



STATEMENT OF ENVIRONMENTAL EFFECTS

**Proposed Hours of
Operation to Tenancy 2**

**14/22 Central Avenue,
Manly NSW 2095 – Lot 172
SP13245**

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This report has been prepared to support a Development Application under the *Environmental Planning and Assessment Act 1979*.

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Report prepared for:

Viva Leisure

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Table of Contents

1. Introduction and Background Information	4
1.1 Introduction	4
1.2 Background Information	4
2. Site Profile	5
2.1 Property Description	5
2.2 Site and Locality Description	5
3. Proposal	8
4. Statutory Planning Controls	10
4.1 Environmental Planning and Assessment Act 1979 (as amended)	10
4.2 State Environmental Planning Policies	10
4.3 Manly Local Environmental Plan 2013	13
4.4 Manly Development Control Plan 2013	28
5. Matters for Consideration Pursuant to Section 4.15 of the Environmental Planning & Assessment Act 1979 (as amended)	43
6. Summary and Conclusion	46

1. Introduction and Background Information

1.1 Introduction

This report has been prepared as supporting documentation for a Development Application for proposed hours of operation for tenancy 2 at 14/22 Central Avenue, Manly, being Lot 172 in Strata Plan 13245.

This report has been prepared following instructions from the client, Viva Leisure. In preparing this application consideration has been given to the following:

- *Environmental Planning and Assessment Act, 1979* (as amended) (EP&A Act);
- Environmental Planning and Assessment Regulation 2021;
- Relevant State Environmental Planning Policies;
- Manly Local Environmental Plan 2013 (MLEP 2013);
- Manly Development Control Plan (MDCP);
- Architectural Plans prepared by Viva Leisure Group;
- Operational Noise Emission Assessment prepared by Acoustic Dynamics.

This Statement of Environmental Effects describes the proposed development having particular regard to the provisions of Section 4.15 of the EP&A Act 1979 and examines any potential environmental impacts with regard to the relevant sections of the Act, State policies and requirements of Northern Beaches Council's MDCP.

The conclusions of the Statement of Environmental Effects are that the proposed development, being hours of operation to an approved recreation facility (indoor) is permissible with development consent and is consistent with the relevant statutory planning instruments including the Manly Local Environmental Plan 2013 and planning policies of the Manly Development Control Plan 2013.

Accordingly, the Development Application succeeds on its merits and should be approved by Council as submitted.

1.2 Background Information

DA2023/0597 was approved 19 July 2023 for alterations and additions to existing mixed-use development in particular the splitting of Lot 172 into three tenancies.

Mod2023/0698 was approved 19 March 2024 which included a reduction to two tenancies only each as a recreation facility (indoor) with tenancy 2 the subject of this application. The application included proposed hours of operation for tenancy 2 being 24/7. It is noted last minute Council would not accept the proposed hours of operation as a Section 4.55 (2) application. The applicant agreed to allow the use and fit out to be approved, with a subsequent development application to be lodged.

It is noted that this application should just be a formality noting that Councils environmental health officer accepted the Noise Impact Assessment lodged with the Section 4.55 application.

The comments from Councils environmental health officer under Mod2023/0698 are provided on the following page:

This application is seeking consent for modifications to DA2023/0597 for alterations and additions to an existing mixed-use development at 14/22 Central Avenue, Manly. This proposed modification includes:

Modification from three to two tenancies only

Use of tenancy 2 (previously tenancies 2 and 3) as a recreation facility (indoor) for plus fitness. No classes are proposed inside plus fitness.

An acoustic assessment has been provided which outlines recommended noise mitigation measures which will be conditioned.

In addition, there are 2 levels of carparking above the Plus Fitness space therefore reducing a noise impact on residential occupants.

Environmental Health recommends approval subject to conditions.

The proposal is therefore supported.

2. Site Profile

2.1 Property Description

The subject allotment is described as 22 Central Avenue, Manly, legally known as Strata Plan 7114. The ground floor lot is known as 14/22 Central Avenue, Manly, being Lot 172 SP13245. The site is zoned E1 Local Centre under the Manly Local Environmental Plan 2013.

The site is located on the Manly Foreshore Scenic Protection Area Map. The site is not identified as a heritage item nor is it located within a heritage conservation area.

2.2 Site and Locality Description

The site is located on the western side of Central Avenue to the south of the intersection with Raglan Street. The site has a total area of 2782sqm.

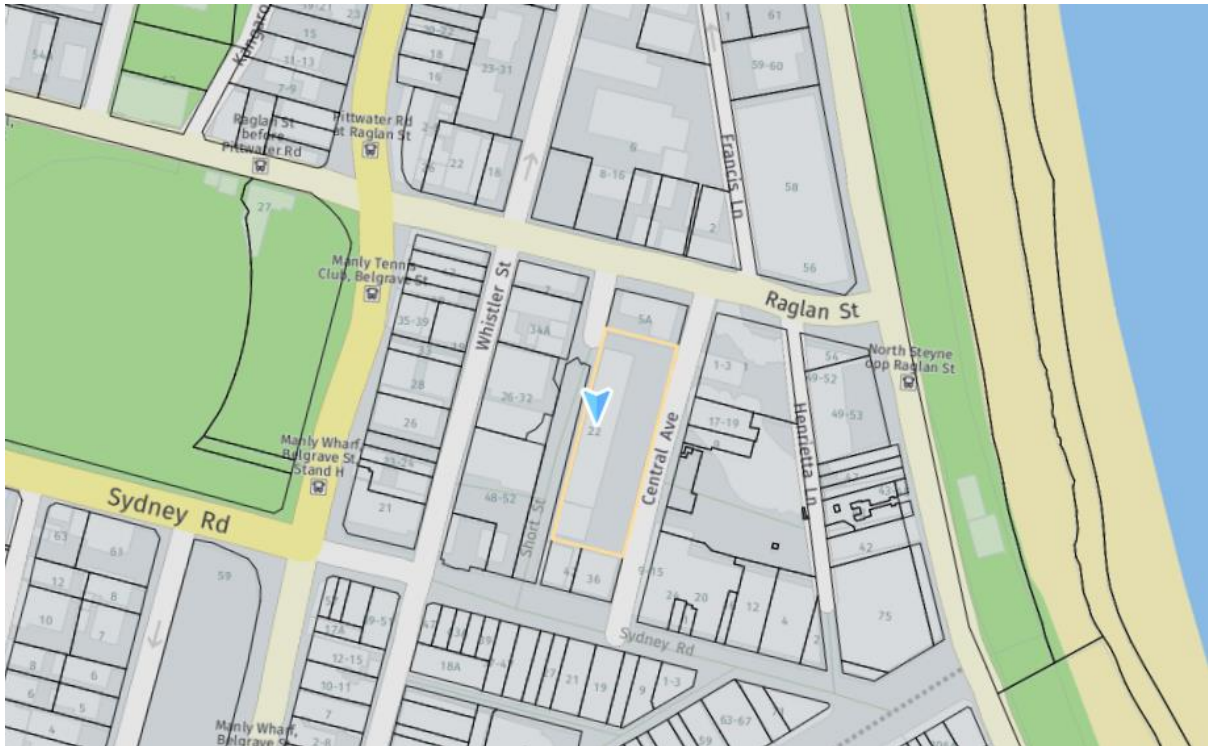
The site is currently occupied by a multi storey concrete building with a concrete roof. The site has various vehicular access points off both Central Avenue and Short Street. The building has multiple land uses including commercial ground floor, Council car park and car parking for lot owners, offices premises and then residential apartments.

