

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2023/0368
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<b>Responsible Officer:</b>	Nick England
<b>Land to be developed (Address):</b>	Lot 1 SP 61679, 1 / 9 - 15 Central Avenue MANLY NSW 2095
<b>Proposed Development:</b>	Fit out and use of the courtyard for the seating of 100 patrons, operating from 8.00am to 10.00pm (same as existing)
<b>Zoning:</b>	Manly LEP2013 - Land zoned E1 Local Centre
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	D & M Sachar Pty Ltd
<b>Applicant:</b>	Robinson Urban Planning Pty Ltd

<b>Application Lodged:</b>	12/04/2023
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Commercial/Retail/Office
<b>Notified:</b>	03/05/2023 to 17/05/2023
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	29
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Refusal

<b>Estimated Cost of Works:</b>	\$ 242,000.00
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### EXECUTIVE SUMMARY

This Development Application seeks consent for alteration and additions to an existing restaurant within a mixed commercial / residential development ("In-Situ"), specifically the application proposes a fit out and use of the associated courtyard for the seating of 100 patrons, operating from 8.00am to 10.00pm.

The application proposes to use both Lot 1 (commonly known as "Shop 1") and to the common property for the restaurant seating. The physical works in the application only apply to the courtyard and consist of two small service structures, pergolas and an overarching roof, which is to be operable

to be either open or closed.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to 29 submissions which were received to the proposed development. 11 of these submissions were objections, with the remaining 18 submissions letters of support.

Concerns raised in the objections primarily relate to the noise impacts on adjoining residents adjacent the site, specifically the multi-storey residential apartment building adjoining the premises to the north.

The application seeks to expand on the existing development consent under which the restaurant operates (684/99 issued on 14 February 2000), which has an approved capacity of 100 patrons.

However, having regard to the submitted plans which proposes 104 seats in the courtyard and the existing number of seats within the restaurant (which existing records show could be as high as 70), a maximum of 174 patrons could be accommodated within the expanded restaurant. The potential impact of such patronage is not critically considered in the documentation submitted with the application and as such the impact of the restaurant on adjoining residences cannot be accurately assessed.

Council raised these concerns with the applicant in correspondence dated 17 August 2023. Additional information was provided by the applicant on 28 September 2023. This information is however not considered of adequate detail or information to overcome the concerns with the potential adverse impacts on adjoining residents.

Given that the extent of impact of the additional patronage cannot be accurately assessed, it is recommended that the NBLPP refuse the application, for the reasons provided within the report.

## **PROPOSED DEVELOPMENT IN DETAIL**

The application proposes alterations and additions to an existing restaurant ("In-Situ").

Physical works are proposed in the common property area, as follows:

- Demolition of the planter boxes along the eastern boundary / vegetation removal / relocation;
- Removal and replacement of part of existing rear wall and rebuilding part of this wall along the boundary line;
- Construction of a new service area / store / wash / cool rooms (21m<sup>2</sup> in area) adjoining eastern boundary;
- Construction of new storeroom (9m<sup>2</sup> in area) adjoining the northern boundary;
- Four (4) interlocking timber pergolas; and
- Retractable awning over the pergolas.

Note: A "New internal corridor to provide access to communal sanitary facilities" is claimed in the Statement of Environmental Effects (SEE), however this is not entirely enclosed by walls and / or a roof.

Operational aspects of the proposal, as directly stated in the SEE, are:

" (a) *Capacity for up to 100 persons (seated only) (same as existing)*

*(b) Operating hours: Monday to Sunday 8.00 am and 10.00 pm (same as existing).  
No change is proposed to the operation of the existing shop tenancies (indoor and out), current liquor licenses and license boundaries are to remain unchanged as a result of this refurbishment."*

Upon initial assessment of the application, correspondence was sent to the applicant on 17 August 2023, where it was advised that the proposal was not supported. The issues raised in this correspondence include:

- insufficient / inconsistent information with respect to the total number of seats / patrons on the site; and
- unfavourable support from Council's Environmental Health Officers in relation to the documentation provided with the application.

Amended information was received by the applicant in response to Council's correspondence on 28 September 2023.

The applicant was advised on 16 November 2023 that the additional information had failed to address the concerns raised in Council's earlier correspondence. In detail, Council re-iterated its position that the application is not a true and accurate depiction of the intensity of the proposed use and impact of the scale of the operations likely by what is proposed in the development application.

The applicant was advised that as result of the inconsistencies present in the application, Council could not be properly satisfied that the potential impact on adjoining residents would not be adverse. In turn, the application could not demonstrate consistency with:

- the objectives of the E1 Local Centre of the Manly Local Environmental Plan 2013 (MLEP);
- Clause 6.21 Noise impacts—licensed premises of MLEP; and
- Part 3.4.2 Privacy and Security of the Manly Development Control Plan 2013.

Further advice was also provided on the specific information that Council would need for the proper assessment of the application. To date, no response to the Council letter of 16 November 2023 has been provided by the Applicant.

