the level of tree retention across the site as a whole (noting that the applicant seeks to retain 54 Florida Road as a vacant and vegetated site) ensures consistency with the technical requirements and outcomes of clause D12.10 of P21 DCP.

### Side Setbacks

- **Clause D12.6 (Side and Rear Building Line) of P21 DCP**

Proposed setback to eastern boundary of 1a Ocean Place (adjoining SLSC site): 2.1m  
Proposed setback to southern boundary (neighbour at 52 Florida Road): 7.3m

Note: As the application does not propose to consolidate the site of the new building with the sites containing the existing SLSC facilities, the internal boundary adjacent to the proposed building has been conservatively considered as a "side" boundary for the purpose of this control.

Clause D12.6 of P21 DCP prescribes that development shall be sited with a minimum setback of 1m to one side, 2.5m to the other side, and 6.5m to the rear, measured from the outer wall/edge of the development (ie: eaves and roof overhangs are permitted within the setback). However, the subject site does not conform to the standard front, rear and 2 sides approach adopted by this control.

A submission has been received in objection to the development on the basis that the eastern façade of the proposed development has a nil setback to the eastern side boundary of 1a Ocean Place. However, it is noted that the eastern elevation of the proposal is setback at a distance of 2.1m this boundary, with only the roof element projecting out with a nil setback.

The proposed development is deliberately sited in close proximity to the eastern boundary of 1a Ocean Place to relate to the existing Palm Beach SLSC facilities at 27-28 Ocean Road. The building is also sited with generous setbacks to Florida Road, Ocean Place and the adjoining residential neighbour at 52 Florida Road, and overall, the proposal is consistent with the outcomes of clause D12.6 of P21 DCP, as follows:

- The proposal is consistent with the desired future character of the Palm Beach Locality,
- The bulk and scale of the proposed built form is reasonably minimised,
- The development is sited to ensure that equitable views and vistas are retained to and/or from public/private places, and that view sharing between properties is achieved,
- The siting of the development ensures a reasonable amenity is maintained to the adjoining residential property at 52 Florida Road, with no unreasonable impacts associated with solar access or visual privacy,
- The proposal, particularly noting the retention of 54 Florida Road as a vacant vegetated lot, ensures a reasonable retention of existing vegetation, substantial landscaping and the protection of mature tree canopy, and
- The landscape plan, in addition with vegetation to be retained, ensures that the visual impact of the built form will be minimised and softened.

#### **Building Envelope**

- **Clause D12.8 (Building Envelope) of P21 DCP**

Note: As the application does not propose to consolidate the site of the new building with the sites containing the existing SLSC facilities, the internal boundary adjacent to the proposed building has been conservatively considered as a “side” boundary for the purpose of this control.

A submission has been received in objection to the proposal and non-compliance with the building envelope prescribed by clause D12.8 of P21 DCP. The roof overhang and a portion of the external wall protrude beyond the prescribed envelope along the entire eastern elevation. However, noting that clause D12.8 of P21 DCP provides a variation that permits eaves and shading devices to extend outside the building envelope, the area of non-compliance is essentially limited to the upper most 600mm of the eastern external wall of the building.

Despite this minor area of non-compliance with the prescribed building envelope, the proposed development is consistent with the outcomes of the building envelope control, as highlighted with respect to setbacks above and as follows:

- The proposed landscaping and architectural style of the building will enhance the streetscape,
- The scale of the building is below the height of surrounding canopy trees, and
- Whilst some tree removal is proposed, the building is sited to respond to the existing natural environment and the existing urban context.

## 11.0 CONCLUSION

The proposed development has been designed to provide additional facilities for the Palm Beach SLSC, being a community facility, as defined by PLEP 2014. Subject to conditions of consent and consistency with the Plan of Management, the intensification of the Palm Beach SLSC facilities will not result in any unreasonable impacts upon adjoining properties, particularly with respect to acoustic privacy. If anything, the proposal may provide adjoining and nearby residents with more certainty regarding the ongoing use of the facility, noting that the hours and use of the existing premises do not appear to be enforced in any conditional approval or publically available Plan of Management.

Despite the proposed use of the building being for the purpose of a community facility, the scale of the proposed built form is in keeping with surrounding residential development, and the proposed landscaping solution will ensure that the carpark is adequately screened from the street. Overall, the proposal is considered consistent with the aims and objectives of PLEP 2014 and P21 DCP.

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## RECOMMENDATION

That Council as the consent authority pursuant to Section 80 of the Environmental Planning and Assessment Act 1979 approve Development Application N0319/17 for the demolition of an existing dwelling, construction of a new Community Facility building, 30 space carpark, and consolidation of land at 1a Ocean Place, 54-56 Florida Road and 27-28 Ocean Road, Palm Beach, in accordance with the draft determination attached.

**DRAFT DETERMINATION**

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**CONSENT NO: N0319/17  
ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979 (AS AMENDED)  
NOTICE TO APPLICANT OF DETERMINATION OF A DEVELOPMENT APPLICATION**

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Applicants Name and Address:

**Palm Beach Surf Life Saving Club  
Attn: Club President  
Ocean Road  
Palm Beach NSW 2108**

Being the Applicant in respect of Development Application **N0319/17**

Pursuant to section 80(1) of the Act, notice is hereby given of the determination by Northern Beaches Council, as the consent authority, of Development Application **N0319/17** for:

**Demolition of an existing dwelling, construction of a new Community Facility building, 30 space carpark, and consolidation of land**

**At: 1a Ocean Place, 54-56 Florida Road and 27-28 Ocean Road, Palm Beach NSW 2107**

Decision:

The Development Application has been determined by the granting of consent based on information provided by the Applicant in support of the application, and in accordance with:

