

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2018/0525
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Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 2 DP 1170245, 0 Wharves And Jetties MANLY NSW 2095 Lot 3 DP 1170245, 0 Wharves And Jetties MANLY NSW 2095 Lot 1 DP 1170245, 0 Wharves And Jetties MANLY NSW 2095 Lot 1 DP 809933, 0 Wharves And Jetties MANLY NSW 2095
Proposed Development:	Modification of Development Consent DA142/2011 granted for commercial premises
Zoning:	
Development Permissible:	
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Roads & Maritime Services TMG Developments Pty Ltd
Applicant:	Reward Interiors Pty Ltd

Application lodged:	28/09/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	31/10/2018 to 17/11/2018
Advertised:	03/11/2018
Submissions Received:	2
Recommendation:	Refusal

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

There are no assessment issues.

SITE DESCRIPTION

Property Description:	<p>Lot 2 DP 1170245 , 0 Wharves And Jetties MANLY NSW 2095</p> <p>Lot 3 DP 1170245 , 0 Wharves And Jetties MANLY NSW 2095</p> <p>Lot 1 DP 1170245 , 0 Wharves And Jetties MANLY NSW 2095</p> <p>Lot 1 DP 809933 , 0 Wharves And Jetties MANLY NSW 2095</p>
Detailed Site Description:	<p>The subject site is legally described as Lots 1, 2 and 3 in Deposited Plan 1170245 and is commonly known as Manly Wharf. The site is located within Manly Cove and is located at the junction of East Esplanade and West Esplanade, Manly.</p> <p>This site has an area of 13,405sqm. The subject site is located in Zone W2 Environmental Protection under SREP (Sydney Harbour Catchment), 2005.</p> <p>The site has multiple pedestrian accesses from the street as well as from the ferry terminal. The site is oriented east west, with the northern and southern boundaries fronting East and West Esplanade and Manly Cove, respectively. The Wharf is surrounded by sheltered marine environment. The surrounding waters and nearby harbour foreshore is known to provide habitat for Little Penguins, and possess other marine ecology including seagrass beds.</p> <p>Opposite the site is Manly Corso. The Corso is a wide open promenade and public open space between Manly Beach and Manly Wharf and provides street furniture, public art and a focal point for the Manly Town Centre. Commercial uses including shops, offices, restaurants, cafes, licensed premises and services and amenities dominate the frontages of The Corso. The scale of development along</p>

The Corso is varied between two to four storeys.

East and West Esplanades characterised by mixed-use developments consisting of ground floor commercial uses such as shops, offices, restaurants and cafes, with residential above. Some of the building along East Esplanade consist primarily of multi-storey commercial developments. The scale of development along East Esplanade is predominately between three to six storeys. The scale of development along West Esplanade is predominately between three to eight storeys.

Map:



SITE HISTORY

The land has been used for commercial purposes for an extended period of time. A search of Council's records has revealed the following relevant recent history:

- DA0142/2011 for Construction of a first floor addition to the existing Manly Wharf structure including four (4) restaurant tenancies with plant rooms and changes to the ground floor including two (2) new retail tenancies was refused on 19 April 2012 by the former Manly Independent Assessment Panel. A subsequent appeal was lodged with the NSW Land and Environment Court (LEC) by the Applicant against the refusal of the application. The LEC approved the development by orders issued on 7 November 2013.
- DA0142/2011 Part 2 for Section 96 to modify approved DA0142/2011 was approved on 15 October 2015 by the former Manly Independent Assessment Panel.
- MOD2017/0340 for Modification of Development Consent DA0142/2011 granted for construction of a first floor addition to the existing Manly Wharf structure including restaurant tenancies and changes to the ground floor including new retail tenancies was approved on 18 May 2018 under staff delegation.
- MOD2018/0196 for Modification of Development Consent DA0142/2011 granted for alterations and additions to Manly Wharf was approved on 17 October 2018 by the Northern Beaches Local Planning Panel.

- DA2018/1418 for use of premises as restaurants was approved on 1 November 2018.
- DA2018/1706 for signage is currently under assessment by Council.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent to modify Development Consent No. 142/2011 for the construction of a screen around mechanical rooftop plant.

