

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2024/0419
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Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot B DP 102407, 34 - 35 South Steyne MANLY NSW 2095 Lot 2 DP 861591, 34 - 35 South Steyne MANLY NSW 2095
Proposed Development:	Modification of Development Consent DA2022/1164 granted for Demolition and construction of a commercial building
Zoning:	Manly LEP2013 - Land zoned E1 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Applicant:	34-35 South Steyne Pty. Limited

Application Lodged:	07/08/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	19/08/2024 to 02/09/2024
Advertised:	19/08/2024
Submissions Received:	2
Clause 4.6 Variation:	4.3 Height of buildings: Part 25%, Part 37%
Recommendation:	Approval

EXECUTIVE SUMMARY

This modification application seeks to modify Development Consent DA2022/1164 (as previously modified by Mod2024/0225), which was granted for demolition and construction of a commercial building. The modifications sought include:

- Minor internal and external reconfiguration of approved elements,
- Reconfigured windows and doors,
- Infilling of the approved lightwell and supplementary inclusion of skylights,
- Reconfiguration of mechanical plant at the roof (no additional height), and
- Addition of solar panels on the roof.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to a variation to the height of buildings development standard of 37% (up to RL 18.500) with respect to the portion of the development subject to a 10-metre height limit, and 25% (up to RL 19.500) with respect to the portion of the development subject to a 12-metre height limit. The works do not increase the overall height approved under DA2022/1164, as increased via Mod2024/0225 (up to RL 19.500).

The works above the building height development standard under this application are limited to minor reconfiguration of mechanical plant on the roof and infilling of the approved lightwell. The Assessment Report establishes that the works are acceptable on merit, as detailed in the section of this report relating to Clause 4.3 Height of Buildings of the Manly Local Environmental Plan 2013. Works are otherwise internal or within the approved elevations, demonstrating the development remains reasonable.

Submissions from two parties were received. One party raised concern relating to safety during construction, though this matter is not relevant to assessment of the application. The other party raised concern with respect to view loss resulting from the proposed solar panels. The location of the solar panels is addressed as acceptable on merit with respect to the applicable development controls and the NSW Land and Environment Court planning principle set by *Tenacity Consulting v Warringah Council [2004] NSWLEC 140*.

In this report, detailed consideration is given to the height of buildings variation and the view sharing outcome of the development. As above, the modified development is acceptable on merit with respect to these matters.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks modification to Development Consent DA2022/1164 as follows:

- Relocation of services at basement 1,
- Minor recalculation of the retail premises floor area at basement 1,
- Relocation of the sprinkler booster and reconfiguration of internal walls to the rear of the ground floor,
- Additional doors to the through-site link at the ground floor,
- Reconfigured windows and doors to the western elevation of the ground floor,
- Addition of fire doors to the ground floor,
- Reconfiguration of services at levels 1, 2, and 3,
- Extension of level 3 to the west, including new western windows,
- Deletion of the lightwell and inclusion of skylights,
- Reconfiguration of mechanical plant at the roof (no additional height), and
- Addition of solar panels on the roof.

The above design changes necessitate amendment to Conditions 1, 19, 20, 25, 56, and 63. The proposal seeks deletion of Condition 28, as requirements of this condition have been independently satisfied.

The above is as per amended plans received on 18 February 2025. In accordance with Council's Community Participation Plan, the amended plans did not require re-notification, as they amounted to

lesser environmental impact than the original plans for this application.

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 - Zone E1 Local Centre
Manly Local Environmental Plan 2013 - 4.3 Height of buildings
Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Local Environmental Plan 2013 - 5.21 Flood planning
Manly Local Environmental Plan 2013 - 6.1 Acid sulfate soils
Manly Local Environmental Plan 2013 - 6.2 Earthworks
Manly Local Environmental Plan 2013 - 6.4 Stormwater management
Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
Manly Local Environmental Plan 2013 - 6.11 Active street frontages
Manly Local Environmental Plan 2013 - 6.12 Essential services
Manly Local Environmental Plan 2013 - 6.13 Design excellence
Manly Local Environmental Plan 2013 - 6.16 Gross floor area in Zone B2
Manly Development Control Plan - 3.4.3 Maintenance of Views
Manly Development Control Plan - 4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor
Manly Development Control Plan - 4.2.5.2 Height of Buildings: Consideration of Townscape Principles in determining exceptions to height in LEP Zone B2 in Manly Town Centre
Manly Development Control Plan - 4.2.5.4 Car Parking and Access

SITE DESCRIPTION

Property Description:	Lot B DP 102407 , 34 - 35 South Steyne MANLY NSW 2095 Lot 2 DP 861591 , 34 - 35 South Steyne MANLY NSW 2095
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Detailed Site Description:

The subject site consists of two allotments on the western side of South Steyne, Manly.

The site is irregular in shape with a frontage of 15.305 metres along South Steyne and a maximum depth of 46.815 metres. The site has a surveyed area of 690.2m².

The site is located within the E1 Local Centre zone and previously accommodated a two-storey commercial building with vehicular access to the rear via Rialto Lane. The site is now under construction for the development approved via DA2022/1164, as modified by Mod2024/0225.

The site is generally level and is partially affected by flooding influenced by the surrounding stormwater systems, ground water table and low lying position of the land adjacent the ocean mean high water mark.

The site is located within the Manly Town Centre Conservation Area and in the vicinity of a number of heritage items but the site itself is not heritage-listed.

Detailed Description of Adjoining/Surrounding Development

Surrounding development comprises retail, commercial, shops, restaurants, mixed-use developments, and residential flat buildings.

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:

- DA265/2004 for internal alterations to a restaurant including shop front was approved by Council on 16 July 2004.
- DA474/2004 for signage was approved by Council on 24 November 2004.
- DA45/2009 for fit out of an existing restaurant including new facade and signage was approved by Council on 9 July 2014.
- DA14/2012 for alterations and additions to an existing building including facade upgrade, signage and fit out of an existing restaurant was approved by the former Development Assessment Unit on 10 May 2012.
- CDC2018/0132 for internal alterations to an existing commercial premises was approved by a private certifier on 4 December 2017.
- Pre-lodgement Meeting PLM2022/0084 was held on 9 June 2022 to discuss demolition works and construction of a commercial building.
- DA2022/1164 for demolition and construction of a commercial building was approved by the Northern Beaches Local Planning Panel on 18 December 2023. DA2022/1164 is the consent subject of this modification application. Works approved under this consent have commenced.
- Mod2024/0225 for modification of DA2022/1164 was approved by the Northern Beaches Local Planning Panel on 7 August 2024.

Works approved via DA2022/1164, as modified by Mod2024/0225 are underway. Works subject of this modification application have not yet commenced.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2022/1164, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2022/1164, as it remains wholly commercial in much the same configuration, with expansions of approved areas.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA2022/1164 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed	See discussion on "Notification & Submissions Received" in this report.

