

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/0318
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Responsible Officer:	Penny Wood
Land to be developed (Address):	Lot 501 DP 736679, 14 South Steyne MANLY NSW 2095
Proposed Development:	Alterations and additions to commercial development
Zoning:	Manly LEP2013 - Land zoned R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Stephen Hayes Pty Ltd
Applicant:	IKUS Pty Ltd T/A U+I Building Studio

Application Lodged:	06/04/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	15/04/2021 to 29/04/2021
Advertised:	Not Advertised
Submissions Received:	13
Clause 4.6 Variation:	4.4 Floor space ratio: 1.02%
Recommendation:	Approval

Estimated Cost of Works:	\$ 978,977.00
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EXECUTIVE SUMMARY

The application seeks consent for alterations and additions and to an existing commercial building and to convert two (2) existing restaurants located in the building into the one tenancy.

The application is being referred to the Local Planning Panel as a total of thirteen (13) unique submissions have been received (including two petitions; one in support and one objecting to the development). The issues raised in the objections relate to concerns regarding intensification of the use and increase in gross floor area at the expense of the proposed works to the rear. Other issues include operational issues, acoustic privacy, visual privacy, design and appearance of the rear addition in relation to heritage.

The proposal results in an increase to the gross floor area of the building by 15.4sqm. The increase in

floor area will result in a minor variation of 1.02% (4.14sqm) to the floor space ratio control for the site. The proposed works will not alter the existing building envelope therefore having a minor impact on the existing bulk and scale of the building. An assessment of the development standard breach and the accompanying Clause 4.6 written request is undertaken within this report and is found to be satisfactory.

The external alterations are minor and there is no impact on the heritage significance of the area. The proposal will assist in screening the unsightly bin area currently located at the rear of the site and will not impact on access to the foreshore.

In summary, the Panel can be satisfied that the proposal generally complies with the relevant controls contained within the Manly LEP and DCP. No objections have been raised from internal experts, subject to conditions. On balance, the proposal is recommended for approval having considered the relevant issues as part of the assessment of the plans submitted.

PROPOSED DEVELOPMENT IN DETAIL

The subject development application proposes the following works:

External Works

- A new back of house service area will be screened by an acoustically treated fence, gated to allow access for staff and deliveries. The rear service area includes an internal bin room accessed by a roller door. An external staircase, with an acoustically treated screen, at the rear of the building is also proposed. This staircase will provide access for staff via a self-closing solid core door with acoustic seals. The proposed staircase is to be used by staff providing access to the proposed enclosed bin room to dispose of waste and bottles, to collect deliveries, and for staff to enter and exit the premises. This area is to be screened by a 3.6m high acoustically treated screen/fence with access provided via a door in the screen along the north western elevation. A 1.8m high screen is proposed along the rear of the building adjacent to the new kitchen door and stairs for a length of 2.5m.
- The existing fabric awning along the north eastern and north western elevation is to be replaced.
- The existing flat metal roof at the rear of the building is to be removed and replaced with a new tiled roof to match the existing roof style.
- New mechanical exhaust system to be located on the roof of existing building.
- Proposed acoustic screen set behind tiled roof from both Dungowan Lane and Victoria Avenue to screen new mechanical exhaust system.
- New wall and windows flush with north western facade to enclose existing balcony on the north western facade of the building.
- Windows along the north western facade to be replaced with new timber framed windows.
- Existing recess infilled at the rear of building with new window (W10).

Internal works

The development will involve the renovation of all internal spaces, with a new internal staircase, new bathrooms (including a unisex accessible facility) new kitchen, and back of house services. The building will be occupied by a single tenant operating a single restaurant over two floors. A dumb waiter lift will

facilitate the transfer of food and utensils between floors.

Signage

The development application proposes four (4) signs. Three of these signs are hand painted wall signs with 2 located on the north western elevation and one located on the south western elevation. The fourth sign is a projecting wall sign along the north eastern elevation fronting South Steyne. The location and size of the three (3) hand painted wall signs are supported by Council's Heritage Officer, however given the lack of detail regarding the final design a condition is imposed that these signs be subject to further approval once a final design is provided. The projecting wall sign is supported. The signage spotlights proposed over the hand painted wall signs are not approved as part of the subject application.

Hours of Operation

The development application does not alter or propose new hours of operation as part of the proposed works. A review of Council's files revealed that there are two (2) separate consents operating on the site. The proposed hours of operation for the ground floor and first floor are inconsistent.

Modification 96(1A) to DA1979/86 approved the following hours of operation for Shop 1 and 2 (14 South Steyne) 7.00am to 10.00pm Monday to Sunday. Approved on 4 May 2010.

Modification 96(1A) to DA1540/1985 approved the following hours of operation; 6.30am - 12 midnight Monday to Saturday and 6.30am to 10pm on Sundays. Approved on 12 December 2013.

The subject development application does not alter the existing hours of operation for the restaurant. To ensure consistent hours of operation for the whole building, the following hours of operations are imposed in a condition of consent.

- Monday to Sunday & Public Holidays - 6.30am - 10.00pm.

Any changes to the approved hours of operation are subject to a new application.

Deliveries

Deliveries are proposed to take place between the hours of 6.30am - 8pm on weekdays and 8.00am - 8.00pm on weekends and public holidays

Waste Collection

Waste is to be collected by a private waste contractor from Dungowan Lane with waste stored at the rear of the premises in the dedicated bin room.

Revised plans were received on 4 June 2021 in relation to comments received from Council's Road and Assets Officer which did not support the encroachment of private floorspace into the public airspace of the Council road reserve with the enclosure of the balcony. The amended revised plans were supported by Council's Road and Assets Officer. As a result of the revised design, the plans were also submitted to Council's Heritage Officer who also supported the design changes.

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 - 4.6 Exceptions to development standards

Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 4.4.3 Signage

SITE DESCRIPTION

Property Description:	Lot 501 DP 736679 , 14 South Steyne MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the southern corner of South Steyne and Victoria Avenue.</p> <p>The site is regular in shape with a frontage of 6.09m along South Steyne, 28.595m along the northern boundary, 21.945m along the southern boundary and 6.03m at the rear fronting Dungowan Lane. The site has a surveyed area of 175.5m².</p> <p>The site is located within the R3 Medium Density Residential zone under the provisions of MLEP 2013 and accommodates a two (2) storey building consisting of two (2) restaurants. The building is identified as a Heritage Item I225 - Residential / commercial buildings - 7 and 14 South Steyne. The subject site is also located in proximity of a number of other items of local heritage significance, as outlined further in the report.</p> <p>The site is relatively flat and is located within the Foreshore Scenic Protection Area .</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by similar uses located adjacent to Manly Wine and the Sebel Hotel to the South. To the rear of the site abutting Dungowan Lane is a 5 storey residential apartment fronting Victoria Avenue. Directly opposite the site to the east is</p>

Map:



SITE HISTORY

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

- DA No. 1540/1985 - Restoration of the existing terrace building into shops and a restaurant - Approved 20 August 1985.
- DA No. 1797/1986 - Proposed Establishment of Refreshment Room in Existing Shop Premises - Approved 2 May 1986.
- DA15/12 - Alterations and additions to existing building including replacement and relocation of mechanical ventilation systems (exhaust system) for the two commercial kitchens. Approved 19 July 2012.
- Section 96(1A) modification to the approved Restoration of the existing terrace building into shops and a restaurant - involving modification to opening hours. Approved 12 December 2013.
- PLM2020/0286 - Alterations and additions to commercial development. Notes issues on 30 November 2020.