- **Architectural plans, prepared by Louise Nettleton Architects, dated 30.06.2017:**
  - A-DA-100-001 revision (-)
  - A-DA-100-002 revision (A)
  - A-DA-102-001 revision (A)
  - A-DA-110-001 revision (A)
  - A-DA-110-002 revision (A)
  - A-DA-110-003 revision (A)
  - A-DA-210-001 revision (A)
  - A-DA-210-002 revision (A)
  - A-DA-310-001 revision (A)
  - A-DA-310-002 revision (A)
  - A-DA-310-003 revision (A)
- **Materials Palette, A-DA-890-001 revision A, prepared by Louise Nettleton Architects, dated 30.06.2017**
- **Landscape Plan, LP01, prepared by Stuart Pittendrigh, dated November 2017**
- **Stormwater Management Plans, prepared by Adcar Consulting,**
  - SW-000, revision B, dated 26.06.2017
  - SW-101, revision D, dated 31.10.2017
  - SW-102, revision C, dated 27.06.2017
  - SW-103, revision C, dated 27.06.2017
  - SW-200, revision C, dated 27.06.2017
- **Arborist Report, prepared by Stuart Pittendrigh, dated November 2017**
- **Acoustic Report, prepared by Renzo Tonin & Associated, dated 13 November 2017**
- **Plan of Management, 'Conroy Building Management Plan', prepared for Palm Beach Surf Life Saving Club, dated 14.11.2017**
- **Geotechnical Risk Management Report, reference J0849, prepared by White Geotechnical Group, dated 29 June 2017**

as amended in red (shown clouded) or as modified by any conditions of this consent.

The reason for the imposition of the attached conditions is to ensure that the development consented to is carried out in such a manner as to achieve the objectives of the Environmental Planning and Assessment Act 1979 (as amended), pursuant to section 5(a) of the Act, having regard to the relevant matters for consideration contained in section 79C of the Act and the Environmental Planning Instruments applying to the land, as well as section 80A of the Act which authorises the imposing of the consent conditions.

Endorsement of date of consent: **TBA**

Mark Ferguson  
CHIEF EXECUTIVE OFFICER



## CONDITIONS OF APPROVAL

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This consent is not an approval to commence building work. The works associated with this consent can only commence following the issue of the Construction Certificate.

Note: Persons having the benefit of development consent may appoint either a council or an accredited certifier as the principal certifying authority for the development or for the purpose of issuing certificates under Part 4A of the Environmental Planning and Assessment Act. When considering engaging an accredited certifier a person should contact the relevant accreditation body to ensure that the person is appropriately certified and authorised to act in respect of the development.

### A. Prescribed Conditions:

- A1. All works are to be carried out in accordance with the requirements of the Building Code of Australia and the National Construction Code.
- A2. In the case of residential building work for which the *Home Building Act 1989* requires there to be a contract of insurance in force in accordance with Part 6 of that Act, there is to be such a contract in force.
- A3. 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:
  - a. showing the name, address and telephone number of the Principal Certifying Authority for the work, and
  - b. 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
  - c. 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.

- A4. 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:
  - a. in the case of work for which a principal contractor is required to be appointed:
    - i. The name and licence number of the principal contractor, and
    - ii. The name of the insurer by which the work is insured under Part 6 of that Act.
  - b. in the case of work to be done by an owner-builder:
    - i. The name of the owner-builder, and
    - ii. If the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- A5. If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (2) 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.

**B. Matters to be incorporated into the development and maintained over the life of the development:**

- B1. This approval/consent relates only to the new work nominated on the approved consent plans and does not approve or regularise any existing buildings or structures within the property boundaries or within Council's road reserve.
- B2. If any Aboriginal Engravings or Relics are unearthed all work is to cease immediately and the Metropolitan Local Aboriginal Land Council (MLALC) and the Office of Environment and Heritage are to be notified.
- B3. No environmental weeds are to be planted on the site. Refer to Council's website for environmental weed lists.
- B4. Weeds listed in the Greater Sydney Regional Strategic Weed Management Plan 2017 – 2022 must be removed and managed continuously. Details demonstrating compliance are to be submitted to the Certifying Authority.
- B5. Any vegetation planted onsite outside the approved landscaping is to be consistent with:
  - Locally native species growing onsite and/or selected from the list pertaining to the vegetation community growing in the locality as per the vegetation mapping and Native Plants for Your Garden guide available on Council's website.
  - Species listed in the flora and fauna assessment report referenced in this consent.

Any other plant species can only be used with written approval of Council.
- B6. Any new fencing is to be made passable to native wildlife. Hole dimensions are to be a minimum of 150mm wide x 100mm high at ground level spaced at 6m intervals.
- B7. The recommendations of the approved Arboricultural Impact Assessment Report referenced in this consent are to be incorporated into the construction plans and implemented during construction.
- B8. Landscaping is to be implemented in accordance with the approved Landscape Plans referenced in this consent, as modified by any conditions of consent. This landscaping is to then be maintained for the life of the development.
- B9. A garbage enclosures/refuse shall be provided and maintained in accordance with the following:
  - a. A separate room or an appropriately constructed area is to be provided for the storage of garbage and recyclables.
  - b. The walls of the enclosure shall be cement rendered and steel trowelled to a smooth, even surface.
  - c. The floor shall be of impervious material coved at the intersection with the walls, graded and drained to an approved floor waste within the room/enclosure.
  - d. Stormwater shall not enter the floor of the garbage enclosure such that the sewer system may be contaminated by rainwaters.
  - e. Garbage and recycling rooms shall be vented to the external air by natural or artificial means. The installation and operation of the mechanical ventilation system shall comply with AS 1668, Parts 1 & 2.
  - f. The room used for the storage and washing down of garbage and recycling receptables shall be constructed of solid material (brick, concrete blocks, structural fibrous cement or similar homogeneous material) so as to prevent the formation of cavities which become possible harborages for insects and vermin. Framing in timber is not permitted.
  - g. The garbage and recycling room shall be made vermin proof.