Section 4.55 (2) - Other Modifications	Comments
by the regulations or provided by the development control plan, as the case may be.	

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 (2) the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to view sharing, with respect to the top level western extension. Sufficient information was received in January 2025.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 2001: The Demolition of Structures. This matter has been addressed via a condition of consent.</p>

Section 4.15 'Matters for Consideration'	Comments
	<p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 19/08/2024 to 02/09/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment

Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Kn Planning Pty Limited	Po Box 3372 WAREEMBA NSW 2046
Mr James Edward Morell Lloyd	733 / 25 Wentworth Street MANLY NSW 2095

The following issues were raised in the submissions:

- Concern regarding specification of the height of solar panels, with reference to view impacts to Unit 633 of 25 Wentworth Street, Manly.
- Concern about the safety of surrounding buildings regarding the use of cranes during construction.

The above issues are addressed as follows:

Solar Panels / View Sharing

The submissions raised concern that the height of the proposed solar panels is not specified. The submissions raises concerns that the solar panels are misrepresented in the View Impact Assessment and will result in additional view loss to Unit 633 of 25 Wentworth Street, Manly.

Comment:

The submitted plans indicate that the solar panels will achieve a maximum height matching the lift overrun at RL 19.200. A condition of consent has been included in the recommendation of this report stipulating this as the maximum height. The View Impact Assessment has been prepared in accordance with the practice policy set by the NSW Land and Environment Court by a suitably qualified professional and is therefore accepted in good faith and assessed as being accurate. From the perspective of Unit 633 of 25 Wentworth Street, the proposed solar panels will be in line with approved built form, so will not result in a materially different view impact to the approved development.

Construction Safety

The submissions raised concern that the use of cranes during construction may cause damage to surrounding buildings.

Comment:

This is a matter that will be managed during construction and is not a relevant consideration for the assessment of this application.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<i>Supported, subject to conditions</i> 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

Internal Referral Body	Comments
	<p>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>Supported, subject to conditions</p> <p>Environmental Health has reviewed the letter dated 5 July 2024 regarding acoustics.</p> <p>which state the modifications proposed to the design do not result in any changes to the noise impacts assessed within the Noise Impact Assessment prepared for the Development Application (referenced above).</p> <p>Environmental Health recommend existing conditions to remain, updated for the new acoustic advice for both the DA and previous modification.</p>
Landscape Officer	<p>Supported without additional conditions</p> <p>The modification seeks to amend some landscape elements approved under the original DA.</p> <p>The amendments are largely internal with minimal impact on the streetscape.</p> <p>No objections are raised to the modification or amendments to conditions as outlined in the SEE.</p>
NECC (Coast and Catchments)	<p>Supported without additional conditions</p> <p>The modification application has been assessed in consideration of the Coastal Management Act 2016 and State Environmental Planning Policy (Resilience & Hazards) 2021.</p> <p>Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore Coastal Management Act 2016 is applicable to the proposed modifications. The proposed modifications are in line with the objects, as set out under Clause 3 of the Coastal Management Act 2016.</p> <p>State Environmental Planning Policy (Resilience & Hazards) 2021 The subject land has been included on the 'Coastal Environment Area' map under the State Environmental Planning Policy (Resilience & Hazards) 2021. Hence, Clauses 2.10 and 2.12 apply for this DA.</p> <p>On internal assessment the modification application satisfies the</p>

Internal Referral Body	Comments			
	requirements under clauses 2.10 and 2.12 of the State Environmental Planning Policy (Resilience & Hazards). As such, it is considered that the modification application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021.			
NECC (Development Engineering)	Supported without additional conditions No objections to approval and no changes to conditions of Consent DA2022/1164.			
NECC (Flooding)	Supported without additional conditions The proposal seeks consent to modify DA2022/1164. The modifications include changes necessary to comply with the fire safety provisions of the BCA, changes to the design of the internal courtyard and an increase in the size and geometry of the Level 3 floorplate. The proposed changes are not expected to affect the flood compatibility of the development with councils DCP and LEP. There are no objections subject to the retention of the flood related conditions of consent from DA2022/1164.			
NECC (Water Management)	Supported without additional conditions The application is for modification to development consent DA2022/1164. The proposed amendments will not change the landscape outcome approved in DA2023/0871, and as such the original conditions remain. No further conditions are imposed.			
Parks, reserves, beaches, foreshore	Supported without additional conditions Parks, Reserves and Foreshores raise no concerns.			
Strategic and Place Planning (Heritage Officer)	Supported without additional conditions <table><tr><th>HERITAGE COMMENTS</th></tr><tr><th>Discussion of reason for referral</th></tr><tr><td><p>The proposal has been referred to Heritage as the subject property is within the C1 - Town Centre Conservation Area and adjacent to a heritage item, being Item I106 - Group of commercial buildings - All numbers, The Corso, listed in Schedule 5 of Manly Local Environmental Plan 2013. It is also within the vicinity of a number of heritage items, including:</p><p>Item I168 - Ocean foreshores - Manly municipal area, boundary adjacent to the ocean</p><p>Item I174 - Beach Reserve—Merrett Park North Steyne and South Steyne</p></td></tr></table>	HERITAGE COMMENTS	Discussion of reason for referral	<p>The proposal has been referred to Heritage as the subject property is within the C1 - Town Centre Conservation Area and adjacent to a heritage item, being Item I106 - Group of commercial buildings - All numbers, The Corso, listed in Schedule 5 of Manly Local Environmental Plan 2013. It is also within the vicinity of a number of heritage items, including:</p> <p>Item I168 - Ocean foreshores - Manly municipal area, boundary adjacent to the ocean</p> <p>Item I174 - Beach Reserve—Merrett Park North Steyne and South Steyne</p>
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Internal Referral Body	Comments
	<p data-bbox="544 320 975 342">Details of heritage items affected</p> <p data-bbox="544 353 1369 421">Details of the conservation area and the items in the vicinity, as contained within the Heritage Inventory are:</p> <p data-bbox="544 454 1046 488">C2- Town Centre Conservation Area</p> <p data-bbox="544 499 882 521"><u>Statement of significance:</u></p> <p data-bbox="544 533 1417 981">The Manly Town Centre Conservation Area (TCCA) is of local heritage significance as a reflection of the early development of Manly as a peripheral harbor and beachside village in the fledgling colony of New South Wales. This significance is enhanced by its role as a day-trip and holiday destination during those early years, continuing up to the present time, and its association with H G Smith, the original designer and developer of the TCCA as it is today. The physical elements of the TCCA reflect this early development and its continued use for recreational purposes, most notably the intact promenade quality of The Corso and its turn of the century streetscape, as well as key built elements such as hotels, and remaining original commercial and small scale residential buildings.</p> <p data-bbox="544 992 815 1014"><u>Physical description:</u></p> <p data-bbox="544 1025 1417 1395">The Manly TCCA has a mixed character and comprises three key zones. The triangular zone northwest of The Corso, bound by Belgrave Street and Sydney Road, including Market Square, generally comprises small scale commercial buildings. The second zone comprises The Corso, which is the iconic focus for the Manly Town Centre Conservation Area. Extending from Manly Wharf north-east to Ocean Beach, The Corso is a grand promenade, now primarily pedestrian, lined with predominantly low rise commercial buildings. The majority date to the late Nineteenth Century through to the 1930s, and are generally on narrow allotments.</p> <p data-bbox="544 1406 1374 1541">The third zone, which lies south east of The Corso along Darley Road is predominantly mixed development progressing south eastward into residential, and is quite diverse with regard to building form.</p> <p data-bbox="544 1552 1358 1608">Significant vistas adjacent to the boundary of the Manly TCCA include:</p> <ul data-bbox="544 1619 1374 1686" style="list-style-type: none"> • Vistas north and south along North and South Steyne from the north eastern end of The Corso; <p data-bbox="544 1697 1342 1787">This listing also includes any significant interior elements (including original room layout, decorative elements, finishes, fittings and fixtures) of all buildings within the Manly TCCA.</p> <p data-bbox="544 1821 1134 1854">Item I106 - Group of commercial buildings</p> <p data-bbox="544 1865 882 1888"><u>Statement of significance:</u></p> <p data-bbox="544 1899 1406 2101">The streetscape and its special qualities are of major significance to the state. The Corso has important historical links to the development of tourism and recreation which is still present and likely to continue. It's role as the pedestrian link between harbour and ocean, city and sea - for the tourist, is fundamental to Manly's status as a resort.</p>