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 Matters for Consideration'	Comments
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for commercial purposes for an extended period of time. The proposed development retains the commercial use of the site, and is not considered a contamination risk.
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 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to the comments provided from Council's Road Reserve Section given the proposed encroachment of private habitable floorspace into the public airspace of the Council road reserve as a result of the enclosure of the first floor balcony along the eastern elevation of the building. Revised plans were received on 6 June 2021 which pushes the wall and windows (W13, W14 and W15) flush with the brick facade. This is considered acceptable.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue</p>

Section 4.15 Matters for Consideration'	Comments
	of a Construction Certificate. This clause is not relevant to this application.
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 development application has been publicly exhibited from 15/04/2021 to 29/04/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 13 submission/s from:

Name:	Address:
Lisa Jane Clapham	C/- Manly Owners Group Pty Ltd GPO Box 7085 SYDNEY NSW 2001
Mr David Nicholas Foodey	401 / 46 Victoria Parade MANLY NSW 2095
Ms Adelle Anne Church	1 / 46 Victoria Parade MANLY NSW 2095
Joseph Maceri	202 / 46 Victoria Parade MANLY NSW 2095
Dr David Stuart Gordon Ekins	1 / 46 Victoria Parade MANLY NSW 2095

Name:	Address:
Mr Paul Brendan Hannan	11 Soniver Road NORTH CURL CURL NSW 2099
George Athol Murray Clapham	1 / 46 Victoria Parade MANLY NSW 2095
Ms Belinda Jane Hannan	11 Soniver Road NORTH CURL CURL NSW 2099
Mrs Janette Margaret Wall Mr Mark Joseph Wall	24 / 25 - 27 Victoria Parade MANLY NSW 2095
Mr Jeffrey David Schaffer	5 / 25 - 27 Victoria Parade MANLY NSW 2095
Mod Urban Pty Ltd	PO Box R1702 ROYAL EXCHANGE NSW 1225
Petition	Invalid Address NSW
Mrs Merran Grace Cooper	302 / 46 Victoria Parade MANLY NSW 2095

Eleven unique submissions were received in objection to the proposal, in addition to one petition in support of the proposal and one petition in objection to the proposal. Thirteen (13) submissions were therefore received. The matters raised in the submissions are addressed as follows:

- **Noise**

Comment: Concern is raised from the neighbouring properties in relation to the level of noise anticipated as a result of the proposed development. An acoustic report was submitted with the subject development application (Prepared by Koikas Acoustics Pty Ltd, dated 10 March 2021) as requested by Council in the Pre-lodgement notes (PLM2020/0286) provided on 30 November 2020. The acoustic report was referred to Council's Environmental Health (Industrial Use) Section who raised no objections to the proposed staircase incorporating the acoustic treatment to the proposed screens.

Concern was raised in regard to the noise generated from the new mechanical ventilation system located on the roof in the southern corner of the building. An acoustic screen was also proposed along the south western facade of the mechanical ventilation system to assist in mitigating potential noise generated from the mechanical ventilation system. The acoustic report found that mechanical plant emissions are calculated to be within the acoustic design standards.

The proposed bin area is completely enclosed with access provided via a roller shutter door. This will assist in reducing the level of noise associated with disposing of waste and bottles. A condition is imposed on the consent to ensure the disposal of bottles from the restaurant to the bin room is to occur only between the hours of 7.00am to 7.00pm Monday to Friday and between the hours of 8.00am - 7.00pm Saturdays, Sundays and Public Holidays. General waste from the restaurant can be disposed of to the bin room via the use of the external staircase between the hours of 8.00am to 9.00pm Monday - Sunday and Public Holidays.

The use of the staircase by staff was also raised as a concern from the occupants at 46 Victoria Parade. These concerns were in regard to loitering on the stairs and having conversations with other staff members or using the stairs during staff breaks. A condition is imposed in the consent to ensure the stairs are only used to access the bin room within the dedicated hours imposed in the consent. Staff are not to use the staircase to enter and exit the restaurant between 9pm - 7am Monday to Sunday and Public Holidays.

Concern is raised in regard to the potential noise generated from W17 and W18 fronting Victoria Avenue and servicing the kitchen at the first floor. It is anticipated that any noise generated from these windows would not be out of keeping with the expected noise generated from a restaurant.

- **Visual Privacy**

Comment: Concern is raised in regard to the use of the stairs and the ability for a person to stand on the landing (Identified as Step 15 on Dwg No. DA11, Prepared by Building Studio, dated 06/06/2021) and look towards the north eastern elevation of the ground floor apartment and first floor apartment located at 46 Victoria Avenue. A 1.8m high privacy screen is proposed along the south western elevation of the staircase at the proposed kitchen door and continuing down the stairs with the ability for someone to look over the proposed screen whilst standing on the landing (Step 15). However given this landing will be used for a short time while accessing the staircase, it is not considered to create an unreasonable opportunity for overlooking towards the ground floor and first floor units at 46 and balconies. Suitable conditions are imposed in the consent to ensure the staircase is not utilised between the hours of 9pm and 7am by staff entering and exiting the building.

Concern regarding the visual impact of the proposed window at ground floor fronting Dungowan Lane was also raised. A condition is imposed to ensure the window (W10) is fixed with translucent glazing to reduce any potential for overlooking towards the ground floor unit located at 46 Victoria Avenue.

- **Undersized bin storage area**

Comment: The application was referred to Council's Waste Officer for comment. The proposed bin area appears to be of a sufficient area to contain 4 x 660 litre bins, however the bin located under the stairs may not have enough height clearance to allow convenient opening of the lid to deposit waste, which if left open could lead to odour problems. There is no requirement in relation to the number of bins to be provided, therefore allowing the commercial business flexibility in arranging the frequency of collection to suit their needs. A condition is therefore imposed that waste collection contractors must retrieve waste bins from the bin room and replace them in the bin room. Waste bins must not be presented or left in the road reserve for emptying.

- **FSR/ over development of the site**

Comment: Concern is raised in relation to the non-compliant gross floor area of the site. The plans indicate that the increase to the overall gross floor area is minor (3.34sqm) resulting in a 1.02% variation to the FSR development standard of 0.5:1 specified for the subject site. Whilst the proposed development does result in an increase to the overall gross floor area, the built form of the subject building is not dramatically altered, with the increase in floor area resulting in the removal of an existing internal staircase and the enclosure of a ground floor verandah and first floor balcony. The submissions argue that the proposed increased floor area and removal of internal stairs should not be at detriment to the amenity of the adjoining residents of 46 Victoria Avenue. This is discussed in further detail under *Clause 4.6 Exceptions to development standards* in the report.

- **Waste collection and Site Servicing**

Comment: Concern is raised in relation to the collection of waste from the dedicated service area at the rear of the site. A condition is imposed that waste and recyclable material generated by the premises must not be collected between the hours of 7.00pm to 6.30am the following day (Monday to Friday) and 7.00pm to 8.00am the following day (Saturday, Sunday and Public Holidays).

- **Design and appearance of staircase and metal screening to the rear of the site.**

Comment: The application was referred to Council's Heritage officer who raised no objection to the proposed addition at the rear of the site fronting Dungowan Lane. Whilst the proposed staircase is of a more modern design to the existing heritage item, Council supports the adopted

approach to delineate the addition as new works different from the character of the rest of the building and it's proposed setback to Dungowan Lane.