The locality maps below show the location and area of the site:

Locality Maps



Source: Nearmaps 2023



Source: Nearmaps 2023

3. Proposal

The proposed application relates to proposed hours of operation for tenancy 2 - plus fitness:

Hours of Operation

Monday to Sunday – 24 hours a day – 7 days a week - 24/7

Operational Management Plan

It is noted that the operational management plan submitted and approved under Mod2023/0698 related to hours of operation 24/7, therefore a supplementary operational management plan is not required.

4. Statutory Planning Controls

The proposal has been assessed in accordance with the following instruments and controls:

- *Environmental Planning and Assessment Act 1979*, and Environmental Planning and Assessment Regulation 2021;
- State Environmental Planning Policies;
- Manly Local Environmental Plan 2013; and
- Manly Development Control Plan 2013.

4.1 *Environmental Planning and Assessment Act 1979* (EP&A Act 1979) and Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)

The EP&A Act 1979 governs all environmental planning instruments within New South Wales. The proposal has been reviewed pursuant to the matters for consideration within Section 4.15 of the EP&A Act 1979.

The proposal is not Designated Development under Section 4.10 of the EP&A Act 1979 or Schedule 3 of the EPA Assessment Regulation 2021, therefore Northern Beaches Council is the Consent Authority. In addition, the proposal does not constitute an Integrated Development under the EP&A Act 1979, Section 4.46 with no further approvals from other Government agencies required.

4.2 State Environmental Planning Policies (SEPPs)

SEPP (Transport and Infrastructure) 2021

It is submitted that the proposal does not fall under the provisions of SEPP (Transport and Infrastructure) 2021 and therefore no assessment is required.

SEPP (Resilience and Hazards) 2021

Contamination

SEPP (Resilience and Hazards) 2021 requires the consent authority to consider whether land is contaminated prior to granting of consent to the carrying out of any development on that land. The proposal relates to hours of operation only which does not change the merit based assessment of DA2023/0597 which approved the land use and fit out works.

Coastal

The aims of Chapter 2 of the SEPP (Resilience and Hazards) 2021 is to promote an integrated and coordinated approach to land use planning in the coastal zone in a manner consistent with the objects of the *Coastal Management Act 2016*, including the management objectives for each coastal management area by:

- a) managing development in the coastal zone and protecting the environmental assets of the coast, and*
- b) establishing a framework for land use planning to guide decision-making in the coastal zone, and*
- c) mapping the 4 coastal management areas that comprise the NSW coastal zone for the purpose of the definitions in the Coastal Management Act 2016.*

Coastal Use Area



Clause 2.11(1) of the SEPP (Resilience and Hazards) 2021 prescribes that development consent must not be granted to development on land that is within the coastal use area unless the consent authority

- - i) *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*
 - ii) *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*
 - iii) *has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*

The consent authority can be satisfied that the proposed development does not contribute to any additional impacts of the coastal area. The proposal will result in an acceptable impact to the coastal use area and adequately considers the surrounding coastal, the built environment and the bulk and scale of the development all of which will remain unchanged.

4.3 Manly Local Environmental Plan 2013 (MLEP2013)

The relevant matters to be considered under the MLEP2013 are outlined below in the LEP summary compliance table.

Part 4: Principal Development Standards			
Standard	Permitted	Proposed	Comments
4.1 Minimum subdivision lot size	N/A	N/A	N/A
4.1AA Minimum subdivision lot size for community title scheme	N/A	N/A	N/A
4.1A Minimum lot sizes for manor houses and multi dwelling housing (terraces) in Zone R2	N/A	N/A	N/A
4.2 Rural subdivision	N/A	N/A	N/A
4.3 Height of buildings	25m	N/A	N/A
4.3A Special height provisions	N/A	N/A	N/A
4.4 Floor space ratio	3:1	N/A	N/A
4.5 Calculation of floor space ratio and site area	Noted	N/A	Noted
4.6 Exceptions to development standards	Noted	N/A	N/A

Part 5: Miscellaneous Provisions	
Provisions	Comments
5.1 Relevant acquisition authority	N/A
5.2 Classification and reclassification of public land	N/A
5.3 Development near zone boundaries	N/A
5.4 Controls relating to miscellaneous permissible uses	N/A
5.5 (Repealed)	N/A
5.6 Architectural roof features	N/A
5.7 Development below mean high water mark	N/A
5.8 Conversion of fire alarms	N/A
5.9, 5.9AA (Repealed)	N/A
5.10 Heritage conservation	N/A
5.11 Bush fire hazard reduction	N/A
5.12 Infrastructure development and use of existing buildings of the Crown	N/A
5.13 Eco-tourist facilities	N/A
5.14 Siding Spring Observatory – maintaining dark sky	N/A

