

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/1375
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Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 1 DP 1170245, 0 East Esplanade MANLY NSW 2095
Proposed Development:	Internal and external alterations and additions to Manly Wharf and pub
Zoning:	SEPP (Biodiversity and Conservation) 2021 – Zone 2 Environment Protection
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Applicant:	HSW Nominees Pty Ltd

Application Lodged:	01/11/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	19/12/2024 to 07/02/2025
Advertised:	19/12/2024
Submissions Received:	2
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 964,700.00
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EXECUTIVE SUMMARY

This development application seeks consent for internal and external alterations and additions to Manly Wharf and the existing pub. It should be noted the Manly Wharf Hotel is now known as Felons Manly.

The subject site falls outside the local government boundary of Northern Beaches Council, being located within Sydney Harbour, however a small portion of works extend within the RE1 Public Recreation zone (within the Northern Beaches local government area) under the *Manly Local Environmental Plan 2013* ('MLEP 2013'). The development is predominantly within Zone 2 Environment Protection, per Chapter 6 of the *State Environmental Planning Policy (Biodiversity and Conservation) 2021* ('the SEPP Biodiversity and Conservation') being within the Sydney Harbour Catchment and Sydney Harbour Foreshores and Waterways Area. Northern Beaches Council is the consent authority through provisions of SEPP Biodiversity and Conservation provisions and delegations

from the Minister.

The proposed works are ancillary to the approved use of the relevant tenancy, being a pub, and ancillary to the wharf itself, and are permissible with consent.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to demolition works to the listing of the site (Manly Wharf) on the State Heritage Inventory. Whilst the majority of the works are located outside of the Northern Beaches local government area (detailed below), Council via the NBLPP is the consent authority, per section 6.25 of the *State Environmental Planning Policy (Biodiversity and Conservation) 2021* ('the SEPP Biodiversity and Conservation').

Concerns raised in the submissions related to loss of public domain, the visual impact of the works to the amphitheatre, and concern about consistency of the works with the heritage significance of the site.

Within this assessment report, detailed consideration is given to the proposed development in relation to the applicable planning controls, including with respect to the SEPP Biodiversity and Conservation. Assessment of the proposed development is carried out with reference to the MLEP 2013 and Manly Development Control Plan 2013 ('MDCP 2013'), as these instruments apply to the portion of the works within the Northern Beaches local government area, and are the closest controls to the remainder of the development, in the absence of site-specific controls. Specific consideration is given to the heritage significance of the site, and the visual impact of the extended outdoor dining and play area. This report establishes that the proposed works are acceptable in the context of the site and are of low impact.

This assessment concludes with a recommendation that the NBLPP grant approval to the development application, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for alterations and additions to Manly Wharf and the existing pub known as Felons Manly, as follows:

- Demolition of:
 - Existing metal railing balustrades associated with the wharf and its various existing pub and restaurant tenancies,
 - Wooden bench seating,
 - Existing internal pizza oven, and
 - An awning,
- Partial infilling of the existing amphitheatre seating/stairs to provide a walkway, and
- Construction of:
 - Non-climbable, extendable (vertical) glass balustrades associated with the wharf and its various existing pub and restaurant tenancies,
 - New internal pizza oven and preparation area, and
 - Extended deck area for outdoor seating and children's play area including a boat feature, and
 - New awnings.

The above description is in accordance with the amended plans received on 10 February 2025. In accordance with Council's Community Participation Plan, the amended plans did not require public notification, as they result in lesser environmental impact than the original notified plans.

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

Manly Local Environmental Plan 2013 - 6.1 Acid sulfate soils
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Local Environmental Plan 2013 - 6.10 Limited development on foreshore area
 Manly Local Environmental Plan 2013 - 6.12 Essential services
 Manly Local Environmental Plan 2013 - 6.21 Noise impacts—licensed premises
 Manly Development Control Plan - 3.1 Streetscapes and Townscapes
 Manly Development Control Plan - 3.4.3 Maintenance of Views

SITE DESCRIPTION

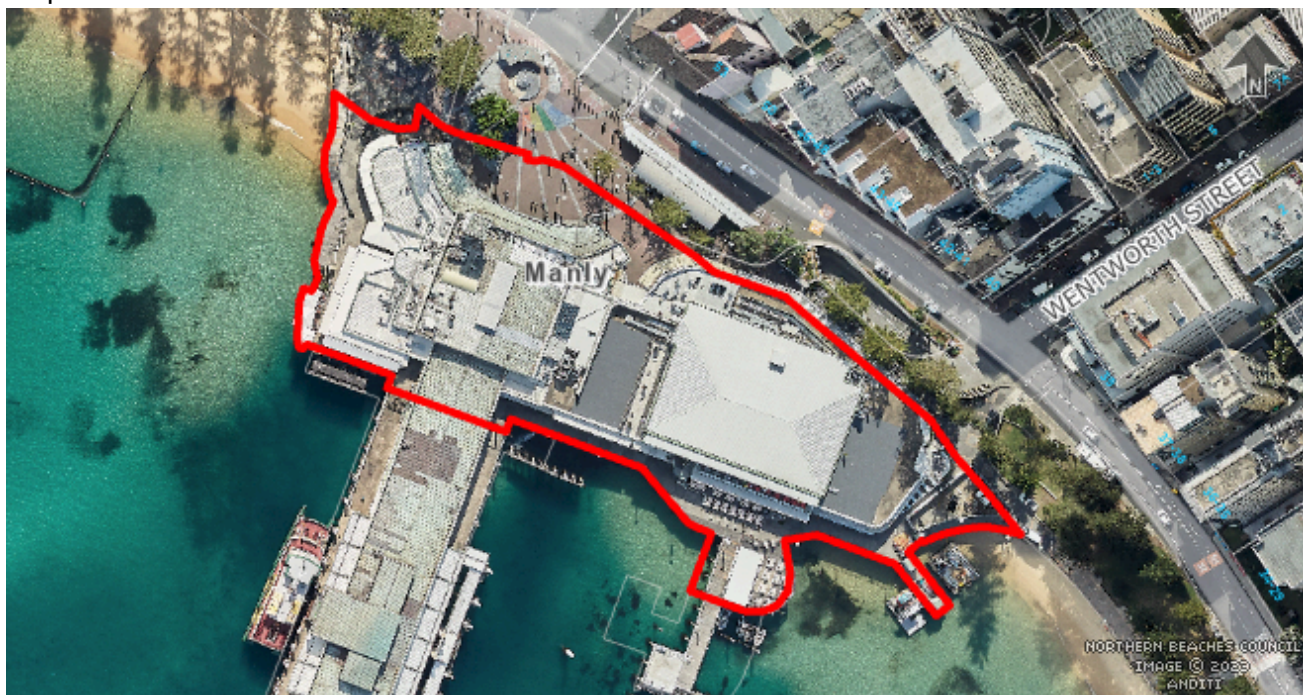
Property Description:	Lot 1 DP 1170245 , 0 East Esplanade MANLY NSW 2095
Detailed Site Description:	<p>The subject site is legally described as Lot 1 in DP 1170245 and is commonly known as Manly Wharf. The site is located within Manly Cove and is located at the junction of East Esplanade and West Esplanade, Manly.</p> <p>This site is irregular in shape and has an area of 9,614.5m².</p> <p>The subject site is located in the RE1 Public Recreation zone under the <i>Manly Local Environmental Plan 2013</i>, and Zone 2 Environment Protection under the <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i>.</p> <p>The site (Manly Wharf) is listed on the State Heritage Inventory.</p> <p>The site has multiple pedestrian access points from East and West Esplanades, and functions as a ferry terminal. The site is oriented east to west, with the northern and southern</p>

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.

Detailed Description of Adjoining/Surrounding Development

Opposite the site to the north is The Corso, a pedestrian 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 The Corso is varied between two to four storeys. East and West Esplanades are 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 an extensive history of development applications and complying development certificate applications for fit outs, signage, and alterations and additions to the various tenancies at

Manly Wharf. Of particular note to the tenancy subject of this application are the following:

- DA238/2002 for alterations and additions and fitout for use as a pub was approved by Council on 20 September 2002. This application has been subject to numerous modifications since consent was originally granted. This premises has historically been known as Manly Wharf Hotel, and was re-named Felons Manly in October 2024.
- DA2024/1249 for alterations and additions including internal fit-out for use of premises as a pub and artisan food and drink industry was approved by the Northern Beaches Local Planning Panel on 5 February 2025.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 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 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan 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 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 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 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire</p>

Section 4.15 Matters for Consideration	Comments
	<p>safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 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 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact 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 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 application has been publicly exhibited from 19/12/2024 to 07/02/2025 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
David Colman	Address Unknown
Tania Louise Waterhouse	5 / 43 - 45 East Esplanade MANLY NSW 2095

The following issues were raised in the submissions:

- Objection to reduced public domain by way of narrowed walkway and modified amphitheatre structures, including concern about creation of a sheer wall to East Manly Cove Beach.
- The proposed development lacks utility, given it includes a kids play area right next to land used for recreation.
- The proposed development is inconsistent with the heritage significance of Manly Wharf.