Internal Referral Body	Comments		
	<u>Physical description:</u> The Corso is the NE-SW link between Manly Beach and Manly Cove. It acts as a low scale horizontal corridor which steps down from the harbour to the ocean. It has a cohesive character resulting from generally low scale of development on its principle streets, Construction to the property boundaries, slightly higher and distinctive corner buildings and a good level of pedestrian protection and amenity generated by footpath awnings and through-block arcades has produced strongly defined and comfortable urban spaces.		
	Other relevant heritage listings		
	SEPP (Biodiversity and Conservation) 2021	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		
	The proposal seeks consent for modifications to the development consent - DA2022/1164. There is presently a separate S4.55 Application under assessment (MOD/2024/0225). This application includes changes to the internal layout, an extension to Level 3 (towards west/Rialto Lane and north/heritage buildings) removing the approved triangular terrace on Level 3, changes to the size and shape of the approved internal courtyard and changes to the approved roof layout.		
	The removal of the north-west facing terrace on Level 3 is not supported by Heritage as this extension will remove the approved transition between the proposed new building and the heritage item. A smaller extension, that is sympathetic to the surrounding buildings in scale and form, providing a transition could be supported, but the proposed extension is considered to have a negative impact on the significance of the heritage context and the HCA.		
Revised comments: 10 February 2025			
Amended drawings, submitted by the applicant has resolved the concern raised by Heritage by providing a 2m setback to the upper level from the Rialto Lane façade, which will provide a better visual transition from higher building envelopes to the existing low level			

Internal Referral Body	Comments
	<p>building mass of the adjoining heritage buildings, located within the Heritage Conservation Area.</p> <p>Final comments: 19 February 2025</p> <p>The applicant has provided amended plans - dated 11 February 2025, reintroducing the chamfer offset to Level 3, removing the approved internal courtyard and introducing a series of skylights to provide natural light to Level 2. Accordingly the location of the proposed solar panels have been changed to become closer to the front boundary. However, it is considered that these panels will not be readily visible from the public domain. Given the proposed changes are mainly within the approved building envelope, the impact of the proposal upon the heritage items is considered tolerable.</p> <p>Therefore, no objections are raised on heritage grounds and no conditions required.</p> <p><u>Consider against the provisions of CL5.10 of Manly LEP 2013.</u> 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</p>
Strategic and Place Planning (Development Contributions)	<p><i>Supported without additional conditions</i></p> <p>DA2022/1164 for Demolition and construction of a commercial building was approved on 18 December 2023. At the time of determination, Northern Beaches Section 7.12 Contributions Plan 2022 applied to the development and the subject property resulting in the inclusion of Condition 8 to the development consent which reads as follows:</p> <p><i>8. Policy Controls</i> <i>Northern Beaches Section 7.12 Contributions Plan 2022</i></p> <p><i>A monetary contribution of \$110,750.00 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 (as amended).</i></p> <p><i>The monetary contribution is based on a development cost of \$11,075,000.00.</i></p> <p><i>The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).</i></p>

Internal Referral Body	Comments
	<p><i>Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).</i></p> <p><i>A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council's website at Northern Beaches Council - Development Contributions.</i></p> <p><i>Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.</i></p> <p>To date, development contributions have not been paid that would satisfy condition 8 of the development consent DA2022/1164. There has been no Construction Certificate issued for works approved under consent DA2022/1164 or commencement of site works. Mod2024/0225, which sought to modify consent DA2022/1164, was approved by Council on 7 August 2024. Both the cost of works and Condition 8 were unaltered by this application.</p> <p>SPP3 received a referral request for this modification, Mod2024/0419, on 7 August 2024.</p> <p>ASSESSMENT OF MODIFICATION APPLICATION Northern Beaches Section 7.12 Contributions Plan 2022 was the applicable plan at date of determination and remains applicable to this development consent. The modification will be assessed under this Plan.</p> <p>The current application Mod2024/0419 seeks an increase to the total development cost from \$11,075,000.00 to \$12,575,000.00. An updated Quantity Surveyor's report has been provided by the applicant. The increased cost is consistent with the changes proposed under Mod2024/0419.</p> <p>As no contribution has been paid to render satisfaction of condition 8, and given the changes proposed to the approved plans, it is reasonable to amend condition 8 of the consent to reflect the updated development costs stemming from the current modification application.</p> <p>RECOMMENDATION A. The proposal is supported subject to a modification of Condition 8 as follows:</p> <p><i>8. Policy Controls</i> <i>Northern Beaches Section 7.12 Contributions Plan 2022</i></p> <p><i>A monetary contribution of \$125,750.00 is payable to Northern</i></p>

