

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0849
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Responsible Officer:	Kye Miles
Land to be developed (Address):	Lot 1 SP 67337, 1 / 63 - 67 The Corso MANLY NSW 2095
Proposed Development:	Alterations and additions to a commercial premise
Zoning:	Manly LEP2013 - Land zoned E1 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Robblock Pty Ltd
Applicant:	Max Hayson

Application Lodged:	19/07/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	25/07/2023 to 08/08/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.4 Floor space ratio: 4.78%
Recommendation:	Approval

Estimated Cost of Works:	\$ 720,475.00
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EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to an existing commercial premise.

The existing building is a locally listed heritage item under the Manly Local Environmental Plan 2013 and forms part of Heritage Item No. Item I106 - Group of commercial buildings - All numbers. The application involves the demolition and reconstruction of the existing shopfront. The nature of the works are considered 'sensitive development', proposing the demolition of the heritage listed frontage, and such, the application is referred to the Northern Beaches Local Planning Panel (NBLPP) for determination.

No submissions were received during the notification period.

In addition to the development being class as 'sensitive development, the proposal results in a 4.78% variation to the floor space ratio (FSR) development standard.

The 4.6 request for the non-compliance with the floor space standard arises from the minor increase of the building's gross floor area equating to 5.1% (25.08m²), as a result of extending the existing mezzanine level. The variation is contained entirely within the existing building and does not add to the bulk and scale of the building. Given the minor nature of the works, the proposal is considered acceptable.

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

PROPOSED DEVELOPMENT IN DETAIL

Development for alterations and additions to a commercial premise, including signage. The works comprise:

Ground floor:

- Demolition works including the removal of the existing shop-front.
- Internal alterations to create two separate retail premises (Retail 01 and Retail 02) and the separate entrance to Retail 03.

Mezzanine level:

- Partial demolition of the existing mezzanine.
- Internal alterations and additions to create two separate retail premises (Retail 02 and Retail 03), resulting in an additional 28.58m² of gross floor area.

External:

- Construction of new ground floor facade.

Use:

- Retail 01 - convenience store (retail premises)
- Retail 02 - retail shop (retail premises)
- Retail 03 - beautician facility (business premises)

Amended plans

Following a preliminary assessment of the application, Council issued a Request for Information (RFI) letter to the applicant on 15 September 2023, outlining concerns with the application.

.The concerns related to Floor Space Ratio, Hours of Operation, and Heritage.

The applicant lodged amended plans and additional information to address the concerns on 20 September 2023.

The amended plans incorporated the following changes:

- An updated gross floor area calculation plan of the entire building.
- Recessed entrances to the three shopfronts.
- Neutral colours on the awning.

Community Participation Plan

The proposed amendments will have a reduced environmental impact on the adjoining properties when compared to the original proposal. The amended plans result in a reduced size development. Therefore, formal re-notification was not required in accordance with Northern Beaches Community Participation Plan

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Local Environmental Plan 2013 - 5.10 Heritage conservation

Manly Development Control Plan - 4.2.1 FSR (Consideration of Exceptions including Arcades)

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

Manly Development Control Plan - 4.4.3 Signage

SITE DESCRIPTION

Property Description:	Lot 1 SP 67337 , 1 / 63 - 67 The Corso MANLY NSW 2095
Detailed Site Description:	The subject site consists of one (1) allotment which is Strata subdivided into three (3) lots (being Part Lots 1, 2 and 3).

The site is located at the northern end of The Corso and enjoys frontages to both The Corso and Market Place. Both streets are pedestrianised.