No record of consent could be found for the mechanical plant proposed to be screened. The Applicant was contacted in writing on two occasions to provide evidence of consent and no response was received. As such, Council is not satisfied that the proposed development relates to or is substantially the same as the development for which consent was granted. Further, the Construction Certificate drawings demonstrate plant on the eastern portion of the rooftop is to be removed. Finally, Condition 3 of Development Consent No. DA142/2011 reads as follows:

"No new structures, venting, exhaust outlets, mechanical plant or equipment are to be placed on or above the roof of the restaurants approved pursuant to this consent or the ancillary structures at first floor level. All existing venting, exhaust outlets, mechanical plant and equipment and structures ancillary to the foregoing on the existing roof east of gridline P on drawing DA 202 revision H are to be removed. The roof areas to the east and west of the walls of the restaurants at first floor level as shown on drawing DA202 revision H as being non-trafficable are to be non-trafficable.

Reason: To comply with the decision of the Court."

The plant proposed to be screened is east of gridline P on drawing DA 202 revision H, so does not have consent.

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 DA142/2011 and its subsequent approved modifications, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.56 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.56- Other Modifications	Comments
(1) 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, relates to screening of rooftop plant. However, no consent exists for the plant proposed to be screened. As such, Council is not satisfied that the proposed development relates to or is substantially the same as the development for which consent was granted.
(b) 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, Manly Local Environment Plan 2013 and Manly Development Control Plan 2013
(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and	Written notices of this application have been sent to the last address known to Council of the objectors or other persons who made a submission in respect of DA0142/2011.
(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 “Notification & Submissions Received” in this report.

Section 4.15 Assessment

In accordance with Section 4.56 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 4.15(1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 79C 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.

Section 79C 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan 2013 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&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>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&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&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&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&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> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural	(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan

Section 79C 'Matters for Consideration'	Comments
and built environment and social and economic impacts in the locality	2013 section in this report. (ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

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 the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Mr Ronald John Mobbs Mrs Robyn Lynette Mobbs	13 / 41 - 42 East Esplanade MANLY NSW 2095
Mrs Sybille Katherine Lechner	11 / 10 Hilltop Crescent FAIRLIGHT NSW 2094

The following issues were raised in the submissions and each have been addressed below:

- An outdoor area is being used for tables and seating.
- The proposed wall surrounding the mechanical ducting should be raised in height to the existing gutter level to block unsightliness and greenery should be included.
- The existing wall surrounding the air conditioning units should be raised in height to the existing gutter level to block unsightliness.
- The redevelopment of the site will require further parking.

The matters raised within the submissions are addressed as follows:

- Outdoor Tables and Seating
Comment:
The outdoor seating is approved under DA0142/2011.
- Mechanical Ducting Wall Height
Comment:
The proposed wall adequately screens the ducting from public view. The proposed wall will also predominantly screen the ducting from view of nearby residential properties that look over the development. Increasing the height of the proposed wall to the level of the gutter would result in inconsistency with the design of the existing approved walls screening the air-conditioning.
- Air-Conditioning Wall Height
Comment:
The walls surrounding the air-conditioning units are existing and are not proposed to be altered. No change can be made to these walls, as this application does not relate to those walls.
- Parking
Comment:
The proposed modification relates to the construction of a wall to screen mechanical ducting only and does not increase the parking requirement on site.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
Strategic and Place Planning (Heritage Officer)	<p>Further to a review of available documents and a site visit The application is a “prescribed DA” under the NSW Heritage Act 1977, i.e. requires approvals under the two Acts. Therefore, we will have to include NSW OEH opinions in the assessment process and assess the proposal in concurrence with the NSW OEH.</p> <p>The following additional information is required to fully assess the impact of the current proposal: - Determination by NSW OEH under NSW Heritage Act. NOTE that applicants have submitted a copy of the application to the NSW OEH. However, this is not (as yet) endorsed by the NSW OEH.</p> <p><u>Assessing Officer Comments:</u> The application was referred to the NSW Office of Environment and Heritage. However, comments were not provided as no record of consent for the plant subject of this application could be found on Council's records.</p>

External Referral Body	Comments

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

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. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The subject site is zoned W2 Environment Protection under the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 ('the SREP'). The proposed development is classified as is land/water interface development under the SREP and, in accordance with clause 5 of the SREP, Council is the consent authority. The proposed development is not listed as a permissible use under Clause 18 of the SREP. As such, assessment pursuant to Clause 18(2) is necessary to consider the

permissibility of the development. Clause 18(2) is as follows:

- (2) Despite subclause (1), development not referred to in the Table to this clause may be carried out with development consent, but only if the consent authority is satisfied that the development:
- (a) is not inconsistent with the aims of this plan or the objectives of the zone in which it is proposed to be carried out, and
 - (b) is not inconsistent with any other environmental planning instrument that applies to the land, and
 - (c) will not otherwise have any adverse impacts.