The above issues are addressed as follows:

Public Domain

Submissions raised objection to reduced public domain by way of narrowed walkway and modified amphitheatre structures, including concern about creation of a sheer wall to East Manly Cove Beach.

Comment:

The portion of the wharf subject of this application (including the walkway and amphitheatre) is privately owned, although it provides a public walkway it is not public land. The proposed development retains ample walkway for efficient pedestrian access, being a minimum 3.5 metres in width. The amended design includes a part retention of an amphitheatre, so does not result in a sheer wall to East Manly Cove Beach. The plan titled DA.105 Revision 5 shows a three-dimensional view of the works, which demonstrate two tiers of the amphitheatre.

Utility of Development

Submissions raised concern that the proposed development lacks utility, given it includes a kids play area right next to land used for recreation.

Comment:

The existence of public recreation areas in the vicinity does not prevent application for (and granting of consent for) additional such spaces, nor private recreation spaces to support the approved pub use, in this case.

Heritage Significance

Submissions raised concern that the proposed development is inconsistent with the heritage significance of Manly Wharf.

Comment:

The subject site is listed on the State Heritage Inventory, as listing 01434, being Manly Wharf. Given the heritage value and significance of the subject site, the proposed development was referred to Heritage NSW for approval and Council's Heritage Advisor for comment. These experts are satisfied with the proposed development, subject to amendments to reduce impact (amendment to the balustrades and reduction of the proposed boat) via conditions of consent, which have been included in the recommendation of this report.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p><i>Supported, subject to conditions</i></p> <p>The application, including amended plans and BCA report, has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p><i><u>Note:</u> The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</i></p>
Environmental Health (Industrial)	<p><i>Supported, subject to conditions</i></p> <p><u>Original Comments (5 December 2024):</u></p> <p>The proposal includes the replacement of unsafe and climbable balustrades around the perimeter of Manly Wharf with glass balustrades. It also proposes alterations and additions to the existing Manly Wharf Hotel, including the installation of two solid fuel pizza ovens and one solid fuel grill, extension of the wharf bar deck and construction of a children's play area.</p> <p>The Acoustic Statement, prepared by Pulse White Noise Acoustics, dated 30 September 2024, concludes that with the inclusion of appropriate noise management and mitigation measures, compliance with appropriate construction and operational noise and vibration criteria would be achieved. This includes the provision of acoustic treatment to an external discharge fan servicing the new ovens through the existing mechanical ventilation, to be specified during design development. It also recommends building and management controls for the children's play area.</p> <p>Although this statement does not adequately state which acoustic treatments will be used as the plant and equipment has not been finalised, conditions of consent can be recommended to manage this.</p> <p><u>Updated Comments (13 December 2024):</u></p> <p>The proposal has been subject to minor amendments. Environmental Health raises no objection to the proposal.</p>
Environmental Health (Solid Fuel/Oil Heater)	<p><i>Supported, subject to conditions</i></p> <p><u>Original Comments (1 November 2024):</u></p> <p>The proposal seeks (in part) "Installation of a pizza preparation area including the replacement of an existing gas fired pizza oven with two solid fuel pizza ovens and one solid fuel grill in the existing Manly Wharf Hotel kitchen. The pizza ovens and grill will rely on the existing</p>

Internal Referral Body	Comments
	<p>mechanical exhaust plant with no new penetrations required through the roof of the existing building."</p> <p>In consideration of the plans and supporting documentation, there is no information included with the proposal as to how potential smoke and odour emissions from the new solid fuel pizza ovens will be managed.</p> <p>With the potential for smoke emissions from wood fired fueled pizza ovens there are concerns that, without evidence of further design considerations in relation to adding this equipment to the existing mechanical ventilation system without additional measures in place to control smoke emissions, the result will be unreasonable smoke impacts to nearby residences and other receivers.</p> <p>Generally, the use of a wood burning fuel source in such close proximity to residential receivers is strongly discouraged.</p> <p><u>Updated Comments (5 December 2024):</u></p> <p>The applicant has provided documentation accompanying the proposal title "Plans - Mechanical Exhaust" which describe updated equipment including (Electrostatic precipitators (ESP) which will be used to service the new wood fired pizza ovens.</p> <p>Environmental Health considers this equipment appropriate for the smoke generating use associated with the proposal provided that adequate and regular cleaning and maintenance is undertaken.</p>
Environmental Health (Food Premises, Skin Pen.)	<p><i>Supported, subject to conditions</i></p> <p>Minor internal works replacing ovens and prep benches, supported subject to conditions.</p>
NECC (Bushland and Biodiversity)	<p><i>Supported, subject to conditions</i></p> <p><u>Original Comments (29 November 2024):</u></p> <p>The application has been assessed by Biodiversity referrals body for potential impacts to the endangered population of Little Penguins at Manly, as declared under the NSW Biodiversity Conservation Act 2016. The proposed retractable balustrades will serve to reduce litter ingress into penguin foraging and breeding habitat by enclosing public areas of the wharf and walkway. It is understood that potential impacts to seagrass in the adjoining waters will be assessed by the appropriate referrals body.</p> <p><u>Updated Comments (19 December 2024):</u></p> <p>The amended plans have been reviewed; biodiversity referral comments remain as below.</p>
NECC (Coast and Catchments)	<p><i>Supported, subject to conditions</i></p>

Internal Referral Body	Comments
	<p>The application has been assessed in consideration of the</p> <ul style="list-style-type: none"> - Coastal Management Act 2016 - State Environmental Planning Policy (Resilience & Hazards) 2021 - The Manly LEP and DCP - Submitted designs and reports - Sydney Regional Environmental Plan 2005 (SREP) <p><u>Coastal Management Act 2016:</u></p> <p>The subject site has been identified as being within the coastal zone and therefore Coastal Management Act 2016 is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the Coastal Management Act 2016.</p> <p><u>State Environmental Planning Policy (Resilience & Hazards) 2021:</u></p> <p>The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H), however Clauses 2.10 and 2.11 do not apply to land within the Foreshores and Waterways Area within the meaning of State Environmental Planning Policy (Biodiversity and Conservation) 2021, Chapter 6. Hence, only clause 2.12 of the CM (R & H) apply for this DA.</p> <p><i>Clause 2.12 Development in coastal zone generally—development not to increase risk of coastal hazards:</i></p> <p>The proposed development sits within the Foreshore zone and is subject to the risks of inundation and coastal processes such as wave energy and overtopping. The EPL for this location is 3.26 m AHD however the proposed development is above this EPL and therefore does not apply. On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Architectus Australia Pty Ltd dated 6 December 2024, the DA satisfies requirements under clause 2.12 of the SEPP R&H.</p> <p><u>Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005:</u></p> <p>The subject land has been included on the Foreshore and Waterways Area and hence is subject to the objectives and clauses of the DCP 2005. On internal assessment, the objectives of the DCP are satisfied in the Statement of Environmental Effects (SEE). In particular, clause 6.32 Rocky Foreshore and significant seagrasses (Division 3 Development in Foreshore and Waterways Area) has been considered. The proposed development is limited to interior alterations and will have no impact to the seagrass, marine environment or coastal processes assuming appropriate design and conditions are followed. As such, the DA complies with the DCP.</p> <p><u>Manly LEP 2013 and Manly DCP:</u></p> <p>No coastal related issues identified. As such, it is considered that the application does comply with the requirements of the coastal relevant clauses of the Manly LEP 2013 and Manly DCP.</p>

