

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0597
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Responsible Officer:	Nick Keeler
Land to be developed (Address):	Lot 172 SP 13245, 14 / 22 Central Avenue MANLY NSW 2095
Proposed Development:	Alterations and Additions to Existing Mixed-Use Development
Zoning:	Manly LEP2013 - Land zoned E1 Local Centre OLDManly LEP2013 - Land zoned B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Nasus (NO 1) Pty Ltd
Applicant:	Nasus (NO 1) Pty Ltd

Application Lodged:	02/06/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	12/06/2023 to 26/06/2023
Advertised:	Not Advertised
Submissions Received:	12
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 792,000.00
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PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for alterations and additions including change of use and fit-out of the former Australia Post tenancy within the Manly National building.

The proposed works include the following:

- Demolition works within tenancy
- Alterations and Additions to the ground floor commercial area, external works and converting Lot 172 from one (1) into three (3) tenancies
- Use and fit-out of the three new tenancies

The proposed operational details of each new tenancy is as follows:

Tenancy 1

Use and fit out of tenancy 1 as a recreation facility (indoor).

- Hours of Operation: Monday to Sunday – 5:30am to 9pm
- Staff: Maximum two (2) staff at anytime
- Class Numbers: Ten (10) to twenty (20) patrons with up to eight (8) classes a day
- Parking: Three (3) parking spaces

Tenancy 2

Use and fit out of tenancy 2 as a recreation facility (indoor).

- Hours of Operation: Monday to Sunday – 5:30am to 9pm
- Staff: Two (2) staff
- Class Numbers: Maximum 40 people in a class
- Parking: Three (3) parking spaces

Tenancy 3

Use and fit out of tenancy 3 as a business premises - health and wellness studio.

- Hours of Operation: Monday to Sunday – 6am to 9pm
- Staff: Maximum three (3)
- Patrons: Maximum ten (10) at any one time
- Parking: Three (3) parking spaces

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 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 - 4.2.5.4 Car Parking and Access

SITE DESCRIPTION

Property Description:	Lot 172 SP 13245 , 14 / 22 Central Avenue MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of strata one (1) allotment located at the ground floor fronting the western side of Central Avenue.</p> <p>The site is irregular in shape with a frontage of 33.9m along Central Avenue and a surveyed area of 572m².</p> <p>The site is located within the E1 Local Centre zone and accommodates a 24 storey mixed use building with residential and commercial tenancies.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by mixed use developments of varying density and architectural style.</p>

Map:



SITE HISTORY

The land has been used for residential and commercial purposes for an extended period of time. A search

of Council's records relevant to the subject tenancy has revealed the following history:

Application **CDC2023/0073** for works associated to the make good of the existing Australia Post tenancy was approved on 27/01/2023 by a private building certifier.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended plans showing awning details and amended flooding information.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire 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>

Section 4.15 Matters for Consideration	Comments
	Clause 69 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.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 12/06/2023 to 26/06/2023 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 12 submission/s from:

Name:	Address:
Mrs Ashling Theresa O'brien	5 Meredith Place FRENCHS FOREST NSW 2086
Steve Carrodus	17 / 25 Marshall Street MANLY NSW 2095

Name:	Address:
Klaudia Brown	Address Unknown
Ms Tracey Kathleen Mietzke	PO Box 843 MANLY NSW 1655
Mr Robert John Webb	66 The Corso MANLY NSW 2095
Sue Brassel	Address Unknown
Mr Stephen Smith	70 Edgecliffe Esplanade SEAFORTH NSW 2092
Brian Symons	Address Unknown
Mr Edward Damian Breslin	246 Pittwater Road MANLY NSW 2095
Good For Manly Association Mrs Candy Laura Bingham	28 High Street MANLY NSW 2095
Alex Jacques	402 / 13 Whistler Street MANLY NSW 2095
Mr Nicholas Dracakis	18 Violet Street BALGOWLAH NSW 2093

All submissions received were in support of the development application.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<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>
NECC (Coast and Catchments)	<p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> - Supplied plans and reports; - Coastal Management Act 2016; - State Environmental Planning Policy (Resilience and Hazards) 2021 <p>Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore the Coastal Management Act 2016 is applicable to this DA. The proposed development is considered to be consistent with the objects, as set out under Part 1 Section 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' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP). Hence, Clauses 2.11 and 2.12 apply for this DA. On internal assessment the DA satisfies requirements under clauses 2.11 and 2.12 of the SEPP. As such, it is considered that the application does comply with the</p>