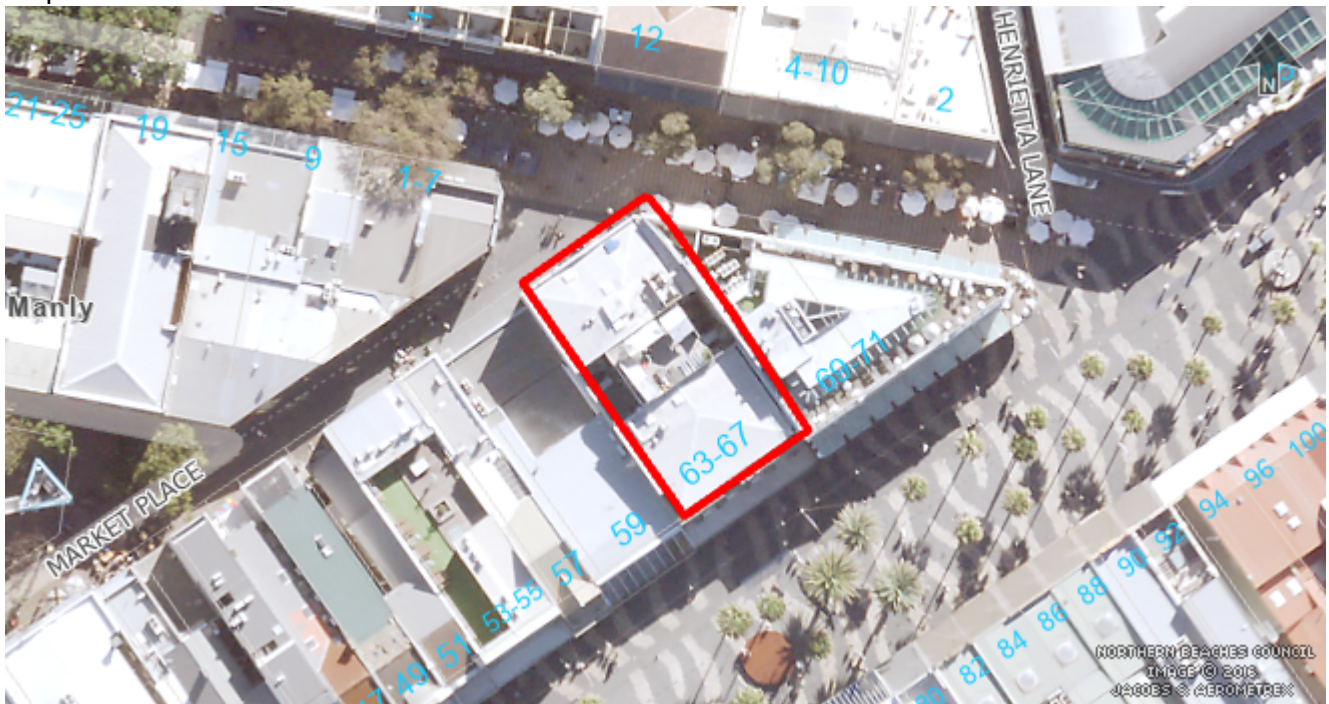
The site is generally rectangular in shape with a frontage of 16.385m to the Corso, a frontage of 14.860m to Market Place and an average depth of 27.88m. The site has a surveyed area of 490.3m².

The site is located within the E1 Local Centre zone and accommodates a mixed use development comprising retail outlets at the ground and mezzanine floor levels and backpackers' accommodation within the three (3) levels above.

The site has a slight downward slope of 0.34m from The Corso to Market Place although this is not noticeable because the topography has been altered to accommodate the existing building.

Adjoining and surrounding development is characterised by commercial development comprising retail outlets and the neighbouring three (3) storey hotel immediately to the north.

Map:



SITE HISTORY

Council's records reveal that the site was used as a retail premises by Woolworths until 1999 when the site was subject to a development application (DA201/98) for alterations and additions to the existing two storey retail building to create a 3 storey development containing retail and backpacker accommodation.

The following application is relevant to the current proposal:

DA2019/1398

This application for "Alterations and additions to an existing building to facilitate shop top housing containing 12 apartments including the construction of a pergola and lift overrun to the roof terrace" approved by the Northern Beaches Local Planning Panel on 12 August 2020.

DA2022/0662

This application for "Change of use to a pub and live entertainment venue, building works and signage" was withdrawn on 12 August 2022.