Proposed Hours of Operation

5.15 Defence communications facility	N/A
5.16 Subdivision of, or dwellings on, land in certain rural, residential or environmental protection zones	N/A
5.17 Artificial waterbodies in environmentally sensitive areas in areas of operation of irrigation corporations	N/A
5.18 Intensive livestock agriculture	N/A
5.19 Pond-based, tank-based and oyster aquaculture	N/A
5.20 Standards that cannot be used to refuse consent—playing and performing music	N/A
5.21 Flood planning	N/A
5.22 Special flood considerations	N/A
5.23 Public bushland	N/A
5.24 Farm stay accommodation	N/A
5.25 Farm gate premises	N/A

Part 6: Relevant Additional Local Provisions	
Provisions	Comments
6.1 Acid sulfate soils	N/A
6.2 Earthworks	N/A
6.3 (Repealed)	N/A
6.4 Stormwater management	N/A
6.5 Terrestrial biodiversity	N/A
6.6 Riparian land and watercourses	N/A
6.7 Wetlands	N/A
6.8 Landslip risk	N/A
6.9 Foreshore scenic protection area	N/A
6.10 Limited development on foreshore area	N/A
6.11 Active street frontages	N/A
6.12 Essential services	N/A
6.13 Design excellence	N/A
6.14 Requirement for development control plans	N/A
6.15 Tourist and visitor accommodation	N/A
6.16 Gross floor area in Zone B2	N/A
6.17 Health consulting rooms in Zones E3 and E4	N/A
6.18 (Repealed)	N/A
6.19 Development in St Patrick's Estate	N/A
6.20 Location of sex service premises	N/A

6.21 Noise impacts – licensed premises	N/A
6.22 Development for the purposes of secondary dwellings in certain residential and environmental protection zones	N/A

Relevant Schedules	
Schedule	Comments
Schedule 1 – Additional permitted uses	N/A
Schedule 2 – Exempt development	N/A
Schedule 3 – Complying development	N/A
Schedule 4 – Classification and reclassification of public land	N/A
Schedule 5 – Environmental heritage	N/A
Schedule 6 – Pond-based and tank-based aquaculture	N/A

Zoning Provisions

Zone E1 Local Centre



1 Objectives of zone

- To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.
- To encourage investment in local commercial development that generates employment opportunities and economic growth.
- To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.
- To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.
- To minimise conflict between land uses in the zone and adjoining zones and ensure amenity for the people who live in the local centre in relation to noise, odour, delivery of materials and use of machinery.
- To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.

- *To create urban form that relates favourably in scale and in architectural and landscape treatment to neighbouring land uses and to the natural environment.*

2 Permitted without consent

Home-based child care; Home businesses; Home occupations

3 Permitted with consent

Amusement centres; Boarding houses; Car parks; Centre-based child care facilities; Commercial premises; Community facilities; Creative industries; Early education and care facilities; Electricity generating works; Entertainment facilities; Environmental protection works; Flood mitigation works; Function centres; Group homes; Home industries; Hostels; Hotel or motel accommodation; Information and education facilities; Local distribution premises; Medical centres; Oyster aquaculture; Passenger transport facilities; Places of public worship; Public administration buildings; Recreation areas; Recreation facilities (indoor); Registered clubs; Respite day care centres; Roads; Service stations; Shop top housing; Signage; Tank-based aquaculture; Tourist and visitor accommodation; Veterinary hospitals; Waste or resource transfer stations

4 Prohibited

Any development not specified in item 2 or 3

Comment:

Complies - The site is zoned E1 Local Centre pursuant to MLEP2013. The proposed application for hours of operation to tenancy 2 facilitates the operation of a recreational facility (indoor) which serves the community and local centre. It is noted that plus fitness has been in Manly for many years at another site and there are many recreation facilities that run 24/7. The proposal is consistent with the approvals granted under DA2023/0597 and allows the functional running of Plus Fitness.

4.4 Manly Development Control Plan (MDCP)

In designing the proposed changes to the built form, due consideration has been given to the respective sections and objectives of MDCP2013, in particular:

- Part 3: General Principles of Development
- Part 4: Development Controls and Development Types

Key components of the DCP have been detailed below. The proposal is compliant with relevant provisions of the MDCP2013.

Part 3: General Principles of Development

3.1 Streetscapes and Townscapes

3.1 Streetscapes and Townscapes

Relevant DCP objectives to be met include the following:

Streetscape

Objective 1) To minimise any negative visual impact of walls, fences and carparking on the street frontage.

Objective 2) To ensure development generally viewed from the street complements the identified streetscape.

Objective 3) To encourage soft landscape alternatives when front fences and walls may not be appropriate.

Townscape

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

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

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

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

Comment:

Not applicable – the proposal relates to proposed hours of operation only.

3.1.1 Townscape (Local and Neighbourhood Centres)

Many areas of the former Manly Council area have a particularly important townscape character with an essentially unified townscape, giving rise to a particular individual character which should be maintained. This townscape character is derived as a result of the general scale and interest of the buildings and surrounds. This scale and interest exists even in areas with a limited number of heritage listed buildings with individual importance. The determination of the townscape of a locality should examine this sense of place and the sense of unity from a variety of perspectives identified in the following design principles.

Comment:

Not applicable – the proposal relates to proposed hours of operation only.

3.1.3.1 Design Principles

The following design principles and requirements at paragraphs 3.1.3.1.a) to i) should be achieved in all development involving the erection of a new building or external alterations to an existing building in order to:

☐ maintain and enhance the townscape of the former Manly Council area's LEP Business

Zones:

☐ achieve the townscape objectives of this plan; and

☐ consider that the development exhibits design excellence in accordance with considerations of LEP clause 6.13(4) (as a statutory consideration for land in Zone B2 Local Centre and as a DCP consideration in other zones)

A scale and design of building appropriate to this local role should then be achieved.

