

**Four Towns
Planning**

Planning and property consultant

STATEMENT OF ENVIRONMENTAL EFFECTS

**Development Application -
Alterations and Additions
to Existing Mixed-Use
Development (Balcony
Balustrades)**

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

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Report prepared for:

The Owners Corporation – Strata Plan 7114

17 July 2023

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1. Introduction and Background Information

1.1 Introduction

This report has been prepared as supporting documentation for a Development Application for alterations and additions to existing mixed-use building (Balcony Balustrades) at 22 Central Avenue, Manly, within Strata Plan 7114 and Strata Plan 13245.

This report has been prepared following instructions from the client, The Owners Corporation - Strata Plan 7114. In preparing this application consideration has been given to the following:

- *Environmental Planning and Assessment Act, 1979* (as amended) (EP&A Act);
- Environmental Planning and Assessment Regulation 2021;
- Relevant State Environmental Planning Policies;
- Manly Local Environmental Plan 2013 (MLEP 2013);
- Manly Development Control Plan (MDCP);
- Survey Plan prepared by C&A Surveyors;
- Survey Plan prepared by Byrne and Associates;
- Architectural Plans prepared by Urbaine Architecture;
- BCA Capability Assessment prepared by AED Group;
- Waste Management Plan.

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

The conclusions of the Statement of Environmental Effects are that the proposed development, being alterations and additions to the existing building is permissible with development consent and is consistent with the relevant statutory planning instruments including the Manly Local Environmental Plan 2013 and planning policies of the Manly Development Control Plan 2013.

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

1.2 Background Information

The site has an extensive history with many applications pertaining to the site. It is noted that none of the recent applications relate or conflict the proposed works. Further, the proposal was not the subject of a pre-lodgement meeting with Northern Beaches Council.

2. Site Profile

2.1 Property Description

The subject allotment is described as 22 Central Avenue, Manly, legally known as Strata Plan 7114 and Strata Plan 13245. The site is zoned E1 Local Centre under the Manly Local Environmental Plan 2013.

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

2.2 Site and Locality Description

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

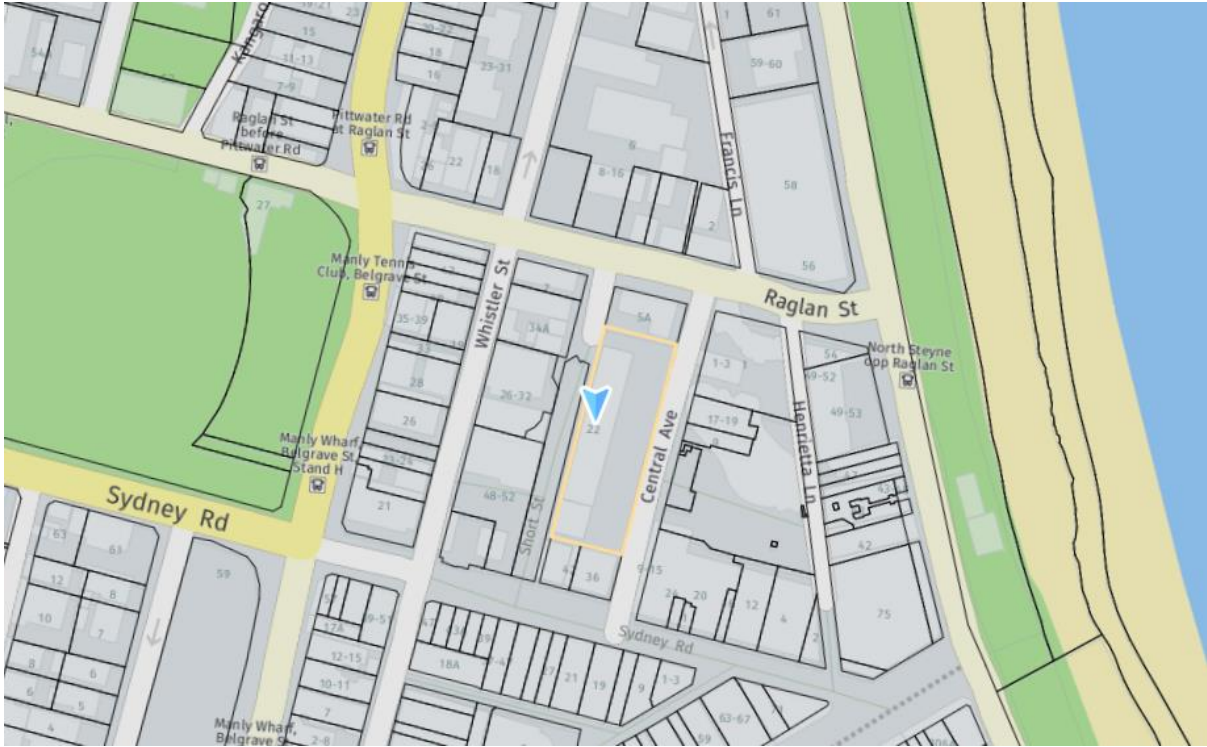
The site is currently occupied by a multi storey concrete building with a concrete roof. The site has various vehicular access points off both Central Avenue and Short Street. The building has multiple land uses including commercial ground floor, offices above, Council public car park and car parking for lot owners and residential apartments. It is noted that the balcony's the subject of the application are located on the eastern façade only. The building is 24 levels as per the strata plan, noting the split levels counted separately.