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. The NSW employment zones reforms have been made and will come into force on 26 April 2023. These reforms will result in this property changing from a B2 Local Centre zone to a E1 Local Centre zone. The proposed use will remain permissible in the new zone.
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>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.</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>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental	<p>(i) Environmental Impact</p> <p>The environmental impacts of the proposed development on the natural and built environment are addressed under</p>

Section 4.15 Matters for Consideration	Comments
impacts on the natural and built environment and social and economic impacts in the locality	<p>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 25/07/2023 to 08/08/2023 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 of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>Supported with conditions.</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</p>

Internal Referral Body	Comments
	requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.
Environmental Health (Food Premises, Skin Pen.)	<p>Supported with conditions.</p> <p>General Comments</p> <p>This application is seeking consent to alter the internal layout of the building. One of the retail units is to be a beauty salon. Appropriate conditions can be applied to ensure compliance with relevant fitout guidelines.</p> <p>Environmental Health recommends approval.</p>
NECC (Coast and Catchments)	<p>Supported with no conditions.</p> <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 (section 2.10, 2.11 & 2.12); • State Environmental Planning Policy (Biodiversity & Conservation) 2021 • Relevant LEP and DCP clauses. <p>State Environmental Planning Policy (Resilience & Hazards) 2021</p> <p>The subject land has been included on the 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Clauses 2.11 and 2.12 of the CM (R & H) apply for this DA.</p> <p>Comment:</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Gyde dated May 2023, the DA satisfies requirements under clause 2.12 of the SEPP R&H.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021.</p> <p>Manly LEP 2013 and Manly DCP</p> <p>Foreshores Scenic Protection Area Management</p> <p>The subject site is also shown to be as "Manly Foreshores Scenic Protection Area" on Council's Foreshores Scenic Protection Area in Manly LEP 2013. As such, Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013 will apply to proposed development on the site.</p>

Internal Referral Body	Comments					
	<p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Gyde dated May 2023, the DA satisfies requirements under Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013.</p> <p>As such, it is considered that the application does comply with the requirements of the Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013.</p> <p>No other coastal related issues.</p>					
NECC (Flooding)	<p>Supported with conditions.</p> <p>The proposal seeks consent for internal fit out and works to the façade of the existing commercial building.</p> <p>The property is affected by the 1% AEP flood extent, PMF Flood extent, Medium Flood Risk Precinct and a H3 Flood life Hazard.</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)	<p>Supported with conditions.</p> <table><tr><th>HERITAGE COMMENTS</th></tr><tr><th>Discussion of reason for referral</th></tr><tr><td><p>The proposal has been referred to heritage as the subject property is a heritage item, being a part of a group listed Item I106 - Group of commercial buildings - All numbers, The Corso and sits within the C2 - Manly Town Centre Conservation Area. It is also within the vicinity of a number of heritage items:</p><p>Item I110 - New Brighton Hotel - 69–71 The Corso</p><p>Item I233 - Commercial and residential building - 12 Sydney Road</p><p>Item I104 - Street trees - The Corso (from Whistler Street to Sydney Road)</p></td></tr><tr><th>Details of heritage items affected</th></tr><tr><td><p>Details of the heritage items as contained within the Manly Heritage inventory are as follows:</p><p>Item I106 - Group of commercial buildings</p><p><u>Statement of significance</u></p><p>The streetscape and its special qualities are of major significance to the state. The Corso has important historical links to the</p></td></tr></table>	HERITAGE COMMENTS	Discussion of reason for referral	<p>The proposal has been referred to heritage as the subject property is a heritage item, being a part of a group listed Item I106 - Group of commercial buildings - All numbers, The Corso and sits within the C2 - Manly Town Centre Conservation Area. It is also within the vicinity of a number of heritage items:</p> <p>Item I110 - New Brighton Hotel - 69–71 The Corso</p> <p>Item I233 - Commercial and residential building - 12 Sydney Road</p> <p>Item I104 - Street trees - The Corso (from Whistler Street to Sydney Road)</p>	Details of heritage items affected	<p>Details of the heritage items as contained within the Manly Heritage inventory are as follows:</p> <p>Item I106 - Group of commercial buildings</p> <p><u>Statement of significance</u></p> <p>The streetscape and its special qualities are of major significance to the state. The Corso has important historical links to the</p>
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Internal Referral Body	Comments
	<p>development of tourism and recreation which is still present and likely to continue. It's role as the pedestrian link between harbour and ocean, city and sea - for the tourist, is fundamental to Manly's status as a resort.</p> <p><u>Physical description</u></p> <p>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.</p> <p>C2 - Manly Town Centre Conservation Area</p> <p><u>Statement of significance</u></p> <p>The Manly Town Centre Conservation Area (TCCA) is of local heritage significance as a reflection of the early development of Manly as a peripheral harbor and beachside village in the fledgling colony of New South Wales. This significance is enhanced by its role as a day-trip and holiday destination during those early years, continuing up to the present time, and its association with H G Smith, the original designer and developer of the TCCA as it is today. The physical elements of the TCCA reflect this early development and its continued use for recreational purposes, most notably the intact promenade quality of The Corso and its turn of the century streetscape, as well as key built elements such as hotels, and remaining original commercial and small scale residential buildings.</p> <p>Item I110 - New Brighton Hotel</p> <p><u>Statement of significance</u></p> <p>This building is an example of exotic Egyptian-like motifs and Inter-war Free Classical style. The hotel is of major significance due to its contribution to the streetscape, its visual/textural interest and its association with early 20th century development of the resort. An unusual design utilising exotic Egyptian-like motifs appropriate to the resort location such as columns faintly reminiscent of the Brighton Pavilion. The building is an important feature on the corner of Sydney Rd and the Corso and its eclectic design contributes to the rich collection of architectural styles in the streetscape of the Corso.</p> <p>Item I233 - Commercial and residential building</p> <p><u>Statement of significance</u></p> <p>The building 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.</p> <p><u>Physical description</u></p> <p>Two storey, brick rendered building with parapet. The former Fire Station was designed in Federation Free style. The building, although now redeveloped, retains its picturesque facade that features a curved parapet, heavily moulded entablature and group</p>