Internal Referral Body	Comments
	<p><i>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 (as amended).</i></p> <p><i>The monetary contribution is based on a development cost of \$12,575,000.00.</i></p> <p><i>The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).</i></p> <p><i>Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).</i></p> <p><i>A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council's website at Northern Beaches Council - Development Contributions.</i></p> <p><i>Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.</i></p> <p><u>Assessing Officer's Comment:</u> The works resulting in the increased cost of works have been deleted by way of amended plans received on 18 February 2025. As such, the former cost of works and associated development contribution apply. No change to Condition 8 is included in the recommendation of this report.</p>
Traffic Engineer	<p><i>Supported without additional conditions</i></p> <p>The Traffic team has reviewed the following documents:</p> <ul style="list-style-type: none"> Plans (Master Set), Amended – issue for S4.55.02, designed by DURBACH BLOCK JAGGERS, dated 11/07/2024, S4.55 Traffic and Parking Assessment report, Ref. 24087 prepared by CTP Consulting Engineers dated 27 July 2024, Addendum Statement of Environmental Effects prepared by Boston Blyth Fleming Town Planners dated 02nd August 2024, and Traffic Referral Responses to DA2022/1164 dated 22/03/2022. <p><u>Traffic notes</u></p>

Internal Referral Body	Comments			
	<ul style="list-style-type: none"> The plans outline the calculations for gross floor area (GFA) for both previously approved applications and the current development, as detailed in the table below. However, the GFAs provided do not match the figures in the traffic report, so the report should be updated accordingly. 			
		DA2022/1164	Mod2024/0225	Mod2024/0419
	Retail/ Commercial	1429.69	1267.5	1393.7
	Food & Drink BOH	169.17	188.4	188.3
	Food & Drink Serviced Area	192.2	329.9	330.8
	Total:	1791.06	1785.8	1912.8
	<ul style="list-style-type: none"> It is noted that under the current modification application, the approved car parking provision, mix, general layout, loading, servicing, and waste collection arrangements, site through link, vehicular access location, and design remain unchanged from the approved application. According to the DCP, there is a need for 3-4 extra parking spaces due to an increase of approximately 125m² of commercial premises' gross floor areas (GFAs), and in total, 43-44 parking spaces are required to support the proposed uses on the site, however, the developer has only proposed 13 parking spaces, including 2 staff carpool spaces and 2 car stackers. A loading/servicing bay is also proposed. The number of parking spaces proposed is significantly lower than the DCP requirements. However, the applicant has presented this reduced parking provision in a positive light, arguing that it encourages workers to use sustainable transport and reduces car trip rates in the pedestrian-dominated environment of Rialto Lane. These arguments have been accepted, with the acknowledgment that removing the basement 			

Internal Referral Body	Comments
	<p>commercial area would likely result in excessively steep ramps, tighter parking arrangements, and the loss of the below-ground loading bay.</p> <p>Given the above the 13 parking spaces are accepted in this instance.</p> <ul style="list-style-type: none"> It is noted that the development makes provision for 6 bicycle parking spaces (a net increase of 1 bicycle parking space, with relocation of all bicycles to B2) and EOT facilities, encouraging active forms of transport over private single car trips. <p><u>Conclusion</u></p> <p>The Traffic S4.55 and plans can be supported on traffic grounds. No new conditions are proposed with all previously imposed conditions in DA2022/1164 to remain in place.</p> <p><u>Assessing Officer's Comment:</u></p> <p>The above comments relate to the originally submitted plans, which have been amended, and result in the following floor areas (as relevant to parking requirement calculations):</p> <ul style="list-style-type: none"> Retail/Commercial: 1,322.7m² Food & Drink BOH: 187.9m² Food & Drink Serviced Area: 330.8m² Total: 1,841.4m² <p>The modified development retains the approved parking arrangements, being for 13 car spaces. The above calculations require provision of 42 car parking spaces per Schedule 3 Parking and Access of the Manly Development Control Plan 2013. This means the proposed modifications result in an increased requirement of 2 car parking spaces beyond Mod2024/0225. Given the earlier proposed modifications, which required 3-4 additional spaces, were deemed acceptable, the reduced application with reduced parking requirements is also acceptable.</p>
Waste Officer	<p><i>Supported without additional conditions</i></p> <p>Existing waste conditions of consent applied to DA2022/1164 to be retained and applied to this Mod2024/0419 unchanged.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p><i>Supported, subject to conditions</i></p> <p>The proposal was referred to Ausgrid who provided a response</p>

External Referral Body	Comments
	stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

Housing and Productivity Contribution

Part 2 Development for which contribution is require and determination of contribution, Division 2 Housing and productivity contribution amounts, Clause 7 Base component.

Comment:

The Housing and Productivity Contribution does not apply to a development consent granted to a 'pending development application'. A pending development application includes a development application that is made, but not determined, before the commencement of this Order. The Order commenced on 1 October 2023. DA2022/1164 (being the consent modified by this application) was lodged on on 28 July 2022, being before commencement of the Order. As such, no Housing and Productivity Contribution is payable.

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 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 who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

SEPP (Biodiversity and Conservation) 2021

Chapter 6 – Water catchments

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

Part 6.3 Foreshores and Waterways Area

Division 1 Preliminary

6.25 Consent authority

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

- (a) development comprising the subdivision of land owned by TfNSW in or abutting the Foreshores and Waterways Area,*
- (b) development carried out in the Foreshores and Waterways Area wholly below the mean high water mark,*
- (c) development carried out in the Foreshores and Waterways Area for one or more of the following purposes, including development carried out wholly or partly inside a local government area—*
Above-water boat lifts; Advertisements; Advertising structures; Aids to navigation; Aviation facilities; Boat lifts; Charter and tourism boating facilities; Commercial port facilities; Dredging; Floating boat platforms; Flora and fauna enclosures; Houseboats; Maintenance dredging; Mooring pens; Private landing facilities; Private landing steps; Private marinas; Private swimming enclosures; Public boardwalks; Public water transport facilities; Single moorings; Skids; Slipways

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

- (a) development carried out partly above and partly below the mean high water mark,*
- (b) development carried out below the mean high water mark for the purposes of one or more of the following—*
Boat building and repair facilities; Boat launching ramps; Boat sheds; Marinas; Reclamation works; Swimming pools; Water-based restaurants and entertainment facilities; Waterfront access stairs; Water recreation structures; Wharf or boating facilities that are sea walls
- (c) development carried out wholly or partly inside the zoned waterway, including development carried out below the mean high water mark, for the purposes of one or more of the following—*
Car parks; Commercial premises; Recreational or club facilities; Residential accommodation; Restaurants or cafes; Retail premises; Tourist facilities

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

Comment:

Clause 6.25(2) provides that the Minister for Planning is the consent authority for development in the

Foreshores and Waterways Area, per subclauses (a)-(c) inclusive.

Clause 6.25(2)(a) refers to development carried out partly above and partly below the mean high water mark (as defined by the SEPP). This subclause is relevant to this application, as the works are partly above and partly below MWHM.

Clause 6.25(2)(b) refers to certain development types carried out below the MHWM. This subclause does not apply to this application, as the proposal does not involve any of the development types specified below MHWM.

Clause 6.25(2)(c) of the SEPP refers to certain development types carried out wholly or partly inside the zoned waterway, including development carried out below the mean high water mark. This subclause does not apply to this application, as it is not located within the zoned waterway.