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

Locality Maps



Source: Nearmaps 2023

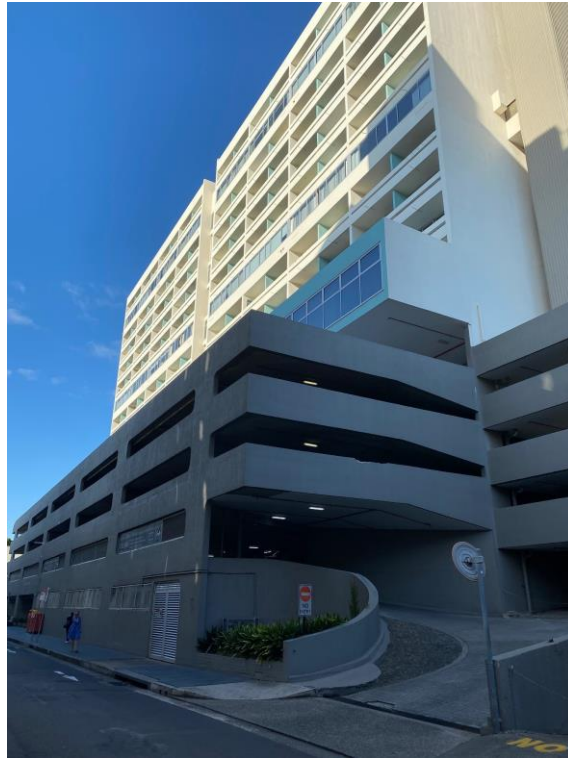


Source: Nearmaps 2023

The locality has a variety of property types and sizes. The proposal is for alterations and additions to the residential component of the building and is not out of context and will complement the existing streetscape of the precinct. Relevant photos are provided on the following pages highlighting the site and streetscape of the area.



Photograph of the site and existing balcony balustrades



Photograph of the site and existing balcony balustrades



Photograph of an existing balcony and proposed balustrade – note the upper concrete component will be removed as it is non-compliant with the BCA for balustrades. The proposal is to replace as per the example above (glass balustrade)

#Note – the upper concrete component is not a structural element and does not impact the integrity of the building or balcony

3. Proposal

The proposed development is for alterations and additions to an existing mixed-use development relating to the existing balcony balustrades at 22 Central Avenue, Manly. The proposal will result in a more aesthetically pleasing outcome for residents and the streetscape. The proposed development is consistent with the desired future character of the Manly LGA.

The proposed works include the following:

Demolition Works

- Demolition of existing concrete balustrades as depicted on architectural plans A001b.

Alterations and Additions

- Installation of new glass balustrades

4. Statutory Planning Controls

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

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

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

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

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

4.2 State Environmental Planning Policies (SEPPs)

SEPP (Transport and Infrastructure) 2021

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

BASIX and Energy Efficiency (SEPP Building Sustainability Index: BASIX) 2004

The proposal has been assessed in accordance with the relevant provisions of the BASIX and Energy Efficiency (SEPP Building Sustainability Index: BASIX) 2004. It is our professional opinion that a BASIX Certificate is not required for the proposed works as it relates to the demolition of the existing concrete balustrade for glass balustrades for the balconies. The works are considered to be minor and if split into the individual units would be less than the \$50,000 requirement.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

State Environmental Planning Policy (Biodiversity and Conservation) 2021 relates to various rescinded SEPPs that related to the preservation of trees and vegetation, koala habitat and bushland in urban areas.

The aims of this Policy are to protect the biodiversity values of trees and other vegetation, and to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.