- h. Hot and cold water hose cocks shall be located within a garbage enclosure or in close proximity to Council's satisfaction.
- B10. Security lighting is to be provided in accordance with the relevant provisions of AS4282 - *The control of the obtrusive effects of outdoor lighting*.
- B11. Air-conditioning units, hot water systems, and other mechanical equipment shall not be located on any roof or in locations that are visible from a public place.
- B12. All parking spaces are to be maintained free of obstruction and used solely for the parking of vehicles.
- B13. The ongoing operation of the facility is to be in accordance with the provisions of the Protection of the Environment Operations Act 1997, the NSW EPA Industrial Noise Policy and the recommendations of the approved Acoustic Report referenced in this consent. Where implementation of the recommendations of the Approved Acoustic Report are met and complaints about "offensive noise" are received and justified, action is to be taken by the applicant to review any potential nuisance and implement any additional assessment and measures necessary to prevent the occurrence of offensive noise.
- B14. As part of an integrated on-site stormwater management system a minimum 24,000 litres on-site detention tank is to be installed, operated and maintained in association with the development.
- B15. As part of the integrated stormwater management plan, suitably positioned stormwater quality improvement devices shall be installed and operated in accordance with Manufacturer's Specifications and associated operational guidelines. The stormwater quality improvement devices shall be maintained and emptied of spoil materials at regular intervals. Spoil materials removed from the stormwater quality improvement devices shall be disposed of as dry mixed waste.
- B16. As part of the integrated on-site stormwater management system, stormwater from the on-site detention system is to be discharged directly to the kerb and gutter or piped drainage system, consistent with the approved Stormwater Management Plans referenced in this consent.
- B17. The internal driveway finish is:
  - a. to be a stable surface for all weather conditions
  - b. to be constructed of materials that blend with the environment and are of dark or earthy tones or natural materials.
- B18. 30 off-street vehicle spaces, inclusive of one space for people with disabilities, are to be maintained for the life of the development.
- B19. The recommendations of the approved Geotechnical Risk Management Report referenced in this consent are to be incorporated into the construction plans and implemented during construction.
- B20. All natural landscape features, including natural rock outcrops, natural vegetation, soil and watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.
- B21. In accordance with Northern Beaches Council's Pittwater Tree Preservation and Management Order, all existing trees as indicated on Survey Plan Prepared by BMA Surveyors, Reference No 9591-13D, Amendment D, dated 31/5/2017 shall be retained except where Council's prior written consent has been obtained, or where after approval of the relevant Construction Certificate Application/s, trees stand within the envelope of

approved buildings or within the alignment of approved permanent paved vehicular access roads and parking areas.

B22. A minimum of 200mm clearance is to always be maintained to the tree trunk from proposed bearers, joists and decking.

B23. At the completion of the landscape maintenance period, as specified in the landscape working drawings and specifications submitted with the Construction Certificate application where it extends beyond the issue of an Occupation Certificate the consultant landscape architect/designer is to submit a final report to the Principal Certifying Authority within 7 working days, certifying that all plant material has been successfully established and that all of the outstanding maintenance works or defects have been rectified prior to preparation of the report and that a copy of the landscape maintenance strategy has been provided to the owner/occupier.

B24. The site is to be managed and operated in accordance with the approved Plan of Management referenced in this consent, and as amended by any conditions.

B25. Use of the carpark is limited to 6:45am and 10:00pm, with no vehicle movements in or out of the carpark outside these hours. Any lighting of the carpark shall be turned off between the hours of 10:00pm and 6:45am.

B26. Overnight accommodation shall only be used by members of Palm Beach Surf Life Saving Club.

B27. The use of the training room and adjacent BBQ area is to be in accordance with the following:

- a. When the training room is in use between 6:00pm and 10:00pm, all but one of the doors on the eastern elevation of the training room must be shut.
- b. When the training room is in use between 10:00pm and 8:00am, all windows and doors of the training room must be shut.
- c. No music (amplified or live) is to be played within the training room or in the adjacent BBQ area between 6:00pm and 8:00am.
- d. The BBQ area adjacent to the training room is not to be used between 10:00pm and 8:00am.
- e. The service of alcohol within the training room is not authorised by this consent.

B28. Once mature, the *Tristanopsis laurina* (watergums) along the eastern façade of the proposed new building are to be maintained in line with the height of the eastern roof overhang.

B29. Gravel used onsite must be inert material such as quartz or sandstone. No blue metal or granite or other igneous material should be used as these release nutrients that can pollute waterways and contribute to weed plumes.

B30. Extendable or retractable blinds be installed to the inside of the proposed new building and retained in perpetuity for the life of the development. The blinds should be affixed to the inside of the proposed glass windows in the upper portion of the eastern elevations to minimise light spill at night.

B31. Electrical and other service connections are to be provided underground.

B32. The development is to remain consistent with the approved Materials Palette referenced in this consent.



**C. Matters to be satisfied prior to the issue of the Construction Certificate:**

Note: All outstanding matters referred to in this section are to be submitted to the accredited certifier together. Incomplete Construction Certificate applications / details cannot be accepted.

C1. Submission of construction plans and specifications and documentation which are consistent with the approved Development Consent plans, the requirements of Building Code of Australia and satisfy all conditions shown in Part B above, are to be submitted to the Principal Certifying Authority.

C2. No works are to be carried out in Council's Road Reserve without the written approval of the Council.

Note: Separate approval is required for access driveways, paths, connections to underground services (stormwater, gas, sewer, electricity, etc:), and landscaping works within Council's Road Reserve.

C3. Applicants will be required to obtain a Section 139 Consent for Works on a Public Road Reserve issued by Council under the provisions of Section 138 of the *Roads Act 1993* for the design and construction of any works located on the road reserve including Access Driveways.

C4. Construction works approved by this consent must not commence until:

- a. Construction Certificate has been issued by a Principal Certifying Authority;
- b. A Principal Certifying Authority has been appointed and Council has been notified in writing of the appointment, and
- c. At least 2 days' notice, in writing has been given to Council of the intention to commence work.

C5. In accordance with section 34 of the Building and Construction Industry Long Service Payments Act 1986, the applicant must pay a long service levy at the prescribed rate of 0.0035 of the total cost of the work to either the Long Service Payment Corporation or Council for any work costing \$25,000 or more.

C6. An Erosion and Sediment Management Plan is to be submitted prior to the issue of a Construction Certificate. Control over discharge of stormwater and containment of run-off and pollutants leaving the site/premises shall be undertaken through the installation of erosion control devices such as catch drains, diversion drains, energy dissipaters, level spreaders and sediment control devices such as hay bale barriers, filter fences, filter dams and sedimentation basins. Such plan is to be accompanied by a certification from an appropriately qualified person, that the plans/ details have been designed in accordance with the requirements of *Managing Urban Stormwater: Soils and Construction* (Landcom 2004). The plan is also to include specific details required to remove fine sediment and clay from vehicles leaving the site so as to maintain public roads in a clean condition.