Comment:

Not applicable – the proposal relates to proposed hours of operation only.

3.2 Heritage

Relevant DCP objectives in relation to heritage in this plan include the following:

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

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

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

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

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

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

Comment:

Not applicable – the site is not identified as a heritage item or located within a heritage conservation area.

3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)

Relevant DCP objectives to be met in relation to these paragraphs include the following:

Objective 1) To protect the amenity of existing and future residents and minimise the impact of new development, including alterations and additions, on privacy, views, solar access and general amenity of adjoining and nearby properties including noise and vibration impacts.

Objective 2) To maximise the provision of open space for recreational needs of the occupier and provide privacy and shade.

Designing for Amenity

a) Careful design consideration should be given to minimise loss of sunlight, privacy, views, noise and vibration impacts and other nuisance (odour, fumes etc.) for neighbouring properties and the development property. This is especially relevant in higher density areas, development adjacent to smaller developments and development types that may potentially impact on neighbour's amenity such as licensed premises.

b) Development should not detract from the scenic amenity of the area. In particular, the apparent bulk and design of a development should be considered and assessed from surrounding public and private viewpoints.

c) The use of material and finishes is to protect amenity for neighbours in terms of reflectivity. The reflectivity of roofs and glass used on external walls will be minimal in accordance with industry standards. See also Council's Administrative Guidelines regards DA lodgement requirements for materials and finishes.

Comment:

Complies – the proposal relates to proposed hours of operation for tenancy 2 only. The approved uses and works approved under separate applications ensure the increased hours will not have any impact on the amenity in the locality. The proposal will not result in unreasonable levels of noise for a E1 Local Centre zone with the application supported by a Noise Impact Assessment. The proposed tenancy being plus fitness will not operate with obtrusive noise and is considered to be a suitable use for the site. This is further reinforced noting under Mod2023/0698 (which originally proposed 24/7 hours of operation) the comments from Councils environmental health officer which provided on the following comments and supported the hours:

This application is seeking consent for modifications to DA2023/0597 for alterations and additions to an existing mixed-use development at 14/22 Central Avenue, Manly. This proposed modification includes:

Modification from three to two tenancies only

Use of tenancy 2 (previously tenancies 2 and 3) as a recreation facility (indoor) for plus fitness. No classes are proposed inside plus fitness.

An acoustic assessment has been provided which outlines recommended noise mitigation measures which will be conditioned.

In addition, there are 2 levels of carparking above the Plus Fitness space therefore reducing a noise impact on residential occupants.

Environmental Health recommends approval subject to conditions.

The proposal is therefore supported.

3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)

Relevant objectives in relation to this part include the following:

Objective1) To ensure the principles of ecologically sustainable development are taken into consideration within a consistent and integrated planning framework that achieves environmental, economic and social sustainability in the short, medium and long term.

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

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

Objective 4) To encourage the use of recycled materials in landscape construction works.

Objective 5) To encourage the establishment of vegetable gardens and the planting of fruit trees.

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

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

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

See also Council's Administrative Guidelines

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

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

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

Comment:

Not applicable – the proposal relates to proposed hours of operation only.

3.6 Accessibility

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

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

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

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

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

Comment:

Not applicable – the proposal relates to proposed hours of operation only.

3.7 Stormwater Management

Relevant objectives to satisfy relation to this part include the following:

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

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

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

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

Comment:

Not applicable – the proposal relates to proposed hours of operation only.

3.8 Waste Management

Relevant objectives to satisfy in relation to this paragraph include the following:

Objective 1) To facilitate sustainable waste management in a manner consistent with the principles of Ecologically Sustainable Development (ESD).

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

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

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

Objective 4) To ensure waste storage and collection facilities complement waste collection and management services, offered by Council and the private service providers and support on-going control for such standards and services.

Objective 5) To minimise risks to health and safety associated with handling and disposal of waste and recycled material, and ensure optimum hygiene.

Objective 6) To minimise any adverse environmental impacts associated with the storage and collection of waste.

Objective 7) To discourage illegal dumping.

Comment:

Not applicable – the proposal relates to proposed hours of operation only.

3.9 Mechanical Plant Equipment

Comment:

Not applicable – no change to existing plant rooms.

3.10 Safety and Security

Relevant DCP objectives to be met in relation to these paragraphs include the following:

Objective 1) To ensure all development are safe and secure for all residents, occupants and visitors of various ages and abilities.

Objective 2) To ensure that the design process for all development integrate principles of 'Safety in Design' to eliminate or minimise risk to safety and security.

Objective 3) To contribute to the safety and security of the public domain.

Comment:

Complies - The development through separate applications has been designed with due regard to safety and security through the activation of the frontage to Central Avenue with a new shop front split into two (2) tenancies with new glazing and entrances. The proposal enhances the safety and security of the site and contributes to the public domain. Plus Fitness has adequate measures in place to ensure the safety of all clients including swipe access and security cameras.

Part 4: Development Controls and Development Types

4.2 Development in Business Centres (LEP Zones B1 Neighbourhood Centres and B2 Local Centres)

All DAs in local and neighbourhood centres are to consider townscape, design, diversity, interest and heritage values. Any departure from this plan and its controls will not be allowed where Council regards

these considerations and the objectives of the LEP as being compromised by the development.

Relevant DCP objectives to be met in relation to these paragraphs include:

Objective 1) To introduce guidelines for the assessment of building heights, setback and other controls relating to building form and height in order to achieve a consistent and coherent townscape appropriate to the locality.

4.2.1 FSR (Consideration of Exceptions including Arcades)

Note: FSR is a development standard under LEP clauses 4.4 & 4.5 and applies to land shown on the LEP FSR Map. This paragraph details certain considerations for arcades in determining whether to grant an exception to the FSR standard in the LEP concerning whether 'compliance with the standard is unreasonable or unnecessary in the circumstances of the case', and whether 'there is sufficient environment planning grounds to justify contravening the development standard' (LEP clause 4.6.3).