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

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

Per the first dot-point above, which refers to Clause 6.25(a), being relevant to this application, Council is the consent authority, as the application does not involve any of the development types listed for determination by Transport for NSW.

The second dot-point above does not apply as it refers to Clause 6.25(b)(c), being not applicable to this application.

In this instance, despite the above, the Northern Beaches Local Planning Panel is the consent authority, as the application includes work above the height of buildings development standard, resulting in a maximum 37% breach.

Division 2 Zoning of Foreshores and Waterways Area

(3) This section does not affect the zoning, under another environmental planning instrument, of land in the Foreshores and Waterways Area if the land is not included in a zone under this section.

Comment:

Not applicable. The subject site is zoned E1 Local Centre pursuant to the Manly Local Environmental Plan 2013, and is not within the zoned waterway pursuant to the SEPP.

Division 3 Development in Foreshores and Waterways Area

6.28 General

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

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

- (i) Sydney Harbour is a public resource, owned by the public, to be protected for the public good,*
- (ii) the public good has precedence over the private good,*
- (iii) the protection of the natural assets of Sydney Harbour has precedence over all other interests,*
- (b) whether the development will promote the equitable use of the Foreshores and Waterways Area, including use by passive recreation craft,*
- (c) whether the development will have an adverse impact on the Foreshores and Waterways Area, including on commercial and recreational uses of the Foreshores and Waterways Area,*
- (d) whether the development promotes water-dependent land uses over other land uses,*
- (e) whether the development will minimise risk to the development from rising sea levels or changing flood patterns as a result of climate change,*
- (f) whether the development will protect or reinstate natural intertidal foreshore areas, natural landforms and native vegetation,*
- (g) whether the development protects or enhances terrestrial and aquatic species, populations and ecological communities, including by avoiding physical damage to or shading of aquatic vegetation,*
- (h) whether the development will protect, maintain or rehabilitate watercourses, wetlands, riparian lands, remnant vegetation and ecological connectivity.*

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

- (a) having regard to both current and future demand, the character and functions of a working harbour will be retained on foreshore sites,*
- (b) if the development site adjoins land used for industrial or commercial maritime purposes—the development will be compatible with the use of the adjoining land,*
- (c) if the development is for or in relation to industrial or commercial maritime purposes—public access that does not interfere with the purposes will be provided and maintained to and along the foreshore,*
- (d) if the development site is on the foreshore—excessive traffic congestion will be minimised in the zoned waterway and along the foreshore,*
- (e) the unique visual qualities of the Foreshores and Waterways Area and its islands, foreshores and tributaries will be enhanced, protected or maintained, including views and vistas to and from—*
 - (i) the Foreshores and Waterways Area, and*
 - (ii) public places, landmarks and heritage items.*

Comment:

With respect to clause (1), the proposed development is wholly on private land, so is acceptable with respect to the matters above at (a) to (h) inclusive.

With respect to clause (2), the proposed development is wholly on private land, does not impact the working harbour, does not unreasonably impact upon traffic congestion, and is acceptable with respect to the visual quality of the foreshore. The development does not involve commercial maritime purposes. The proposed development retains suitable pedestrian access around the entirety of the site. As such, the development is satisfactory with respect to the matters above at (a) to (e) inclusive.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

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

Comment:

The approved development was demonstrably not likely to cause an adverse impact on the matters above at (a) to (g). The proposed modifications under this application are not anticipated to result in any increased adverse impact on those matters.

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

Comment:

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

Division 4 Coastal use area

2.11 Development on land within the coastal use area

- 1) *Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:*
- a) *has considered whether the proposed development is likely to cause an adverse impact on the following:*
 - i) *existing, safe access to and along the foreshore, beach, headland or rock*
 - ii) *platform for members of the public, including persons with a disability,*
 - iii) *overshadowing, wind funnelling and the loss of views from public places to*
 - iv) *foreshores,*
 - v) *the visual amenity and scenic qualities of the coast, including coastal headlands,*
- Aboriginal cultural heritage, practices and places,*
cultural and built environment heritage, and

- b) *is satisfied that:*
- i) *the development is designed, sited and will be managed to avoid an*
 - ii) *adverse impact referred to in paragraph (a), or*
 - iii) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or if that impact cannot be minimised—the development will be managed to mitigate that impact, and*
- c) *has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*

Comment:

The approved development was demonstrably not likely to cause an adverse impact on the matters above at (a). The proposed modifications under this application are not anticipated to result in any increased adverse impact on those matters. The consent authority can be satisfied that the modified development is designed, sited and will be managed to avoid adverse impact. The proposal has been considered in relation to the coastal and built environment, bulk and scale throughout the assessment, as demonstrated within this report.

Division 5 General

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

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

Comment:

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

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

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings	Part 10m	Max. 14.2m (up to 42%)	Unchanged* New works to 13.7m (37%)	-	As approved
	Part 12m	Max. 15m (up to 25%)	Unchanged*	-	As approved
Floor Space Ratio	2.5:1 Plus 0.5:1 per Clause 4.4(2A) Total: 3:1 (2,070.6m ²)	2.57:1 1,772.9m ²	2.67:1 (1,843.5m ²)	-	Yes
Gross floor area in certain areas	Min. 25% GFA as Commercial	100%	Unchanged	-	Yes
	Max. 1,000m ² per retail premises	Each <1,000m ²	Each <1,000m ²	-	Yes

* The proposal includes new works above the applicable height limits, though these works do not result in any increase to the maximums approved.

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.11 Active street frontages	Yes
6.12 Essential services	Yes
6.13 Design excellence	Yes
6.16 Gross floor area in Zone B2	Yes

Detailed Assessment

Zone E1 Local Centre

With respect to the new works above the maximum building height, the objectives of the E1 Local Centre zone are addressed as follows:

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.

Comment:

The proposed modified development retains the approved commercial uses of the site, which serve the needs of people who live in, work in and visit the area.

To encourage investment in local commercial development that generates employment opportunities and economic growth.

Comment:

The proposed modified development retains the approved commercial uses of the site, which generate 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.

Comment:

Not applicable. The proposed modified development retains the approved commercial uses of the site.

To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.

Comment:

The proposed modified development retains the approved commercial uses of the site, including retail premises.

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.

Comment:

The subject site does not adjoin any land in a zone other than E1 Local Centre. It is in close proximity to RE1 Public Recreation land, across South Steyne. The use of the site for commercial premises is not proposed to change under this application, thereby protecting the existing amenity of those who live in the area.

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.

Comment:

The proposed modified development is designed in order to provide a suitable balance between provision of diverse and active street frontages and retention of the existing heritage value of nearby buildings. The resultant development serves as a contribution to the existing 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.

Comment:

The proposed modified development generally retains the approved form of the building, with new built form limited to the north-western elevation only. The resultant development is complementary to and consistent with the scale architectural treatment of the existing building and its surrounds, including its relationship to South Steyne reserve and the foreshore.