Internal Referral Body	Comments					
Parks, reserves, beaches, foreshore	<p><i>Supported, subject to conditions</i></p> <p>The property adjoins Council managed East and West Esplanade. No physical encroachments over the site boundaries are permitted, and structures and built elements are not permitted beyond the site boundaries with the exception of the approved dining area for 'The Bavarian Restaurant'. Limited details are provided for the proposed boat in the children's playground and it is suggested that the maximum height of any structure be lower than the operable glass balustrade proposed, to limit impact of views from the surrounding public space.</p> <p><u>Comment:</u> The proposed boat is higher than the proposed balustrade. However, as per the General Terms of Approval provided by Heritage NSW, the roof and cabin of the boat is to be deleted to reduce its height.</p>					
Property Management and Commercial	<p><i>Supported, subject to conditions</i></p> <p>The proposal involves development on Crown land administered by Northern Beaches Council, on which it is proposed to install outdoor dining and minor building works consisting of balustrading. Property has no objection to the works as proposed subject to a condition of consent that the leaseholder enters into an agreement with Property regarding operation of the outdoor dining area on Crown land.</p>					
Strategic and Place Planning (Heritage Officer)	<p><i>Supported, subject to conditions</i></p> <table><tr><th>HERITAGE COMMENTS</th></tr><tr><th>Discussion of reason for referral</th></tr><tr><td><p>The proposal has been referred to Heritage as the subject site is a heritage item with state significance, and in the vicinity of the Manly Town Centre Conservation Area and a number of heritage items with local significance:</p><p>SHR No 01434 - Manly Wharf</p><p>Item I143 - Park/Reserve - East Esplanade</p><p>Item I251 - Park - West Esplanade</p><p>Item I1 - Harbour foreshores - Manly municipal area boundary adjacent to the Harbour</p></td></tr><tr><th>Details of heritage items affected</th></tr><tr><td><p>Details of the items as contained within the heritage inventory are:</p><p>SHR No 01434 - Manly Wharf</p><p><u>Statement of Significance</u></p><p>Of environmental significance as a visually prominent man-made feature. Of historical significance for its associations with the maritime activities at Manly as a tourist destination and suburb of Sydney, dependent on the ferry link to the CBD. (Anglin 1990:2033)</p></td></tr></table>	HERITAGE COMMENTS	Discussion of reason for referral	<p>The proposal has been referred to Heritage as the subject site is a heritage item with state significance, and in the vicinity of the Manly Town Centre Conservation Area and a number of heritage items with local significance:</p> <p>SHR No 01434 - Manly Wharf</p> <p>Item I143 - Park/Reserve - East Esplanade</p> <p>Item I251 - Park - West Esplanade</p> <p>Item I1 - Harbour foreshores - Manly municipal area boundary adjacent to the Harbour</p>	Details of heritage items affected	<p>Details of the items as contained within the heritage inventory are:</p> <p>SHR No 01434 - Manly Wharf</p> <p><u>Statement of Significance</u></p> <p>Of environmental significance as a visually prominent man-made feature. Of historical significance for its associations with the maritime activities at Manly as a tourist destination and suburb of Sydney, dependent on the ferry link to the CBD. (Anglin 1990:2033)</p>
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Internal Referral Body	Comments	
	<p>Together with Circular Quay, the wharf is the only substantial older style ferry wharf surviving in Port Jackson: association with Manly's history as a recreational centre. (Blackmore, Ashton, Higginbotham, Rich, Burton, Maitland, Pike 1985)</p> <p><u>Physical Description</u></p> <p>A broad wharf supported on timber piers and with a concrete platform. The superstructure is constructed of steel and timber. The facade and side walls form an important architectural design, similar to the Circular Quay ferry terminals. (Blackmore, Ashton, Higginbotham, Rich, Burton, Maitland, Pike, 1985).</p> <p>The original part of the wharf was built in a modernistic transport idiom, with typical stylistic features of era including play of circular and rectangular geometric terms, bayed facade to the water (marine connotations), wide arc plan at entrance, clock tower with "fins", flat roofing marked by wide fascia board. The current entrance was originally designed as a tram terminus and turning area. Timber clad framed structure opening and large internal spaces, concrete deck to west enclosed by "ship" railing. Some original shop fittings, signage etc. Subjected to major alterations to the wharf wings involving a T-shaped clerestorey (Stapleton, 1981). Additions to the wharf include the hydrofoil pontoon c1968, and the more recent elevated platforms for new ferries. (Blackmore, Ashton, Higginbotham, Rich, Burton, Maitland, Pike 1985)</p> <p>Extensive refurbishment in 1990. (Anglin 1990:2033)</p> <p>Item I143 - Park/Reserve</p> <p><u>Statement of Significance</u></p> <p>Belongs to similar treatment as West Esplanade as early cultural landscape to emphasise arrival by ferry.</p> <p><u>Physical Description</u></p> <p>Open space, part beach, sandstone retaining wall and park railing, pavings and split stone edging, raised planting beds, grassed surfaces and cultural planting of Norfolk Island pine and Port Jackson figs. All items substantially intact.</p> <p>Item I251 - Park</p> <p><u>Statement of Significance</u></p> <p>Part of earliest cultural treatment of Manly landscape and provision of designed open space. High visual significance.</p> <p><u>Physical Description</u></p> <p>Open space, beach, sandstone retaining wall, pavings, grassed surfaces, monument, structures and cultural plantings of Norfolk Island pine, Moreton Bay Figs, Port Jackson figs and Canary Island Palms. Raised planting beds, with split stone edging of Edwardian period characterise the eastern part of the Park. Recent paving detracts from the Edwardian character.</p>	
	Other relevant heritage listings	
	SEPP (Biodiversity and Conservation) 2021	Yes

Internal Referral Body	Comments		
	Australian Heritage Register	No	
	NSW State Heritage Register	Yes	
	National Trust of Aust (NSW) Register	Yes	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	N/A	
Consideration of Application			
<p data-bbox="528 745 1437 1216">The proposal seeks consent for alterations and additions to the existing heritage item, including the removal of existing balustrades and the timber and concrete bench seats around the water's edge; removal of timber balustrades that define the edge between the public promenade and the outdoor seating areas of The Bavarian and the Manly Wharf Hotel; installation of new 1,200mm and 1,800mm high retractable glass balustrades to replace all removed balustrading; removal of existing awnings, to be replaced with new operable awnings; installation of a pizza preparation area including the replacement of an existing gas fired pizza oven with two solid fuel pizza ovens and one solid fuel grill in the existing Manly Wharf Hotel kitchen; extension of Manly Wharf Bar deck by 159 sqm to enable construction of a children's play area and a repurposed boat playground installation.</p> <p data-bbox="528 1261 1437 1429">As Manly wharf is a state heritage item, the application is an integrated development and was referred to Heritage NSW. In response, Heritage NSW provided their comments requiring additional information and updated documents to enable completion of the assessment.</p> <p data-bbox="528 1462 1437 1507">Revised comments - 28 April 2025</p> <p data-bbox="528 1541 1437 1742">Although, the amended drawings and reports submitted in February, have not addressed all of the concerns raised by Heritage NSW, General Terms of Approval have been granted, subject to amended plans and information are to be submitted with the s.60 application for approval by Heritage Council of NSW (or delegate) to mitigate the remaining heritage concerns.</p> <p data-bbox="528 1809 1437 2116">It is considered that the retention of the ship railing and the integrated design details of the glass balustrades, such as the framing, fixing methods, and the mechanism for retraction, will be important considerations in the approval process. Similarly, the design and installation of the new awnings will need to be sensitive to the heritage character of the wharf, ensuring they don't visually dominate or detract from significant architectural features. The proposed extension of the deck and the changed direction of the stairs at the southern end of the existing amphitheatre will alter the</p>			

Internal Referral Body	Comments
	<p>waterfront profile of the wharf. The design will need to consider its visual integration with the existing structure and the surrounding environment.</p> <p>Another concern is raised regarding the visibility of the proposed new mechanical exhaust from the public domain. Therefore, an additional condition is required for the relocation of the exhaust to a less visible location and/or if necessary the installation of screening elements to minimise its visual impact.</p> <p>Therefore, no objections are raised on heritage grounds, subject to all terms of approval (conditions) required by Heritage NSW being included in any consent. An additional condition to address the exhaust's visibility is also required.</p> <p><u>Consider against the provisions of CL5.10 of MLEP.</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? Manly Wharf already has a CMP Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? Yes</p> <p><u>Assessing Officer's Comment:</u> Minor amendments were made to the recommended condition about the new mechanical exhaust for ease of understanding and compliance.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p><i>Supported, subject to conditions</i></p> <p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations are included as a condition of consent.</p>
NSW Police - Crime Prevention Office (Local Command matters)	<p><i>Supported, subject to conditions</i></p> <p>The proposal was referred to NSW Police who provided a response stating that the proposal is acceptable subject to recommendations with respect to outdoor patron seating, CCTV and security, crime prevention, and operational management. These recommendations are included as a condition of consent.</p>
Nominated Integrated Development - Heritage NSW - Heritage Act 1977	<p><i>Supported, subject to conditions</i></p> <p>The proposed development was referred to Heritage NSW for approval under Section 57(1) of the <i>Heritage Act 1977</i>, given the subject site contains Manly Wharf, being an item listed on the State Heritage Register. Heritage NSW are supportive of the proposed development, subject to specified General Terms of Approval, which are as follows (paraphrased for brevity):</p>