FSR gives a firm indication of the overall maximum scale of development considered. In practice many sites may be limited in the ability to achieve this scale given characteristics of the site itself, and the other requirements of this plan.

In additional to LEP Objectives at clause 4.4(1) this plan further details the control of FSR in the following objective:

Objective 1) To provide firm guidelines as to the potential development of a centre and an individual site. See also paragraph 3.2.5.2 Exceptions to FSR for development of Heritage Items.

4.2.1.1 Exceptions to FSR for Arcades

Arcades and other types of thoroughfares which are available for public use at all times may be excluded from the calculation of gross floor area for the purpose of determining the FSR.

4.2.1.2 Exceptions to FSR for Plant Rooms

In determining the exclusion of plant rooms in accordance with the LEP meaning of gross floor area, consideration must be given to paragraph 3.9 Plant Equipment of this plan with regard to the design and maximum area of plant and plant rooms when calculating the gross floor area for the purpose of calculating FSR.

Comment:

Not applicable – the proposal relates to proposed hours of operation only.

4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2)

Note: Height of Building is a development standard contained under LEP clause 4.3 and applies to land

*shown on the LEP Height of Building Map. This DCP details certain considerations to townscape principles * in determining whether to grant an exception to the LEP standard concerning whether 'compliance with the standard is unreasonable or unnecessary in the circumstances of the case' and whether 'there is sufficient environment planning grounds to justify contravening the development standard' (LEP clause 4.6(3)).*

4.2.2.1 Exceptions to Height for Design Excellence

In determining whether to grant an exception to the LEP height standard, the environmental planning grounds to justify contravening the development standard (LEP clause 4.6(3)) may include consideration of the design principles at paragraph 3.1.3.1 Design Principles in this DCP.

Comment:

Not applicable – the proposal relates to proposed hours of operation only.

4.2.3 Setbacks Controls in LEP Zones B1 and B2

Relevant DCP objectives in this plan to be met in relation to this paragraph include the following:

Objective 1) To ensure unobstructed access between the private and public domain.

Objective 2) To maintain the existing streetscape of building to the boundary.

All buildings must be constructed to the public road and side boundaries of the allotment except where:

a) an alternative setback is identified on the townscape and opportunities maps or having regard to established building lines and whether they contribute positively to the streetscape; or

b) the applicant can demonstrate to the satisfaction of the Council that an alternative setback will not conflict with overall townscape objectives, reduce the general availability of retail frontage or remove weather protection for pedestrians; or

c) the stipulated setback would be undesirable in terms of the amenity of any residential uses existing on adjoining land or proposed for inclusion in the development. In such cases the planning principles in this plan for residential development at paragraph 3.1.1 will also apply. In relation to setbacks in Neighbourhood Centres, see also paragraph 4.2.8.2 which includes guidance for when development adjoins land zoned residential in the LEP.

d) Council considers the need for building works to be setback at corner lots/street intersections to provide for an unobstructed splay for the purpose of improved traffic visibility. The maximum dimension of this triangular shaped splay would be typically up to 3m along the length of the site boundaries either side of the site corner.

Comment:

Not applicable – the proposal relates to proposed hours of operation only.

4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor

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

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

Comment:

Not applicable – the proposal relates to proposed hours of operation only.

4.2.4.1 Car Parking

a) The Council may be prepared to allow exceptions to the parking rate/requirements required in this DCP in the following circumstances:

- (i) where it can be demonstrated that particular activities in mixed use developments have car parking demands which peak at different times;*
- (ii) where visitors are likely to use more than one facility per trip;*
- (iii) considering available car parking in the surrounding area, except in relation to Manly Town Centre where more particular exceptions are provided at paragraph 4.2.5.4 of this plan; or*
- (iv) where it is satisfied that reduced number of parking spaces will facilitate conservation of an item of the environmental heritage in accordance with LEP clause 5(10).*

Comment:

Not applicable – the proposal relates to proposed hours of operation only.

4.2.4.2 Vehicular Access

Vehicular Access is to be provided for all new buildings in such a manner that all vehicles enter and leave the site in a forward direction.

Comment:

Not applicable – the proposal relates to proposed hours of operation only.

4.2.4.3 Loading bays

- a) Loading bays must be provided in sufficient number to meet anticipated demand. This demand is related to the total amount of floor space, the intensity of use and the nature of the activity.*
- b) The minimum dimensions for a loading bay are 7.6m length, 3m width and 3.4m height.*
- c) Access is to be provided to and from the loading bay areas in such a manner that there is sufficient room for trucks to manoeuvre. Greater head-height may be required, in consultation with NSW Roads Services (previously RTA) Guidelines, should this seem warranted by the nature of the development. Council will also have regard to the NSW Roads Services guidelines when assessing the required number and dimensions of loading bay facilities.*
- d) Off street loading facilities are to be provided to service the entire development in the LEP Business Zones considering the uses proposed on the site and to overall townscape considerations and in other LEP zones where the use requires regular servicing by commercial vehicles.*
- e) Where a residential building may require regular servicing by commercial vehicles, off street loading facilities must be provided with least 1 complying loading bay.*

Comment:

Not applicable – the proposal relates to proposed hours of operation only.

4.2.5 Manly Town Centre and Surrounds

Objective 1) To consolidate, promote and strengthen both retail activity in the Manly Town Centre as well as townscape in accordance with the townscape requirements of this plan.

Comment:

Not applicable – the proposal relates to proposed hours of operation only.

4.2.5.1 Design for Townscape

Council must be satisfied that the design of any development (not just heritage listed buildings) has given due attention to the site's position within, and the developments contribution to the overall existing and future townscape quality of the Manly Town Centre and surrounds.