## **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 - 6.21 Noise impacts—licensed premises

Manly Development Control Plan - 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)

Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 4.2.5.4 Car Parking and Access

Manly Development Control Plan - 4.2.5.6 Late Night Venues

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 1 SP 61679, 1 / 9 - 15 Central Avenue MANLY NSW 2095
<b>Detailed Site Description:</b>	<p>The site is commonly known as 9-15 Central Avenue, Manly and is an existing two-storey commercial building located on the corner of Central Road and Sydney Road, Manly.</p> <p>The land specific to the proposed development relates to both an allotment (Part 1) in Strata Plan 61679 and the adjoining ground level common property in this strata plan. This building and the strata plan it is on is the commercial component of a broader complex, known as "Pacific Waves".</p> <p>Part 1 is currently occupied by a restaurant ("In-Situ") and has an estimated area of 245m<sup>2</sup>. The associated common property has a site area of approximately 267m<sup>2</sup> and is located to the north of Part 1 and is also accessed by Parts 2 to 6 in SP 61679. This area is used predominantly for outdoor seating for In-Situ and also two other cafe / restaurants in the building ("Ground Zero" and "Austies / Jah Bar"). It also provides access to the sanitary facilities for the ground floor on the eastern side of the building.</p> <p>Primary access to the restaurant is from Sydney Road, with a secondary access through the aforementioned common property to the adjoining common property of the multi-storey residential component of "Pacific Waves" on a separate Strata Plan 61139, which connects to Henrietta Lane and Central Road.</p> <p>Strata Plan 61679 has access to a number of car spaces in a stratum within a basement level beneath Strata Plan 61139.</p> <p>The site is located within the E1 Local Centre zone of Manly Local Environmental Plan 2013, with adjoining and surrounding</p>

development characterised by a broad range of retail, commercial and residential land uses. Immediately adjoining the site to the north is the aforementioned Pacific Waves building, which is a residential flat building of approximately eight stories in height.

Enclosed are photographs of the courtyard and its relationship to adjoining buildings.

**Figure 1:** Viewed from the associated courtyard on common property. Beyond the doors is the restaurant on Lot 1.



**Figure 2:** Looking towards the courtyard of Strata Plan 61679, viewed from the adjoining common property of Strata Plan 61139. To the left is the multi-storey residential building.





## Map:



## SITE HISTORY

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

684/1999: Development consent was granted for "Cafe / Restaurant and Advertising Sign" on 14 February 2000. The existing restaurant on the site operates subject to this consent. A search of Council's records has not revealed the specifically approved plans for this consent, which relate to the total area of seating on the premises. However, a plan from file dated 15 June 2004 reveals that 32 seats are provided in the courtyard, as shown below:

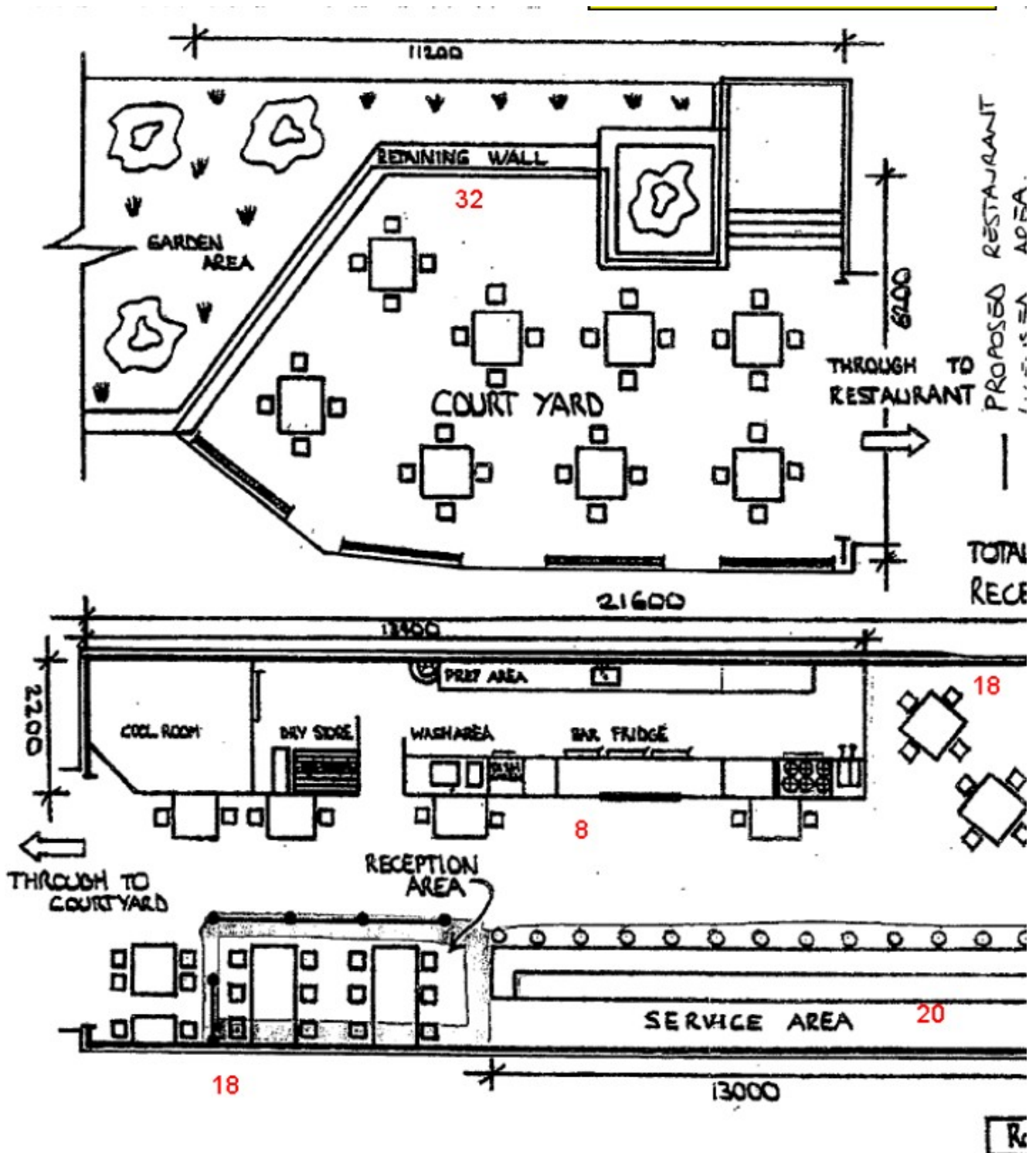
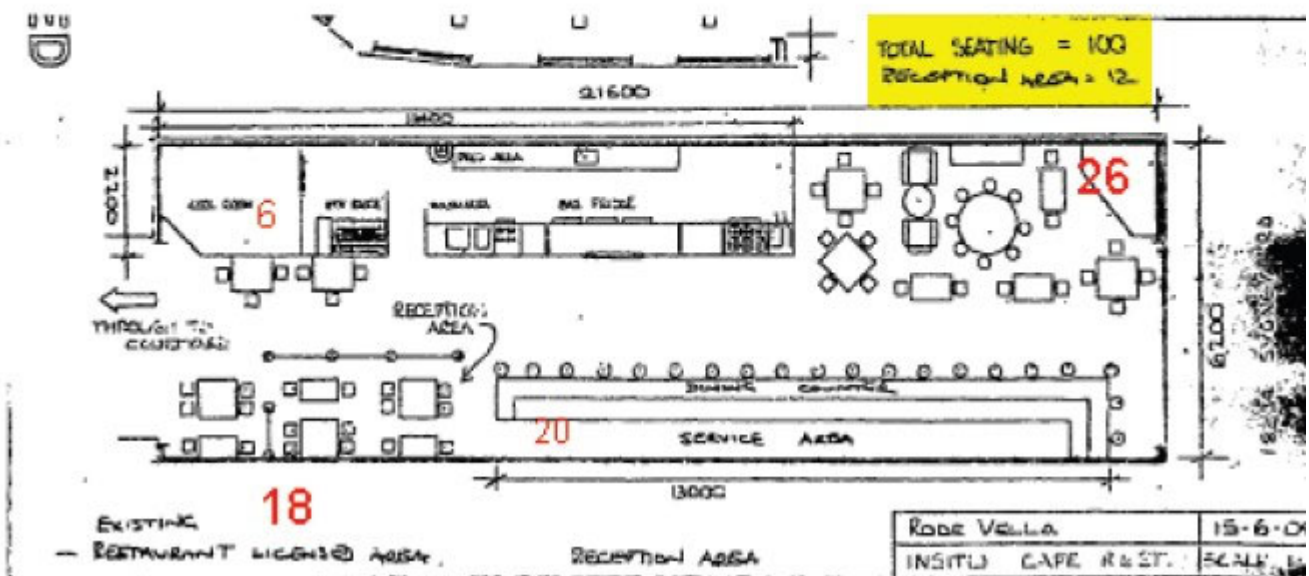