The development remains consistent with the provisions of the SEPP as it does not propose the removal of any significant vegetation.

SEPP (Resilience and Hazards) 2021

Contamination

SEPP (Resilience and Hazards) 2021 requires the consent authority to consider whether land is contaminated prior to granting of consent to the carrying out of any development on that land.

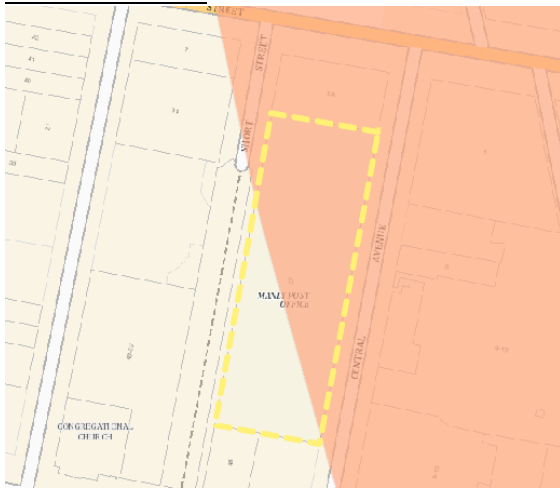
It is submitted that the site has been used for the purpose of a mixed-use development for decades. Therefore, no known high-risk contaminants are known for the site and the building would be low risk. The builder/contractors should take all measures to ensure if contamination is found during construction that relevant procedures are followed to report and remove contaminated materials.

Coastal

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

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

Coastal Use Area



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

- i) *has considered whether the proposed development is likely to cause an adverse impact on the following—*
 - (i) *existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (ii) *overshadowing, wind funnelling and the loss of views from public places to foreshores,*
 - (iii) *the visual amenity and scenic qualities of the coast, including coastal headlands,*
 - (iv) *Aboriginal cultural heritage, practices and places,*
 - (v) *cultural and built environment heritage, and*

- ii) *is satisfied that—*
 - (i) *the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*
 - (ii) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (iii) *if that impact cannot be minimised—the development will be managed to mitigate that impact, and*

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

The proposed works to an existing mixed-use development will not have any impact to the access to the foreshore or headland; cast additional shadowing, wind funneling or reduce views from public places and will uphold the scenic qualities of the foreshore area.

The consent authority can be satisfied that the proposed development does not contribute to any additional impacts as per the requirements of MLEP2013. The proposal will result in an acceptable impact to the coastal use area and adequately considers the surrounding coastal, the built environment and the bulk and scale of the development all of which will remain relatively unchanged.

State Environmental Planning Policy No. 65 (Design Quality for Residential Apartment Development)

The relevant aims of this policy are to improve the design quality of residential apartment development in New South Wales and recognise that the design quality of residential apartment development is of significance for environmental planning for the State due to economic, environmental, cultural and social benefits of high-quality design.

Clause 4(1) of the SEPP No. 65 is that this policy applies to development for the purposes of a residential flat development, 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.*

In this regard, the proposed alterations and additions being the replacement of balustrades to the residential component of the existing 15 storey mixed use building containing 160 apartments does not, in our opinion, represent the substantial redevelopment or substantial refurbishment of the existing building or the conversion of an existing building to such uses.

Accordingly, the provisions of SEPP 65 do not apply to the proposed development.

4.3 Manly Local Environmental Plan 2013 (MLEP2013)

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

Part 4: Principal Development Standards			
Standard	Permitted	Proposed	Comments
4.1 Minimum subdivision lot size	N/A	N/A	N/A
4.1AA Minimum subdivision lot size for community title scheme	N/A	N/A	N/A
4.1A Minimum lot sizes for manor houses and multi dwelling housing (terraces) in Zone R2	N/A	N/A	N/A
4.2 Rural subdivision	N/A	N/A	N/A
4.3 Height of buildings	25m	42.9m	Merit Assessment - No change to existing maximum building height. The proposed works involve works to the existing balustrades which will have a maximum building height of 42.9m. Refer to assessment under Heading Clause 4.3 and also Clause 4.6.
4.3A Special height provisions	N/A	N/A	N/A
4.4 Floor space ratio	3:1	N/A	No change to existing GFA.
4.5 Calculation of floor space ratio and site area	Noted	N/A	Noted
4.6 Exceptions to development standards	Noted	Yes	The development application is supported by a Clause 4.6 report to vary Clause 4.3 Height of Buildings.