In addition to the townscape principles at paragraph 3.1.3 which apply to all Centres including the Townscape Principles Map A for Manly Town Centre at Schedule 2 of this plan, additional townscape requirements for Manly Town Centre and Surrounds apply as follows:

- a) Maintain the predominant pattern of narrow fronted buildings within the town centre with new buildings incorporating modulation of the street wall such as recesses or modulation in the building facade to visually reduce the length and perceived bulk of the street wall.*
- b) Maintain existing setbacks.*
- c) New development to enhance townscape characteristics, disregarding existing unsympathetic buildings.*
- d) Step back development around the intersection of Sydney Road and Whistler Street to reveal the historic building (church) at this intersection.*
- e) Develop new facade line in North Steyne to avoid unattractive end walls and sharp transitions in the vicinity of 46-48 North Steyne, Manly.*
- f) Height and setback of development must cause no undue affectation to properties to the south in terms of loss of sunlight or privacy (Pittwater Road, Manly).*

Comment:

Not applicable – the proposal relates to proposed hours of operation only.

4.2.5.2 Height of Buildings: Consideration of Townscape Principles in determining exceptions to height in LEP Zone B2 in Manly Town Centre

Consideration of the appropriate heights within the maximum Building Height development standard and exceptions to the standard in the LEP includes the following:

- a) Whether the final building height including any architectural embellishments adversely dominate the heights of end (corner) buildings in the same street block or that of adjoining buildings.*
- b) Whether the proposed development successfully demonstrates the most appropriate relationship to adjoining development in terms of fulfilling the Council's townscape objectives. New development provides opportunities to achieve the maximum height of building in the centre of the street blocks to obtain views and outlook over buildings on the block edge at a lower height.*
- c) Whether new development should be constructed to the same building envelope as existing buildings on a site in order to maintain interest and variety, provided the other objectives and requirements (including FSR) of this plan are achieved.*
- d) Whether new buildings equate with both the overall height as well as the level of each floor of adjoining buildings and in relation to particular architectural details like parapet details and with particular regard to important end-buildings in the particular street block.*

Note: *The height relationship of particular architectural details with adjoining buildings may often require particular consideration of floor to ceiling heights. The creation of an additional storey by reducing the typical floor to ceiling height in a manner inconsistent with adjoining buildings will not be permitted. The use of internal mezzanine levels may be considered in order to achieve the desired height levels, where necessary, within the total height of the building.*

Comment:

Not applicable – the proposal relates to proposed hours of operation only.

4.2.5.3 Security Shutters

Shop window security roller shutters are not permitted on the external face of the building. Such screens may only be used behind the window display.

Comment:

Not applicable – the proposal does not include security shutters.

4.2.5.4 Car Parking and Access

See also paragraph 4.2.4 Parking, Access and Loading (in LEP Zones B1 and B2 generally).

See also Schedule 3 Minimum Parking Rates/ Requirements.

Exceptions to parking rates/ requirements in Manly Town Centre

a) In exceptional circumstances and having regard to the merits of the application, Council may be prepared to allow a reduction in the any parking rate/ requirements in Manly Town Centre (including residential and commercial) where the applicant has demonstrated that:

(i) in the case of all uses other than dwellings, the dimensions or topography of the site would physically prevent the provision of some or all of the required spaces;

(ii) the required access interferes with the continuity of retail frontage or interrupts the frontage of the property in other ways such that there would be a conflict with any other provisions of this DCP in particular the townscape objectives; or

(iii) the movement of vehicles to and from the site would cause unacceptable conflict with pedestrian movements, special servicing arrangements for pedestrianised areas or contribute to congestion at key intersections.

Application of Manly Section 94 Contributions Plan

b) In respect of onsite parking requirements generated by development under this plan in Manly Town Centre (other than dwellings, tourist accommodation and backpackers' accommodation), no more than 50 percent of the required car parking spaces is permitted to be provided onsite, with the remainder being provided by way of monetary contribution in accordance with the former Manly Council's Section 94 Contributions Plan.

Note: This provision supports parking in conjunction with development in accordance with long held standards, at the same time limiting the number of cars brought into Manly Town Centre with ready access to public transport as well as existing and future public carparking stations.

Location of Driveways

c) No driveway crossover should be less than 10m from a major street intersection and vehicular crossovers should be minimal in size.

Comment:

Not applicable – the proposal relates to proposed hours of operation only.

4.2.5.5 Backpackers' Accommodation

Comment:

Not applicable – the proposal is not for backpackers accommodation.

4.2.5.6 Late Night Venues

Comment:

Not applicable – the proposal is not identified as a late night venue.

Part 4.4 Other Development (all LEP Zones)

4.4.1 Demolition

Relevant DCP objectives in this plan in relation to these paragraphs include:

Objective 1)

To protect the environment during demolition, site works, and construction phases of development.

Where development involves demolition, the applicant is to demonstrate that the degree of demolition considers any existing building on the land that should be retained and appropriately adapted in order to:

- a) Meet ecologically sustainable development principles by conserving resources and energy and reducing waste from any demolition process; and*
- b) Conserve the cultural heritage of the existing building and that of the locality. An appropriate assessment of potential heritage significance must accompany any DA in relation to demolition. If the property has merit as a potential heritage item, the heritage controls and considerations in this plan apply, and*
- c) Comply with the requirements of the Northern Beaches Waste Management Policy*

Comment:

Not applicable – the proposal relates to proposed hours of operation only.

4.4.2 Alterations and Additions

Mainly Council promotes the retention and adaptation of existing buildings rather than their demolition and replacement with new structures.

Extent to which this Plan Applies to Alterations and Additions

- a) This paragraph defines alterations and additions in respect of how much of the building is to be demolished. If alterations and additions involve demolition of more than half of the building then the development will be assessed as new work and the controls of this plan will apply to the whole building i.e. to both existing and new development.*
- b) In paragraph a) above, the extent of demolition is calculated as a proportion of the existing external fabric being demolished including the surface area of the walls, the roof measured in plan form and the area of the lowest habitable floor.*

Comment:

Not applicable – the proposal relates to proposed hours of operation only.

4.4.4.1 Awnings in LEP B1 and B2 Business Zones

Continuous footpath awnings must be provided on all street frontages generally consistent with the streetscape. The width, fascia height and method of support of all awnings in any street block must be consistent with entrances to public lands and through-site links allowed to be accentuated and generally in accordance with given dimensions (see Figure 46 – Awnings).