- **Illumination of proposed signage and light spillage from the proposed window (W10) at ground level fronting Dungowan Lane**

Comment: Revised plans received on 4 June 2021 have deleted the spotlight fronting Dungowan Lane above the wall painted sign. Comments received from Council's Heritage Officer state that the wall painted signs are supportable in concept however given the limited level of detail, the applicant is to lodge another development application for signage. The spotlights proposed on the Victoria Avenue frontage are therefore not approved as part of the subject development application. A condition is imposed to this effect.

Concern was also raised in regard to the light spillage from the new window (W10) proposed at ground level fronting Dungowan Lane. A condition is imposed to ensure this window is fixed with translucent glass to reduce the amenity impacts on the residents of 46 Victoria Avenue.

- **Insufficient Plan of Management**

Comment: Concern is raised in regard to the management of the proposed use. Given the use of the subject site as a restaurant will remain substantially unchanged, the Operational Management Plan accompanying the development application is considered reasonable. The subject development application did not address the proposed hours of operation. The two separate tenancies operate under preexisting consents where the trading hours are not the same. To ensure consistency for the proposed single tenancy a condition is imposed to limit the hours of operation to 6.30am - 10.00pm Monday to Sunday and Public Holidays. Conditions are imposed in the consent in relation to the use of the staircase, deliveries, waste and bottle disposal and waste collection.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>No objection with conditions.</p> <p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Environmental Health (Industrial)	<p>No objection with conditions.</p> <p>General Comments</p> <p>A review of acoustics was undertaken by Environmental Health. It was found that the operational plan of management & acoustic report provided with the development are suitable and recommended</p>

Internal Referral Body	Comments
	<p>specific treatments and controls. As such conditions have been provided to be imposed.</p> <p>Environmental Health recommend approval subject to provided conditions being imposed.</p> <p>Recommendation</p> <p>APPROVAL - subject to conditions</p>
Environmental Health (Food Premises, Skin Pen.)	<p>No objection with conditions.</p> <p>General Comments</p> <p>Environmental Health have been requested to provide comment on proposed Alts and Adds DA for 14 South Steyne for an existing commercial building. A part of this food premise fit out will be assessed.</p> <p>Based on the provided SEE and plans the overall flow of the 2x kitchens and 2x bar areas seem sufficient. Hand wash basins will need to be provided to bar areas but finer detail can be provided in fit out plans. Food premise fit out and mechanical ventilation is to be conditioned to provide certification that kitchen fit out and mechanical ventilation comply with AS 1668 & AS 4674. Environmental Health recommend approval subject to conditions.</p> <p>Recommendation</p> <p>APPROVAL - subject to conditions</p>
Landscape Officer	<p>No objection with conditions.</p> <p>The development application is for alterations and additions to an existing commercial building listed as a local heritage item.</p> <p>Council's Landscape Referral section have assessed the application against the Manly Local Environment Plan, and against the following landscape controls of Manly Development Control (but not limited to):</p> <ul style="list-style-type: none"> • section 3: General Principles of Development, including but not limited to clauses 3.3.1 Landscape Design, and 3.3.2 Preservation of Trees and Bushland Vegetation, • section 4: Development Controls and Development Types, including but not limited to clauses 4.1.5 Open Space and Landscaping, and 4.4.5 Eathworks (Excavation and Filling) of particular reference to this application. <p>Additionally, the site frontage contains a street tree as part of the local heritage item i238 listing for street trees along Victoria Parade. Conditions of consent shall be imposed to protect this street tree and all street trees.</p> <p>Landscape Referral raise no objections to the proposal.</p>

Internal Referral Body	Comments
NECC (Coast and Catchments)	<p>No objection without conditions.</p> <p>The application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, State Environmental Planning Policy (Coastal Management) 2018. It has also been assessed against requirements of the Manly LEP 2013 and DCP 2013.</p> <p><i>Coastal Management Act 2016</i> The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p>State Environmental Planning Policy (Coastal Management) 2018 The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13, 14 and 15 of the CM SEPP apply for this DA.</p> <p>Comment:</p> <p>On internal assessment, the DA satisfies requirements under clauses 13, 14 and 15 of the CM SEPP. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p> <p>Manly LEP 2013 and Manly DCP</p> <p>Foreshores Scenic Protection Area Management The subject site is also shown to be as “Manly Foreshores Scenic Protection Area” on Council’s Foreshores Scenic Protection Area in Manly LEP 2013. As such, Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013 will apply to proposed development on the site.</p>

Internal Referral Body	Comments
	<p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by R & H Projects Pty. Ltd. dated March 2021, the DA satisfies requirements under Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013.</p> <p>As such, it is considered that the application does comply with the requirements of the Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013.</p>
NECC (Development Engineering)	<p>No objection with conditions.</p> <p>Development Engineering has no objection to the application as there is no impact to the existing on site stormwater management on the subjected site.</p> <p>However, the proposed lounge on the first floor will encroach the air space on the road reserve, which does not permit. Please refer the application to our Transport & Civil Infrastructure Asset team for assessment.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>No objection with conditions.</p> <p>The proposed development is for alterations and additions to commercial premises. There are no proposed extensions of floor areas below the flood planning level. Subject to conditions the proposal is compliant with Council's development controls.</p>
Road Reserve	<p>No objection without conditions.</p> <p>Proposal involves further encroachment of private habitable floorspace into the public airspace of the Council road reserve with enclosure of the balcony. Whilst minor, this is not supported.</p> <p>In principle, developments should be confined within their own boundaries and therefore Council should not approve any structure, other than an awning, that encroaches into the airspace above a road reserve.</p> <p>Amended comments as at 10 May 2021</p> <p>Further to discussions with the Planner the existing bay window arrangements where they encroach are acceptable however the amended plans removing the encroaching bay windows at the lounge area (First Floor - Issue C dated 03/03/2021) and indicating windows enclosing the "lounge" area (W16) will not encroach on the road reserve are acceptable.</p>

Internal Referral Body	Comments
Strategic and Place Planning (Heritage Officer)	<p>No objection with conditions.</p> <p>HERITAGE COMMENTS</p> <p>Discussion of reason for referral</p> <p>The proposal has been referred to Heritage as the subject property is a heritage item and is located in proximity to a number of other items:</p> <p><i>1225 - Residential/commercial buildings</i> - 7 and 14 South Steyne <i>12 - All stone kerbs</i> - On the South Steyne frontage <i>1238 - Street Trees</i> - Victoria Parade <i>1241 - Residential flat building</i> - 29 Victoria Parade <i>1242 - Residential flat building</i> - 31 Victoria Parade <i>1226 - House</i> - 15-16 South Steyne <i>1224 - Public Shelters</i> - South and North Steyne (one is located diagonally opposite the site) <i>1174 - Beach Reserve, Merret Park North Steyne and South Steyne</i> - Oceanside of North and South Steyne.</p> <p>Details of heritage items affected</p> <p>Due to the large number of heritage items, only information for the site and the immediately adjoining items is included. Details of these items as included within the Manly inventory is as follows:</p> <p>Residential/commercial buildings - 7 and 14 South Steyne <u>Statement of significance:</u> A good example of early 20th century architectural styles in this form of development; in textural interest provided to streetscape and in showing Art Nouveau and California Bungalow influence.</p> <p><u>Physical description:</u> Group of eight buildings of two to four floors, generally brick with render decoration. Provide a range of early twentieth century architectural styles from c. 1910-25, showing Art Nouveau and California Bungalow decoration and ornament in timber, shingle, brickwork and render.</p> <p>Stone Kerbs <u>Statement of significance:</u> Stone kerbs are heritage listed.</p> <p><u>Physical description:</u> Sandstone kerbing to streets relating to paving and kerbing of streets in the nineteenth century. Mostly located within Manly Village area and adjacent lower slopes of Eastern Hill and Fairlight.</p> <p>Street Trees - Victoria Parade <u>Statement of significance:</u> Historical line of HG Simth's intended Victoria Park. Aesthetic.</p>