Part 5: Miscellaneous Provisions	
Provisions	Comments
5.1 Relevant acquisition authority	N/A
5.2 Classification and reclassification of public land	N/A
5.3 Development near zone boundaries	N/A
5.4 Controls relating to miscellaneous permissible uses	N/A
5.5 (Repealed)	N/A
5.6 Architectural roof features	N/A
5.7 Development below mean high water mark	N/A
5.8 Conversion of fire alarms	N/A

Alterations and Additions to Existing Mixed-Use Building

5.9 Dwelling house or secondary dwelling affected by natural disaster	N/A
5.9AA	N/A
5.10 Heritage conservation	N/A
5.11 Bush fire hazard reduction	N/A
5.12 Infrastructure development and use of existing buildings of the Crown	N/A
5.13 Eco-tourist facilities	N/A
5.14 Siding Spring Observatory – maintaining dark sky	N/A
5.15 Defence communications facility	N/A
5.16 Subdivision of, or dwellings on, land in certain rural, residential or environmental protection zones	N/A
5.17 Artificial waterbodies in environmentally sensitive areas in areas of operation of irrigation corporations	N/A
5.18 Intensive livestock agriculture	N/A
5.19 Pond-based, tank-based and oyster aquaculture	N/A
5.20 Standards that cannot be used to refuse consent—playing and performing music	N/A
5.21 Flood planning	Not applicable – the proposed alterations and additions are on levels 11 and above of the mixed-use building at a minimum of 18.9m from street level.
5.22 Special flood considerations	N/A
5.23 Public bushland	N/A
5.24 Farm stay accommodation	N/A
5.25 Farm gate premises	N/A

Part 6: Relevant Additional Local Provisions	
Provisions	Comments
6.1 Acid sulfate soils	N/A - The site is identified as class 4 acid sulfate soils. No earthworks or soil disturbance proposed.
6.2 Earthworks	N/A
6.3 (Repealed)	N/A
6.4 Stormwater management	N/A - No change to the existing stormwater management through the existing building footprint.
6.5 Terrestrial biodiversity	N/A
6.6 Riparian land and watercourses	N/A
6.7 Wetlands	N/A
6.8 Landslip risk	N/A
6.9 Foreshore scenic protection area	Complies - The site is identified in the Manly foreshore scenic protection area map. Refer to assessment after this table.

Alterations and Additions to Existing Mixed-Use Building

6.10 Limited development on foreshore area	N/A
6.11 Active street frontages	N/A
6.12 Essential services	N/A – no change to existing provisions.
6.13 Design excellence	N/A
6.14 Requirement for development control plans	N/A
6.15 Tourist and visitor accommodation	N/A
6.16 Gross floor area in certain areas	N/A
6.17 Health consulting rooms in Zones E3 and E4	N/A
6.18 (Repealed)	N/A
6.19 Development in St Patrick's Estate	N/A
6.20 Location of sex service premises	N/A
6.21 Noise impacts – licensed premises	N/A
6.22 Development for the purposes of secondary dwellings in certain residential and environmental protection zones	N/A

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

Zoning Provisions

Zone E1 Local Centre



1 Objectives of zone

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

2 Permitted without consent

Home-based child care; Home businesses; Home occupations

3 Permitted with consent

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

4 Prohibited

Any development not specified in item 2 or 3

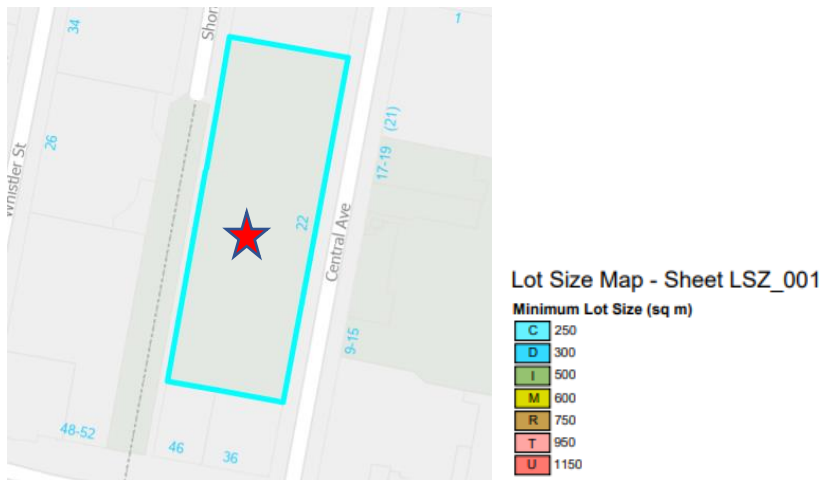
Comment:

The site is zoned E1 Local Centre pursuant to MLEP2013. The proposed alterations and additions to the existing residential component of the existing mixed-use building are consistent with the objectives of the zone, as follows:

- The proposal invests in local residential development that generates employment and economic growth.
- The proposal maintains and enhances the existing urban form with the introduction of the glass balustrades that are consistent with the architecture of the building and will not detract from the streetscape and bulk and scale of the precinct.