Internal Referral Body	Comments		
	requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021.		
NECC (Flooding)	<p>The proposal seeks consent for alterations and additions to convert lot 172 from one commercial lot into three commercial lots. The works involve minor alterations to the existing ground floor layout, new access openings along the Eastern, Western and Southern elevation as well as associated fit out works.</p> <p>The property is affected by the Medium Risk Flood Precinct, 1% AEP Flood, PMF Flood and a H3 Flood Life Hazard Category.</p> <p>Subject to the following conditions, council is satisfied that the proposal is compliant with Section 5.4.3 Flood Prone Land from the Manly DCP 2013 and Clause 5.21(2)(a-e) of the Manly LEP 2013, with consideration of Clause 5.21(3)(a-d) of the Manly LEP 2013.</p>		
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS		
	Discussion of reason for referral		
	The proposal has been referred to Heritage as the broader site adjoins a heritage conservation area		
	C2 - Town Centre Conservation Area		
	Details of heritage items affected		
	<u>Statement of Significance</u> 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.		
	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		

Internal Referral Body	Comments
	<p>The proposal seeks consent to turn an existing tenancy into three, create shopfronts for each tenancy facing Central Avenue and construct an awning. The larger Manly National complex of which this site is part of adjoins the conservation area to the south. However the site of the works is located some distance down Central Avenue away from the conservation area at Sydney Road. Given the physical separation, the proposal is considered to not impact upon the conservation area or its significance.</p> <p>Therefore Heritage raises no objections and requires no conditions.</p> <p>Consider against the provisions of CL5.10 of MLEP.</p> <p>Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	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.

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)

SEPP 65 - Design Quality of Residential Apartment Development

Clause 4 of State Environmental Planning Policy No. 65 – Design Quality for Residential Apartment Development (SEPP 65) stipulates that:

(1) This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:

(a) the development consists of any of the following:

- (i) the erection of a new building,
 - (ii) the substantial redevelopment or the substantial refurbishment of an existing building,
 - (iii) the conversion of an existing building, and
- (b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and
- (c) the building concerned contains at least 4 or more dwellings.

As previously outlined, the proposed development is for the alterations and additions to a ground floor commercial tenancy in the existing 24 storey residential and commercial mixed use building.

As per the definition of a mixed use development, the provisions of Clause 4 outlining the application of the policy and the minor scale of the proposed development in the context of the existing development, the provisions of SEPP 65 are not applicable to the assessment of this application.

Accordingly, no further assessment is required with regard to the provisions of SEPP 65.

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 raised no objections.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

- 1) Development consent must not be granted to development on land that is within the coastal

environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:

- a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
- b) coastal environmental values and natural coastal processes,
- c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,
- d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
- e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
- f) Aboriginal cultural heritage, practices and places,
- g) the use of the surf zone.

Comment:

The proposed development is not expected to cause adverse impact to the coastal environment area.

- 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:

Council is satisfied that the proposed development is appropriately designed and sited to ensure adverse impact to the items referred to in subsection (1) is avoided.

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:

Council is satisfied the proposed development will not cause an increased risk of coastal hazards on the site or surrounding land.

2.13 Development in coastal zone generally—coastal management programs to be considered

Development consent must not be granted to development on land within the coastal zone unless the

consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

Comment:

All relevant provisions of applicable certified coastal management programs have been considered as part of the assessment of the application.

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.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	25m	4.5m (awning)	N/A	Yes
Floor Space Ratio:	3:1	Unaltered	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	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
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.11 Active street frontages	Yes
6.12 Essential services	Yes

Manly Development Control Plan

Built Form Controls

Built Form Controls	Requirement	Proposed	%	Complies
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			Variation	
4.4.4.1 Awnings in LEP B1 and B2 Business Zones	Height above footpath: 3.5m - 4.5m	3.5m	N/A	Yes
	Setback from kerb: 0.6m	0.6m	N/A	Yes
Schedule 3 Parking and Access	Gymnasium (Metropolitan regional (central business district) centres): 3 spaces per 100m ² GFA	Tenancy 1 (162.8m ²): 3 spaces	2 spaces	No
		Tenancy 2 (219.6m ²): 3 spaces	4 spaces	No
	Business premises: 1 space per 40m ² GFA	Tenancy 3 (118.7m ²): 3 spaces	N/A	Yes

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
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.4 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
3.10 Safety and Security	Yes	Yes
4.2 Development in Business Centres (LEP Zones B1 Neighbourhood Centres and B2 Local Centres)	Yes	Yes
4.2.1 FSR (Consideration of Exceptions including Arcades)	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	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.4.1 Awnings in LEP B1 and B2 Business Zones	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

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

Refer to Part 4.2.5.4 for detailed assessment regarding onsite parking.