Internal Referral Body	Comments		
	<u>Physical description:</u> Norfolk Island Pines on both sides of road planted in carriageway.		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	N/A	
	Consideration of Application		
	Currently the property operates as two separate restaurants occupying different levels of the heritage listed property. This proposal seeks consent for alterations and additions that includes but is not limited to		
	<ul style="list-style-type: none">• Converting from two separate restaurants to one restaurant• Internal reconfiguration• Replacement of existing awning with a new extended awning in a striped pattern• Replacement of rear flat metal roof with a half hipped tiled roof to match existing hipped and gable roof.• Aluminium screening with acoustic treatment to roof mechanical plant, rear stairway and bin area adjacent to Dungowan Lane• New bay window style pop out to the upper level of the Victoria Parade frontage, and matching window infill treatment to the lower level verandah• New timber windows and doors to match existing• Retention of external tile/brick detailing around doors and windows• New external unified paint and colour scheme• Signage areas		
	<i>Nearby Heritage Items</i>		
	As indicated above, there is a large number of heritage items in the immediate vicinity of this property, with two directly adjacent. The first listing is the stone kerbs which applies to the South Steyne frontage of this property, however there are no stone kerbs remaining here and there is no heritage impact. The second item is		

Internal Referral Body	Comments
	<p>the Norfolk Island Pines trees in Victoria Parade and one is located right outside the property. The proposed works will have no impact upon this item or its significance, but Heritage agrees with the conditions from Landscaping that they be protected during construction works. As to the other surrounding heritage items, the site is afforded visual and physical separation by the road carriageways and there is no impact to them from the proposal.</p> <p><i>14 South Steyne</i></p> <p>Overall there are a large number of changes proposed to the property, but they have generally been designed well to respect the significance of the item and allow for its ongoing use as a commercial operation. No objections are raised to the replacement of doors and windows on a like for like basis with timber frames. No objections are raised to the new awning or internal reconfiguration of the site. Internally it has been subject to much change and the most important intact element being the double side fireplace and surrounds is proposed to be retained as is. Further, no objections are raised to the window pop-outs to Victoria Parade or their detailing.</p> <p>There is no objections to the proposal for the roof . The half hipped and tiled roof with capping is considered to be a good response to the site that is sympathetic to the roof at the front of the property. It also provides an opportunity to improve the visual presentation to Victoria Parade by screening some of the plant and ventilation facilities. While the metal screen will just be noticeable from some places, it has been well designed with an appropriate colour scheme that will minimise its visual impact.</p> <p>The new screening to the service area adjoining Dungowan Lane is on balance acceptable. While it is quite tall, it will step back from the Victoria Parade frontage providing relief to this heritage elevation. It will also allow for amenity improvements through the screening of the bin area with a reduction in noise pollution. Further, the rear elevation of the site is considered to be less significant which allows more room for changes to occur.</p> <p>The proposed external colour scheme while not being the most traditional approach is also broadly acceptable. The only suggested amendment would be to paint the roughcast render in a different shade to highlight this feature.</p> <p>The proposed signage areas are also well designed with appropriate locations and sizing. Heritage's only concern would be the final design of these hand painted signs which is currently not known. However this can be determined later and Heritage would suggest a condition that they be subject to further approval when they are known.</p>

Internal Referral Body	Comments
	<p>Lastly, Heritage will also condition that a simple photographic archival recording of the property be undertaken generally to Heritage NSW guidelines to capture the building and provide a record in its current state before works begins.</p> <p><i>Conclusion</i></p> <p>Overall the proposal provide a good response to the heritage item and the need to resolve a number of amenity issues. It has retained important heritage features of the building and appropriately designed new works to complement them. The proposal has also been supported with a detailed heritage impact statement that has assessed the proposal against the item and its significance, as well as the provisions of the LEP and DCP. Heritage can broadly agree with the conclusions of the heritage impact statement.</p> <p>Therefore Heritage raises no objections to the proposal and recommends two conditions.</p> <p>Consider against the provisions of CL5.10 of MLEP.</p> <p>Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? Yes - A statement from Dr Anne Warr Heritage Consulting has been provided.</p> <p>Amended Comments 30 June 2021</p> <p>Amended plans were submitted by the applicant removing the proposed overhanging enclosed balcony to the upper level of the Victoria Parade frontage. The amended plans instead have this balcony infilled with glass and panels and flush with the existing boundary wall. Heritage has no objection to his amended design. Heritage also understands some concerns have been raised regarding the appearance of the rear metal screening to the laneway and its inconsistency with the rest of the building. Heritage supports the adopted approach to clearly delineate this as new works different from the character of the rest of the building and its proposed setback to Victoria Parade.</p> <p>Lastly, Heritage understands a condition will be applied requiring the signage to be dealt with via a separate application to Council. Heritage raises no objections to this approach and will remove its signage condition.</p> <p>Further Comments</p> <p>COMPLETED BY: Brendan Gavin, Principal Planner</p> <p>DATE: 3 May 2021 - Amended 30 June 2021</p>

Internal Referral Body	Comments

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 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 Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the commercial land use.

SEPP 64 - Advertising and Signage

Clauses 8 and 13 of SEPP 64 require Council to determine consistency with the objectives stipulated under Clause 3(1)(a) of the aforementioned SEPP and to assess the proposal against the assessment criteria of Schedule 1.

The objectives of the policy aim to ensure that the proposed signage is compatible with the desired amenity and visual character of the locality, provides effective communication and is of high quality having regards to both design and finishes.

In accordance with the provisions stipulated under Schedule 1 of SEPP 64, the following assessment is provided:

Matters for Consideration	Comment	Complies
1. Character of the area Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	<p>The proposed signage is consistent with the existing and anticipated future character of the Manly area along South Steyne.</p> <p>The proposed sign is the same design as the sign located at 8-13 South Steyne for Manly Wine Bar. It is considered that the proposed signage is compatible with the existing and desired future</p>	YES

	character along South Steyne.	
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	The proposed projecting wall sign fronting South Steyne is in keeping with the existing projecting wall sign located at the adjoining site to the south at Manly Wine. The overall design and size of the signage is consistent with other outdoor advertising in the area.	YES
2. Special areas Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	The subject site forms part of a heritage item, and is within the vicinity of other heritage items. The signage is designed to be visually subservient to the heritage item and will not detract from views to this item. Furthermore, the scale and design of the sign proposed is consistent with the nearby businesses. The subject site is not located within an environmentally sensitive, natural, open space or rural area. The proposed signage does not detract from the amenity or visual quality of nearby open space areas, waterways, or residential areas.	YES
3. Views and vistas Does the proposal obscure or compromise important views?	The proposed signage will not obscure or compromise important views.	YES
Does the proposal dominate the skyline and reduce the quality of vistas?	The proposed signage does not project above the existing building, so does not dominate the skyline or reduce the quality of vistas.	YES
Does the proposal respect the viewing rights of other advertisers?	The proposed signage will not impact on the viewing rights of other advertisers.	YES
4. Streetscape, setting or landscape Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	The scale, proportion and form of the proposed signage is consistent with other existing comparable uses within the streetscape, and within the zoning of the site. As such, the proposed signage is appropriate in the streetscape and setting of the site.	YES
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	The proposed development and associated signage have been designed in a clear and modern manner, and therefore create visual interest within the streetscape.	YES
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	The proposed signage is located at a key point on the proposed building and, therefore, does not create visual clutter.	YES
Does the proposal screen unsightliness?	The proposed signage does not give rise to unsightliness.	YES
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	The subject signage does not protrude above the height of the existing building.	YES
5. Site and building Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or	The proposed signage is of compatible scale and proportion to the proposed building and the existing buildings in the street.	YES