Part 4 Principal development standards

4.1 Minimum subdivision lot size



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

- (a) to retain the existing pattern of subdivision in residential zones and regulate the density of lots in specific locations to ensure lots have a minimum size that would be sufficient to provide a useable area for building and landscaping,
- (b) to maintain the character of the locality and streetscape and, in particular, complement the prevailing subdivision patterns,
- (c) to require larger lots where existing vegetation, topography, public views and natural features of land, including the foreshore, limit its subdivision potential,
- (d) to ensure that the location of smaller lots maximises the use of existing infrastructure, public transport and pedestrian access to local facilities and services.

(2) This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan.

(3) The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.

(3A) If a lot is a battle-axe lot or other lot with an access handle, the area of the access handle is not to be included in calculating the lot size.

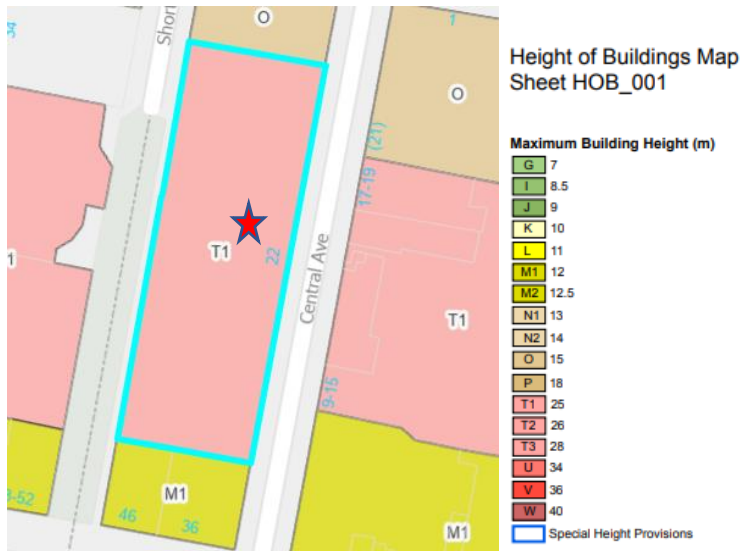
(4) This clause does not apply in relation to the subdivision of any land—

- (a) by the registration of a strata plan or strata plan of subdivision under the Strata Schemes Development Act 2015, or
- (b) by any kind of subdivision under the Community Land Development Act 1989.

Comment:

Not applicable – no subdivision proposed with this application.

4.3 Height of buildings



(1) *The objectives of this clause are as follows—*

- (a) *to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*
- (b) *to control the bulk and scale of buildings,*
- (c) *to minimise disruption to the following—*
 - (i) *views to nearby residential development from public spaces (including the harbour and foreshores),*
 - (ii) *views from nearby residential development to public spaces (including the harbour and foreshores),*
 - (iii) *views between public spaces (including the harbour and foreshores),*
- (d) *to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*
- (e) *to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

(2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

Comment:

Merit Assessment – the proposal is for alterations and additions to the existing mixed-use development on the residential component of the building which does not change the existing maximum building height for the site. It is important to acknowledge that the building existing is over the 25m maximum height allowance and that the proposed works are below that existing on the site. There is no further variation to that existing.

The proposal includes demolition works to delete the existing concrete balustrades and replace them with glass balustrades. The maximum building height for the proposed works is 42.9m (71,6% variation) which is above the maximum building height of 25m. It is noted that the building height breach is existing and not impacted by the proposed alterations and additions.

The proposal does not increase the building footprint, nor does it extend the building height as existing. The proposal is supported and in our opinion is consistent with the objectives of the Clause, as outlined below:

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

Comment: The proposed development retains the existing building height, bulk and scale and is therefore consistent as existing with the prevailing heights and roof forms. It is noted that notwithstanding the existing breach to the building height, this application and proposed works to the balcony balustrades are below the existing maximum building height for the building, therefore the works are considered to be inconsequential to that existing and purely relate to the replacement of balustrades on the balconies. It is noted that notwithstanding the existing breach to the building height, other properties within the Manly LGA have similar breaches, and the approval would not result in significant impacts to the bulk and scale of Manly. It is important for Council to acknowledge the existing streetscape and built form of 22 Central Avenue, as existing. The proposed works relate to cosmetic alterations and additions that are consistent with the desired future streetscape of the locality.