External Referral Body	Comments
	<ol style="list-style-type: none"> 1. Development must be in accordance with the submitted architectural plans, engineering plans, Statement of Heritage Impact, and Statement of Environmental Effects. 2. Deletion of the proposed extendable balustrades. 3. An application under Section 60 of the <i>Heritage Act 1977</i> must be submitted to, and approved by, Heritage Council of NSW prior to works commencing, including the following documentation: <ul style="list-style-type: none"> • Retention of the existing metal 'ship railing' balustrades, • Affixing of clear glass or perspex panes to the existing balustrades (no higher than the existing balustrade height) so as to be non-climbable, • Further detail of the amphitheatre works, • Removal of the boat roof and cabin to reduce its height, and • Materials and finishes details for the boat and awnings. 4. The Applicant and any nominated heritage consultant may be required to participate in audits of Heritage Council of NSW approvals to conform compliance with conditions of consent, if requested. 5. Significant built and landscape elements are to be protected during site preparation and the works from potential damage. 6. If any archaeological deposits, State significant relics, Aboriginal objects, or other important fabrics are found, work must cease and the Heritage Council of NSW must be notified. <p>The above matters have been included in full as conditions of consent in the recommendation of this report.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs 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 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)

Housing and Productivity Contribution

The Housing and Productivity Contribution does not apply to the proposed development. The subject site is only partially mapped as 'Greater Sydney Region' on the Housing and Productivity Contribution Regions Map. The works proposed on the portion of the site on that map does not trigger the

Contribution, as the works do not result in additional commercial gross floor area.

If the whole site was mapped as 'Greater Sydney Region', Housing and Productivity Contribution would remain not applicable, as the whole works do not result in additional commercial gross floor area.

SEPP (Transport and Infrastructure) 2021

The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

SEPP (Biodiversity and Conservation) 2021

Chapter 6 – Water catchments

The subject property is located within the Sydney Harbour Catchment and Sydney Harbour Foreshores and Waterways Area therefore the provisions of Chapter 6 Water catchments of *State Environmental Planning Policy (Biodiversity and Conservation) 2021* apply to this development. Accordingly, an assessment under Chapter 6 has been carried out as follows:

Part 6.2 Development in regulated catchments - Division 2 Controls on development generally

6.6 Water quality and quantity

(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the following—

- (a) whether the development will have a neutral or beneficial effect on the quality of water entering a waterway,*
- (b) whether the development will have an adverse impact on water flow in a natural waterbody,*
- (c) whether the development will increase the amount of stormwater run-off from a site,*
- (d) whether the development will incorporate on-site stormwater retention, infiltration or reuse,*
- (e) the impact of the development on the level and quality of the water table,*
- (f) the cumulative environmental impact of the development on the regulated catchment,*
- (g) whether the development makes adequate provision to protect the quality and quantity of ground water.*

(2) Development consent must not be granted to development on land in a regulated catchment unless the consent authority is satisfied the development ensures—

- (a) the effect on the quality of water entering a natural waterbody will be as close as possible to neutral or beneficial, and*
- (b) the impact on water flow in a natural waterbody will be minimised.*

Comment:

The proposal has been reviewed by Council's Coastal Officer, Biodiversity Officer, Environmental Health Officer, and Development Engineer who have raised no objection to the works and their impacts to the adjoining waterway (subject to conditions).

6.7 Aquatic ecology

(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the following—

- (a) whether the development will have a direct, indirect or cumulative adverse impact on terrestrial, aquatic*

or migratory animals or vegetation,

(b) whether the development involves the clearing of riparian vegetation and, if so, whether the development will require—

(i) a controlled activity approval under the Water Management Act 2000, or

(ii) a permit under the Fisheries Management Act 1994,

(c) whether the development will minimise or avoid—

(i) the erosion of land abutting a natural waterbody, or

(ii) the sedimentation of a natural waterbody,

(d) whether the development will have an adverse impact on wetlands that are not in the coastal wetlands and littoral rainforests area,

(e) whether the development includes adequate safeguards and rehabilitation measures to protect aquatic ecology,

(f) if the development site adjoins a natural waterbody—whether additional measures are required to ensure a neutral or beneficial effect on the water quality of the waterbody.

(2) Development consent must not be granted to development on land in a regulated catchment unless the consent authority is satisfied of the following:

(a) the direct, indirect or cumulative adverse impact on terrestrial, aquatic or migratory animals or vegetation will be kept to the minimum necessary for the carrying out of the development,

(b) the development will not have a direct, indirect or cumulative adverse impact on aquatic reserves,

(c) if a controlled activity approval under the Water Management Act 2000 or a permit under the Fisheries Management Act 1994 is required in relation to the clearing of riparian vegetation—the approval or permit has been obtained,

(d) the erosion of land abutting a natural waterbody or the sedimentation of a natural waterbody will be minimised,

(e) the adverse impact on wetlands that are not in the coastal wetlands and littoral rainforests area will be minimised.

Comment:

The proposal has been reviewed by Council's Coastal Officer, Biodiversity Officer, Environmental Health Officer, and Development Engineer who have raised no objection to the works and their impacts to the adjoining waterway (subject to conditions).

6.8 Flooding

(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the likely impact of the development on periodic flooding that benefits wetlands and other riverine ecosystems.

(2) Development consent must not be granted to development on flood liable land in a regulated catchment unless the consent authority is satisfied the development will not—

(a) if there is a flood, result in a release of pollutants that may have an adverse impact on the water quality of a natural waterbody, or

(b) have an adverse impact on the natural recession of floodwaters into wetlands and other riverine ecosystems

Comment:

The site is not located within a flood prone area.

6.9 Recreation and public access

(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider—

(a) *the likely impact of the development on recreational land uses in the regulated catchment, and*
(b) *whether the development will maintain or improve public access to and around foreshores without adverse impact on natural waterbodies, watercourses, wetlands or riparian vegetation.*

(2) *Development consent must not be granted to development on land in a regulated catchment unless the consent authority is satisfied of the following—*

(a) *the development will maintain or improve public access to and from natural waterbodies for recreational purposes, including fishing, swimming and boating, without adverse impact on natural waterbodies, watercourses, wetlands or riparian vegetation,*
(b) *new or existing points of public access between natural waterbodies and the site of the development will be stable and safe,*
(c) *if land forming part of the foreshore of a natural waterbody will be made available for public access as a result of the development but is not in public ownership—public access to and use of the land will be safeguarded.*

Comment:

The proposed development is almost entirely located on private land, with the portion of works on public land being replacement of an existing balustrade in the same location. As such, the development does not impact upon recreation or public access along the foreshore. The proposed works retain suitable pedestrian access around the entirety of Manly Wharf.

6.10 Total catchment management

In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consult with the council of each adjacent or downstream local government area on which the development is likely to have an adverse environmental impact.

Comment:

The proposal has been reviewed by Council's Coastal Officer, Biodiversity Officer, Environmental Health Officer, and Development Engineer who have raised no objection to the works and their impacts to the surrounding natural environment. Based on the expert advice provided and conditions imposed, the proposed works are not considered to have an adverse environmental impact. As such consultation with adjoining local government areas was not undertaken in this instance.

Division 3 Controls on development in specific areas

6.11 Land within 100m of natural waterbody

In deciding whether to grant development consent to development on land within 100m of a natural waterbody in a regulated catchment, the consent authority must consider whether—

(a) *the land uses proposed for land abutting the natural waterbody are water-dependent uses, and*
(b) *conflicts between land uses are minimised.*

Comment:

The proposed works will meet these requirements.

Part 6.3 Foreshores and Waterways Area

Division 1 Preliminary

6.25 Consent authority

(1) *The Minister administering the Ports and Maritime Administration Act 1995 is the consent authority for*

the following development—

(a) development comprising the subdivision of land owned by TfNSW in or abutting the Foreshores and Waterways Area,

(b) development carried out in the Foreshores and Waterways Area wholly below the mean high water mark,

(c) development carried out in the Foreshores and Waterways Area for one or more of the following purposes, including development carried out wholly or partly inside a local government area—

Above-water boat lifts; Advertisements; Advertising structures; Aids to navigation; Aviation facilities; Boat lifts; Charter and tourism boating facilities; Commercial port facilities; Dredging; Floating boat platforms; Flora and fauna enclosures; Houseboats; Maintenance dredging; Mooring pens; Private landing facilities; Private landing steps; Private marinas; Private swimming enclosures; Public boardwalks; Public water transport facilities; Single moorings; Skids; Slipways

(2) Despite subsection (1), the Minister administering the Environmental Planning and Assessment Act 1979 is the consent authority for the following development carried out in the Foreshores and Waterways Area—

(a) development carried out partly above and partly below the mean high water mark,

(b) development carried out below the mean high water mark for the purposes of one or more of the following—

Boat building and repair facilities; Boat launching ramps; Boat sheds; Marinas; Reclamation works; Swimming pools; Water-based restaurants and entertainment facilities; Waterfront access stairs; Water recreation structures; Wharf or boating facilities that are sea walls

(c) development carried out wholly or partly inside the zoned waterway, including development carried out below the mean high water mark, for the purposes of one or more of the following—

Car parks; Commercial premises; Recreational or club facilities; Residential accommodation; Restaurants or cafes; Retail premises; Tourist facilities

(3) Subsections (1) and (2) do not apply if another environmental planning instrument specifies a different public authority, other than the council, as the consent authority for the development.