Figure 3: Existing layout from 2004.

With respect to the seating indoors, a plan from a noise report dated 22 January 2016 illustrates a seating plan with up to 70 seats internally, as shown below:

## APPENDIX A – LAYOUT PLAN & PROPOSED DOOR CONFIGURATION

### A.1 EXISTING LAYOUT PLAN 70



**Figure 4:** 2016 internal layout

Potentially up to 102 seats are provided on the premises. This consent has been subject to numerous modifications, with the most recent being described below.

684/1999 - Part 6: Consent granted for "Section 96(2) to modify approved Change of hours of operation and eating - Shop I Insitu Manly - Part 7 and Part 8" by the Northern Beaches Independent Assessment Panel on 15 June 2017.

Relevant conditions of this consent, to the proposed application, are as follows:

#### ANS01

*The hours of operation of the premises must not exceed the following, without the prior approval of the Council:*

- *Outdoor section: 8.00am to 10.00pm - 7 days a week.*
- *Internal section: 8.00am to Midnight - 7 days a week.*

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

*Reason: To ensure amenity of the surrounding locality is maintained.*

#### ANS12

*3. The seating both within and outside the shop is to not exceed one hundred (100) seats without prior approval of the Council.\**



*\* this condition dates from the Section 96(2) - Part 5 modification consent, issued on 11 May 2005.*

On the balance of this information, the restaurant has approval for 100 patrons, across both indoor and external areas of the commercial tenancy.

## **ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)**

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

<b>Section 4.15 Matters for Consideration</b>	<b>Comments</b>
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 2013 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters maybe addressed via a recommended condition of consent.</p> <p><u>Clause 29</u> of the EP&amp;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&amp;A Regulation 2021 allow Council to request additional information. In correspondence dated 17 August 2023, additional information was requested in relation to: inconclusive information in regard to number of seats / patrons; and noise impacts / Environmental Health Officer comments. Additional information was received from the applicant on 28 September 2023.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 62 and/or 64</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter may be addressed via a condition of consent.</p>

Section 4.15 Matters for Consideration	Comments
	<p>Clause 69 of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p>Clause 69 of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter may be 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) <b>Environmental Impact</b> 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) <b>Social Impact</b> Despite the amenity impacts identified elsewhere in this report, the proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> 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	This assessment has found that the application contains insufficient information for Council to be satisfied that there will be no adverse impacts on the amenity of the adjoining residents; be consistent with the objectives of the zone; and meet the reasonable expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 03/05/2023 to 17/05/2023 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 29 submission/s from:

<b>Name:</b>	<b>Address:</b>
Mr James Winston Hunter	19 / 51 The Crescent MANLY NSW 2095
Ms Elizabeth Hunter	19 / 51 The Crescent MANLY NSW 2095
Mr Faustino Miguel Martinez De Morentin	508 / 9 - 15 Central Avenue MANLY NSW 2095
Ms Sharon Lee Yabsley Mr Victor James Parker	45 Ingleside Road INGLESIDE NSW 2101
Mr David Alistair Wilson	501 / 9 - 15 Central Avenue MANLY NSW 2095
Mr Paul William D'Arcy	PO Box 605 BELCONNEN NSW 2616
Mrs Jae-Won Kim	Address Unknown
Mr Khay Soon Ong	C/- The Rightside Estate Agency PO Box 486 MANLY NSW 2095
Mr David Edward Glading Mrs Frances Elizabeth Glading	507 / 9 - 15 Central Avenue MANLY NSW 2095
The Owners of Strata Plan 61139	9-15 Central Avenue MANLY NSW 2095
Mr Gregory Ernest Brown	8 Macquarie Road PYMBLE NSW 2073
Mr Eric Thomas Martinez De Morentin	703 / 9 - 15 Central Avenue MANLY NSW 2095
Mrs Samantha Barbara Stow	505 / 9 - 15 Central Avenue MANLY NSW 2095
Mr David Ly	3/42-44 Victoria Parade MANLY NSW 2095
Mr Ray Caryl Stone	704 / 9 - 15 Central Avenue MANLY NSW 2095
Mr Timothy Rogers	15 / 33 Malvern Avenue MANLY NSW 2095
Mr Gary James Thomson	1 / 9 Narabang Way BELROSE NSW 2085
Ivan Gordon	Address Unknown
Mr Michael Robert Tuck	6 / 113 Sydney Road MANLY NSW 2095
Lachlan Paramor	11 Bay View Street LAVENDER BAY NSW 2060
Narumu Pty Ltd	45 Ingleside Road INGLESIDE NSW 2101
Stephen Dawson	Address Unknown
Mr Stephen Thomas Mulvogue Mrs Patricia Olga Mulvogue	34 Rosedale Avenue FAIRLIGHT NSW 2094
Manly Business Chamber	52 Raglan Street MANLY NSW 2095
Mr Denis Joseph Mockler Mrs Mary Philomena Mockler	210 / 9 - 15 Central Avenue MANLY NSW 2095
Pete Brown	Address Unknown
Mrs Susan Marie Chrysiliou Mr Marios Chrysiliou	802 / 9 - 15 Central Avenue MANLY NSW 2095
Brian Joseph O'Connor	32 Blaxland Street FRENCHS FOREST NSW 2086
Ms Zina Dybac	509 / 9 - 15 Central Avenue MANLY NSW 2095

Of the 29 submissions received, 11 submissions objected to the proposed development, with the remaining 18 submissions were in support of the proposal.

The issues raised in the submissions are summarized below for clarity and are addressed below:

- **The proposed works will create an adverse level of noise impact on adjoining residents in the Manly Town Centre**

Comment: A full consideration of the potential impact of the development on the amenity of adjoining residents is provided elsewhere in this report. In summary, the application fails to provide adequate information which demonstrates that there will be no adverse impact on the amenity of adjoining residents. Hence, this issue is considered valid in the context of the assessment and forms the primary reason for the recommended refusal of the application.

- **The sanitary facilities in the premises need to be upgraded.**

Comment: A report was provided with the application that demonstrated the relevant provisions of the National Construction Code / Building Code of Australia could be complied with. The report was reviewed by Council's Building Surveyor who advised that no objection was raised to the proposal and that a potential condition of consent could ensure the adequacy of sanitary facilities.

- **We request that Council verify the current approved outdoor seating as stated in the application and that of the proposed seating will be within that existing approval regime (ie. not increased)**

Comment: A detailed consideration of the documentation provided with the application is provided elsewhere in this report. In summary, there is no clear information or detail which demonstrates that the total number of patrons will reflect what is proposed (100), when the plans provided for the courtyard seating, in conjunction with the reliance on the existing consent for the seating inside the restaurant, may result in a much higher patronage on the premises (potentially 174). Hence, this issue is considered valid in the context of the assessment and forms the primary reason for the recommended refusal of the application.

- **The loss of vegetation in the proposal will degrade the general amenity of the area.**

Comment: This aspect of the proposal is not considered to be adverse to any relevant Council policy or standard. Hence, this is not a valid reason to include in the recommended refusal of the application.

- **A Plan of Management should be submitted with the application.**

Comment: A Plan of Management would not be adequate to address the concerns of Council with respect to the likely adverse impacts on adjoining residents. A clear depiction of the proposal is required, that clearly quantifies the exact number of seats on the entire premises, with supporting noise assessment documentation to directly test this potential impact of this specific number of seats. Reliance on plans of management and/or conditions of consent to cover any knowledge gaps is not considered to be efficient or sound development assessment.

- **The increased noise impacts will result in residents forced to rely on mechanical means of ventilation and increased energy usage.**

Comment: This impact is difficult to quantify and could not reasonably be included in the recommended reasons for refusal. However, it remains valid in as much that it relates to amenity impact (noise) that would affect the on-going enjoyment of residents of their current surroundings.

- **Anti-social behavior originates from the premises and the proposal will only increase this.**

Comment: This matter is the responsibility of NSW Police. It should be noted that NSW Police have been consulted in the assessment of this application and they have raised no objection to the proposed development.

- **The proposed works are of benefit to the surrounding area and no objection is raised to the proposal.**

Comment: The support for the proposal stated in 18 of the received submissions is noted. In principle, the potential benefits of the proposal to the social and economic life of Manly Town Centre is acknowledged. However, as the information provided with the application is not sufficient to ensure that conflict between land uses in the zone can be properly managed, this support is not persuasive to the degree that would warrant approval of the application.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p><b><i>Supported, subject to Conditions</i></b></p> <p>The application has been investigated with respects to aspects relevant the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Environmental Health (Industrial)	<p><b><i>Not Supported, subject to Conditions</i></b></p> <p>The proposal seeks Council approval to refurbish the existing communal outdoor dining space to improve the amenity and functionality of the space.</p> <p>The use of the communal commercial courtyard is to remain unchanged, with the capacity restricted to 100 patrons and operation limited to between 8.00 am and 10.00 pm only (in line with current approvals).</p>



Noise concerns raised previously by Council have been addressed and Environmental Health believe noise can be managed by suitable conditions.