Internal Referral Body	Comments		
	<p>of three arch headed, elongated windows. The words 'Metropolitan Fire Brigade 1897' are embossed on the parapet with 'Manly' below. The windows are timber framed double hung with round headed highlight and multiple small sashes. The face brickwork is now painted but highly contrasted with render, especially the detail such as voussoirs. The adjoining wing to the south-east appears to have been a later addition of face brickwork with similar style windows and entablature but without a high parapet.</p>		
	<p>Item I104 - Street trees</p>		
	<p><u>Statement of significance</u></p>		
	<p>Part of earliest planting on The Corso c.1850's by H.G. Smith. Historic and aesthetic importance to the streetscape.</p>		
	<p><u>Physical description</u></p>		
	<p>Centre planting of Ficus Macrophylla (Moreton Bay Fig) Remnant Palm planting (Phoenix Canariensis) of 1928.</p>		
	<p>Other relevant heritage listings</p>		
	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	No		
<p>Consideration of Application</p>			
<p>The proposal is seeking consent for alterations and additions to the existing building to facilitate a change the use of the existing ground floor retail at Unit 1 / 63-67 The Corso, Manly into three commercial tenancies requiring replacement shopfronts and internal works. The existing shopfront is proposed to be replaced with slim metal-framed glazed storefronts with a small section of wall above the shopfronts. Heritage supports the following statement from the HIS, submitted with this application: <i>"As an alternative to reconstruction, a shopfront design interpretive of the original interwar version could be proposed. This occurred with an earlier scheme reviewed by the author of this report when only two tenancies were proposed. It included recessed entrances and low-tiled stall boards. From a heritage impact perspective, it was preferable."</i></p>			
<p>The proposal should revise the shopfront treatment to comply with the controls of the related parts of Manly DCP 2013 including the</p>			