Comment:

Clause 6.25(2) provides that the Minister for Planning is the consent authority for development in the Foreshores and Waterways Area, per subclauses (a)-(c) inclusive.

Clause 6.25(2)(a) refers to development carried out partly above and partly below the mean high water mark. This subclause does not apply to this application, as the works are wholly above MWHM.

Clause 6.25(2)(b) refers to certain development types carried out below the MWHM. This subclause does not apply to this application, as the proposals do not involve the development types specified.

Clause 6.25(2)(c) of the SEPP refers to certain development types carried out wholly or partly inside the zoned waterway, including development carried out below the mean high water mark. This subclause applies to this application, as it includes one of the specified development types, being commercial premises (pub).

On 21 November 2024, the Department of Planning, Housing and Infrastructure delegated the Minister's consent authority functions back to Council for certain development types and Transport for NSW for other development types. The instrument of delegation specifies that:

- The Minister delegates his consent authority functions to Council for everything under Clause 6.25(2)(a) of the SEPP, except some specified land uses, which are instead to go to Transport for NSW for determination, and
- The Minister delegates his consent authority functions to Council for everything under Clauses 6.25(2)(b) and (c) of the SEPP.

Per the second dot-point above, which refers to Clause 6.25(c), being relevant to this application, Council is the consent authority.

In this instance, Council as the consent authority refers the application to the Northern Beaches Local Planning Panel for determination, as it is triggered by involving the (partial) demolition of a heritage item, being Manly Wharf.

Division 2 Zoning of Foreshores and Waterways Area

6.26 Zoning of Foreshores and Waterways Area

Comment:

The subject site is within the Zone 2 Environment Protection under the SEPP.

6.27 Zone objectives and Land Use Table

(2) Development not specified in the Table in relation to a zone may be carried out with development consent in the zone if the consent authority is satisfied that the development—

- (a) is not inconsistent with the objectives for development in the zone, and*
- (b) is not inconsistent with the provisions of another environmental planning instrument, and*
- (c) will not otherwise have adverse impacts.*

(3) The consent authority must consider the objectives for development in a zone when determining a development application in relation to land in the zone.

Comment:

The proposed development is for alterations and additions to an existing pub and to the Manly Wharf structure. The pub land use is not specified in the Land Use Table for Zone 2 Environment Protection. As such, subclause (2) is addressed as follows:

(2) Development not specified in the Table in relation to a zone may be carried out with development consent in the zone if the consent authority is satisfied that the development—

- (a) is not inconsistent with the objectives for development in the zone, and*

Comment:

The objectives of the Zone 2 Environment Protection zone are addressed as follows:

To protect the natural and cultural values of waters in the zone.

To prevent damage to, or the possibility of long term adverse impact on, the natural and cultural values of waters in the zone and adjoining foreshores.

To enhance and rehabilitate the natural and cultural values of waters in the zone and adjoining foreshores.

To provide for the long term management of the natural and cultural values of waters in the zone and adjoining foreshores.

Comment:

The proposed works, being wholly upon disturbed (built) land, will protect the existing natural and cultural value of the water surrounding the subject site. The proposed development is also acceptable from a heritage perspective, given its retention and protection of the State heritage listed Manly Wharf structure. The proposed development is supported by a Plan of Management (which is to be adhered to per the recommended conditions of consent). The Plan of Management ensures appropriate operation of the site in consideration of the special values of the site. The proposed development is demonstrably low impact.

(b) is not inconsistent with the provisions of another environmental planning instrument, and

Comment:

The proposed development is consistent with all provisions of applicable environmental planning instruments.

(c) will not otherwise have adverse impacts.

Comment:

The proposed development is designed and sited so as not to result in adverse impacts. The proposed development has been considered with respect to amenity impacts, visual impact, and community safety, and is acceptable as demonstrated throughout this report.

(3) The consent authority must consider the objectives for development in a zone when determining a development application in relation to land in the zone.

Comment:

The objectives of the Zone 2 Environment Protection zone are addressed above at (2).

Division 3 Development in Foreshores and Waterways Area

6.28 General

(1) In deciding whether to grant development consent to development in the Foreshores and Waterways Area, the consent authority must consider the following—

(a) whether the development is consistent with the following principles—

(i) Sydney Harbour is a public resource, owned by the public, to be protected for the public good,

(ii) the public good has precedence over the private good,

(iii) the protection of the natural assets of Sydney Harbour has precedence over all other interests,

(b) whether the development will promote the equitable use of the Foreshores and Waterways Area, including use by passive recreation craft,

(c) whether the development will have an adverse impact on the Foreshores and Waterways Area, including on commercial and recreational uses of the Foreshores and Waterways Area,

(d) whether the development promotes water-dependent land uses over other land uses,

(e) whether the development will minimise risk to the development from rising sea levels or changing flood patterns as a result of climate change,

(f) whether the development will protect or reinstate natural intertidal foreshore areas, natural landforms and native vegetation,

(g) whether the development protects or enhances terrestrial and aquatic species, populations and ecological communities, including by avoiding physical damage to or shading of aquatic vegetation,

(h) whether the development will protect, maintain or rehabilitate watercourses, wetlands, riparian lands, remnant vegetation and ecological connectivity.

(2) Development consent must not be granted to development in the Foreshores and Waterways Area unless the consent authority is satisfied of the following—

(a) having regard to both current and future demand, the character and functions of a working harbour will be retained on foreshore sites,

(b) if the development site adjoins land used for industrial or commercial maritime purposes—the development will be compatible with the use of the adjoining land,

(c) if the development is for or in relation to industrial or commercial maritime purposes—public access that does not interfere with the purposes will be provided and maintained to and along the foreshore,

(d) if the development site is on the foreshore—excessive traffic congestion will be minimised in the zoned waterway and along the foreshore,

(e) the unique visual qualities of the Foreshores and Waterways Area and its islands, foreshores and tributaries will be enhanced, protected or maintained, including views and vistas to and from—

(i) the Foreshores and Waterways Area, and

(ii) public places, landmarks and heritage items.

Comment:

With respect to clause (1), the proposed development is almost entirely located on private land, with the portion of works on public land being replacement of an existing balustrade in the same location. Therefore, the proposed development is acceptable with respect to the matters above at (a) to (h) inclusive.

With respect to clause (2), the proposed development does not impact the working harbour, does not unreasonably impact upon traffic congestion, and is acceptable with respect to the visual quality of the foreshore. With respect to (b) and (c), the subject site includes Manly Wharf, which is used for commercial maritime purposes. The proposed development retains suitable pedestrian access around the entirety of Manly Wharf. As such, the development is satisfactory with respect to the matters above at (a) to (e) inclusive.

6.32 Rocky foreshores and significant seagrasses

(3) Development consent must not be granted to development on land to which this section applies unless the consent authority is satisfied the development—

- (a) will preserve and enhance the health and integrity of seagrasses, areas containing seagrasses and ecological communities in rocky foreshore areas, and*
- (b) will maintain or increase the connectivity of seagrass vegetation and natural landforms, and*
- (c) will prevent, or will not contribute to, the fragmentation of aquatic ecology, and*
- (d) will not cause physical damage to aquatic ecology.*

Comment:

The proposal has been reviewed by Council's Biodiversity and Coastal Officers who raised no objection to the works. The works are satisfactory with respect to the matters above at (a)-(d).

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

Division 3 Coastal environment area

2.10 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 supported by architectural plans that demonstrate the proposed development is of acceptably low risk in relation to the above matters. As such, the proposed development is not anticipated to result in adverse impact.

- 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 subsection (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:

The development is designed, sited and will be managed to avoid an adverse impact, in accordance with the above at (1).