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

Comment: The proposal has been strategically designed by the project architect to be the replacement of the existing concrete balustrade with a new glass balustrade only. It is noted that the existing concrete balustrade does not comply with the Building Code of Australia, therefore the proposal is required to ensure compliant balconies for the site. The proposal will not have an adverse visual impact and will not disrupt views, privacy or have amenity impacts to neighbouring properties. It is therefore considered that the bulk and scale of the existing building is retained.

The excerpt below of the eastern elevation shows the proposed works and the existing building height of the entire building. The proposal has been strategically designed to maintain the existing bulk and scale of the streetscape. The excerpt below shows the proposed balustrades in blue which are below the existing building height.



(c) to minimise disruption to the following—

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

Comment: The proposal relates to alterations and additions externally in the form of replacing the existing concrete balustrade. The proposal will have no impact to views from both adjoining properties and public spaces.

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

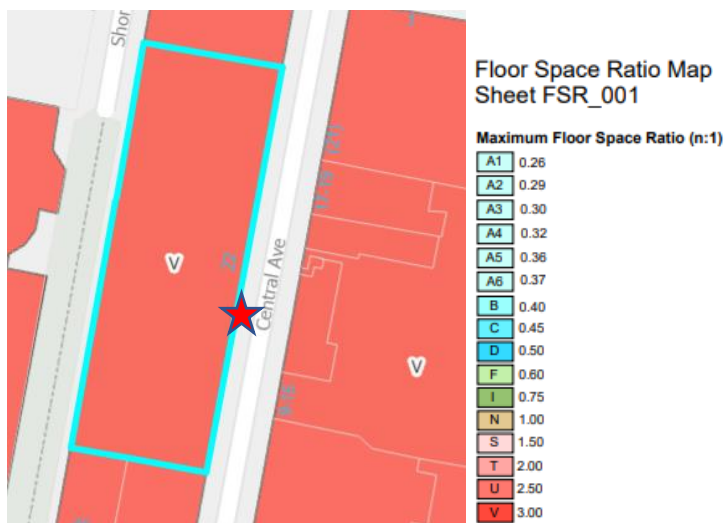
Comment: The proposal relates to alterations and additions externally in the form of replacing the existing concrete balustrade. The proposal will have no impact to solar access from both adjoining properties and public spaces.

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

Comment: Not applicable – the site is not located within a recreation or environmental protection zone.

It is our professional opinion that the building, by virtue of its height, bulk and scale, is consistent with the locality and desired character of the area. We have formed the considered opinion that the project is a sympathetic design and development with no impact to existing bulk and scale and is consistent with the existing and future character of the area. The proposal is not offensive, or unsympathetic in a streetscape context nor the context from Manly, and therefore the variation can be supported by Northern Beaches Council.

4.4 Floor space ratio



(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,*
 - (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,*
 - (c) to maintain an appropriate 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,*
 - (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.*
- (2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the [Floor Space Ratio Map](#).*
- (2A) Despite subclause (2), the floor space ratio for a building on land in Zone B2 Local Centre may exceed the maximum floor space ratio allowed under that subclause by up to 0.5:1 if the consent authority is satisfied that at least 50% of the gross floor area of the building will be used for the purpose of commercial premises.*

Comment:

Not applicable – no change to existing FSR for the site.

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.*
- (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 Planning Secretary has been obtained.*
- (5) In deciding whether to grant concurrence, the Planning Secretary must consider—*
- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) the public benefit of maintaining the development standard, and*

(c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if—

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note. When this Plan was made, it did not include land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition or Zone R5 Large Lot Residential.