4.3 Height of buildings

Whilst the modification application involves work above the maximum building height development standard, there is no increase to the approved overall maximum heights of the development. Despite this, the application does not strictly need to address the requirements of Clause 4.6.

The application has been made under Section 4.55 of the *Environmental Planning and Assessment Act 1979*, which is a free standing provision that in itself authorises the development to be approved notwithstanding any breach of development standards. Section 4.55 is subject to its own stand-alone tests (such as the substantially the same test and consideration of all relevant Section 4.15 matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application. As such, no document pursuant to Section 35B of the *Environmental Planning and Assessment Regulation 2021* or Clause 4.6 is required.

Notwithstanding that Clause 4.6 does not apply to Section 4.55 modification applications, the merits of the variation have been assessed with regard to the objectives of the height of buildings development standard and the underlying objectives of the E1 Local Centre zone. The assessment has also taken into consideration the relevant tests of the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*.

DESCRIPTION OF NON-COMPLIANCE:

Development standard: Clause 4.3 Height of Buildings
Requirement: Part 10m / Part 12m
Proposed: Part 13.7m / Part 15m
Percentage of variation: Part 37% / Part 25%

The proposal includes works above the maximum building height development standard for the purpose of the infilling of the lightwell, reconfigured mechanical plant, and internal reconfiguration. It is noted the modifications also include addition of solar panels, though these elements are considered an exemption from building height as '*and the like*', per the Dictionary of the *Manly Local Environmental Plan 2013* (emphasis added):

building height (or height of building) means—

(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or

(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,

*including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues **and the like**.*

The following diagrams depict the applicable maximum building height line in red (being part 10 metres and part 12 metres), as well as the reconfigured mechanical plant (highlighted in pink) and the infilling of the lightwell (highlighted in blue). The proposed solar panels are highlighted in green, though this is reiterated to be exempt from the building height definition.

Subclause (3) of this clause provides that:

(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

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

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

Comment:

As above, a written request pursuant to Section 35B of the Environmental Planning and Assessment Regulation 2021 or Clause 4.6 is not required.

Development Standard Objectives:

The underlying objectives of Clause 4.3 Height of Buildings are addressed as follows:

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

Comment:

The proposed modifications result in works above the applicable building heights that do not increase maximum approved heights. The works do not unreasonably alter the upper level roof form, or require additional earthworks. The works are located such that they are not readily perceptible from the public domain along South Steyne, and are not unreasonably imposing from other vantage points, such as Rialto Lane, and are not of negative consequence to surrounding private residences.

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

Comment:

The proposed modifications are not of a size or location that unreasonably alters the bulk and scale of the building. The modified development remains compliant with the maximum floor space ratio development standard applicable to the site, the objective of which is to control bulk and scale.

(c) to minimise disruption to the following—

(i) views to nearby residential development from public spaces (including the harbour and foreshores),

(ii) views from nearby residential development to public spaces (including the harbour and foreshores),

(iii) views between public spaces (including the harbour and foreshores),

Comment:

The application is supported by a visual impact assessment that demonstrates a negligible change to the view loss as a result of the modifications. It is considered that the proposed works are designed in such a way that achieves the desired outcome for the site with minimal disruption and impact to adjoining and surrounding land. The modified development suitably retains views to, from and between public and private places. Further assessment detail is provided in the section of this report relating to Clause 3.4.3 Maintenance of Views of the Manly Development Control Plan 2013.

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

Comment:

Despite the works above the building height development standard, the proposed modifications retain the approved level of solar access to public and private open spaces.

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

Comment:

Not applicable. The subject site is not zoned for recreation or conservation.

4.6 Exceptions to development standards

Whilst the modification will result in a building height that contravenes the maximum permitted by Clause 4.3 of the MLEP 2013, the application does not strictly need to address the requirements of Clause 4.6.

The application has been made under Section 4.55 of the *Environmental Planning and Assessment Act 1979*, which authorises the development for which consent was granted to be modified, notwithstanding any breach of development standards. As such, no document pursuant to Section 35B of the *Environmental Planning and Assessment Regulation 2021* or Clause 4.6 is required.

The matters set out in Section 4.55(3) are addressed in the relevant sections of this report.

5.21 Flood planning

Under this clause, development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development:

- (a) is compatible with the flood function and behaviour on the land, and*
- (b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and*
- (d) incorporates appropriate measures to manage risk to life in the event of a flood, and*
- (e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.*

Comment:

The application has been referred to Council's Flood Engineer, who has reviewed the development in relation to the above matters. The Engineer is supportive of the works, subject to conditions of consent, which have been included in the recommendation of this report. Accordingly, the development is satisfactory with respect to the above matters at (a) through (e).

In deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters:

- (a) the impact of the development on projected changes to flood behaviour as a result of climate change,*
- (b) the intended design and scale of buildings resulting from the development,*
- (c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,*
- (d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.*

Comment:

The application has been referred to Council's Flood Engineer, who has reviewed the development in relation to the above matters. The Engineer is supportive of the works, subject to conditions of consent, which have been included in the recommendation of this report. Accordingly, the development is satisfactory with respect to the above matters at (a) through (e).

6.1 Acid sulfate soils

Clause 6.1 Acid Sulfate Soils requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works. The site is located in an area identified as Acid Sulfate Soil Class 4, as indicated on Council's Acid Sulfate Soils Planning Map. The proposed modifications are not anticipated to result in any unreasonable acid sulfate soils risk.

6.2 Earthworks

The objectives of Clause 6.2 Earthworks require development:

- (a) to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, and*
- (b) to allow earthworks of a minor nature without requiring separate development consent.*

In this regard, before granting development consent for earthworks, Council must consider the following matters:

- (a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development*

Comment:

The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality.

- (b) the effect of the proposed development on the likely future use or redevelopment of the land*

Comment:

The proposal will not unreasonably limit the likely future use or redevelopment of the land.

- (c) the quality of the fill or the soil to be excavated, or both*

Comment:

The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

- (d) the effect of the proposed development on the existing and likely amenity of adjoining properties*

Comment:

The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Conditions have been included in the recommendation of this report to limit impacts during excavation/construction.

- (e) the source of any fill material and the destination of any excavated material*

Comment:

The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

- (f) the likelihood of disturbing relics*

Comment:

The site is not mapped as being a potential location of Aboriginal or other relics.

(g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area

Comment:

The site is not located in the vicinity of any watercourse, drinking water catchment or environmentally sensitive areas.

(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Comment:

Conditions are included in the recommendation of this report that will minimise the impacts of the development.

6.4 Stormwater management

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

(a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and

(b) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and

(c) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.

Comment:

The proposed modifications are acceptable with respect to this clause and (a) to (c) above, as they do not alter the approved stormwater arrangements for the development.

6.9 Foreshore scenic protection area

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

(a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,

(b) measures to protect and improve scenic qualities of the coastline,

(c) suitability of development given its type, location and design and its relationship with and impact on the foreshore,

(d) measures to reduce the potential for conflict between land-based and water-based coastal activities.