Internal Referral Body	Comments
	<p>following controls:</p> <ul style="list-style-type: none"> • <i>Manly DCP 2013 - Schedule 6 - The Corso: Site Specific Controls</i> require the following for 63-67 The Corso: <ul style="list-style-type: none"> • <i>re-paint façade to highlight the Art Deco detailing.</i> • <i>reconstruct ground floor shops as opportunity arises.</i> • <i>Manly DCP 2013 - 5 Special Character Areas and Sites - 5.1.2 The Corso</i> require specific controls for developments located within The Corso including the following: <p>5.1.2.13 Shop-fronts are to be Reinstated</p> <ul style="list-style-type: none"> • <i>a) Where shop-fronts have been removed and replaced with shuttered openings, the reinstatement of shop-fronts is supported for aesthetic and historic reasons. New Shuttered openings will not be permitted.</i> • <i>b) New shop-fronts should comprise a 'frame' established by masonry ends read as vertical continuations of the façade above, and by a solid horizontal plinth between the ground and the window sill. The design of the space within this frame can reflect the use of the premises, and utilise contemporary design. See Figure 51 - Shop-fronts within a masonry frame.</i> <p>The proposed external colours should also be revised to remove the proposed awning colour "Dulux Monument" from the external finishes schedule as colours should be selected with an emphasis on light and neutral colours that are based on historical evidence and harmonise. Dark colours, such as black and grey, are not considered appropriate within The Corso.</p> <p>Revised comments - 05 October 2023</p> <p>Amended drawings, received on 20 September 2023, have resolved the main concern that Heritage had with the proposal, by providing recessed entrances and low-tiled stall boards to the proposed shopfront. The amended colour scheme is also considered to not have an adverse impact within the heritage context.</p> <p>Therefore, no objections are raised on heritage grounds and no conditions required.</p> <p><u>Consider against the provisions of CL5.10 of Manly LEP 2013.</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No</p>

Internal Referral Body	Comments
	Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? Yes

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

SEPP 65 – Design Quality of Residential Apartment Development states the following:

(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.

Considering that the proposal mainly involves internal alterations and minor cosmetic changes to the ground floor commercial premise of the four-story mixed-use development, it does not fit into the aforementioned categories. Moreover, it does not constitute a significant redevelopment since the overall height and building footprint remain unchanged.

Accordingly, no further consideration of this Policy is required in this instance.

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, subject to conditions which have been included in the recommendation of this report.

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 4 Coastal use area

2.11 Development on land within the coastal use area

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

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

Comment: The proposal seeks consent for alterations to an existing commercial premise to create three new tenancies, along with upgrades to the existing shop front. The existing built form, including footprint will remain unchanged. The limited scope of works will ensure the coastal use area will be unaffected by the proposed works, ensuring access to and along the foreshore is maintained, while the visual amenity is also unaffected. The works will not adversely impact on overshadowing, views, wind funnelling, while retaining the heritage aspects of the site and wider area. Council is satisfied that the development has been designed, sited and managed to avoid impact on the provisions of subclause (a).

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: The limited scope of works will ensure the development will not increase risk of coastal hazards.

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: N/A

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

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

Is the development permissible?	Yes
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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:	10m	Unchanged	N/A	Yes
Floor Space Ratio	FSR: 2.5:1 (1,225.75m ²)	2.6:1(1,284.28m ²)	4.78%	No
Gross Floor Area in certain areas	Min. 25% GFA as Commercial (321.07m ²)	34.9% (447.59m ²)	N/A	Yes
	Max. 1,000m ² per premises	447.59m ²	N/A	Yes

Compliance Assessment

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

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	2.5:1 (1,225.75m ²)
Proposed:	2.6:1(1,284.28m ²)
Percentage variation to requirement:	4.78%

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

(a) the consent authority is satisfied that:

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

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

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

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

Comment:

The Applicant's written request has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

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

In this regard, the Applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- *The proposed variation to the floor space ratio development standard assists in promoting "the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources" as it will renew and reuse an existing building, maximising the social and economic benefits that can be derived from it.*
- *The development assists in promoting "the orderly and economic use of land" by using land that contains built infrastructure and services.*
- *The variation to the FSR development standard does not result in any amenity impacts to the Corso or adjoining properties.*

The justification provided in the request to vary Clause 4.4 (Floor Space Ratio) is considered to be acceptable in that, the variation is contained entirely within the existing building and does not add to the bulk and scale of the building. Overall, the requested variation is reasonable in terms of its impacts and strict compliance with this development standard would not provide a net benefit to the immediate locality. In this regard, the request has satisfactorily justified the variations against the objectives of the respective Development Standard and the zone.