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

(8) This clause does not allow development consent to be granted for development that would contravene any of the following—

(a) a development standard for complying development,

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,

(c) clause 5.4,

(ca) clause 6.15,

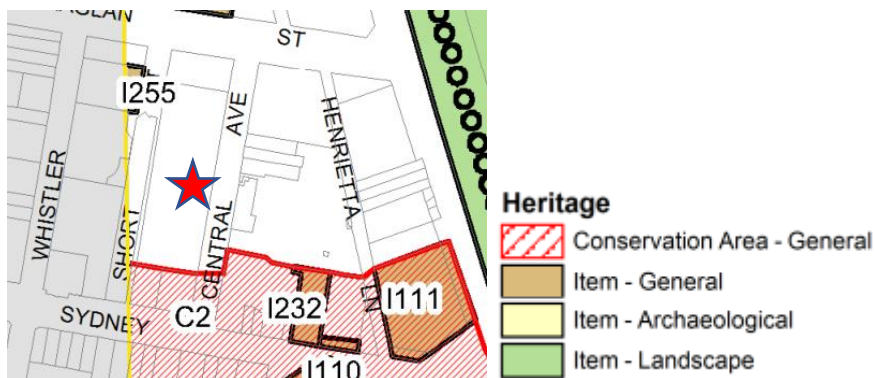
(cb) a development standard on land to which clause 6.19 applies.

Comment:

Complies – the proposal is supported by a Clause 4.6 Variation report to support the breach to Clause 4.3 Height of Buildings. It is our professional opinion that the variation is well founded, and environmental planning grounds provide justification that the enforcement would be unreasonable and unnecessary in this instance.

Part 5 Miscellaneous provisions

5.10 Heritage conservation



Note—

Heritage items (if any) are listed and described in Schedule 5. Heritage conservation areas (if any) are shown on the Heritage Map as well as being described in Schedule 5.

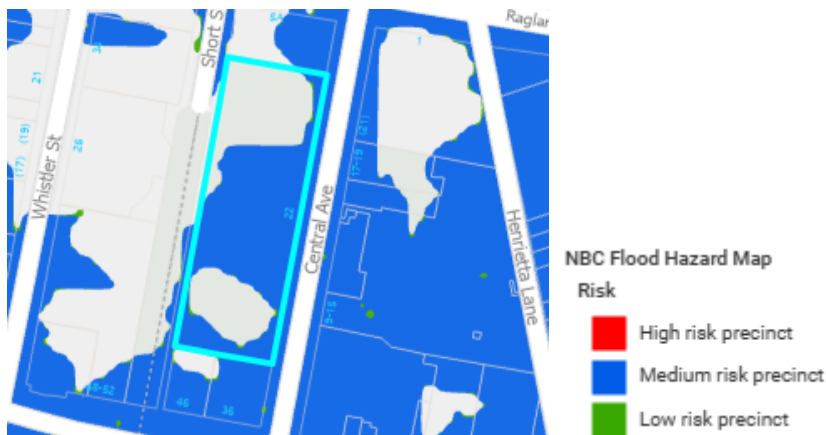
(1) Objectives The objectives of this clause are as follows—

- (a) to conserve the environmental heritage of Manly,
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,
- (c) to conserve archaeological sites,
- (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.

Comment:

Not applicable - the site is not identified as a heritage item nor is it located within a heritage conservation zone. Further, the location of the proposed works on the eastern elevation are not in close proximity to a heritage item, therefore no impact to other heritage items or buildings. It is noted that the site is adjacent to the conservation area to the south. The proposal does not detract from the heritage qualities of Manly and therefore its our opinion no further review is required.

5.21 Flood planning



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

- (a) to minimise the flood risk to life and property associated with the use of land,
- (b) to allow development on land that is compatible with the flood function and behaviour on the land, taking into account projected changes as a result of climate change,
- (c) to avoid adverse or cumulative impacts on flood behaviour and the environment,
- (d) to enable the safe occupation and efficient evacuation of people in the event of a flood.

(2) Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development—

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

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

- (a) the impact of the development on projected changes to flood behaviour as a result of climate change,

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

(4) A word or expression used in this clause has the same meaning as it has in the Considering Flooding in Land Use Planning Guideline unless it is otherwise defined in this clause.

(5) In this clause—

Considering Flooding in Land Use Planning Guideline means the Considering Flooding in Land Use Planning Guideline published on the Department’s website on 14 July 2021.

flood planning area has the same meaning as it has in the Floodplain Development Manual.

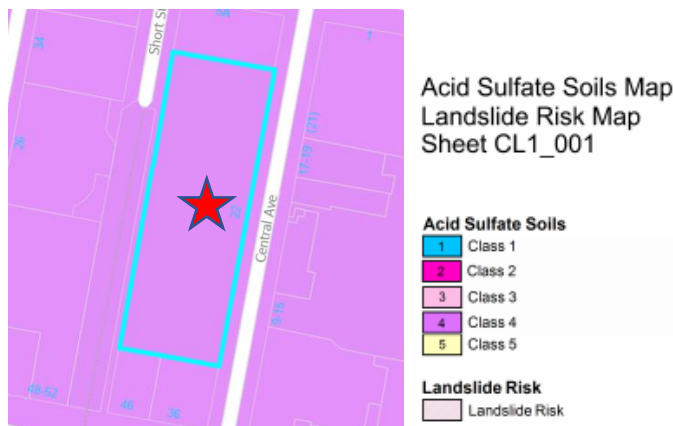
Floodplain Development Manual means the Floodplain Development Manual (ISBN 0 7347 5476 0) published by the NSW Government in April 2005.