C7. A satisfactory Construction Traffic Management Plan (CTMP) prepared by a suitably qualified traffic consultant is to be submitted prior to the issue of a Construction Certificate. The CTMP is to detail:

- a. Quantity of material to be transported;
- b. Proposed truck movements per day;
- c. Proposed hours of operation; and
- d. Proposed traffic routes, noting that 3 tonne load limits apply to some roads within the local government area.
- e. Location of on/off site parking for workers associated with construction for the whole period of construction.



- C8. A section 73 Compliance Certificate under the provisions of the Sydney Water Act, 1994 must be obtained from Sydney Water. A copy of any Notice of Requirements letter which may be issued by Sydney Water, is to be provided to the Private Certifying Authority with the Construction Certificate application.

Application must be made through an authorised Water Servicing Coordinator. Please refer to the Building Developing and Plumbing section of the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

- C9. Structural Engineering details relating to the approved development are to be submitted to the Accredited Certifier or Council prior to release of the Construction Certificate. Each plan/sheet is to be signed by a qualified practicing Structural Engineer who is registered on the National Engineers Register (NER) maintained by Engineers Australia and has appropriate experience and competence in the related field.

- C10. Engineering plans including specifications and details of the on-site stormwater detention system, are to be submitted to the Accredited Certifier or Council with the Construction Certificate application. Such details are to be accompanied by a certification by a qualified experienced practicing Civil Engineer with corporate membership of the Institute of Engineers Australia (M.I.E), or who is eligible to become a corporate member and has appropriate experience and competence in the related field, confirming that the plans/details comply with B5.7 of Pittwater 21 DCP.

Note: Where Council is the Principal Certifying Authority, 3 sets of engineering plans are to be submitted.

- C11. Drainage plans including specifications and details showing the site stormwater management are to be submitted to the Accredited Certifier with the Construction Certificate application. Such details are to be accompanied by a certificate from (as appropriate) either a Licensed plumber or qualified practicing Civil Engineer with corporate membership of the Institute of Engineers Australia (M.I.E), or who is eligible to become a Corporate member and has appropriate experience and competence in the related field, that the stormwater management system complies with the requirements of section 3.1.2 Drainage of the Building Code of Australia Housing Provision and AS/NZS 3500.3.2 - Stormwater Drainage. The details shall include disposal of site stormwater (if the site is in a known slip area the stormwater disposal system must comply with the recommendations of a Geotechnical Engineers Report).

Note: Where Council is the Principal Certifying Authority 3 sets of plans/specifications are to be submitted.

- C12. Plans and details demonstrating that the following issues have been addressed are to be submitted to the Accredited Certifier with the Construction Certificate application.
- Driveway profiles must be obtained from Council for all access driveways across the public road verge to road edge. The driveway profiles provided by Council must be incorporated into and attached to design plans for the access driveway and internal driveway.
  - All construction of the access driveway across the public road verge must be undertaken by a Council authorised contractor.

C13. Prior to issue of the Construction Certificate, Form 2 of the *Geotechnical Risk Management Policy for Pittwater* (Appendix 5 of P21 DCP) is to be completed and submitted to the Principal Certifying Authority.

C14. A Landscape Maintenance Plan is to be prepared and submitted to Council that outlines the technique and frequency of maintenance tasks during the establishment of the landscaping on the subject site. The Landscape Maintenance Plan is to be implemented for a period 12 months immediately following the completion of landscape and hardscape works on site. The Landscape Maintenance Plan is to incorporate maintenance and care of hardscape elements (e.g. paving, retaining walls, secured pedestrian access paths), weeding, watering, mowing, consideration of other endemic species where plantings do not respond to the conditions as expected and a procedure for the replacement of failed plantings.

C15. Relocation of trees as detailed in approved Arborist Report and associated attachments/appendices (authored by Stuart Pittendrigh, dated November 2017) is to be carried out by a qualified contractor with proven experience in this area (and specifically mature palm relocation) and a maintenance strategy for a 12 month re-establishment period is to be developed, implemented and incorporated into the detailed landscape working drawings. This strategy is to address maintenance issues such as irrigation, soil testing, weeding, plant staking, fertilising, pest and disease control, remedial pruning and the like. Further, provision is to be made for the contractor to visit the site on a 3 monthly basis from the date of the relocation. After the inspection, the contractor is to issue a report to the project manager certifying that the palms are healthy and performing to expectation. A copy of this report is to be forwarded to the Principal Certifying Authority.

C16. The approved Plan of Management, as referenced in this consent, is to be amended to ensure strict consistency with the recommendations and conclusions of the Approved Acoustic Report, as referenced in this consent, and the requirements of Conditions B25 and B27.

**D. Matters to be satisfied prior to the commencement of works and maintained during the works:**

Note: It is an offence to commence works prior to issue of a Construction Certificate.

D1. A clearly legible *Site Management Sign* is to be erected and maintained throughout the course of the works. The sign is to be centrally located on the main street frontage of the site and is to clearly state in legible lettering the following:

- a. The builder's name, builder's telephone contact number both during work hours and after hours.
- b. That no works are to be carried out in Council's Road Reserve without the written approval of the Council.
- c. That a Road Opening Permit issued by Council must be obtained for any road openings or excavation within Council's Road Reserve associated with development of the site, including stormwater drainage, water, sewer, electricity, gas and communication connections. During the course of the road opening works the Road Opening Permit must be visibly displayed at the site.
- d. That no skip bins or materials are to be stored on Council's Road Reserve.
- e. That the contact number for Northern Beaches Council for permits is 9970 1111.

D2. All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.

D3. The area of the proposed construction works must be fenced throughout demolition and/or excavation and must comply with WorkCover New South Wales requirements and be a minimum of 1.8m in height.