Comment:

The subject site is within the foreshore scenic protection area and adjoins foreshore land. The modified development:

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

6.11 Active street frontages

Under this clause, development consent must not be granted to the erection of a building, or a change of use of a building, on land to which this clause applies unless the consent authority is satisfied that the building will have an active street frontage after its erection or change of use.

Comment:

The proposed modifications retain the approved active street frontage to South Steyne, with no amendment.

6.12 Essential services

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

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

Comment:

The subject site is supplied with the above essential services. The approved development and proposed modifications retain and rely upon these services.

6.13 Design excellence

The objective of this clause is to deliver in Manly the highest standard of architectural and urban design of buildings and public spaces. Development consent must not be granted for development to which this clause applies unless the consent authority considers that the development exhibits design excellence.

Comment:

Design excellence for the original consent (DA2022/1164) was established within the corresponding Assessment Report. The proposed modifications retain the design excellence of the development in that the materials and colours remain unchanged, the vast majority of works are internal, and the external works are minor in nature. The overarching design of the development is not materially changed.

6.16 Gross floor area in Zone B2

This clause requires that:

Development consent must not be granted to the erection of a building on land in Zone B2 Local Centre unless the consent authority is satisfied that at least 25% of the gross floor area of the building will be used as commercial premises.

Comment:

The gross floor area of the modified development remains entirely for commercial premises.

Development consent must not be granted for development on land to which this clause applies if the gross floor area of any retail premises on the land would exceed 1,000 square metres.

Comment:

The retail tenancies modified by this application each remain less than 1,000m² in area.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 690.2m²	Requirement	Approved	Proposed	Complies
4.2.3 Setbacks Controls in LEP Zones B1 and B2	Nil	Nil	Nil	Yes
Schedule 3 Parking and Access	Commercial/Retail: 1 space per 40m ² GFA (35 spaces)	13 spaces	13 spaces	No
	Food & Drink Premises: 1 space per 40m ² serviced area (8 spaces)			

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.3 Townscape (Local and Neighbourhood Centres)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.2 Energy Sources and Systems	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.6 Energy efficiency/conservation requirements for non-residential developments	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

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor	Yes	Yes
4.2.5 Manly Town Centre and Surrounds	Yes	Yes
4.2.5.1 Design for Townscape	Yes	Yes
4.2.5.2 Height of Buildings: Consideration of Townscape Principles in determining exceptions to height in LEP Zone B2 in Manly Town Centre	Yes	Yes
4.2.5.4 Car Parking and Access	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.1.1 General Character	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.3 Maintenance of Views

The development is considered against the objectives of the control as follows:

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

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

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

Comment:

The proposed modifications retain the angled rear setback to the uppermost level, which is designed so as to allow view to the ocean for Unit 535, 25 Wentworth Street, Manly. The proposed modifications do not alter the approved view sharing outcome for the development with respect to that apartment.

A submission has been received on behalf of Unit 633, 25 Wentworth Street, raising concern with the location of proposed solar panels on the roof. The solar panels are set on the approved roof form to a maximum height matching the top of the approved lift overrun (RL 19.200), being below the maximum height of approved mechanical plant (RL 19.500). The submitted Visual Impact Assessment demonstrates that the location of the solar panels will not have more than a negligible impact upon the approved view sharing outcome for Unit 633.

Below, the blue depicts the proposed building outline, the pink highlighted area is a portion of additional built form resulting from the infilling of the lightwell, and the yellow highlighted area is where solar panels are proposed.



Above: The view from the terrace of Unit 633 of 25 Wentworth Street.

With respect to Unit 633, 25 Wentworth Street, the four (4) planning principles outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*, are applied to the proposal.

1. Nature of the views affected

"The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured".

Comment to Principle 1:

The affected view from Unit 633 is of the subject site, adjoining sites, and further to Manly Beach, the surf, the ocean and its horizon, and several headlands to the north in the distance.

2. What part of the affected property are the views obtained

"The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic".

Comment to Principle 2:

The affected view from Unit 633 is available from the sitting room, terrace and informal dining room, across the north-eastern side boundary from a standing position.

3. Extent of impact

"The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor,

moderate, severe or devastating”.

Comment to Principle 3:

The extent of the impact on the affected view from Unit 633 is minor. A small portion of the view to the surf is lost as a result of infilling the approved lightwell, but this corridor is already predominantly obstructed by existing pine trees. The proposed solar panels are located such that they will be set within a position of the view already obstructed by approved built form, and a condition of consent has been included in the recommendation to limit the height of solar panels to RL 19.200 accordingly. The view sharing outcome for Unit 633 resulting from the modified development is not materially different to that of the approved development.

4. Reasonableness of the proposal that is causing the impact

“The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.”

Comment to Principle 4:

The modified development includes variation to the height of buildings development standard, which is demonstrably acceptable, as detailed throughout this report. Given this and that the view sharing outcome for Unit 633 resulting from the modified development is not materially different to that of the approved development, the modifications proposed are reasonable in this instance.

The impact on the views from the objecting property does not warrant refusal of the application.

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

The proposed modifications includes additional floor space and does not alter approved car parking arrangements. The objectives of the control are addressed as follows:

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

Comment:

The proposed modifications result in an increase in parking requirements from 40 spaces to 42 spaces, when compared to the approved development. This matter has been addressed by Council's Traffic Engineer and is supported on merit, establishing that there is adequate provision for car parking to support the modified development. Further, the location is well-served by public transport options, with frequent bus and ferry services within walking distance of the subject site.

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

Comment:

No change is proposed to the approved vehicular parking arrangement, so the works will not result in any increased risk of conflict between pedestrian and vehicular movement in the E1 Local Centre Zone.

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

The proposed works above the maximum building height are addressed in the sections of this report relating to the E1 Local Centre Zone, Clause 4.3 Height of Buildings, and Clause 4.6 Exceptions to Development Standards of the MLEP 2013.

4.2.5.4 Car Parking and Access

Vehicular parking is addressed in the section of this report relating to Clause 4.2.4 of the MDCP 2013.

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 2024

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

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

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

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

PLANNING CONCLUSION

This modification application seeks to modify Development Consent DA2022/1164 (as previously modified by Mod2024/0225), which was granted for demolition and construction of a commercial building.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to a variation to the height of buildings development standard of 37% (up to RL 18.500) with respect to the portion of the development subject to a 10-metre height limit, and 25% (up to RL 19.500) with respect to the portion of the development subject to a 12-metre height limit. As demonstrated in this report, the works do not increase the overall height approved under DA2022/1164, as increased via Mod2024/0225 (up to RL 19.500).

The submissions received are demonstrably addressed as acceptable with respect to the concerns raised (construction impacts and view sharing), with detailed assessment of the view sharing outcome within the section of this report relating to Clause 3.4.3 Maintenance of Views of the Manly Development Control Plan 2013.