Division 4 Coastal use area

2.11 Development on land within the coastal use area

- 1) *Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:*
 - 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*
 - ii) *platform for members of the public, including persons with a disability,*
 - iii) *overshadowing, wind funnelling and the loss of views from public places to*
 - iv) *foreshores,*
 - v) *the visual amenity and scenic qualities of the coast, including coastal headlands,*
Aboriginal cultural heritage, practices and places,
cultural and built environment heritage, and
 - b) *is satisfied that:*
 - i) *the development is designed, sited and will be managed to avoid an adverse*
 - ii) *impact referred to in paragraph (a), or*
 - iii) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
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:

The proposed development is supported by architectural plans that demonstrate the proposed development is of acceptably low risk in relation to the matters above at (a). As such, the proposed development is designed, sited and will be managed so as not to result in adverse impact with respect to those matters. The proposed development has been reviewed by Council's Coast & Catchments teams, who are supportive of the application, subject to conditions of consent. The proposal has been

considered in relation to the coastal and built environment, bulk and scale throughout the assessment, as demonstrated within this report.

Division 5 General

2.12 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

Given the above, the proposed development is designed such that it will not result in increased risk of coastal hazards on the subject site or surrounding land.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for commercial purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the commercial land use.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Whilst a portion of the works are within the Northern Beaches local government area under the *Manly Local Environmental Plan 2013* (MLEP 2013), there are no principal development standards applying to the site under Part 4 of the MLEP 2013. The relevant portion of the site is zoned RE1 Public Recreation, which is not subject to principal development standards.

Compliance Assessment

Clause	Compliance with Requirements
5.10 Heritage conservation	Yes
6.1 Acid sulfate soils	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes
6.21 Noise impacts—licensed premises	Yes

Detailed Assessment

6.1 Acid sulfate soils

Clause 6.1 Acid sulfate soils requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works. The site is located in an area identified as Acid Sulfate Soil Class 5, as indicated on Council's Acid Sulfate Soils Planning Map. The proposed development is not anticipated to result in increased risk with respect to acid sulfate soils.

6.9 Foreshore scenic protection area

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the following matters:

- (a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,*
- (b) measures to protect and improve scenic qualities of the coastline,*
- (c) suitability of development given its type, location and design and its relationship with and impact on the foreshore,*
- (d) measures to reduce the potential for conflict between land-based and water-based coastal activities.*

Comment:

The subject site is partially within the foreshore scenic protection area and is foreshore land. The proposed development:

- does not unreasonably impact upon the visual amenity of the foreshore and surrounds, and does not result in view loss from a public place to the foreshore,
- is not closely visible from the coastline, so does not impact upon its scenic quality,
- is suitable in its site context, and
- does not result in conflict between land-based and water-based coastal activities.

6.10 Limited development on foreshore area

Under Clause 6.10 Limited Development on Foreshore Area, development consent must not be granted for development on land in the foreshore area except for the following purposes:

- *the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area,*
- *the erection of a building in the foreshore area, if the levels, depth or other exceptional features of the site make it appropriate to do so,*
- *boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*

Comment:

The proposed development is predominantly outside of the foreshore area. The proposed works within the foreshore area are for replacement of balustrades in the same location. As such, the works are for rebuilding of an existing building in the foreshore area, per (2)(a) of this clause.

Development consent must not be granted under this clause unless the consent authority is satisfied that:

- *the development will contribute to achieving the objectives for the zone in which the land is located, and*
- *the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and*
- *the development will not cause environmental harm such as:*
 - *pollution or siltation of the waterway, or*
 - *an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or*
 - *an adverse effect on drainage patterns, and*
- *the development will not cause congestion or generate conflict between people using open space areas or the waterway, and*
- *opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and*
- *any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and*
- *in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and*
- *sea level rise, coastal erosion and recession, or change of flooding patterns as a result of climate change have been considered.*

Comment:

The proposed development is consistent with the objectives of the RE1 Public Recreation and Zone 2 Environment Protection zones. The appearance of the proposed development is compatible with the surrounding area. The proposed development will not cause environmental harm in relation to pollution, siltation, surrounding uses, marine habitat, wetland areas, flora or fauna habitats or drainage patterns. The proposed development will not cause congestion or generate conflict between people using the adjacent open space or waterway. The proposed development retains public access along the foreshore. The proposed development will not result in adverse impacts to any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land. The proposed development will not have an adverse impact on the amenity or aesthetic appearance of the foreshore. The proposed development will not impact upon sea level rise, coastal erosion or recession, or change flooding patterns.

In satisfying itself about a matter mentioned in subclause (3) (e), the consent authority must give consideration to the following—

- *continuous public access to and along the foreshore through or adjacent to the proposed development,*
- *public access to link with existing or proposed open space,*
- *public access to be secured by appropriate covenants, agreements or other instruments registered on the title to land,*
- *public access to be located above mean high water mark,*
- *the reinforcing of the foreshore character and respect for existing environmental conditions.*

Comment:

The proposed development will retain continuous public access to and along the foreshore. It is noted that the proposed development infills the amphitheatre-style stairs, which can be used to access the

foreshore. However, these stairs are wholly on private land. As such, the proposed development does not impact upon any public access. The proposed development is acceptable in relation to the foreshore character and the existing environmental conditions.

6.12 Essential services

Under this clause, development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:

- (a) the supply of water,*
- (b) the supply of electricity,*
- (c) the disposal and management of sewage,*
- (d) stormwater drainage or on-site conservation,*
- (e) suitable vehicular access.*

Comment:

The subject site is supplied with the above essential services. The proposed development retains and relies upon these services.

6.21 Noise impacts—licensed premises

This clause requires that, before granting development consent for development involving the use of land as licensed premises under the Liquor Act 2007, the consent authority must consider the impact of any noise nuisance likely to be generated by the proposed development on residential accommodation in the vicinity of the proposed development.

Comment:

The proposed development involves alteration and addition to the existing pub, but does not involve any change to its operation, maximum patronage, or approved hours of operation. Given the additional area to be used for the pub purpose, the proposed development has been reviewed by Council's Environmental Health Officer with respect to noise generation. This expert is supportive of the proposed development, subject to conditions of consent, which have been included in the recommendation of this report. The conditions include adherence to the recommendations made within the supporting acoustic assessment.

Manly Development Control Plan

Built Form Controls

Whilst a portion of the works are within the Northern Beaches local government area under the Manly Development Control Plan 2013 (MDCP 2013), there are no built form controls applying to the site under the MDCP 2013. The relevant portion of the site is zoned RE1 Public Recreation, which is not subject to built form controls. For completeness, the following describes the built form of the proposed works, relative to the existing ground levels:

- Awnings: Works to a maximum of 2.9 metres, with an under-awning clearance of 2.5 metres.
- Balustrades: Minimum 1.2 metres in height, with capability to extend to maximum 1.9 metres in height.
- Outdoor seating umbrellas: Maximum 2.4 metres in height.
- Boat: Maximum 3.2 metres in height.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.3 Townscape (Local and Neighbourhood Centres)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

Detailed Assessment

3.1 Streetscapes and Townscapes

The underlying objectives of this control are addressed as follows:

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

Comment:

The proposed development does not include alteration to the existing parking arrangement, being a basement car park accessed via East Esplanade.

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

Comment:

The proposed works are in support of the existing approved land uses, being appropriate in the context of the site and locality.

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

Comment:

The proposed development provides adequate space for the movement of pedestrians around the site, by way or removal of the existing timber bench seating, and creation of a walkway to supplement the extension of the outdoor seating area.

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.

Comment:

The subject site is located at a key point in the Manly area, and is of significant visual importance. The proposed works are designed and strategically located such that they do not obstruct important views to or from public or private places, and so as to retain the visual quality of the locality.

3.4.3 Maintenance of Views

The proposed development is designed and sited so as to reasonably retain view sharing for the subject site and surrounding land. The underlying objectives of the control are addressed as follows:

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

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).

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.

Comment:

The proposed development includes replacement of existing balustrades, and alterations and additions to the existing pub (Felons Manly), principally for extension of the existing outdoor seating area and construction of a children's play area. The proposed balustrades are constructed of clear glass, so as to allow view through from the public domain to the foreshore and waterway. The proposed children's play area adjoining the extended outdoor seating area contains a small boat integrated into landscaping. The plans and supporting photomontage demonstrate that the boat is a low-lying structure that blends into its surrounds, and does not unreasonably impede upon views from the public domain to the foreshore and waterway.

Given the above, the proposed development reasonably shares views, does not disrupt views to or from public or private land, and does not result in unreasonable view loss creep.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect 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 2021;
- 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, 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

PLANNING CONCLUSION

This development application seeks consent for internal and external alterations and additions to Manly Wharf and Manly Wharf Hotel. It should be noted the Manly Wharf Hotel is now known as Felons Manly.

As detailed in the report, whilst the majority of the works are located outside of the Northern Beaches local government area, Council is the consent authority, per section 6.25 of the SEPP Biodiversity and Conservation. The application is referred to the Northern Beaches Local Planning Panel (NBLPP) as the determining authority due to demolition works to the listing of the site (Manly Wharf) on the State Heritage Inventory.