Environmental recommends approval subject to conditions.

**Planner comment:** It is noted that the Environmental Health officer supports the proposal, based on an occupation limit of 100 patrons. As discussed throughout the report, the potential occupation of the expanded restaurant is considered to be approximately 174 patrons. As such, it is considered that the acoustic assessment to which the application relates is misleading and therefore the assessment of the Environmental Health officer has not adequately considered all relevant matters.

### **UPDATED REFERRAL**

Another review of the acoustic report dated 16 March 2023 prepared by WSP Australia has raised a number of issues that Environmental Health wish to have reviewed in order to ensure all possible noise matters have been considered and assessed.

The following factors has already been assessed within the acoustic report.

1. Patron capacity of up to 100 patrons in the outdoor courtyard within 1 in 3 people talking with a raised voice.
2. Patron and background music noise levels from internal areas
3. Northern boundary fence to the residential courtyard
4. Soft chair furnishings and plant features
5. New outdoor servery and small storage structures
6. Outdoor Bar, servery, and a small storage building.
7. Any music on the courtyard to be low background music
8. And the installation of either Option1 or 2 roof/awning.

The outdoor area is proposing a maximum capacity of 100 patrons (**seated only**). However, consideration needs to be given to the potential noise impacts from additional sources such as:

- Patrons from inside the premises using the internal corridor and going through the courtyard to the communal sanitary facilities.
- The possibility of these 'inside' patrons using the outdoor servery area

- The possibility of the inside patrons standing and congregating in the courtyard at the servery area creating more people noise.
- The addition of serving staff in the outdoor area (servery area, wash up, table service)
- Noise after 10:00pm due to staff cleaning the courtyard area,

Note that this acoustic assessment for the outdoor courtyard includes contribution from internal patron and music noise breaking out to the courtyard as described in Section 3.1. however, it hasn't considered that a considerable number of patrons may enter the courtyard area to use the servery or potentially enter the shared sanitary facilities.

The response to further information dated 22 September 2023 has stated:

*it is also proposed to provide an internal walkway along the back of the tenancies, so patrons can gain direct access to the shared amenities without the need to go outside of the building, and have to walk through the courtyard to re-enter the building to access the toilets. This will greatly assist with noise management, especially after 10.00pm when the indoor areas are still operating and the outdoor courtyard area is closed. Patrons will no longer need to exit Insitu into the courtyard to gain access the toilets after 10.00pm.*

Can the applicant please submit the plans identifying this internal walkway?

Many behavioral noise management solutions have been provided such as staff managing the operable roof, staff monitoring numbers in the courtyard, staff closing the external doors when amplified music is being played inside the venue. These behavioral controls are not easily managed, controlled or enforced, and Council is requiring suitable design noise mitigation measures to be provided.

Council understands the external doors to the courtyard are proposed to be locked at 10:00pm however this is highly unlikely to occur. The additional information has stated '*cleaning of the space occurs the morning after prior to the venue opening*'. This is not encouraged by Council especially with the courtyard being an outdoor dining area there is the potential for attracting rodents if

Internal Referral Body	Comments
	<p>spilled food is left on the tables, ground from the previous night. Therefore, cleaning of the courtyard area will need to occur after it closes to the patrons which results in further noise after 10:00pm.</p> <p>Environmental Health suggest the outdoor courtyard be restricted to operate until 9:00pm, allowing that additional 1 hour until 10:00pm for staff clean up and Environmental Health also suggest the removal of the servery area to further reduce noise from staff operations and potential patron congregation around the servery.</p> <p>Environmental Health recommends refusal at this time</p>
Environmental Health (Food Premises, Skin Pen.)	<p><b><i>Supported, subject to Conditions</i></b></p> <p>Matters in this referral are only food preparation areas and Sanitary Facilities</p> <p>On this basis Environmental Health supports the proposal with conditions.</p>
Strategic and Place Planning (Heritage Officer)	<p>HERITAGE COMMENTS</p> <p><b><i>Supported without Conditions</i></b></p>
	<p>The proposal has been referred to heritage as the subject site sits within C2 - Manly Town Centre Conservation Area and is within the vicinity of a number of heritage items:</p> <p><b>Item I106 - Group of commercial buildings</b> - All numbers, The Corso, Manly</p> <p><b>Item I110 - New Brighton Hotel</b> - 69–71 The Corso, Manly</p> <p><b>Item I232 - Commercial and residential building (street facade only)</b> - 4–10 Sydney Road, Manly</p> <p><b>Item I233 - Commercial and residential building</b> - 12 Sydney Road, Manly</p>
	<p>Details of heritage items affected</p>

## **C2 - Manly Town Centre Conservation Area**

### Statement of significance

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.

### **Item I106 - Group of commercial buildings**

#### Statement of significance

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.

#### Physical description

The Corso acts as a low scale horizontal corridor which steps down from the harbour to the ocean. The atmosphere of The Corso is of a 19th century place. Its special qualities include the contrasts of horizontal (low scale architecture) and vertical (planting) dimensions, and urban and natural elements.

### **Item I233 - Commercial and residential building**

#### Statement of significance

The building, of local significance, reflects its former use as a Fire Station. It has a strong presence in the Sydney Road streetscape and contributes to the overall cultural heritage significance and character of the Town Centre Conservation Area.