The detailed consideration given to the height of buildings variation and the view sharing outcome of the development establish that the modified development is acceptable on merit with respect to these matters.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment.

The proposal has therefore been recommended for approval.

REASON FOR DETERMINATION

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

RECOMMENDATION

THAT Northern Beaches Local Planning Panel as the consent authority grant approval to Modification Application No. Mod2024/0419 for Modification of Development Consent DA2022/1164 granted for Demolition and construction of a commercial building on land at Lot B DP 102407,34 - 35 South Steyne, MANLY, Lot 2 DP 861591,34 - 35 South Steyne, MANLY, subject to the conditions printed below:

Modification Summary

The development consent is modified as follows:

MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
PAN-458359 Mod2024/0419	The date of this notice of determination	<p>Internal and external modifications, including infilling the approved lightwell, and addition of solar panels.</p> <p>Additional Conditions:</p> <ul style="list-style-type: none">Condition 1B Modification of Consent - Approved Plans and Supporting DocumentationCondition 60B Fire Safety Matters <p>Modified Conditions:</p> <ul style="list-style-type: none">Condition 2 Compliance with Other Department, Authority or Service RequirementsCondition 19 Building Code of Australia Fire Safety RequirementsCondition 20 Building Code of Australia AccessCondition 25 Acoustic Report RecommendationsCondition 56 Acoustic Report CertificationCondition 63 Roof areas, Terraces and Roof Planting <p>Deleted Conditions:</p> <ul style="list-style-type: none">Condition 28 Amendments to the Approved Plans - Rialto Lane Elevation
PAN-430975 Mod2024/0225	7 August 2024	<p>Minor internal and rooftop modifications.</p> <p>Additional Conditions:</p>

		<ul style="list-style-type: none"> • Condition 1A Modification of Consent - Approved Plans and Supporting Documentation • Condition 29A Mechanical Plant Acoustic Treatment • Condition 60A Acoustic Treatment
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Modified Conditions

A. Add Condition 1B Modification of Consent - Approved Plans and Supporting Documentation, to read as follows:

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
A-DA-110-000	DA-L	Basement 2 Plan	Durbach Block Jaggers	11 February 2025
A-DA-110-001	DA-L	Basement 1 Plan	Durbach Block Jaggers	11 February 2025
A-DA-110-003	DA-L	Ground Plan	Durbach Block Jaggers	11 February 2025
A-DA-110-004	DA-L	Level 1 Plan	Durbach Block Jaggers	11 February 2025
A-DA-110-005	DA-L	Level 2 Plan	Durbach Block Jaggers	11 February 2025
A-DA-110-006	DA-L	Level 3 Plan	Durbach Block Jaggers	11 February 2025
A-DA-110-007	DA-L	Roof Plan	Durbach Block Jaggers	11 February 2025
A-DA-210-001	DA-L	North & South Elevations	Durbach Block Jaggers	11 February 2025
A-DA-210-002	DA-L	East & West Elevation	Durbach Block Jaggers	11 February 2025
A-DA-310-001	DA-L	Section AA, BB & EE	Durbach Block Jaggers	11 February 2025
A-DA-310-002	DA-L	Section CC	Durbach Block Jaggers	11 February 2025
A-DA-310-003	DA-L	Section DD	Durbach Block Jaggers	11 February 2025

Approved Reports and Documentation	
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Document Title	Version Number	Prepared By	Date of Document
Acoustic Statement P01152	-	E-LAB Consulting	5 July 2024
BCA Compliance Statement	-	BM+G	1 August 2024
Fire Statement 222007_DA(MOD-2)_01	-	Affinity Fire Engineering	19 July 2024
Flood Impact and Risk Management Report	4	Integrated Group Services	25 July 2024
Geotechnical Letter P2472_09	-	Morrow Geotechnics	22 July 2024
Statement of Heritage Impact J5623_03	-	Weir Phillips	23 July 2024

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

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

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

B. Modify Condition 2 Compliance with Other Department, Authority or Service Requirements to read as follows:

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	30 August 2024

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

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

C. Modify Condition 19 Building Code of Australia Fire Safety Requirements to read as follows:

The Building Code of Australia fire safety measures for the building as detailed and recommended in the BCA Compliance Statement Report by Blackett, Maguire Goldsmith dated 30/6/2022 and BCA Compliance Statement, dated 01/08/2024, including any Performance Solutions 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.

D. Modify Condition 20 Building Code of Australia Access to read as follows:

Access and facilities to and within the building are to be provided for Persons with a Disability. In this regard the recommendations contained in the Access Report dated June 2022, Ref. 22223-R1.2, and Access Compliance Capability Statement dated 18/07/2024, prepared by Code Performance, is to be taken into consideration as part of the assessment of the Construction Certificate. 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.

E. Modify Condition 25 Acoustic Report Recommendations to read as follows:

Prior to the issuing of any Construction Certificate, documentation is to be submitted to the satisfaction of the Principal Certifying Authority that recommendations within the acoustic report by IGS referenced as VE-N22_017 and dated 29 June 2022, and including any modifications contained within E-LAB Consulting acoustic letter dated 5 July 2024 have been implemented/incorporated into the design of the premises.

Reason: To protect acoustic amenity of building occupants and surrounding premises.

F. Delete Condition 28 Amendments to the Approved Plans - Rialto Lane Elevation as follows:

DELETED

G. Modify Condition 56 Acoustic Report Certification to read as follows:

Prior to any occupation certificate being issued, a further acoustic assessment is to be undertaken by a qualified and experienced person(s) to confirm compliance with the acoustic assessment by IGS referenced as VE-N22_017 and dated 29 June 2022, and including any modifications contained within E-LAB Consulting acoustic letter dated 5 July 2024.

Any recommendations made by the consultant must be implemented prior to issuing the Occupation Certificate in order to achieve compliance with noted conditions of this consent.

Reason: To verify acoustic compliance.

H. Add Condition 60B Fire Safety (under the heading BEFORE ISSUE OF THE OCCUPATION CERTIFICATE), to read as follows:

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 Fire and Rescue NSW.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of a part Occupation Certificate or Occupation Certificate. Each year the Owners must send to the Council and Fire and Rescue NSW, 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 Parts 10, 11 & 12 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021.

I. Modify Condition 63 Roof areas, Terraces and Roof Planting to read as follows:

The following provisions apply:

- i) DELETED
- ii) The Level 3 front roof terrace is not to be used for commercial food and beverage purposes.
- iii) Solar voltaic cells on the Level 3 roof top must not exceed a height of RL 19.200.
- iv) The main upper roof surface of Level 3 is to minimise reflectivity to overlooking apartments.
(White, light grey or similar colours are not to be used for finished roof treatment)

Reason: To ensure that the development remains consistent with Manly DCP townscape.