- D4. Where excavations extend below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must preserve and protect the building from damage and, if necessary, underpin and support the adjoining building in an approved manner.
- D5. Where site fill material is necessary, fill materials must:
- a. be Excavated Natural Material (ENM) only, as approved under the NSW Environment Protection Authority Resource Recovery Exemption (2014);
  - b. be free of slag, hazardous, contaminated, putrescibles, toxic or radioactive excavated material and soil, rock or similar material. Putrescibles and non-putrescibles solid waste (including demolition material) is not permitted.
  - c. Be the subject of testing and monitoring throughout the course of the works, and is to consist of clean fill inert material only, that is, non-contaminated excavated material and soil, and suitable material. Putrescible and non-putrescible solid waste (including demolition material) is not permitted. All imported fill must be sourced locally where practicable to reduce traffic movements.
  - d. Be deposited and works carried out in strict compliance with *Managing Urban Stormwater: Soils and Construction* (Landcom 2004).
- D6. Prior to commencement of any works, temporary sedimentation and erosion controls in accordance with the Erosion and Sediment Management Plan required by this consent are to be installed to eliminate the discharge of sediment from the site and shall not be removed until the site has been stabilised or landscaped to the Principal Certifying Authority's satisfaction including:
- a. A site fence and silt and sediment control fence is to be erected and maintained during the course of works along any street boundary and park/reserve boundary to the site.
  - b. Sediment is not to leave the site or enter areas of riparian vegetation, and the appropriate sediment fencing is to be installed.
  - c. The capacity and effectiveness of runoff and erosion control measures shall be maintained at all times to conform to the specifications and standards quoted and to any conditions of approval of those measures.
  - d. Measures shall be applied, to the satisfaction of council, to prevent site vehicles tracking sediment and other pollutants onto any sealed roads serving the development.
  - e. Measures required in permits issued under the Water Management Act shall be implemented. This Act requires that people obtain approval for any proposed works within 40 metres of a watercourse. Permits should be sought from the NSW Office of Water.
  - f. Approved runoff and erosion controls shall be installed before site vegetation is cleared (other than that associated with the construction of the controls). These shall be as shown on an ESCP approved by council.
  - g. Topsoil shall be stripped only from approved areas and stockpiled for re-use during site rehabilitation and landscaping.
  - h. Stockpiles of topsoil, sand, aggregate, spoil or other material shall be stored clear of any drainage line or easement, waters, footpath, kerb or road surface and shall have measures in place to prevent the movement of such materials onto the areas mentioned. All stockpiled materials are to be retained within the property boundaries.
  - i. Uncontaminated runoff shall be intercepted up-site and diverted around all disturbed areas and other areas likely to be disturbed. Diversion works shall be adequately stabilised.
  - j. Runoff detention and sediment interception measures shall be applied to the land. These measures will reduce flow velocities and prevent topsoil, sand, aggregate, or other sediment escaping from the site or entering any downstream drainage easements or waters.

- D7. Personnel with appropriate training, or demonstrated knowledge and experience in erosion and sediment control shall be responsible for supervising the installation and maintenance of approved erosion and sediment control measures – during and after construction and until the site has been restored to the satisfaction of council.
- D8. Waste materials generated through demolition, excavation and construction works are to be minimised by re-use on site, recycling or where re-use or recycling is not practical, disposal at an appropriate authorised waste facility.
- D9. All waste dockets and receipts regarding demolition, excavation and construction waste are to be retained on site to confirm which facility received the material for recycling or disposal.
- D10. No works are to be carried out in Council's Road Reserve without the written approval of the Council.
- D11. All construction in the public road reserve must be undertaken by a Council authorised contractor. Alternatively, prior to the commencement of works, Council must be notified of each contractor undertaking works within the public road reserve. Each contractor must be able to provide/demonstrate each of the following;
- Incorporated company/ business name and ABN;
  - Public Liability Insurance;
  - Professional Indemnity Insurance;
  - Workers Compensation Insurance;
  - Accident/ Injury Insurance Cover;
  - Other Insurances;
  - Company Licences, Registrations, Permits, Certificates etc.;
  - WorkCover Construction Industry General Induction Card;
  - WHS Documents;
  - Employee qualifications – Certificates, Licences etc.;
  - Contractor Services;
  - Client Services; and
  - WHSMS Self Evaluation.
- D12. A Road Opening Permit, issued by Council, must be obtained for any road openings, or excavation within Council's Road Reserve associated with the development on the site, including stormwater drainage, water, sewer, electricity, gas and communication connections. During the course of the road opening works the Road Opening Permit must be visibly displayed at the site.
- D13. No skip bins or materials are to be stored on Council's Road Reserve.
- D14. The Construction Traffic Management Plan (CTMP) is to be implemented, throughout the construction phase of the development on site, including site preparation or demolition.
- D15. No native canopy trees are to be removed from Council's Road Reserve without prior approval from Council.
- D16. A stamped copy of the approved plans is to be kept on the site at all times, during construction.
- D17. The public footways and roadways adjacent to the site are to be maintained in a safe condition at all times during the construction phase. Pedestrian access is to be maintained at all times during the construction phase.



- D18. Toilet facilities are to be provided in a location which will not detrimentally affect the amenity of any adjoining residents at or in the vicinity of the work site during the duration of the development.
- D19. Prior to commencement of works, at least three photographs of the road reserve and footpath area adjoining the site, one front-on and one from each side of the property, are to be submitted to Northern Beaches Council with the notification of commencement of works, showing the condition of the street trees and road reserve. The photographs must be dated, and accompanied by a statement that they are a true and accurate representation of the scene depicted.
- D20. Tree guards are to be provided around all trees proposed for retention as indicated on Survey Plan No.9591-13D by BMA Surveyors, dated 31/5/17, or where after approval of the relevant Construction Certificate Application/s, trees stand within the envelope of approved buildings or within the alignment of approved permanent paved vehicular access roads and parking areas. The tree guards are to be installed prior to the commencement of any work on the site. No works, including utility installations (eg water, sewer, telephone, drainage), are to be undertaken within 4 metres of the trunk of any such trees. The tree guards shall be a minimum 1200mm high at least four (4) metres from the base of the nominated tree/s and constructed from timber posts and rails or posts and suitable plywood panels.
- D21. When working within the drip line of the trees, hand digging is to occur in sensitive areas. Liaison on a daily basis is to be maintained during the excavation works between the Builder and Arborist. No filling or compaction shall occur over tree roots within the area defined by the outer drip line of the crown. Root protection/ compaction mitigation in the form of planks or metal decking supported clear of the ground fixed to scaffolding is to be installed as required.
- D22. No storage of building materials or building waste, excavated fill or topsoil storage is to occur within the dripline of trees shown on the approved landscape working drawing(s) as being retained or within protective fenced areas. Drainage is to be arranged such that fill, building materials or contaminants are not washed into protective fenced areas.
- D23. The developer or contractor will take all measures to prevent damage to trees and root systems during site works and construction activities including provision of water, sewerage and stormwater drainage services. In particular, works, erection of structures, excavation or changes to soil levels within 5 metres of the trunks of trees, especially T1, 2,4,5,7-8 that are to be retained are not permitted, and the storage of spoil, building materials, soils or the driving or parking of any vehicle or machinery within 5 metres of the trunk of a tree to be retained, is not permitted.