#### **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**

	<p>The proposal seeks consent for to refurbish the existing communal outdoor dining space to improve the amenity and functionality of the space, which is located within the Town Centre Conservation Area and adjacent to a heritage item.</p> <p>Given the minor nature of the proposed works, which are not visible from the public domain, the proposal is considered to not</p>
<b>Internal Referral Body</b>	<b>Comments</b>
	<p>adversely impact the heritage item or the conservation area.</p> <p><b>Revised comments - 05 October 2023</b></p> <p>The application has been amended to clarify its capacity of seating numbers. Given the proposed fitout works are the same as the original application, it is considered that the proposal will not have any additional impact upon the significance of the heritage item or the conservation area.</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 MLEP 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? Addressed in SEE.</p> <p><b><u>Planner comment:</u></b> The comments of the Heritage Advisor are noted. It is however recognised that their support is based on a capacity of 100 patrons. It is considered that with a much larger capacity that the acoustic impacts of the premises may necessitate mitigation measures which may have the potential for an adverse impact on the heritage conservation area.</p>



External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p><b><i>Supported, subject to Conditions</i></b></p> <p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>
NSW Police - Licensing (Clubs, Hotels, Pubs)	<p><b><i>Supported, subject to Conditions</i></b></p> <p>The NSW Police Force have responded in correspondence dated 14 April and 24 October 2023, with the most recent commentary reproduced below:</p> <p><i>"Police refer to the above DA and additional requested information seeking to fit out current courtyard.</i></p> <p><i>The proposal seeks Council approval to refurbish the existing communal outdoor dining space to improve the amenity and functionality of the space. The use of the communal commercial courtyard is to remain unchanged, with the capacity restricted to 100 patrons and operation limited to between 8.00 am and 10.00pm only</i></p>

External Referral Body	Comments
	<p><i>(in line with current approvals).</i></p> <p>1. Fit out works of the existing commercial courtyard:</p> <p>(a) Demolition of the planter boxes along the eastern boundary</p> <p>(b) Removal of small palms from within the planters</p> <p>(c) Removal and replacement of part of existing rear wall and rebuilding part of this wall along the boundary line</p> <p>(d) Construction of a new service area with back of house wash-up (+21.3sqm of GFA)</p> <p>(e) Construction of new storeroom (+9.1sqm of GFA)</p> <p>(f) New timber pergolas plus new retractable awning</p> <p>(g) New internal corridor to provide access to communal sanitary facilities</p> <p>2. Use of the courtyard as follows:</p> <p><b>(a) Capacity for up to 100 persons (seated only) (same as existing)</b></p> <p><b>(b) Operating hours: Monday to Sunday 8.00 am and 10.00 pm (same as existing).</b></p> <p>No change is proposed to the operation of the existing shop tenancies (indoor and out), current liquor licenses and license boundaries are to remain unchanged as a result of this refurbishment.</p> <p><b>Page 6 - Noise</b></p> <p>Opening the doors to the courtyard while music is being played inside is an issue for noise breakout to be addressed fully.</p> <p><b>Response from applicant:</b> The opening of the doors while music is being played will not occur post 10.00pm if anything, would be the doors to the court yard being allowed to stay open till 10pm while music is being played.</p> <p><b>Police Recommendation</b></p> <p>To reduce the impact of excessive noise emanating to the nearby residence it is recommended that while a live band is playing the doors to the outside courtyard be closed at 8pm.</p> <p><b>Plan of Management</b></p> <p>Upon reviewing the proposal, it has been noted a plan of management has not been included. It is unknown as to whether any changes have been made to the current plan of management. A Plan of Management is what Police use for enforcement should they even have a condition of their licence or DA to adhere to.</p> <p>Upon further review of the DA Police have no objection to the above modification."</p>

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)**

#### **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 5.0 metres of an overhead electricity power line.

Comment: The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

#### **SEPP (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?	No
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#### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	12m	4.2m	N/A	Yes
Floor Space Ratio	FSR: 3:1	N/A	N/A	N/A

#### Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
6.1 Acid sulfate soils	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.11 Active street frontages	Yes
6.12 Essential services	Yes
6.13 Design excellence	Yes
6.21 Noise impacts—licensed premises	No
Schedule 5 Environmental heritage	Yes

#### Detailed Assessment

##### **Zone E1 Local Centre**

The proposed development cannot demonstrate compliance with the following objective of the E1 Local Centre zone:

*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.*

The applicant has not provided conclusive information as to the total capacity of the premises. Specifically, the number of seats allocated on the submitted plans, differ from the numbers stated in other documentation provided in the application. Further, as the proposed works/seats will be in conjunction with the existing restaurant, no aggregate number of seats has been provided. This information is necessary for Council to sufficiently determine that the conflicts between the residential and non-residential land uses can be minimised. In this regard, the application fails to achieve this objective.

## **6.21 Noise impacts—licensed premises**

Clause 6.21 of the Manly LEP requires the consent authority to consider noise nuisance impacts likely to be generated by the proposed development on surrounding residential accommodation, before granting development consent for development involving the use of land as licensed premises under the Liquor Act 2007. In-situ is a licensed premises, and as such, it is necessary to consider this provision of MLEP.

An Acoustic Impact Assessment was provided in support of the application, prepared by WSP, dated 16 March 2023. Council's Environmental Health Officer has reviewed the report and all other information provided by the applicant and has advised they have no objection to the proposed development, subject to recommended conditions.

Special conditions recommended include (in summary):

- Maximum number of patrons in the courtyard to be set at 100;
- the operable roof to be automated to extend at 9.00pm;
- the roof to be constructed to the standards specified in the Acoustic Impact Assessment;
- external doors to the rear courtyard are to have a self-closing mechanism; and
- the new boundary fence and access door be constructed of a solid form.