both, on which the proposed signage is to be located?		
Does the proposal respect important features of the site or building, or both?	The proposed signage does not detract from important features of the site or proposed building.	YES
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	The proposed signage is located logically to achieve an adequate level of exposure, while remaining visually compatible with the existing building and the streetscape.	YES
6. Associated devices and logos with advertisements and advertising structures Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	The proposed signage will not require safety devices, platforms or lighting devices, as the illuminated signage is lit internally.	YES
7. Illumination Would illumination result in unacceptable glare, affect safety for pedestrians, vehicles or aircraft, detract from the amenity of any residence or other form of accommodation?	Illumination of the proposed signage will not result in unreasonable or unacceptable glare. Illumination of the proposed signage will not impact upon safety for pedestrians, vehicles or aircraft. Illumination of the proposed signage will not impact upon nearby residences or other accommodation. A condition is to be imposed to ensure that the level of illumination and/or lighting intensity used to illuminate the signage is to be minimised and the design is to be such to ensure that excessive light spill or nuisance is not caused to any nearby premises.	YES
Can the intensity of the illumination be adjusted, if necessary?	A condition of consent will require the illumination to be adjustable.	YES
Is the illumination subject to a curfew?	The proposed signage will be illuminated for the hours of operation of the proposal. This will be conditioned on any consent.	YES
8. Safety Would the proposal reduce the safety for any public road, pedestrians or bicyclists?	The proposed signage is not considered to impact on the safety of pedestrians, bicyclists or anyone travelling on a public road.	YES
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	The proposed signage does not obscure any sightlines, and will, therefore, not reduce pedestrian safety.	YES

Accordingly, the proposed signage is considered to be of a scale and design suitable for the locality. The proposal is therefore deemed to be consistent with the provisions of the SEPP and its underlying objectives.

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid. A response was received within the 21 day statutory period stating no decision was required for the alterations. Therefore, no objections are raised and no conditions are recommended.

SEPP (Coastal Management) 2018

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

13 Development on land within the coastal environment area

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

Comment:

The development is contained wholly within the subject site and is not considered likely to negatively impact upon the matters raised in subclause (1).

- (2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
- (a) *the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*

- (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

The development is located within the boundaries of the subject site with the proposed works reducing any impact to the surrounding land. The proposed development is not considered to negatively impact upon the matters raised in subclause (1).

14 Development on land within the coastal use area

(1)

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

Comment:

The proposed development will not impact on existing public access along the foreshore and there will be no additional amenity impacts towards adjoining properties. The site is identified as a heritage item, however the proposed alterations and additions are considered sympathetic to the subject building's significance and will not impact on the visual amenity when viewed from the waterway. The development is considered to be in keeping with the visual character of South Steyne and Victoria Avenue along the foreshore of Manly. The development is therefore not likely to cause an adverse impact on the matters referred to above.

15 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:

The proposed development will not impact on existing public access along the foreshore and there will be no additional amenity impacts towards adjoining properties. The site will not impact on the visual amenity when viewed from the waterway. The development is considered to be in keeping with the

visual character of South Steyne and the broader Locality of Manly The development is therefore not likely to cause an adverse impact on the matters referred to above.

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

Manly Local Environmental Plan 2013

Is the development permissible?	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

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	13.0m	9.4m	N/A	Yes
Floor Space Ratio	FSR: 1.5:1 (263.26sqm)	FSR: 1.52:1 (267.4sqm)	1.02%	No

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
5.8 Conversion of fire alarms	Yes
5.10 Heritage conservation	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes
6.21 Noise impacts—licensed premises	Yes
Schedule 5 Environmental heritage	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio

Requirement:	263.26sqm
Proposed:	267.4sqm
Percentage variation to requirement:	1.02%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.4 - Floor space ratio development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

Clause 4.4 - Floor space ratio development standard is not expressly excluded from the operation of this clause.

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

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

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

(a) the consent authority is satisfied that:

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Secretary has been obtained.*

Clause 4.6 (4)(a)(i) (Justification) assessment:

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters

required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

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

Comment:

The Applicant's written request (attached to this report as an Appendix) has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

Comment:

In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The applicants written request argues, in part:

- *"The proposed enclosure of the balconies and window boxes will reduce noise levels from the restaurant (see acoustic report in the accompanying SEE);*
- *The increase in floor area has no impact on the visual impact of the building;*
- *The increase in floor area will not reduce environmental amenity of neighbouring properties through loss of views given the overall height of the building and its setbacks are unchanged;*
and
- *The increase in floor space as proposed will not change the character of the locality."*

A detailed assessment of the proposal indicates that the proposed works result in a minor non-compliance of 4.14m² to the gross floor area of the subject building. This equates to a variation of 1.02% to the FSR control. The proposed works to convert two restaurants into one are predominantly internal, with the enclosure of an existing ground floor verandah and first floor balcony located along the north western elevation (Victoria Avenue). The additional floor area is also resultant from the removal of a second staircase and the removal of existing storerooms on both the ground and first floor level, which were previously excluded from FSR calculations. This increase in floor area will not alter the existing building envelope and the enclosure of the first floor balcony and ground floor verandah will assist in reducing the noise levels generated towards the public domain. The external staircase and bin room proposed at the rear of the building along Dungowan Lane is not included in the overall gross floor area calculation. The internal works to both the ground and first floor of the building result in a more functional restaurant with the area used for restaurant patrons located in the north-eastern section of the building reducing the level of noise generated towards the rear where residential properties are located.

The subject site is identified as a Heritage Item (I225 - Residential /commercial buildings - 7 and 14 South Steyne) with the proposed works supported by Council's Heritage Section. The existing building does not currently provide a dedicated bin storage area for the the two restaurants on the site, with existing bins being located at the rear of the site and visible from the public domain. The dedicated bin room and service stairs will create an area which will improve the appearance of the building by removing the unsightliness of the bins and reduce odour and noise associated with disposing of waste.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

Clause 4.6 (4)(a)(ii) (Public Interest) assessment:

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Floor Space Ratio development standard and the objectives of the R3 Medium Density Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.4 – 'Floor space ratio' of the MLEP 2013 are:

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

a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,

Comment:

The proposed works to the existing building do not substantially alter the existing bulk and scale of the development with the proposed alterations and additions enclosing an existing first floor balcony and verandah located along the north western facade. Revised plans were received by Council on 4 June 2021 which amended the design of the enclosed balcony (W16) to be flush with the existing facade. These amendments are supported by Council's Heritage Officer and Council's Road Asset Officer. The proposed access stairs, bin room and fencing to the rear of the building fronting both Victoria Avenue and Dungowan Lane will remain predominantly open with the enclosed bin room not visible from the public domain. The proposed screen will be extended to the rear boundary and north eastern boundary and 1.4m from the north western boundary which will provide some articulation along the north western facade.