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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Floor Space Ratio development standard and the objectives of the E1 Local Centre zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

The additional floor space is contained within the existing building and is a result of extending the mezzanine level. In this regard, the development retains the overall bulk and scale of the existing building when viewed from street level.

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

Comment:

The development does not involve any major external works and therefore does not obscure important landscape and townscape features.

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

Comment:

As above, the additional floor is contained within the existing building and will not affect the visual relationship between new development and the existing character and landscape of the area.

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

Comment:

The development would not cast any additional shadow nor present any overlooking opportunities into surrounding residential or commercial buildings. Furthermore, through the retention of the existing building, the development will not further limit any view sharing to and from private and public spaces.

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

Comment:

The development enhances the existing retail/commercial activities on the ground floor which will provide local services and employment opportunities within the Centre.

Zone objectives

The underlying objectives of the E1 Local Centre zone are:

- *To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.*

Comment:

The proposed redevelopment of the existing commercial premise will provide a range of retail and business uses that serve the needs of the community.

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

Comment:

The proposed redevelopment of the existing commercial premise will provide three new tenancies that generates employment opportunities and economic growth within the Manly CBD.

- *To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.*

Comment:

The proposal does not involve any works to the existing residential areas of the building.

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

Comment:

The proposal retains commercial uses on the ground floor.

- *To minimise conflict between land uses in the zone and adjoining zones and ensure amenity for the people who live in the local centre in relation to noise, odour, delivery of materials and use of machinery.*

Comment:

The proposed uses, subject to the recommended conditions are not anticipated to give rise to adverse noise or odour impacts.

- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*

Comment:

The proposed development has been designed with diverse and engaging street frontages, incorporating a mix of retail, and business uses to attract pedestrian traffic and contribute a vibrant streetscape.

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

Comment:

The works are largely internal and will not alter the existing built form.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the E1 Local Centre zone.

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Floor space ratio Development Standard is assumed by the Local Planning Panel.

5.10 Heritage conservation

The subject site is part of a group listed heritage item and located within the Manly Town Centre Heritage Conservation Area.

In accordance with clause 5.10(4) of the Manly LEP 2013, the consent authority must consider the effect of the proposed development on the heritage significance of the item or area concerned prior to granting consent to the proposal. In this regard, the proposal has been considered by Council's Heritage Officer who is satisfied the proposal is acceptable subject to conditions. Detailed commentary from Council's Heritage Officer is provided in the 'Referrals' section of this report.

Manly Development Control Plan

Built Form Controls

The proposal seeks approval for internal fitout works, including upgrade to the existing shop front and provision of new signage. The existing built form, including setbacks, wall height and other controls remains unchanged.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.3 Townscape (Local and Neighbourhood Centres)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	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

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.2.1 FSR (Consideration of Exceptions including Arcades)	No	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
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
4.2.5.3 Security Shutters	Yes	Yes
4.2.5.4 Car Parking and Access	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.3 Signage	Yes	Yes
4.4.4.1 Awnings in LEP B1 and B2 Business Zones	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.1.1 General Character	Yes	Yes
5.1.2 The Corso	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

4.2.1 FSR (Consideration of Exceptions including Arcades)

The floor space ratio variation is discussed in the section of this report relating to Clause 4.6 Exceptions to Development Standards of MLEP 2013.

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

The proposed development includes a minor increase in floor space due to squaring off the existing mezzanine level. It should be noted that the existing development does not provide for any vehicular parking, as the site is located on The Corso and Market Place, which are both accessed by pedestrians only.

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

Comment:

The proposed development will not lead to an increase in traffic generation compared to the existing

development. Additionally, the current development on the site does not include any off-street parking or loading facilities. Moreover, considering the nearby pedestrianised area, providing off-street parking or loading facilities would adversely affect pedestrian amenity in the vicinity.