Notwithstanding the support from Council's Environmental Health Officer, concern is that the noise report and the recommended conditions fails to take into account the following:

- the different number of seats in the original plans (108 seats) and the amended concept plan (104 seats); and
- factoring in the existing number of seats within the restaurant, which would take the full patronage of the restaurant well beyond 100, to potentially 174.

Whilst it may be assumed that the seats located within the restaurant may have a reduced acoustic impact as they are contained within a building, the submitted acoustic analysis fails to take into account this existing situation, where patronage in the restaurant may be much higher than 100. A review of Council's records has revealed the following likely seating scenarios that are facilitated by the existing consent:

- approximate outdoor seating of 32 seats; and
- approximate internal seating of up to 70 seats.

The application (as stated numerous times in the documentation submitted) relies on the maintenance of this existing approved situation, in regard to total patrons and hours of operation. However, the plans submitted give no assurance that this operational situation, in respect to patrons, will remain and, if approved, the number of patrons that could be accommodated within the expanded restaurant is to well exceed 100 patrons.

Other operational areas of potential additional impact from the courtyard include:



- patrons from inside the restaurant seats must enter the courtyard to access sanitary facilities;
- an additional service area in the courtyard increases the potential for internal patrons to use, and congregate in the courtyard, and;
- the proposed storeroom structure in the courtyard will be accessed by staff and further increases the potential for noise generation.

Based on these aspects of the proposal, it is not realistic to assume that the courtyard will only generate noise from the 100 seated patrons only. The noise generated by the internal patrons will contribute to this noise impact.

In correspondence to the applicant dated 17 August 2023, these concerns were raised and relevant sections of the correspondence are reproduced below (underlined for emphasis):

*"The application as proposed is not definitive in regard to the total number of patrons or seats that may occur on the subject site as a consequence of the proposal.*

*. . . the subject proposal clearly involves a number of seating that exceeds 100 in the courtyard alone and provides no detail on the specific number of seats that are located inside the existing restaurant.*

*Hence, in order for Council to be satisfied that the seating arrangements in the proposed development are to be definitely at the number requested (ie. 100), the total number of seats are to be provided on plan, as they relate to both the existing floorspace within Lot 1 (In-Situ restaurant) and the Common Property (courtyard) for Strata Plan No.61679.*

*In the absence of such information, it is likely that the proposal may involve a maximum patron and seating number that exceeds the number that is requested, and in turn, potentially have an adverse impact on the amenity of the surrounding area."*

Amended plans and documentation were provided in response to Council's correspondence on 28 September 2023. Based on the revised seating arrangements for the outdoor area, 104 seats are proposed. In combination with the identified internal seating of 70 likely under the current consent, the total number of seating/patrons on the premises may be up to 174. This does not accord with the noise report, which simplistically assumes that only 100 patrons will be on premises at any one time. Hence, this information was not sufficient to overcome the concerns raised in Council's correspondence and the overarching concern that the extent of acoustic impact is understated.

It is considered that given that this is a new development application, the entire physical aspects of the premises (and the impacts that arise from them) must be considered collectively, without deferral to previous consents or the conditions that applied to them. Doing so creates a misaligned operating environment where technical compliance between consents maybe achieved, despite the overall impact being unacceptable.

Operational conditions to remedy any adverse impact arising from these inconsistencies are not considered easily enforceable and would not reflect the physical operating reality of the premises. Further, relying on such conditions cannot substitute for a full and proper assessment of the likely impacts on adjoining residents, and in turn, ensure that the statutory requirements of Clause 6.21 can be met.

It is noted that the professional findings in the Acoustic Impact Assessment, specifically in regard to the proposed 100 occupants in the courtyard and its impact on adjoining residents, is not in question. However, its failure to incorporate the full operational scope of the existing restaurant, in conjunction with the proposed increase in capacity, means that insufficient information has been provided to

demonstrate compliance with Clause 6.21. In reality, it is not accurately known what the acoustic impacts of the premises will be and as such, there is no ability for Council or for that matter the NBLPP to be satisfied of the matters prescribed under Section 6.21 of the MLEP.

## Manly Development Control Plan

### Built Form Controls

Built Form Controls	Requirement	Proposed	% Variation*	Complies
4.2.5.1 Design for Townscape	Front Setback: Nil / established building line	No change	N/A	N/A
	Rear Setback: Nil / established building line	Nil (proposed store)	N/A	Yes
	Side Setback: Nil / established building line	Nil (pergola/roof)	N/A	Yes
4.2.4 Car parking in Business Zones 4.2.5.4 Car Parking (Manly Town Centre) Schedule 3 Parking and Access	1 parking space for every 40 sqm of gross floor area of serviced area	No change to existing floor space	N/A	N/A

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.3 Townscape (Local and Neighbourhood Centres)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	No	No
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	No	No
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	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 Development in Business Centres (LEP Zones B1 Neighbourhood Centres and B2 Local Centres)	Yes	Yes
4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2)	Yes	Yes
4.2.3 Setbacks Controls in LEP Zones B1 and B2	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
4.2.5.6 Late Night Venues	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.1.1 General Character	Yes	Yes
5.1.2 The Corso	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes
Schedule 2 - Townscape Principles	Yes	Yes

#### Detailed Assessment

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

The potential adverse impact on the acoustic privacy of adjoining residents is dealt elsewhere in this report. Suffice to say, the application has failed to provide adequate information that the policies of Council with respect to mitigating noise impacts have been properly met.