In particular, awnings may be permitted where:

- a) development abuts pedestrian ways;*
- b) aligned with adjoining awnings in height and width;*
- c) it can be demonstrated the specific need for protection of goods or from weather and sun;*
- d) through site links are not obscured; and where*
- e) lighting under the awnings is provided for pedestrian safety and security*

Comment:

Not applicable – the proposal relates to proposed hours of operation only.

4.4.5 Earthworks (Excavation and Filling)

Note: Before granting development consent for earthworks, consideration must be given to the matters listed in LEP clause 6.2(3)(a)-(h).

Relevant DCP objectives in this plan in relation to these paragraphs include:

- Objective 1) To retain the existing landscape character and limit change to the topography and vegetation of the Manly Local Government Area by:*
- Limiting excavation, “cut and fill” and other earthworks;*
 - Discouraging the alteration of the natural flow of ground and surface water;*
 - Ensuring that development not cause sedimentation to enter drainage lines (natural or otherwise) and waterways; and*
 - Limiting the height of retaining walls and encouraging the planting of native plant species to soften their impact.*

See also paragraph 4.1.8 Development on Sloping Sites (Planning Principles).

See also paragraph 3.3.2 Preservation of Trees and Bushland V.

Comment:

Not applicable – the proposal does not include excavation works.

Part 5 – Special Character Precincts, Areas and Sites

5.4.1 Foreshore Scenic Protection Area

LEP clause 6.9 designates land in the Foreshore Scenic Protection Area as shown on the LEP Foreshore Scenic Protection Area Map to protect visual aesthetic amenity and views both to and from Sydney Harbour, the Pacific Ocean and the Manly foreshore. Development in the Foreshore Scenic Protection Area must not detrimentally effect the ‘visual or aesthetic amenity of land in the foreshore scenic area nor must the development similarly effect the views of that land, including ridgelines, tree lines and other natural features viewed from the Harbour or Ocean from any road, park or land in the LEP for any open space purpose or any other public place. Any adverse impacts considered in this paragraph will be mitigated. In accordance with these LEP objectives Council seeks to conserve and preserve tree canopies and street trees, wildlife corridors and habitat and minimise cumulative impacts on escarpment, rock shelves and other natural landscape features.

5.4.1.1 Additional matters for consideration

LEP clause 6.9(3)(a) to (d) lists certain matters to be taken into account in relation to all development within the Foreshore Scenic Protection Area.

- a) Further to matters prescribed in the LEP, the development in the Foreshore Scenic Protection Area must also:*
- i) minimise the contrast between the built environment and the natural environment;*
 - ii) maintain the visual dominance of the natural environment;*
 - iii) maximise the retention of existing vegetation including tree canopies, street trees, wildlife corridors and habitat;*
 - iv) not cause any change, visually, structurally or otherwise, to the existing natural rocky harbour foreshore areas;*
 - v) locate rooflines below the tree canopy;*
 - vi) consider any effect of the proposal when viewed from the harbour / ocean to ridgelines, tree lines and other natural features; and*
 - vii) use building materials of a non-reflective quality and be of colours and textures that blend with the prevailing natural environment in the locality.*

b) *Setbacks in the Foreshore Scenic Protection Area should be maximised to enable open space to dominate buildings, especially when viewed to and from Sydney Harbour, the Ocean and the foreshores in Manly.*

See also paragraph 4.1.4.5 of this DCP and LEP clause 6.10 in relation to Foreshore Building Lines and limited development in the Foreshore Area

Comment:

Complies – refer to assessment under Clause 6.9.

5.4.3 Flood Prone Land

Objectives

Protection of people.

Protection of the natural environment.

Protection of private and public infrastructure and assets.

Requirements

1. Development must comply with the prescriptive controls set out in the Matrix below. Where a property is affected by more than one Flood Risk Precinct, or has varying Flood Life Hazard Category across it, the assessment must consider the controls relevant at each location on the property.

2. Development on flood prone land requires the preparation of a Flood Management Report by a suitably qualified professional.

Comment:

Not applicable – the proposal relates to proposed hours of operation only.

Schedule 3 - Part A1 - Parking Rates and Requirements for Vehicles

Note: *For other development types not identified in this Schedule, parking shall be provided in accordance with the Roads and Maritime Services (RMS) Design Reference Documents located at www.rta.nsw.gov.au/doingbusinesswithus. This site is a one-stop-shop to access a large range of information and programs to assist in the management of the NSW road network. It includes RMS's technical directions, updated survey data, specifications, guidelines, and information fact sheets*

Application of Parking Rates/Requirements:

All calculations of required parking rates are to be rounded up to the next whole number. In the case of visitors spaces, the required rate is to be rounded up separately for the visitors parking (e.g. for 2x2b dwellings, the sum of rates are 2.4 resident spaces and 0.5 visitor spaces, these rates would be rounded to 3 resident spaces and 1 visitor space i.e. a total of 4 spaces.)

Commercial Premises (including business, offices and retail premises) not elsewhere referred to in this Schedule *:

- 1 parking space for every 40sqm of gross floor area. Note: Where Commercial Premises that are subject to this rate are located in Manly Town Centre, paragraph 4.2.5.4 Car Parking and Access also applies (particularly in relation to section 94 Contributions).*

***Note:** *Commercial Premises elsewhere specifically referred to in this schedule and subject to a different requirement to that of the standard rate for commercial premises includes Pubs and Supermarkets. Restaurant or Cafes and Take Away Food and Drink Premises are subject to a similar rate but are only calculated on the basis of the serviced area for the development.*

Guide to Traffic Generating Developments – RTA (now RMS)

5.9.2 Gymnasiums

Metropolitan regional (central business district) centres. If a gymnasium is located within a regional centre and is in close proximity to rail / bus services, the recommended off-street parking provision is 3.0 spaces per 100m2 GFA.

Comment:

Not applicable – the proposal relates to proposed hours of operation only.