4.2.5.4 Car Parking and Access

Description of non-compliance

Schedule 3 of the MDCP requires the following parking rates to be applied:

Business premises: 1 spacer per 40m² GFA

Recreation facility (indoor): 3 spaces per 100m² GFA (RTA Guide to Traffic Generating Developments)

Based on these rates, the required parking spaces are as follows:

Tenancy 1: 5 spaces

Tenancy 2: 7 spaces

Tenancy 3: 3 spaces

The proposal includes three spaces for each tenancy.

As such, tenancy 1 is deficient of two spaces and tenancy 2 is deficient of four spaces.

Sufficient parking is provided for tenancy 3.

Merit consideration

As the site is located in the Manly Town Centre, exceptions to the parking rates/requirements may be considered on a merit basis.

When considering the proposal on merit, it is important to note that providing off-street parking on the subject site is unfeasible due to the need to significant alter of the existing building to facilitate a compliant amount of parking. The subject site is unable to provide on-site car parking to satisfy the

above rate and it would be unreasonable to request parking to be provided. However, the site is conveniently located to alternate modes of transport, including regular bus routes and ferries at Manly Wharf. It is not unreasonable to expect that a large number of patrons would arrive using these modes of transport. Alternatively, car parks exist in the Manly Town Centre that provide patrons who arrive by private vehicle to park their car and walk to the businesses. Despite the proposed recreation facility use requiring a higher parking rate, the parking demand is not expected to significantly increase due to the reasons outlined above.

The control includes a provision where only 50% of the required parking rate is to be provided within the Manly Town Centre with the other 50% offset by a monetary contribution under the Manly Section 94 Contributions Plan. As this plan has been repealed and no longer applies to the subject site, this provision does not strictly apply. However, its intent reduces the required number of parking spaces 15 spaces to nine spaces. This results in the proposal being compliant across the three tenancies.

Overall, the proposed change of use not considered to result in any significant traffic or parking generation. In this regard, Council can be satisfied that the proposed businesses will not result in adverse traffic generation or parking demand. Likewise, the proposal is not expected to require additional loading zone capacity for the building.

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 \$7,920 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$792,000.

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, 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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2023/0597 for Alterations and Additions to Existing Mixed-Use Development on land at Lot 172 SP 13245, 14 / 22 Central Avenue, MANLY, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

The development must be carried out in compliance with the endorsed stamped plans and documentation listed below, except as amended by any other condition of consent:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A00 - Site Plan - Lot 172 Location	23/08/2021	Urbaine Architecture
A02 - Ground Floor Level Demolition	23/08/2021	Urbaine Architecture
A03 - Ground Floor Level Proposed	23/08/2021	Urbaine Architecture
A03C - Ground Floor Level Proposed	28/06/2023	Urbaine Architecture
A04 - East Elevation	23/08/2021	Urbaine Architecture
A05 - West Elevation	23/08/2021	Urbaine Architecture
A06 - South Elevation	23/08/2021	Urbaine Architecture
A07 - Section A & B	23/08/2021	Urbaine Architecture
Tenancy 1 (Retail 1) - Jiu Jitsu	26/03/2023	Unnamed
D.1 Rev 02	09/06/2023	Archisoul Architects

D.2 Rev 01	09/06/2023	Archisoul Architects
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Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Building Code of Australia Compliance Assessment Report (Ref: 12451)	12/05/2023	AED Group
Flood Risk Management Plan	May 2023	Taylor Consulting
Operational Noise Emission Assessment	20/04/2023	Acoustic Dynamics
Operational Plan of Management	Undated	Four Towns Planning

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan - 22 Central Avenue Manly	Undated	Unnamed

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

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

2. **Compliance with Other Department, Authority or Service Requirements**

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response - Underground Cables	07/06/2023
	Ausgrid Referral Response - Overhead Cables	07/06/2023

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

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

3. **Approved Land Use**

Nothing in this consent shall authorise the use of the tenancies as detailed on the approved plans for any land use beyond the definitions of the following, in accordance with the Dictionary of the Manly Local Environmental Plan 2013:

- Tenancy 1 - *Recreation facility (Indoor)*
- Tenancy 2 - *Recreation facility (Indoor)*
- Tenancy 3 - *Business Premises*

Any variation to the approved land use and occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

Reason: To ensure compliance with the terms of this consent.

4. **Prescribed Conditions**

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

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

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

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and

- (ii) where necessary, underpin the adjoining premises to prevent any such damage.
- (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
- (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

5. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative

- change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
 - (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
 - (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
 - (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
 - (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished
- The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
 - (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
 - (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$7,920.00 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).

The monetary contribution is based on a development cost of \$792,000.00.

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).

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).