The 4.14m² non-compliance is a direct result of minor internal works which do not dramatically alter the existing bulk and appearance of the subject building. The proposed staircase and enclosed bin room are not included in the gross floor area calculation and therefore, the 1.02% variation to the floor space ratio control is considered reasonable in this instance.

b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,

Comment:

The proposed alterations and additions to the subject building will not dramatically increase the bulk and scale of the building with the works resulting in the increased gross floor area being confined within the building envelope. Given the heritage significance of the building, the proposal was referred to Council's Heritage Officer who raised no concerns stating that on balance the addition is acceptable as it will step in from the Victoria Avenue frontage providing relief to this heritage elevation. The addition will assist in improving the overall amenity of the surrounds by screening the bin area which will reduce odours and noise pollution when disposing of waste. The rear of the building is also considered to be of less significance from a heritage view point therefore allowing additional changes which will delineate this as new works different from the existing character of the building. Heritage supports this adopted approach from a design perspective.

c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,

Comment:

The proposed development to the existing building will not dramatically alter the heritage character of the building and is supported by Council's Heritage Officer. Dungowan Lane is primarily used as a service lane for the subject site and the Sebel Hotel. The works to the rear will assist in improving the appearance of the building by providing an enclosed bin area which will reduce odours with all rubbish and bottles contained within the site and not visible from the public domain. The proposed screen will be setback 1.4m from the north western boundary fronting Victoria Avenue which will provide some relief to the building by reducing the bulk of the 3.6m high screen. The screen will extend 2.4m from the rear wall towards Dungowan Lane and will be located significantly lower than the maximum height of the building therefore ensuring a development which does not dominate the bulk and scale of the existing building.

d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,

Comment:

The proposed works to the existing building are contained primarily within the existing building envelope and therefore is not considered to have any adverse environmental impacts on the use or enjoyment of adjoining land and the public domain. The building will continue to be used as a restaurant.

e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

Comment:

The proposed works to the existing building will retain the commercial use as a restaurant which will ensure any future business within the building will continue to contribute to the economic growth and employment opportunities within the Manly Local Centre.

Zone objectives

The underlying objectives of the R3 Medium Density Residential zone are:

Conclusion: The underlying objectives of the R3 Medium Density Residential zone

- *To provide for the housing needs of the community within a medium density residential environment.*

Comment:

The proposed works to the existing commercial building will not impact on the existing level of housing provided within the community.

- *To provide a variety of housing types within a medium density residential environment.*

Comment:

The proposed works maintain the existing use of the building as a restaurant and will not impact on the supply of housing types within the medium density residential environment.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comment:

The development proposal will maintain the existing commercial use as a restaurant and therefore will continue to service the day to day needs of residents.

- *To encourage the revitalisation of residential areas by rehabilitation and suitable redevelopment.*

Comment:

The proposed development will maintain the existing use of the restaurant and will improve the appearance and function of the building by providing an enclosed bin room at the rear.

- *To encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination.*

Comment:

The on-going use of the building will enhance the role of Manly as an international tourist destination.

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R3 Medium Density Residential zone.

Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

In accordance with Local Planning Panels Direction issued by the Deputy Secretary dated 30 June 2020, the Northern Beaches Local Planning Panel may assume the Secretary's concurrence in relation to the proposed development.

Manly Development Control Plan

Built Form Controls

There are no development controls under the Manly Development Control Plan (DCP) to consider as part of this assessment.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.2 Heritage Considerations	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	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
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.3 Signage	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

Concern has been raised in relation to loss of privacy and overlooking towards bedrooms, kitchen/living areas and balconies to the west of the subject site at 46 Victoria Avenue. 46 Victoria Avenue is a recently constructed residential flat building consisting of eleven (11) apartments and is five (5) stories high. The subject site and 46 Victoria Avenue are separated by Dungowan Lane.

Visual Privacy

Concern is raised in relation to the location and use of the proposed external staircase located along the south western elevation of the subject site fronting Dungowan Lane. The staircase will be utilised by staff only for the purposes of transporting waste from the ground floor and first floor to the four (4) 660L bins located within the proposed bin room underneath the new staircase. Access to the bin room is provided at ground level via a new door along the south western elevation and from a new door at the first floor from the kitchen. A roller door is proposed along the north western elevation of the bin room with an external gate being located along the north western elevation (Victoria Avenue) within the proposed screen/fence. The proposed gate is to provide access for staff entering and existing the building and access for the commercial waste contractor.

Currently the subject site utilises the rear of the site for the location of rubbish bins used in association with the use of the site as two (2) restaurants. This area is not enclosed at present.

The plans submitted with the development application indicate that the proposed staircase at the rear of the building will remain open with a 1.8m high metal screen located along the south western elevation of the proposed landing at first floor and the stairs for a length of 2.5m. The plans indicate that a person standing on the landing (Step 15) as indicated on Drawing No, DA31 (2-Southwest facade Dungowan Lane and 3 - Southwest facade without fence) will be visible. At the second landing of the proposed staircase (Step 11), the proposed screen along Dungowan Lane will measure 1.7m in height.

Whilst it is evident that a person utilising the staircase from stair 15 to stair 11 will be visible, the staircase is to be used exclusively for staff access and for the disposal of waste from level 1 to the bin room located underneath the staircase. Any views from the staircase towards the apartments at 46 Victoria Parade will be limited to the ground floor apartment and the first floor apartment along the north eastern facade. Whilst a level of overlooking towards from the proposed staircase towards the ground floor apartment and apartment located at level 1 is unavoidable given the proposed design, the access stairs are to be used intermittently and are not considered to be a place where staff will congregate and therefore create a level of noise that is out of keeping with the noise expected to be generated from the use of a restaurant. The north eastern facade of 46 Victoria Parade is also considered vulnerable given it's location along Dungowan Lane and adjacent to the rear of existing commercial premises and the Sebel Hotel.

The staircase will also be used to provide access to the services access fixed ladder provide access to the mechanical plant area located on the south western portion of the roof via the fixed ladder along the The use of this ladder is not anticipated to be used regularly with it's purpose to provide access for maintenance of the mechanical plant.

Concern is raised in regard to the new window located at ground floor along the south western elevation (Dungowan Lane) which will service the juice/sandwich preparation area. Currently in this location is an arch shaped alcove measuring 1.2m in width providing internal and external access to an existing storage area. The application proposes to internalise this area and proposes a new window (W10) to provide natural light to this area. To ensure this window cannot be used as server window and to reduce the level of noise and improve privacy for the occupants of 46 Victoria Avenue, a condition is imposed for this window to be fixed with obscure glazing.

Acoustic Privacy

Concern was raised relating to the potential noise generated from staff utilising the external staircase and noise generated from the new mechanical ventilation system to be installed on the roof of the subject building. Pre-lodgement advice was provided to the applicant on 30 November 2020 (PLM2020/0286) requesting the fixed privacy screen for the external staircase be acoustically treated to mitigate noise transfer. Acoustic treatment to the kitchen door at first floor servicing the kitchen was also recommended. The development application states that the stairs will be used for staff access and to transport rubbish and bottles to the bin room located at ground floor. The objections received during the assessment of the application raised concern regarding the potential noise generated from the use of the staircase relating to the transfer of rubbish and disposal of bottles and from staff loitering on the external stairs during staff breaks.

An Operational Management Plan and an Acoustic Report (by Koikas Acoustics Pty Ltd dated 10 March 2021) was submitted with the subject application and was referred to Council's Environmental Health (Industrial Use) Section for comment. No objections were raised from the Environmental Health Officer who reviewed both reports and recommended appropriate conditions.