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

Comment:

As no vehicular parking is proposed or existing in this instance, the proposed development will not result in any conflict between pedestrian and vehicular movement in the E1 Local Centre Zone.

4.2.5.4 Car Parking and Access

The proposed development, which comprises change of use, and internal fit outs, will technically result in a numerical non-compliance in relation to vehicular parking. This non-compliance is addressed, in detail, elsewhere in this report, under section Clause 4.2.4 of the MDCP 2013.

4.4.3 Signage

The proposal includes indicative signage locations on the southern elevation. However, details regarding the content of these signs have not been provided under this application. Therefore, no approval is granted under this Development Consent for signs (as defined under Manly Local Environment Plan 2013 and State Environmental Planning Policy (Transport and Infrastructure) 2021. A separate Development Application for any signs (other than exempt and signs permitted under Complying Development) must be submitted for the approval prior to the erection or display of any such signs.

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 \$7,205 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$720,475.

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

Council is satisfied that:

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

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

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

In summary, the application has been assessed with regard to the relevant Manly LEP and DCP controls which guide the future desired character of the site and locality, along with the public submission received during the notification period.

Subject to the recommended conditions of consent, it is considered that the proposal will result in a development that displays reasonable size, scale and density which is compatible with the existing site and surrounding development and will not result in unreasonable amenity impacts to surrounding properties. Overall, the proposal is considered a reasonable response to the site constraints and relevant planning controls.

Accordingly, the application is referred to the NBLPP with a recommendation for approval. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

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

RECOMMENDATION

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

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2023/0849 for Alterations and additions to a commercial premise on land at Lot 1 SP 67337, 1 / 63 - 67 The Corso, 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

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA02	01	Existing/Demolition Plan	Grain Architects	15 June 2023
DA03	02	Proposed Ground Floor Plan	Grain Architects	18 September 2023
DA04	01	Proposed Mezzanine Level	Grain Architects	15 June 2023
DA08	03	Elevations South	Grain Architects	25 October 2023
DA09	02	Section 01	Grain Architects	18 September 2023
DA10	01	Section 02	Grain Architects	15 June 2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Waste Management Plan	-	Max Hayson	19 April 2023

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

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

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

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	28 July 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 - Retail 01**

Nothing in this consent shall authorise the use of Retail 01 as detailed on the approved plans for any land use of the site beyond the definition of a **Shop**, in accordance with the Dictionary of the Manly Local Environmental Plan 2013, as follows:

Shop means premises that sell merchandise such as groceries, personal care products, clothing, music, homewares, stationery, electrical goods or the like or that hire any such merchandise, and includes a neighbourhood shop and neighbourhood supermarket, but does not include food and drink premises or restricted 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. **Approved Land Use - Retail 02**

Nothing in this consent shall authorise the use of Retail 02 as detailed on the approved plans for any land use of the site beyond the definition of a **Shop**, in accordance with the Dictionary of the Manly Local Environmental Plan 2013, as follows:

Shop means premises that sell merchandise such as groceries, personal care products, clothing, music, homewares, stationery, electrical goods or the like or that hire any such merchandise, and includes a neighbourhood shop and neighbourhood supermarket, but does not include food and drink premises or restricted 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.

5. **Approved Land Use - Retail 03**

Nothing in this consent shall authorise the use of Retail 03 as detailed on the approved plans for any land use of the site beyond the definition of a **Business Premises**, in accordance with the Dictionary of the Manly Local Environmental Plan 2013, as follows:

business premises means a building or place at or on which—

(a) an occupation, profession or trade (other than an industry) is carried on for the provision of services directly to members of the public on a regular basis, or
(b) a service is provided directly to members of the public on a regular basis,
and includes funeral homes, goods repair and reuse premises and, without limitation, premises such as banks, post offices, hairdressers, dry cleaners, travel agencies, betting agencies and the like, but does not include an entertainment facility, home business, home occupation, home occupation (sex services), medical centre, restricted premises, sex services premises or veterinary hospital.