NOTE: Trees that are part of an Endangered Ecological Community or are habitat for threatened species and endangered populations must comply with the requirements of the Threatened Species Conservation Act, 1995. Failure to do so may result in a penalty up to a maximum of \$250,000.00 and jail sentences.

Failure to comply with the requirements of the Pittwater 21 DCP Control B4.22 Preservation of Trees of Bushland Vegetation may result in a penalty up to a maximum of \$20,000.00.

- D24. All works within 5 metres of the existing trees to be retained including pruning, demolition, excavation, civil works, fencing and the like must be carried out by hand under the supervision of an experienced and qualified Arborist. Should roots larger than 50mm be encountered all excavation works are to cease immediately and a qualified Arborist is to advise on the impacts of the roots removal on the trees survival and report to the Principal Certifying Authority prior to works recommencing. If tree roots are present a pier and beam method of footing construction is to be adopted so as to bridge/span any identified lateral roots.

Under boring as proposed within the approved Arborist Report and associated appendices



(Stuart Pittendrige dated November 2017) is to be carried out when the provision of essential services is within notional Structural Root Zones (SRZ) or the tree subject to a total encroachment (from all onsite factors) in excess of 15% of the Tree Protection Zone (TPZ).

- D25. In the event that any tree required to be retained is damaged during works on the site, the person acting upon this consent shall advise Council in writing within 48 hours of the damage being identified.
- D26. During site excavation, topsoil which is to be used in later landscape works is to be stockpiled on site and stabilised during construction works. Stockpiles are to be stored outside of hazard areas and not located within the dripline of existing trees which are to be retained.
- D27. Critical stage inspections are to be carried out in accordance with clause 162A of the *Environmental Planning & Assessment Regulation 2000*. To allow a Principal Certifying Authority or another certifying authority time to carry out critical stage inspections required by the Principal Certifying Authority, the principal contractor for the building site or the owner-builder must notify the Principal Certifying Authority at least 48 hours before building work is commenced and prior to further work being undertaken.
- D28. The hours of construction are restricted to between the hours of 7.00am and 5.00pm Monday - Friday and 7.00am to 1.00pm on Saturdays. No works are to be carried out on Sundays or Public Holidays. Internal building work may be carried out at any time outside these hours, subject to noise emissions from the building or works not being audible at any adjoining boundary.
- D29. All works conducted on site must be undertaken in accordance with the requirements of the NSW Environment Protection Authority to ensure noise and vibration minimises any adverse effects on adjoining land.

**E. Matters to be satisfied prior to the issue of Occupation Certificate:**

Note: It is an offence to occupy the building or part thereof to which this consent relates prior to the issue of an Occupation Certificate.

Note: Prior to the issue of an Occupation Certificate the accredited certifier is to ensure that Council's assets, including road, kerb and gutter and drainage facilities adjacent or near to the site have not been damaged as a result of the works. Where such damage has occurred, it is to be repaired to Council's written satisfaction prior to the issue of an Occupation Certificate or suitable arrangements put in place to affect those repairs at a future date to Council's written satisfaction. Should this process not be followed, Council will pursue action against the principal accredited certifier in relation to the recovery of costs to affect such works.

- E1. An Occupation Certificate application stating that the development complies with the Development Consent, the requirements of the Building Code of Australia and that a Construction Certificate has been issued must be obtained before the building is occupied or on completion of the construction work approved by this Development Consent.
- E2. A copy of any Section 73 Compliance Certificate issued under the provisions of the *Sydney Water Act, 1994*, is to be forwarded to Council or the Private Certifying Authority with the Occupation Certificate.
- E3. A qualified landscape architect/designer is to certify that all landscaping works have been undertaken prior to the issuing of any Occupation Certificate. The landscape architect/designer is to confirm that all plants are arranged and spaced in a manner that is consistent with the approved Landscape Plan, as amended by any conditions of consent.

- E4. The stormwater drainage system must be constructed and completed in accordance with the approved design and relevant Australian Standards. A plan showing pipe locations and diameters of the stormwater drainage system, together with certification by a Licensed Plumber or qualified practicing Civil Engineer that the drainage system has been constructed in accordance with the approved design and relevant Australian Standards must be provided.
- E5. A certificate submitted by a Chartered Professional Engineer confirming to the satisfaction of the accredited certifier that the works in the public road reserve comply with Council requirements is to be provided to Council. The applicant is required to obtain written confirmation that all works in the road reserve have been completed in accordance with the conditions of the Roadworks Permit from Council, and a copy of such confirmation is to accompany the Occupation Certificate Application.
- E6. Prior to issue of an Occupation Certificate photographic evidence of the condition of the street trees and road reserve and area adjoining the site after the completion of all construction, must be submitted to the accredited certifier showing that no damage has been done and if damage has been done that it has been fully remediated. The photographs shall be accompanied by a statement that no damage has been done (or where damage has been remediated that Council has approved that work). In this regard, Council's written agreement that all restorations have been completed satisfactorily must be obtained prior to the issue of any Occupation Certificate.
- E7. Evidence is to be provided to confirm the engagement of a suitably qualified landscape architect, horticulturalist or landscape contractor who will be responsible for the implementation of the Landscape Maintenance Plan for a minimum period of 12 months.
- E8. Prior to issue of the Occupation Certificate, Form 3 of the *Geotechnical Risk Management Policy* (Appendix 5 of P21 DCP) is to be completed and submitted to the Principal Certifying Authority.
- E9. Evidence of the consolidation of 1a Ocean Place, 54 Florida Road and 56 Florida Road is to be provided to the Certifying Authority.