Whilst the acoustic treatment of the screen to the external staircase and the measures imposed to ensure the mechanical ventilation system are considered reasonable, additional conditions relating to the following are to be imposed:

- No live or amplified music (other than background music) is to be provided;
- Waste and recyclable material generated by the premises must not be collected between the hours of 8.00pm to 6.30am the following day (Monday to Friday) and 8.00pm to 8.00am the following day (Saturday, Sunday and Public Holidays).
- No service and delivery vehicles are to serve the premises between the hours of 7.00pm to 6.30am the following day (Monday to Friday) and 7.00pm to 8.00am the following day (Saturday, Sunday and Public Holidays).
- All staff are not permitted to enter and exit the premises via the external staircase after 9.00pm and before 7.00am (Monday to Sunday including Public Holidays).
- The use of the stairs to transfer bottles to the bin room is to be limited to the hours of 7.00am - 7.00pm (Monday to Friday) and 8.00am - 7.00pm (Saturdays, Sundays and Public Holidays).
- The use of the stairs to transfer waste to the bin room is to be limited to the hours of 7.00am - 9.00pm (Monday to Sundays and Public Holidays).

These conditions will ensure the level of noise generated from the restaurant is in keeping with the surrounding uses and adequately protect the amenity of the neighbouring properties.

4.4.3 Signage

The application proposes 4 pieces of signage consisting of the following:

- 1 x Projecting Horizontal Wall Sign - (Fronting South Steyne)
- 2 x Wall sign - hand painted- (Fronting Victoria Parade)
- 1 x Wall sign - hand painted (Fronting Dungowan Lane)

The projecting wall sign fronting South Steyne is compliant with the signage controls outlined in Clause 4.4.3 and is supported by Council's Heritage Officer.

The three (3) hand painted wall signs are supported in theory given their size and location on the Victoria Avenue and Dungowan Lane frontage. However, as the design of these signs is not proposed as part of the current application, a condition is imposed for any hand painted signage to be subject to a separate development application. The proposed signage spotlight is not approved as part of the subject development application.

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.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2019.

A monetary contribution of \$9,790 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$978,977.

CONCLUSION

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, 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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

- a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
- b) There are sufficient environmental planning grounds to justify the contravention.

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

The application seeks consent for alterations and additions to an existing commercial building.

The key planning issues considered within this assessment are the proposed variations to the Floor Space Ratio development standard and amenity issues towards adjoining residential properties generated from the proposed external staircase, mechanical ventilation system and bin room proposed at the rear of the site fronting Dungowan Lane.

Notwithstanding the proposed floor space ratio variation of 1.02%, the development is not considered to result in any unreasonable impacts to adjoining properties or the public domain. Conditions are recommended to ensure the use of the external service area at the rear of the site is managed to reduce any amenity impacts towards the adjoining residential properties.

The external alterations and additions to the building are not considered to impact on the heritage significance of the area.

Thirteen (13) submissions were received in relation to the proposed development. The issues raised in the submissions have been addressed with conditions and it is considered that the proposal generally satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

Assessment of the application against the Manly LEP and DCP finds that the development is suitable in the context of the site, and is recommended for approval.

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.4 Floor Space Ratio development standard pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2021/0318 for Alterations and additions to commercial development on land at Lot 501 DP 736679, 14 South Steyne, MANLY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Site Analysis/Context Plan - DA01 - Rev B	2 March 2021	Building Studio
Proposed Ground Floor Plan - DA10 - Rev B	2 March 2021	Building Studio
Proposed First Floor Plan - DA11 - Rev C	3 June 2021	Building Studio
Proposed Roof Plan - DA12 - Rev B	2 March 2021	Building Studio
Sections - DA20 - Rev C	3 June 2021	Building Studio
Proposed Elevation - DA30 - Rev C	3 June 2021	Building Studio
Proposed Elevations - DA31 - Rev C	3 June 2021	Building Studio
Proposed Materials, Colours & Finishes - DA50 - Rev C	3 June 2021	Building Studio

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Acoustical Report	10 March 2021	Koikas Acoustics Pty Ltd

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

c) The development is to be undertaken generally in accordance with the following:

Waste Management Plan		

Drawing No/Title.	Dated	Prepared By
Waste Management Plan for 14 South Steyne, Manly NSW	2 March 2021	Loka Consulting Engineers Pty Ltd

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

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

2. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

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

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and

- (ii) where necessary, underpin the adjoining premises to prevent any such damage.
- (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
- (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.

3. **General Requirements**

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative

change. The applicable fee at the time of payment of the Long Service Levy will apply.

- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

- (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

4. **Policy Controls**

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$9,789.77 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$978,977.00.

The monetary contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate whichever occurs first, or prior to the issue of the Subdivision Certificate where no Construction Certificate is required. If the monetary contribution (total or in part) remains unpaid after the financial quarter that the development consent is issued, the amount unpaid (whether it be the full cash contribution or part thereof) will be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index. If this situation applies, the cash contribution payable for this development will be the total unpaid monetary contribution as adjusted.

The proponent shall provide to the Certifying Authority written evidence (receipt/s) from Council that the total monetary contribution has been paid.

The Northern Beaches Section 7.12 Contributions Plan 2019 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

This fee must be paid prior to the issue of the Construction Certificate. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.

5. **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 Certifying Authority 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.

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

6. Heritage Listed Trees

The site frontage contains / is adjacent to Heritage Listed trees as identified in the Local Environmental Plan. Heritage Listed Trees are to be protected from damage during demolition and construction.

a) The following Heritage Listed Trees are located within the vicinity of the approved works:

- i) Norfolk Island Pine fronting the site along Victoria Parade
- ii) multiple Norfolk Island Pines along Victoria Parade

All Heritage Listed trees along Victoria Parade are to be protected from damage from associated works as part of the development, including deliveries, construction activities and services trenching.

b) A Tree Protection Plan is to be prepared by an Arborist with minimum AQF Level 5 in arboriculture incorporating the following:

- i) annotated photographs of the tree(s) trunk, branches and any exposed roots prior to commencement of any works,
- ii) tree protection measures in accordance with AS4970-Protection of Trees on Development Sites.

As a minimum tree protection fencing for street tree(s) fronting the development site shall consist of standard 2.4m panel length to four sides, unless otherwise directed by an Arborist with minimum AQF Level 5 in arboriculture. The fencing shall remain in alignment for the duration of demolition and construction works and no encroachment within the fencing zone is permitted. All fencing shall be located to allow for unrestricted and safe pedestrian access upon the road verge.

Tree protection fencing shall be in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings, and in accordance with Section 4 of Australian Standard 4970-2009 Protection of Trees on Development Sites.

Reason: Protection of significant community assets.

7. Flooding

In order to protect property and occupants from flood risk the following is required:

Flood Effects Caused by Development – A2

There is to be no filling of the land or any other reduction of the available flood storage which results in a net loss of storage below the 1% AEP flood level of 4.29m AHD.

Building Components and Structural Soundness – B1

All new development below the Flood Planning Level of 4.59m AHD shall be designed and constructed as flood compatible buildings in accordance with Reducing Vulnerability of Buildings to Flood Damage: Guidance on Building in Flood Prone Areas, Hawkesbury-Nepean Floodplain Management Steering Committee (2006).

Building Components and Structural Soundness – B3

All new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed and/or located above the Flood Planning Level. All existing electrical equipment and power points located below the Flood Planning Level must have residual current devices installed to cut electricity supply during flood events.