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.

6. **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.

7. 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.

8. **No Approval for any Signage**

No approval is granted under this Development Consent for signs (as defined under Manly Local Environment Plan 2013 and State Environmental Planning Policy (Transport and Infrastructure) 2021. A separate Development Application for any signs (other than exempt and signs permitted under Complying Development) must be submitted for the approval prior to the erection or display of any such signs.

Reason: Control of signage.

FEES / CHARGES / CONTRIBUTIONS

9. **Policy Controls**

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$7,204.75 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 \$720,475.00.

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.

10. **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

11. **Building components and structural soundness**

B1 - All new development below the Flood Planning Level of 5.85m AHD shall be designed and constructed from flood compatible materials

B3 - All new and existing electrical equipment, power points, wiring and connections must be located above the Flood Planning Level of 5.85m 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.

12. **Storage of Goods**

Storage areas for hazardous or potentially polluting materials shall not be located below the

Flood Planning Level of 5.85m 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.

13. Access & Egress

The proposed building work is required to comply with Part D of the Building Code of Australia other than where a Performance Solution is proposed. In this regard 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 safety.

14. 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. 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.

15. Waste Management Plan

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan.

Details demonstrating compliance must be provided to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

16. 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.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

17. Skin penetration fit out certification

Prior to the issuing of any interim / final occupation certificate, certification is to be provided from a suitably qualified professional that the design, construction and fit out of the skin penetration and beauty salon premises is compliant with the relevant and current guidelines including:

- Public Health Act 2010
- Public Health Regulation 2022
- Local Government (General) Regulations 2021
- Australian Standard: AS/NZS 4815:2006 Office-based health care facilities—
Reprocessing of reusable medical and surgical instruments and equipment, and
maintenance of the associated environment.

Reason: To ensure compliance with legislation and to protect public health and safety.

DURING BUILDING WORK

18. 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

19. Registration with regulatory authority

The skin penetration business must be registered with the Local Council prior to the Occupation Certificate being issued.

Reason: Legislative requirement.

20. Building Components and Structural Soundness

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 5.85m 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.

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

21. Clinical Waste Contractor

All clinical waste produced by the premises is to be transported to and disposed of within an appropriately licensed waste facility through a contract with a suitably qualified waste contractor.

Reason: Responsible disposal management of clinical waste.

22. Deliveries and waste service collections

Deliveries and waste service collections shall only occur after 6am and prior to 10pm on any day.

Reason: Reason: To minimise the impacts of noise on neighbouring premises.

23. On-going operation of skin penetration premises

The ongoing operation of the skin penetration and beauty salon premises including all associated equipment must be maintained in accordance with the relevant and current guidelines including:

- Public Health Act 2010
- Public Health Regulation 2022
- Local Government (General) Regulations 2021
- Australian Standard: AS/NZS 4815:2006 Office-based health care facilities—
Reprocessing of reusable medical and surgical instruments and equipment, and
maintenance of the associated environment.

Reason: To ensure compliance with legislation and to protect public health and safety.

24. Sharps waste management

All commercial premises that require the use of sharps must provide adequate sharps waste disposal facilities. Such premises must be provided with sharps waste disposal containers on site that adequately contain all sharps waste produced and is compliant with AS 4031 – 1992 - Non-reusable containers for the collection of sharp medical items used in health care areas.

Reason: To ensure adequate provisions are made for the safe disposal, collection and transport of used sharp objects and to minimise to risk of infectious waste to public health.

25. Hours of Operation - Shop (Retail 01)

The hours of operation for the Shop (Retail 01) are to be restricted to:

- Monday to Sunday – 6am - 12am (next day).

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.

26. Hours of Operation - Shop (Retail 02)

The hours of operation for the Shop (Retail 02) are to be restricted to:

- Monday to Sunday – 6am - 10pm.

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.

27. **Hours of Operation - Business Premise (Retail 03)**

The hours of operation for the Business Premise (Retail 03) are to be restricted to:

- Monday to Sunday – 6am - 10pm.

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.