**F. Advice:**

- F1. Failure to comply with the relevant provisions of the *Environmental Planning and Assessment Act, 1979* (as amended) and/or the conditions of this Development Consent may result in the serving of penalty notices (on-the-spot fines) under the summary offences provisions of the above legislation or legal action through the Land and Environment Court, again pursuant to the above legislation.
- F2. The applicant is also advised to contact the various supply and utility authorities, i.e. Sydney Water, Sydney Electricity, Telstra etc. to enquire whether there are any underground utility services within the proposed excavation area.
- F3. It is the Project Managers responsibility to ensure that all of the Component Certificates/certification issued during the course of the project are lodged with the Principal Certifying Authority. Failure to comply with the conditions of approval or lodge the Component Certificates/certification will prevent the Principal Certifying Authority issuing an Occupation Certificate.
- F4. In accordance with Section 95(1) of the Act, this consent will lapse if the development, the subject of this consent, is not physically commenced within 5 years after the date from which this consent operates.
- F5. To ascertain the date upon which the determination becomes effective and operates, refer to Section 83 of the *Environmental Planning and Assessment Act, 1979* (as amended).

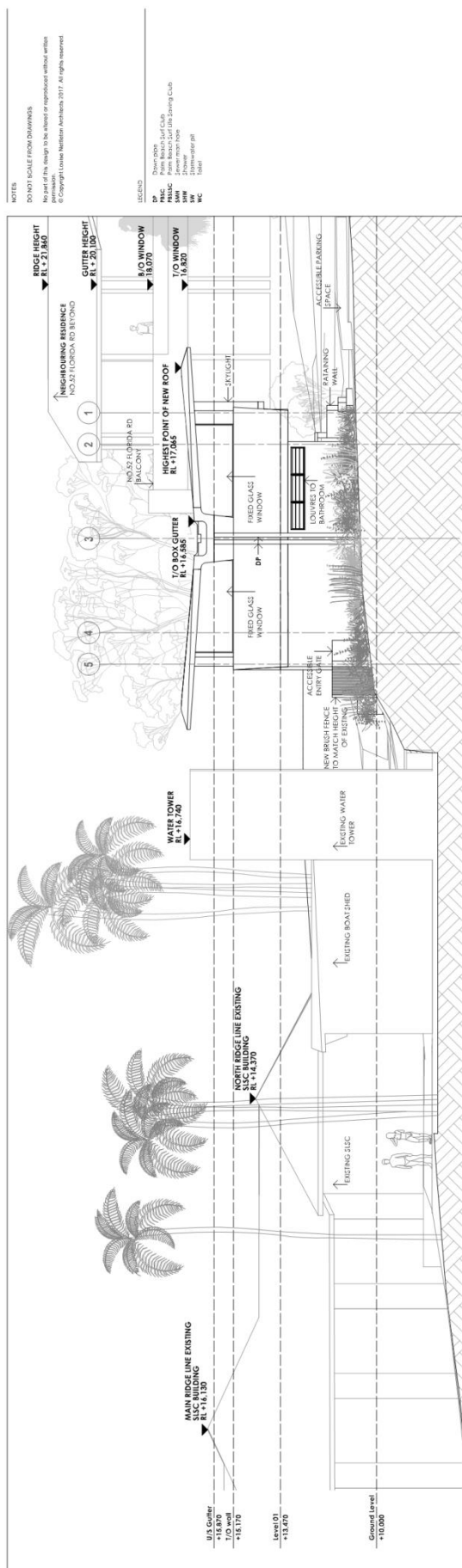
- F6. The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre to determine whether the development will affect Sydney Waters sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. The approved plans will be appropriately stamped. For Quick Check agent details please refer to the web site at [www.sydneywater.com.au](http://www.sydneywater.com.au) then see Building Developing and Plumbing then Quick Check, or telephone 13 20 92.