The proposed works are relatively minor in nature and extent in comparison to the whole heritage item and ancillary to the existing development on site and approved use of the relevant tenancy, being a pub, and ancillary to the wharf itself. The proposal is permissible with consent.

Concerns raised in the submissions related to loss of public domain, the visual impact of the works to the amphitheatre, and concern about consistency of the works with the heritage significance of the site. These have been addressed in the report including support from NSW Heritage as the proposal is nominated integrated development

Within this assessment report, detailed consideration was given to the proposed development in relation to the applicable planning controls, including with respect to the SEPP Biodiversity and Conservation. Assessment of the proposed development was carried out with reference to the MLEP 2013 and Manly Development Control Plan 2013 ('MDCP 2013'), as these instruments apply to the portion of the works within the Northern Beaches local government area, and are the closest controls to the remainder of the development, in the absence of site-specific controls. Specific consideration was given to the heritage significance of the site, and the visual impact of the extended outdoor dining and play area. This report established that the proposed works are acceptable in the context of the site and are of low impact.

Overall, the development performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. Accordingly, the application has been recommended for approval.

REASON FOR DETERMINATION

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

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2024/1375 for Internal and external alterations and additions to Manly Wharf and pub on land at Lot 1 DP 1170245, 0 East Esplanade, MANLY, subject to the conditions printed below:

Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA.101	3	Site Plan	Little Boat Projects	25 November 2024
DA.102A	1	Ground Floor Plan - Existing West	Little Boat Projects	3 September 2024
DA.102B	5	Ground Floor Plan - Existing East	Little Boat Projects	28 January 2025
DA.103A	2	Ground Floor Plan - Proposed West	Little Boat Projects	25 November 2024
DA.103B	6	Ground Floor Plan - Proposed East	Little Boat Projects	28 January 2025
DA.103C	5	Roof Plan - Proposed East	Little Boat Projects	5 December 2024
DA.104	5	Elevations - Proposed	Little Boat Projects	5 December 2024
DA.105	5	Axonometric - Proposed	Little Boat Projects	5 December 2024
DA.205	1	Solid Fuel Detail Plan	Little Boat Projects	26 August 2024
DA.206	1	Boat Playground Details	Little Boat Projects	26 August 2024
DA.207	1	Awning Details	Little Boat Projects	26 August 2024
DA.208	1	Awning Details	Little Boat Projects	26 August 2024

14.GC - 1(4)	04	Cross Section Drawing	Svalson	8 March 2018
14.GC - 2(4)	04	Cross Section Drawing	Svalson	8 March 2018
14.GC - 3(4)	04	Cross Section Drawing	Svalson	8 March 2018
14.GC - 3(4)	04	Cross Section Drawing	Svalson	8 March 2018
La2.S.S.R.I - 1(3)	01	Water resistant and non-climbable	Svalson	10 October 2022
La2.S.S.R.I - 2(3)	01	Water resistant and non-climbable	Svalson	10 October 2022
La2.S.S.R.I - 3(3)	01	Water resistant and non-climbable	Svalson	10 October 2022
MECH 101	01	Cavalier Legend	Cavalier Ventilation	26 July 2024
MECH 102	01	Drawing Notes	Cavalier Ventilation	26 July 2024
MECH 103	01	Typical Detail Drawing	Cavalier Ventilation	26 July 2024
MECH 104	01	Rangehood Detail	Cavalier Ventilation	26 July 2024
MECH 201	01	Site Plan	Cavalier Ventilation	26 July 2024
MECH 202	01	Roof Plan	Cavalier Ventilation	26 July 2024
MECH 203	01	Kitchen Plan View	Cavalier Ventilation	26 July 2024
MECH 204	01	Elevation View	Cavalier Ventilation	26 July 2024
MECH 205	01	Rangehood Elevation View	Cavalier Ventilation	26 July 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Statement of Environmental Impacts	E	Architectus	6 December 2024
Statement of Heritage Impact	04	City Plan	10 December 2024
Acoustic Assessment	3	Pulse White Noise Acoustics	9 December 2024
BCA Capability Report	5	BM+G	9 December 2024
Estuarine Risk Management Report	-	Horton Coastal Engineering	1 August 2024
Construction and Demolition Waste Management Plan	1	MRA Consulting Group	25 October 2024

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Referral - Ausgrid	3 January 2025
Heritage NSW	Referral - Heritage NSW	22 April 2025
NSW Police	Referral - NSW Police	17 December 2024

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website www.northernbeaches.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

3. 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 Certifier 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 Certifier 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 Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

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

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

Reason: Legislative requirement.

4. **Relationship to Other Consents**

This consent is to be read in conjunction with Development Consent No. DA2024/1249 dated 5 February 2025.

Reason: To ensure consistency between consents.

5. **General Requirements**

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
 - 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 8.00 am to 1.00 pm inclusive on Saturday,
 - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Construction certificate plans are to be in accordance with all finished levels identified on approved plans. Notes attached to plans indicating tolerances to levels are not approved.
- (c) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (d) At all times after the submission of the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (e) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (f) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (g) Prior to the release of the Construction Certificate, payment of the following is required:
 - i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
 - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
 - iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.
- (h) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (i) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (j) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (k) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (l) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place

- iii) Building/s that are to be demolished
- iv) For any work/s that is to be carried out
- v) For any work/s that is to be demolished

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

- (m) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (n) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (o) Should any construction cranes be utilised on site, they are to be fitted with bird deterrents along the counterweight to discourage raptor (bird) nesting activity. Deterrents are to remain in place until cranes are dismantled. Selection of deterrent methods is to be undertaken in accordance with the recommendations of a suitably qualified ecologist.
- (p) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

 - (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2018
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
 - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
 - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
 - (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

6. Security Bond

A bond (determined from cost of works) of \$2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, and details demonstrating payment are to be submitted to the Certifier prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at www.northernbeaches.nsw.gov.au).

Reason: To ensure adequate protection of Council's infrastructure.

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

7. Works Not Approved

The proposed removal of the existing 'ship railing' metal balustrades and replacement with 1200/1800mm adjustable glass balustrades along the outer edge of the wharf public thoroughfares is not approved.

Reason: The proposed adjustable glass balustrade design at the identified locations is not sympathetic to the historic and aesthetic values of Manly Wharf and has the potential to adversely affect the character and setting of the item.

8. Boundary Identification Survey

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

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

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

9. Mechanical Exhaust

The new mechanical exhaust is to be relocated to be less visible from the public domain or, if relocation is not feasible, screening measures are to be implemented to minimise the visual impact of the exhaust. Details demonstrating compliance with this condition are to be submitted to Council's Heritage Advisor for approval prior to the issue of the Construction Certificate.

Reason: To ensure the proposed works are sympathetic to the heritage significance of Manly Wharf.

10. **Waste Management Plan**

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan.

Details demonstrating compliance must be provided to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

11. **Mechanical Ventilation**

Prior to the issuing on a Construction Certificate details of mechanical ventilation including Electrostatic precipitators (ESP) as outlined in document titled "Plans - Mechanical Exhaust" dated 26/07/2024 by Cavalier Ventilation accompanying this proposal must be incorporated into the mechanical ventilation design and submitted to the Principal Certifier

Reason: To ensure compliance with Australian Standards and mitigate potential smoke emissions

12. **Plans of Kitchen Design, construction and fit out**

Prior to any Construction Certificate (CC) being issued, detailed plans that demonstrate compliance with Standard 3.2.3 of the Australian and New Zealand Food Standards Code, the Food Act 2003 and Australian Standard AS 4674 'Design, construction and fit out of food premises', must be submitted to and approved by the Principle certifier. These plans are to be prepared by a suitably qualified person.

The plans must detail adequate provision for storage including separate storage of food, equipment, chemicals and personal belongings.

Reason: To ensure that the food premises complies with the design construction and fit-out requirements.

13. **Mechanical ventilation Plans**

Where Mechanical ventilation is required to be installed in the food premises ,prior to any Construction Certificate (CC) being issued, detailed plans must be submitted to and approved by the Principle certifier that demonstrate compliance with the following:

- Australian Standard (AS) 1668.2 "The use of ventilation and air-conditioning in buildings - Mechanical ventilation in buildings"; and
- Any external exhaust discharge must be above the roofline and discharged in a manner that is not likely to cause an amenity impact.

These plans are to be prepared by a suitably qualified person.

Reason: To ensure that the installed mechanical ventilation complies with the requirements of the Australian Standard 1668.2 and to prevent amenity impacts.