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

8. Photographic Heritage Record

A simple photographic heritage record of the site is to be made of all buildings and structures, as a record of the site prior to works. The recording should be generally in accordance with *Photographic Recording of Heritage Items Using Film or Digital Capture* (Heritage NSW, 2006). This record must be submitted to and approved by Council's Heritage Officer prior to the commencement of any demolition or works on-site.

Details demonstrating compliance with this condition must also be submitted to the Principal Certifying Authority.

This photographic record should be made using digital technology and should include:

- Location of property, date of survey and author of survey;
- A site plan at a scale of 1:200 showing all structures and major landscape elements;
- Existing plans of any buildings (floor plans and elevations);
- Photographs of all elevations, interiors and key features (including gardens, fences, architectural details such as windows, joinery etc.) as well as a number of contextual shots depicting the sites surrounding environment.

Note: All images should be cross-referenced to a catalogue sheet.

Reason: To provide an historical photographic record of the site, including any buildings and landscape elements, prior to any works.

9. Amendments to the approved plans

The following amendments are to be made to the approved plans:

- W10 located at ground floor located on the elevation is to be fixed with obscure glazing,
- The two signage spotlights located on the north western elevation are to be deleted, and
- The three hand-painted signs are to be deleted (to form part of a separate application to Council).

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

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

10. **Building Code of Australia Fire Safety Requirements**

The Building Code of Australia fire safety works and recommendations as contained in the NCC Assessment Report prepared by Credwell, dated 23 /2/2021, Report Ref No. C20441-r1 are to be considered as part of the assessment of the Construction Certificate. Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate provision is made for Health, Amenity, access and Fire safety for building occupant health and safety.

11. **Access for People with Disabilities**

Access and facilities to and within the building are to be provided for Persons with a Disability. In particular any front entry ramp and the front entrance doorway are to comply with the Building Code of Australia and AS 1428.1. Details are to be provided to the Certifying Authority prior to the issue of the Construction Certificate and be implemented prior to occupation of the building.

Reason: To ensure adequate provision is made for access to and within the building for Persons with a disability.

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', including bunding of the bin storage room and must be submitted to and approved by the Certifying Authority. 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 premise complies with the design construction and fit-out requirements.

13. **Compliance with Standards**

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

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

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

14. **Road Reserve**

The applicant shall ensure the public footways and roadways adjacent to the site are maintained in a safe condition at all times during the course of the work.

Reason: Public safety.

15. **Property Boundary Levels**

The Applicant is to maintain the property boundary levels. No approval is granted for any change to existing property alignment levels to accommodate the development.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To maintain the existing profile of the nature strip/road reserve.

16. **Traffic Control During Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety.

17. **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 Certifying Authority.

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

**CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE
OCCUPATION CERTIFICATE**

18. **Condition of Retained Vegetation**

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Certifying Authority, assessing the health and impact on all existing trees required to be retained, including the following information:

- i) compliance to any Arborist recommendations for tree protection generally and during excavation works,
- ii) extent of damage sustained by vegetation as a result of the construction works,
- iii) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree protection.

19. **Certification of Services (B3)**

Certification that new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections are located above the FPL and waterproofing of electrical equipment and installation of residual current devices below the Flood Planning Level (B3)

A suitably qualified electrical engineer or contractor is to certify that all new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections

are located above the Flood Planning Level and any existing electrical devices, wiring and the like located below the FPL are protected from water egress or have residual current devices installed to cut electricity supply during flood events.

Details demonstrating compliance are to be submitted to the Certifying Authority for approval.

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

20. **Registration of Food Business**

The food business must be registered with the Appropriate Regulatory Authority, prior to Occupation Certificate being issued.

Reason: Food premises are required to be registered with the Appropriate Regulatory Authority.

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

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

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

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

22. **Mechanical Ventilation certification**

Prior to the issuing of any interim / final 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 Certifying Authority.

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

23. **Acoustic Assessment Recommendations**

Prior to the issuing of any interim / final occupation certificate, details demonstrating compliance with the mechanical plant recommendations & building use recommendations made by Koikas Acoustics referenced as 4609R20210226pd14SouthsteyneManly_DA and dated 10 March 2021 are to be submitted to the satisfaction of the Principal Certifying Authority.

Reason: To protect surrounding residence and occupants from any noise generated by the operation of the development.

24. **Garbage and Recycling Facilities**

All internal walls of the storage area shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.

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

Reason: To prevent pollution of the environment and to protect the amenity of the area.
(DACPLF03)

25. **Fire Safety Matters**

At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and the NSW Fire Brigade.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Interim / Final Occupation Certificate.

Each year the Owners must send to the Council and the NSW Fire Brigade an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement under Part 9 Division 4 & 5 of the Environmental Planning and Assessment Regulation 2000.

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

26. **Compliance with operational management plan**

The operational management plan and its associated hours of operation are to be complied with at all times.

Reason: To protect surrounding residence, occupants and the environment from noise generated by the operation of the development.

27. **Hours of Operation**

The hours of operation are to be restricted to:

- Monday to Friday – 6.30am - 10.00pm
- Saturday – 6.30am - 10.00pm
- Sunday and Public Holidays – 6.30am - 10.00pm

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

Reason: Information to ensure that amenity of the surrounding locality is maintained.

28. **Hours of Illumination**

Illumination of signage at the subject premises shall cease between the hours of 12.00 midnight and 6.00 am daily.

Signs must not flash, move or be constructed of neon materials.

Reason: To ensure residential premises are not affected by inappropriate or excessive illumination. (DACPLG11)

29. **Illumination Intensity and design**

The level of illumination and/or lighting intensity used to illuminate the signage is to be minimised and the design is to be such to ensure that excessive light spill or nuisance is not

caused to any nearby premises.

Reason: To ensure appropriate forms of signage that are consistent with Council's controls and those that are desired for the locality, and do not interfere with amenity of nearby properties. (DACPLG12)

30. **Noise from waste collection and deliveries**

Deliveries and waste collection services (including trade waste) must only occur during the following hours:

- Weekdays - 6.30am - 7.00pm
- Weekends and Public Holidays - 8.00am - 7.00pm

Reason: To minimise disruption to neighbouring properties

31. **Disposal of Bottles**

The disposal of bottles within the premises to the dedicated bin room must only occur between the following hours:

- Weekdays - 7.00am - 7.00pm
- Weekends and Public Holidays - 8.00am - 7.00pm.

Reason: To minimise disruption to neighbouring properties.

32. **Disposal of Rubbish (excludes bottles)**

The disposal of rubbish (excludes bottles) within the premises to the dedicated bin room must only occur between the following hours:

- Weekdays - 7.00am - 9.00pm
- Weekends and Public Holidays - 7.00am - 9.00pm.

Reason: To minimise disruption to neighbouring properties.

33. **Use of external staircase**

Staff are not to enter or exit the building via the external service staircase before 7.00am and after 9.00pm Monday to Sunday and including Public Holidays.

Reason: To minimise disruption to neighbouring properties.

34. **Consent not granted for hand painted wall signs**

Consent is not granted for the three (3) hand painted wall signs proposed as part of the subject application. Any future signage is subject to a separate development application.

Reason: To ensure a design which is in keeping with the character of the heritage item.

35. **Waste collection and storage**

Waste collection contractors must retrieve waste bins from the bin room and replace them in the bin room. Waste bins must not be presented or left in the road reserve for emptying.

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