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.

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

7. Security Bond

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

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

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

to the issue of the Construction Certificate.

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

8. Facilities

The Class 9b sporting venue tenancies are to be provided with shower facilities and toilet facilities in accordance with Clause F4D4 of the Building Code of Australia . 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 building occupant health and amenity.

9. Building components and structural soundness

B1 - All new development below the Flood Planning Level of 5.87m AHD shall be designed and constructed from flood compatible materials.

B2 - All new development must be designed to ensure structural integrity up to the Flood Planning Level of 5.87m AHD, taking into account the forces of floodwater, debris load, wave action, buoyancy and immersion.

B3 - All new and existing electrical equipment, power points, wiring and connections must be located above the Flood Planning Level of 5.87m AHD, protected from flood water or have residual current devices installed to cut electricity supply during flood events.

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

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

10. Emergency response

E1 - The shelter-in-place refuge must:

- a) Have a floor level at or above the Probable Maximum Flood level of 5.80 m AHD; and
- b) Have a floor space that provides at least 1m² per person; and
- c) Be intrinsically accessible to all people on the site, plainly evident, and self-directing, with sufficient capacity of access routes for all occupants without reliance on electrical means. Access to the shelter in place is to be provided as per the Flood Evacuation Route in Appendix D of the Flood Risk Management Plan prepared by Taylor Consulting (Dated: May 2023).

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

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

Government policy.

11. Storage of Goods

G1 - Storage areas for hazardous or potentially polluting materials shall not be located below the Flood Planning Level of 5.87m AHD unless adequately protected from floodwaters in accordance with industry standards.

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

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

12. Building Code of Australia Fire Safety Requirements

The Building Code of Australia fire safety requirements for the building as detailed and recommended in the BCA Compliance Assessment Report prepared by AED Group, dated 12/5/2023, Report No. 12451, including any required Performance Reviews, are to be considered as part of the assessment for any Construction Certificate. Details demonstrating compliance are to be provided to the Certifying Authority, prior to the issue of a Construction Certificate.

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

13. Access and Facilities for Persons with Disabilities

Access and facilities to and within the building are to be provided as required for Persons with a Disability in accordance with the Building Code of Australia and AS1428. In particular attention is required to Clauses F4D5 and F4D7 of the Building Code of Australia which are applicable. 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.

14. Compliance with Standards

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

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

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

DURING BUILDING WORK

15. Removing, Handling and Disposing of Asbestos

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

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

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

16. Survey Certificate

A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all perimeter walls columns and or other structural elements, floor levels and the finished roof/ridge height are in accordance with the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier when the external structure of the building is complete.

Reason: To demonstrate the proposal complies with the approved plans.

17. Waste Management During Development

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

18. Building Components and Structural Soundness

B2 - A suitably qualified structural engineer is to certify the structural integrity of the new development up to the Flood Planning Level of 5.87m AHD. The depth, velocity, debris load, wave action, buoyancy and immersion must all be considered.

B3 - A suitably qualified electrician or contractor is to certify that all new and existing electrical equipment, power points, wiring and connections are located above the Flood Planning Level of 5.87m AHD, are protected from flood water or have residual current devices installed to cut electricity supply during flood events.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Occupation Certificate.

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

19. Waste Management Confirmation

Prior to the issue of an Occupation Certificate, evidence / documentation must be submitted to the Principal Certifier that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

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

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

20. **Flood Management**

Storage of Goods (G1)

Hazardous or potentially polluting materials shall not be stored below the Flood Planning Level of 5.87m AHD unless adequately protected from floodwaters in accordance with industry standards.

Flood Emergency Response (E1)

Appropriate access to the shelter in place refuge is to be maintained at all times from all areas within the development and it must contain as a minimum: sufficient clean water for all occupants; portable radio with spare batteries; torch with spare batteries; and a first aid kit.

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

21. **Hours of Operation**

The hours of operation are to be restricted to:

Tenancy 1

- Monday to Sunday – 5:30am to 9:00pm

Tenancy 2

- Monday to Sunday – 5:30am to 9:00pm

Tenancy 3

- Monday to Sunday – 6:00am to 9:00pm

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

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

22. **Commercial Waste Collection & Deliveries**

Waste and recyclable material, generated by this premises, must not be collected between the hours of 10pm and 6am on any day.

Deliveries to the premises must not occur between the hours of 10pm and 6am on any day.

Reason: To protect the acoustic amenity of surrounding properties.

In signing this report, I declare that I do not have a Conflict of Interest.

Signed



Nick Keeler, Planner

The application is determined on 19/07/2023, under the delegated authority of:



Rodney Piggott, Manager Development Assessments