With regard to the above, the proposal is considered acceptable in this case, as it is consistent with the aims of the SREP and the W2 zone, is consistent with the Manly LEP 2013 and Manly DCP 2013, and will not have any unreasonable adverse impacts. As such, the proposed development is permissible with consent.

The subject property is located within the Foreshores and Waterways Area therefore the provisions of this plan apply to this development. An assessment of the proposal against the relevant Clause 2(2) (aims of the SREP), Clause 14 (nominated planning principles), Clause 22 (relating to public access to and use of foreshores and waterways), Clause 24 (relating to interrelationship of waterway and foreshore uses), Clause 25 (relating to foreshore and waterways scenic quality), and Clause 26 (relating to maintenance, protection and enhancement of views) 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.

SEPP (Coastal Management) 2018

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

13 Development on land within the coastal environment area

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
 - (b) *coastal environmental values and natural coastal processes,*
 - (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
 - (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
 - (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (f) *Aboriginal cultural heritage, practices and places,*
 - (g) *the use of the surf zone.*

Comment:

The proposed development is set above the existing built structure, so does not result in any

unreasonable impacts on the above.

- (2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
- (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or
 - (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

As above, the proposal is designed, sited and managed so as not to result in any unreasonable impacts.

14 Development on land within the coastal use area

- (1)
- (a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
 - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
 - (iv) Aboriginal cultural heritage, practices and places,
 - (v) cultural and built environment heritage, and
 - (b) is satisfied that:
 - (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
 - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
 - (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

In response to 14 1(a) above, access to the foreshore remains unaffected by the proposed development. The proposed development does not result in any unreasonable overshadowing, wind funelling or view loss. The proposed development is acceptable in relation to visual amenity and scenic qualities for the reasons detailed throughout this report. Aboriginal heritage is not affected by the proposed development. The site is heritage listed, though the proposed development does not unreasonably impact on the heritage significance of the site. In response to 14 1(b) above, the proposed development is designed, sited and will be managed so as no to result in any unreasonable impact. In response to 14 1(c) above, the proposal is acceptable in relation to bulk, scale and size in the coastal and built environment context of the site.

As such, it is considered that the application complies with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

Manly Local Environmental Plan 2013

Is the development permissible?	
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	
zone objectives of the LEP?	

Principal Development Standards

There are no relevant Principal Development Standards to consider under Part 4 of the Manly LEP 2013.

Compliance Assessment

Clause	Compliance with Requirements
5.7 Development below mean high water mark	Yes
5.10 Heritage conservation	Yes
6.8 Landslide risk	Yes
6.10 Limited development on foreshore area	Yes

Manly Development Control Plan

Built Form Controls

There are no relevant development controls to consider under Part 4 of the Manly DCP 2013.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.2 Heritage Considerations	Yes	Yes

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.

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;

- Manly Local Environment Plan;
- Manly 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, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council , as the consent authority REFUSE Modification Application No. Mod2018/0525 for Modification of Development Consent DA142/2011 granted for commercial premises on land at Lot 2 DP 1170245,0 Wharves And Jetties, MANLY, Lot 3 DP 1170245,0 Wharves And Jetties, MANLY, Lot 1 DP 1170245,0 Wharves And Jetties, MANLY, Lot 1 DP 809933,0 Wharves And Jetties, MANLY, subject to the reasons outlined as follows:

1. Pursuant to Section 4.56(1)(a) of the Environmental Planning and Assessment Act 1979 the proposed development does not relate to, and is not substantially the same as, the development for which consent was granted.

Pursuant to Section 4.56(1)(a) of the Environmental Planning and Assessment Act 1979 the proposed development does not relate to, and is not substantially the same as, the development for which consent was granted.

In signing this report, I declare that I do not have a Conflict of Interest.

Signed



Claire Ryan, Principal Planner

The application is determined on 20/03/2019, under the delegated authority of:



A handwritten signature in blue ink, appearing to read "R. Piggott".

Rodney Piggott, Manager Development Assessments