14. **Mechanical Ventilation**

Prior to the issuing on a Construction Certificate details of mechanical ventilation including Electrostatic precipitators (ESP) as outlined in document titled "Plans - Mechanical Exhaust" dated 26/07/2024 by Cavalier Ventilation accompanying this proposal must be incorporated into the mechanical ventilation design and submitted to the Principal Certifier

Reason: To ensure compliance with Australian Standards and mitigate potential smoke emissions

15. **Compliance with Standards**

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

16. **Section 60 Application**

An application under section 60 of the Heritage Act 1977 must be submitted to, and approved by, the Heritage Council of NSW (or delegate), prior to works commencing.

The following information is to be submitted with the s.60 application for approval by the Heritage Council of NSW (or delegate):

- a. Amended plans and details are to be provided demonstrating a revised balustrade design to the existing 'ship railing' metal balustrades along the outer edge of the wharf public thoroughfares.
The amended plans should include clear frameless glass or perspex panels affixed or adjacent to the existing 'ship railing' metal balustrades making them non-climbable and BCA-compliant to adequately address the identified safety concerns.
 - The glass or perspex panels are to finish no higher than the underside of the existing 'ship railing' metal balustrades top handrail.
 - Elevation details are to be provided demonstrating the typical panel size and fixing details of the proposed connections.
- b. Further details demonstrating how the boardwalk deck infill of the top 2 amphitheatre tiers will seamlessly integrate within the existing wharf fabric.
- c. Amended plans demonstrating the removal of the roof and cabin from the proposed boat installation to lower the overall height of the boat and reduce bulk.
- d. A materials board illustrating the proposed finishes, colours and artwork that will be painted over the timber boat installation are predominately light colours.
- e. A materials board illustrating the proposed awning structures related materials, colours and finishes are predominantly light colours.

Reason: To meet legislative requirements.

DURING BUILDING WORK

17. **Wildlife Protection**

If construction activity associated with this development results in injury or displacement of a native mammal, bird, reptile or amphibian, a licensed wildlife rescue and rehabilitation

organisation must be contacted for advice.

Reason: To protect native wildlife.

18. **No Access Through Land Owned or Managed by Council**

Site access is not approved for delivery of materials nor construction of the development through adjacent land owned or managed by Council, without the written approval of Council.

Reason: Public safety, landscape amenity and tree protection.

19. **Storage of Materials on Land Owned or Managed by Council Prohibited**

The dumping or storage of building materials, spoil, vegetation, green waste or any other material in land owned or managed by Council is prohibited.

Reason: Public safety and environmental protection.

20. **Removing, Handling and Disposing of Asbestos**

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

21. **Specialist Tradespersons**

All work to, or affecting, significant fabric shall be carried out by suitably qualified tradespersons with practical experience in conservation and restoration of similar heritage structures, materials and construction methods.

Reason: So that the construction, conservation and repair of significant fabric follows best heritage practice.

22. **Site Protection**

Significant built and landscape elements are to be protected during site preparation and the works from potential damage. Protection systems must ensure significant fabric, including landscape elements, is not damaged or removed.

Reason: To ensure significant fabric including vegetation is protected during construction.

23. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels,

prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier.

Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

24. Unexpected Finds

The Applicant must ensure that if substantial intact archaeological deposits and/or State significant relics or any other buried fabric are discovered, work must cease in the affected area(s) and the Heritage Council of NSW must be notified. Additional assessment and approval may be required prior to works continuing in the affected area(s) based on the nature of the discovery.

Reason: All significant fabric within a State Heritage Register curtilage should be managed according to its significance. This is a standard condition to identify to the applicant how to proceed if historical archaeological relics, or other unexpected buried discoveries such as works are identified during the approved project.

25. Aboriginal Objects

Should any Aboriginal objects be uncovered by the work which is not covered by a valid Aboriginal Heritage Impact Permit, excavation or disturbance of the area is to stop immediately and Heritage NSW is to be informed in accordance with the *National Parks and Wildlife Act 1974*.

Works affecting Aboriginal objects on the site must not continue until Heritage NSW has been informed and the appropriate approvals are in place. Aboriginal objects must be managed in accordance with the *National Parks and Wildlife Act 1974*.

Reason: This is a standard condition to identify to the applicant how to proceed if Aboriginal objects are unexpectedly identified during works.

26. Waste Management During Development

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

Details demonstrating compliance must be submitted to the Principal Certifier.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

27. Heritage Consultant

A suitably qualified and experienced heritage consultant must be nominated for this project. The nominated heritage consultant must provide input into the detailed design, provide heritage information to be imparted to all tradespeople during site inductions, and oversee the works to minimise impacts to heritage values. The nominated heritage consultant must be involved in the selection of appropriate tradespersons and must be satisfied that all work has been carried out in accordance with the conditions of this consent.

Reason: So that appropriate heritage advice is provided to support best practice conservation

and ensure works are undertaken in accordance with this approval.

28. Stockpiling materials

During construction, all material associated with works is to be contained at source, covered and must be within the construction area. All material is to be removed off site and disposed of according to local regulations. The property is to be kept clean and any building debris removed as frequently as required to ensure no debris enters receiving waters.

Reason: To ensure pollution control measures are effective to protect the aquatic habitats within receiving waters throughout the construction period.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

29. Acoustic Design Recommendations

Prior to the issuing of any Construction Certificate, documentation is to be submitted to the satisfaction of the Principal Certifier that design recommendations within the acoustic report have been implemented / incorporated into the design of the premises.

Reason: To prevent noise nuisance by using mitigation measures in design.

30. Mechanical Ventilation certification

Prior to the issuing of an Occupation Certificate, certification is to be provided from the installer of the mechanical ventilation system that the design, construction and installation of the mechanical ventilation system is compliant with the requirements of AS1668 The use of mechanical ventilation.

Details demonstrating compliance are to be submitted to the Principal Certifier.

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

31. Certificates of Compliance

Prior to the issue of the Occupation Certificate, the Applicant is to provide Council with certificates from an appropriately qualified person indicating the mechanical ventilation system and solid fuel burning heaters are compliant with all relevant legislation, Building Code of Australia, Australian Standards, Specifications and manufacturer requirements.

Reason: To ensure the system operates in a legislatively compliant manner.

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

Prior to the issuing of any occupation certificate, certification is to be provided to the Principal Certifier by a suitably qualified person demonstrating that the design, construction and fit out of food premises kitchen is compliant with the requirements of AS 4674 Design, construction and fit out of food premises.

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

33. Mechanical Ventilation certification

Where Mechanical ventilation is required to be installed in the food premises it must comply with the following:

- Australian Standard (AS) 1668.2 "The use of ventilation and air-conditioning in buildings - Mechanical ventilation in buildings"; and

- Any external exhaust discharge must be above the roofline and discharged in a manner that is not likely to cause an amenity impact.

Certification is to be provided to the Principal Certifier prepared by a suitably qualified person to demonstrate that the mechanical ventilation complies with the above requirements.

Reason: To ensure that the installed mechanical ventilation complies with the requirements of the Australian Standard 1668.2 and to prevent amenity impacts.

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

34. Acoustic Requirements - On-going

Compliance with the recommendations within all Acoustic Assessments and reports and any additional requirements at OC review stage.

Reason: To prevent a noise nuisance to any neighbouring residential receiver.

35. Amenity

The implementation of this development shall not adversely affect the amenity of the neighbourhood or interfere unreasonably with the comfort or repose of a person who is outside the premises by reason of the emission or discharge of noise, fumes, vapour, odour, steam, soot, ash, dust, waste water, waste products, grit, oil or other harmful products.

Reason: To ensure the surrounding area and people within the neighbourhood are not affected adversely and to ensure compliance with the Protection of the Environment Operations Act 1997.

36. Maintenance of solid fuel heaters

The owner/occupier shall ensure servicing of the heater is maintained according to the manufacturer's specifications.

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

37. Licence Agreement for Outdoor Dining

Prior to commencement of operation, the leaseholder that benefits from the outdoor dining located on Crown Reserve R86015 shall enter into a licence agreement with Council under the Crown Land Management act 2016 for the use of the land.

Reason: To ensure compliance with the provisions of the Crown Land Management Act 2016 as regards use of Crown land

38. Operation of solid fuel burning heaters

The owner/operator must take all practicable measures to prevent the likelihood of causing smoke and/or odour nuisances. Such measures must include:

- Using dry seasoned hardwood
- Storing wood in a dry well-ventilated place
- Having a hot and well oxygenated fire
- Ensuring that the chimney flue is clean
- Checking the chimney at different stages of the fire to see if there is any smoke
- Maintenance according to the manufacturer's specifications

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

39. **Compliance**

If requested, the applicant and any nominated heritage consultant may be required to participate in audits of Heritage Council of NSW approvals to confirm compliance with conditions of consent.

Reason: To ensure that the proposed works are completed as approved.