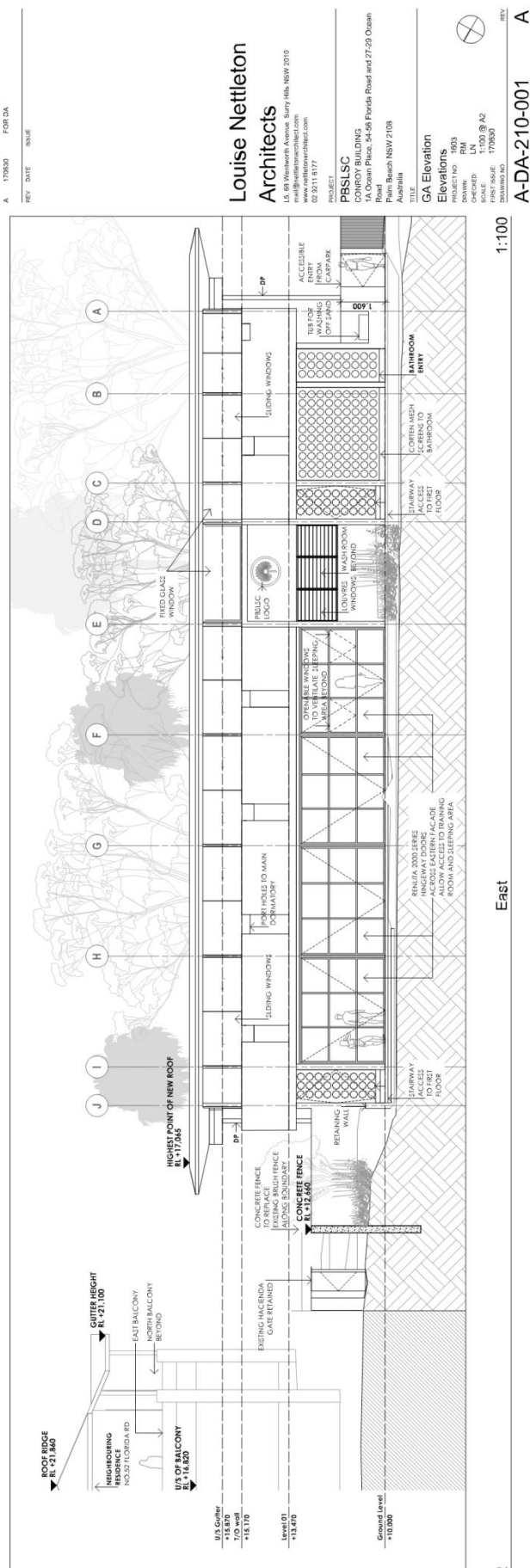




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North

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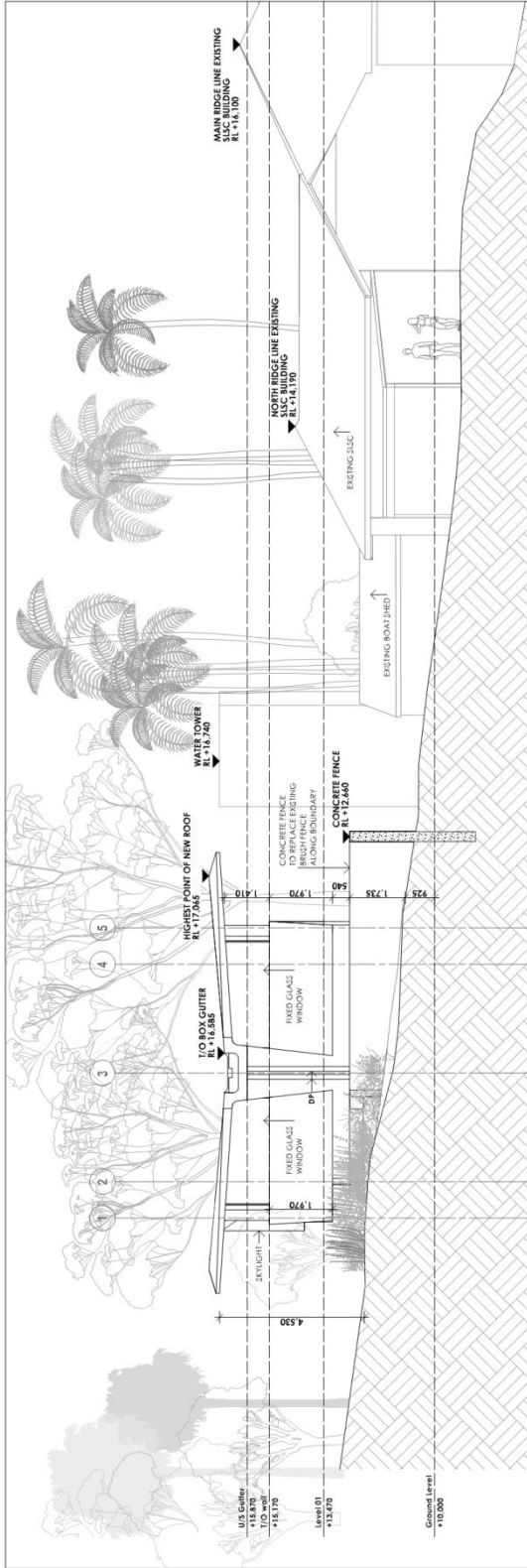
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East

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**NOTES**  
DO NOT SCALE FROM DIMENSIONS  
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**LEGEND**  
P: Palm Tree  
F: Ficus  
M: Mammillaria  
S: Scaevola  
W: Wall  
MC: Mastic  
Total

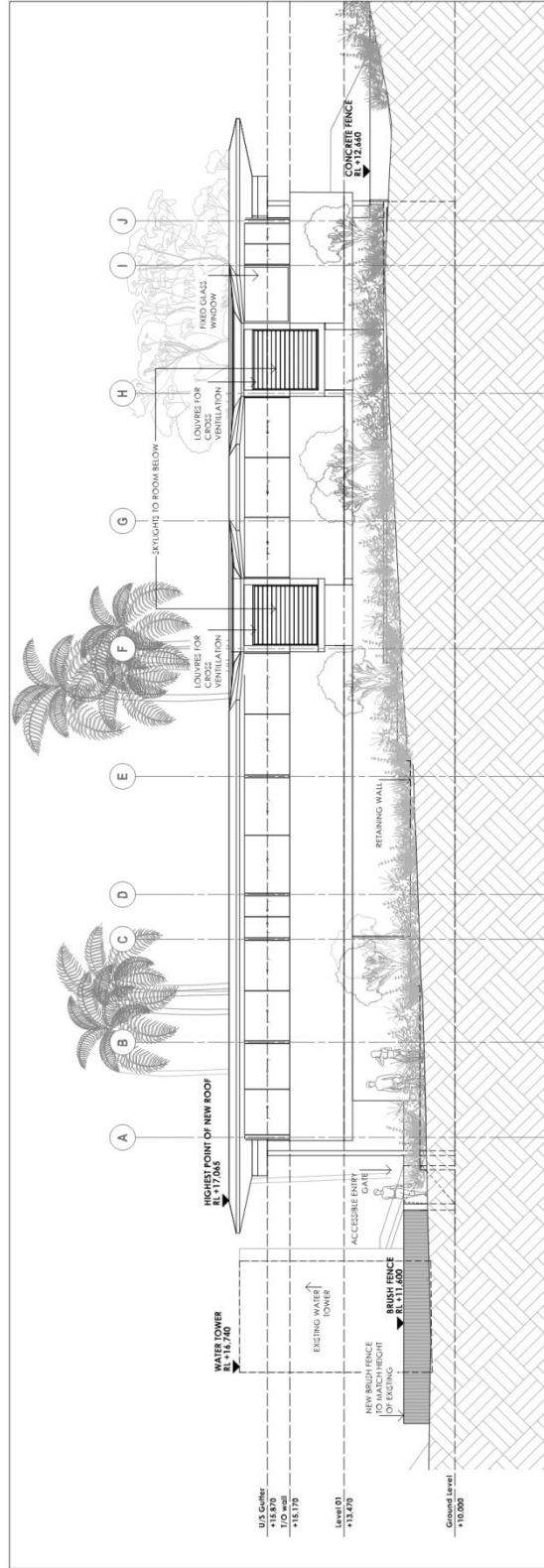


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South

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**REV** **DATE** **ISSUE**  
A 17/09/20 FOR DA



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West

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**CONROY BUILDING**  
1A Ocean Place, 54-56 Florida Road and 27-29 Ocean  
Plains Beach NSW 2108  
Australia

**GA Elevation**

**Elevations**

**PROJECT NO** 1603

**DATE** 17/09/20

**SCALE** 1:100 @ A2

**FIRST ISSUE** 17/09/20

**DRAWING NO** A-DA-210-002

**REV** A