5. Matters for Consideration Pursuant to Section 4.15 of the Environmental Planning & Assessment Act 1979

The following matters are to be taken into consideration when assessing an application pursuant to Section 4.15 of the *Environmental Planning and Assessment Act 1979* (as amended). Guidelines (in *italic*) to help identify the issues to be considered have been prepared by the Department of Planning and Environment. The relevant issues are:

(a) The provisions of:

(i) The provision of any Environmental Planning Instrument

Comment: The proposal is permissible and consistent with the intent of the Manly Local Environmental Plan and Development Control Plan as they are reasonably applied to the proposed works.

(ii) Any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and

Comment: Not applicable.

(iii) Any development control plan

Comment: The proposal has been reviewed and assessed under Manly Development Control Plan.

(iiia) Any Planning Agreement that has been entered into under section 7.4 or any draft planning agreement that a developer has offered to enter into under Section 7.4, and

Comment: Not applicable.

(iv) The Regulations (to the extent that they prescribe matters for the purposes of this paragraph), and

Comment: Not applicable.

(v) (repealed)

(b) The likely impacts of that development, including environmental impacts on both the natural and built environments and social and economic impacts in the locality,

Context and Setting:

i. What is the relationship to the region and local context in terms of:

- *The scenic qualities and features of the landscape*
- *The character and amenity of the locality and streetscape*
- *The scale, bulk, height, mass, form, character, density and design of development in the locality*
- *The previous and existing land uses and activities in the locality*

Comment: The proposal relates to hours of operation only therefore retaining the character and amenity of the streetscape.

ii. What are the potential impacts on adjacent properties in terms of:

- *Relationship and compatibility of adjacent land uses?*
- *sunlight access (overshadowing)*

- *visual and acoustic privacy*
- *views and vistas*
- *edge conditions such as boundary treatments and fencing*

Comment: The proposal is compatible with adjacent and adjoining land uses and will not result in an unacceptable amount of noise.

Access, transport and traffic:

Would the development provide accessibility and transport management measures for vehicles, pedestrians, bicycles and the disabled within the development and locality, and what impacts would occur on:

- *Travel Demand*
- *dependency on motor vehicles*
- *traffic generation and the capacity of the local and arterial road network*
- *public transport availability and use (including freight rail where relevant)*
- *conflicts within and between transport modes*
- *Traffic management schemes*
- *Vehicular parking spaces*

Comment: The proposal retains the existing vehicular access points to the site.

Public Domain

Comment: The proposed development will have no adverse impact on the public domain.

Utilities

Comment: Existing utility services will connect to service the dwelling.

Flora and Fauna

Comment: The proposal does not impact flora and fauna.

Waste Collection

Comment: Normal waste collection applies with access to waste facilities within the loading area.

Natural hazards

Comment: The site is identified as flood prone land. The proposal is for hours of operation only which maintain the flood requirements under separate approvals granted for the tenancy.

Economic Impact in the locality

Comment: The proposed development will not have any significant impact on economic factors within the area notwithstanding that it will generate additional employment opportunities through the construction period with respect to the proposed works. The proposed hours also allow for increase healthy activity noting work hours and requirements for flexible demands of clients.

Site Design and Internal Design

i) Is the development design sensitive to environmental considerations and site attributes including:

- *size, shape and design of allotments*
- *The proportion of site covered by buildings*
- *the position of buildings*
- *the size (bulk, height, mass), form, appearance and design of buildings*
- *the amount, location, design, use and management of private and communal open space*
- *Landscaping*

Comment: These matters have been discussed in detail earlier in this report. The proposed hours of operation are suitable for the locality.

ii) How would the development affect the health and safety of the occupants in terms of:

- *lighting, ventilation and insulation*
- *building fire risk – prevention and suppression*
- *building materials and finishes*
- *a common wall structure and design*
- *access and facilities for the disabled*
- *likely compliance with the Building Code of Australia*

Comment: The proposed development can comply with the provisions of the Building Code of Australia. The proposal complies with the relevant standards pertaining to health and safety and will not have any detrimental effect on the occupants.

Construction

i) What would be the impacts of construction activities in terms of:

- *The environmental planning issues listed above*
- *Site safety*

Comment: Not applicable – no construction works apart of this application.

(c) The suitability of the site for the development

- *Does the proposal fit in the locality*
- *Are the constraints posed by adjacent development prohibitive*
- *Would development lead to unmanageable transport demands and are there adequate transport facilities in the area*
- *Are utilities and services available to the site adequate for the development*
- *Are the site attributes conducive to development*

Comment: The site is located in an established Town Centre. The proposal relates to a recently approved tenancy for a recreation facility (indoor) for plus fitness. The proposed hours will not result in unmanageable transport demands nor will they impact the amenity of the town centre through noise.

(d) Any submissions received in accordance with this act or regulations

Comment: No submissions are available at this time.

(e) The public interest

Comment: The proposal is permissible and consistent with the intent of MLEP2013 and MDCP controls as they are reasonably applied to the proposed hours of operation to the existing development. The development would not be contrary to the public interest. In our opinion, the development satisfies the planning regime applicable to development on this particular site having regards to the considerations arising from its context.

The proposal is acceptable when assessed against the heads of consideration pursuant to Section 4.15 of the *Environmental Planning and Assessment Act, 1979* (as amended), and is appropriate for the granting of consent and accordingly, is in the public interest.

6. Summary and Conclusion

The proposal for hours of operation relating to Tenancy 2 within Lot 172 – 14/22 Central Avenue, Manly, is permissible and consistent with the intent of the built form controls as they are reasonably applied to the proposed application. It is considered that the proposal is appropriate and is worthy of the granting of development consent for the following reasons:

- The merits of the application have been assessed in accordance with the provisions of the relevant requirements of MLEP 2013 and the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979* (as amended). There is no evidence that the impacts of the development would warrant amendment to the subject proposal or justify refusal. Where a variation is proposed, adequate documentation has been provided to support the application.

Accordingly, the proposal is acceptable from environmental, social, and planning perspectives and approval should therefore be granted by Council.