#### **3.4.2 Privacy and Security**

Part 3.4.2.3 Acoustical Privacy (Noise Nuisance), subsection (g) requires that any application for licenced premises provide a Noise Control report, which demonstrates compliance with the following standards:

*i) The La10\* noise level emitted from the licensed premises must not exceed the background of noise level in any Octave Band Centre Frequency (31.5Hz to 8kHz inclusive) by more than 5dB between 7am and 12 midnight at the boundary of any affected residence.*

*ii) The La 10\* noise level emitted from the licensed premises must not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz to 8kHz inclusive) between 12 midnight and 7am at the boundary of any affected residence.*

iii) *The noise level from the licensed premises must not be audible within any habitable room in any residential premises between the hours of 12 midnight and 7am or as otherwise required under conditions of development consent.*

iv) *Balconies, verandahs, any roof top areas and any external access thereto must be closed to patrons between the hours of 10pm to 8am daily to minimise noise nuisance.*

*\*Note: For the purposes of condition, the La10 can be taken as the average maximum deflection of noise emission from licensed premises.*

As stated previously, an Acoustic Impact Assessment was provided with the application, prepared by WSP, dated 16 March 2023. The provision of this report is generally consistent with the requirements of Part 3.4.2.3 Acoustical Privacy.

However, concern is that the noise report and the recommended condition fails to take into account the following:

- the different number of seats in the original plans (108 seats) and the amended concept plan (104 seats); and
- factoring in the existing number of seats within the restaurant, which would take the full patronage of the restaurant well beyond 100, to approximately 174.

The failure of this report to incorporate the full operational scope of the existing restaurant, in conjunction with the proposed works, means that insufficient information has been provided to demonstrate that the requirements of Part 3.4.2 Privacy and Security have been met.

#### **4.2.5.4 Car Parking and Access**

The parking requirements for restaurants are set at 1 parking space for every 40 sqm of gross floor area of serviced area. The definition of gross floor area in MDCP 2013 is adopted as the definition within MLEP 2013, which specified that such area is within external enclosing walls. As the proposed works / seats are within a courtyard and will not be enclosed by walls, there is hence no requirement to provide additional parking spaces.

#### **4.2.5.6 Late Night Venues**

The objectives of Part 4.2.5.6 Late Night Venues focus on ensuring the peace of the community in terms of safety and security.

The application has been referred to the NSW Police for comment, who have advised they have no objections to the proposed development.

Hence, despite the other concerns of Council with respect to the residential amenity impacts, the proposal can demonstrate compliance with this part of 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 2022**

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$2,420 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$242,000.

## **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, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

## **PLANNING CONCLUSION**

This application has been referred to the NBLPP due to the number of objections exceeding 10.

The concerns raised in the objections primarily relate to adverse noise impacts of the proposed increase in seating arrangements on amenity of adjoining residents. This in turn is the critical assessment issue of the application.

The physical works of the application relate only to the common property courtyard, which supports the expanded restaurant use in Shop / Lot 1. The applicant however relies heavily on the assumption that the use of the restaurant will remain the same in regard to the number of existing approved seats (maximum 100).



However, detailed counts of the total number of seats, based on the information provided with this application and the available information in regard to the existing consent, shows that the potential seating on the premises could be much higher than 100, potentially up to as much 174 seats.

Of primary concern is that the information provided with the application, specifically the noise impact assessment report does not critically test and demonstrate how the proposed seating arrangements in the courtyard in conjunction with the internal seating within the restaurant, will have an acceptable acoustic impact, given that potentially the number of patrons on the premises could be much higher than the stated maximum of 100.

The application also relies on the operational aspects of a previous consent (684/1999) to justify its acceptable acoustic impact. However, it is considered that as this is a new development application, the entirety of the expanded restaurant premises must be considered anew, without association to previous consents or the conditions that applied to them, as those approval were granted with regard to different circumstances.

Relying on a condition of development consent to regulate unknown acoustic impact does not give full assurance that these impacts can be mitigated. A full and proper assessment of the potential impacts of any development can only be undertaken when the plans and documentation present a true depiction of the operational aspects of the proposal. The application has failed to provide this, despite Council requesting this of the applicant.

Hence, there is insufficient information to determine if the application can meet:

- the objectives of zone E1 Local Centre zone, specifically the requirement 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; and
- the provisions of Manly LEP 2013 relating to Noise Impacts - Licensed Premises; and
- and the controls of Manly DCP 2013, relating to Acoustical Privacy.

The proposal has therefore been recommended for refusal.

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

## RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council , as the consent authority REFUSE Development Consent to Development Application No DA2023/0368 for the Fit out and use of the courtyard for the seating of 100 patrons, operating from 8.00am to 10.00pm (same as existing) on land at Lot 1 SP 61679,1 / 9 - 15 Central Avenue, MANLY, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause Zone E1 Local Centre of the Manly Local Environmental Plan 2013.

Particulars: There is insufficient information to determine that the proposal will serve to minimise conflict between the residential and non-residential land use and ensure no adverse amenity impact on adjoining residents with respect to generation of noise.

2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 6.21 Noise Impacts - Licensed Premises of the Manly Local Environmental Plan 2013.

Particulars: The application has failed to provide sufficient information to determine if the proposed works / seats will not have an adverse impact on the amenity of residential accommodation in the vicinity of the proposed development.

3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.4.2 Privacy and Security of the Manly Development Control Plan 2013.

Particulars: The application has failed to provide sufficient information that incorporates the full operational scope of the existing restaurant, in conjunction with the proposed works, in order to demonstrate that the proposal will give adequate protection of acoustical privacy to adjoining residents.

4. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.

Particulars: The applicant has not provided adequate and consistent information to identify the exact impact of the proposal and in turn properly manage conflicts between different land uses in the zone in which the proposal is located.