Comment:

Not applicable – the proposed works are at a building height above 18.9m; Therefore, the proposed alterations and additions will not affect the flood risks of the site. It is our professional opinion that no further assessment is required.

Part 6 Additional local provisions

6.1 Acid sulfate soils



(1) The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.

(2) Development consent is required for the carrying out of works described in the Table to this subclause on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.

Class of land	Works
1	Any works.
2	Works below the natural ground surface. Works by which the watertable is likely to be lowered.
3	Works more than 1 metre below the natural ground surface. Works by which the watertable is likely to be lowered more than 1 metre below the natural ground surface.
4	Works more than 2 metres below the natural ground surface. Works by which the watertable is likely to be lowered more than 2 metres below the natural ground surface.
5	Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely

to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.

(3) Development consent must not be granted under this clause for the carrying out of works unless an acid sulfate soils management plan has been prepared for the proposed works in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority.

(4) Despite subclause (2), development consent is not required under this clause for the carrying out of works if—

(a) a preliminary assessment of the proposed works prepared in accordance with the Acid Sulfate Soils Manual indicates that an acid sulfate soils management plan is not required for the works, and

(b) the preliminary assessment has been provided to the consent authority and the consent authority has confirmed the assessment by notice in writing to the person proposing to carry out the works.

(5) Despite subclause (2), development consent is not required under this clause for the carrying out of any of the following works by a public authority (including ancillary work such as excavation, construction of access ways or the supply of power)—

(a) emergency work, being the repair or replacement of the works of the public authority, required to be carried out urgently because the works have been damaged, have ceased to function or pose a risk to the environment or to public health and safety,

(b) routine maintenance work, being the periodic inspection, cleaning, repair or replacement of the works of the public authority (other than work that involves the disturbance of more than 1 tonne of soil),

(c) minor work, being work that costs less than \$20,000 (other than drainage work).

(6) Despite subclause (2), development consent is not required under this clause to carry out any works if—

(a) the works involve the disturbance of less than 1 tonne of soil, and

(b) the works are not likely to lower the watertable.

Comment:

Not applicable - the site is identified as class 4 acid sulfate soils. The proposal does not include earthworks, therefore not triggering the requirements of clause 6.1.

6.2 Earthworks

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

(a) to ensure that earthworks and associated groundwater dewatering for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land,

(b) to allow earthworks of a minor nature without requiring a separate development consent.

(2) Development consent is required for earthworks unless—

(a) the earthworks are exempt development under this Plan or another applicable environmental planning instrument, or

(b) the earthworks are ancillary to development that is permitted without consent under this Plan or to development for which development consent has been given.

(3) Before granting development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters—

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

(b) the effect of the development on the likely future use or redevelopment of the land,

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

- (d) the effect of the development on the existing and likely amenity of adjoining properties,
- (e) the source of any fill material and the destination of any excavated material,
- (f) the likelihood of disturbing relics,
- (g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,
- (h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Note. The National Parks and Wildlife Act 1974, particularly section 86, deals with harming Aboriginal objects.

Comment:

Not applicable – the proposal does not include earthworks.

6.4 Stormwater management

- (1) The objective of this clause is to minimise the impacts of urban stormwater on land to which this clause applies and on adjoining properties, native bushland and receiving waters.
- (2) This clause applies to all land in residential, business, industrial and environmental protection zones.
- (3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development—
 - (a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and
 - (b) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and
 - (c) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.

Comment:

Not applicable – the proposal is for works to the existing balcony balustrades which do not change the existing stormwater provisions on-site.

6.9 Foreshore scenic protection area



- (1) The objective of this clause is to protect visual aesthetic amenity and views to and from Sydney Harbour, the Pacific Ocean and the foreshore in Manly.

(2) This clause applies to land that is shown as “Foreshore Scenic Protection Area” on the Foreshore Scenic Protection Area Map.

(3) Development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the following matters—

- (a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,*
- (b) measures to protect and improve scenic qualities of the coastline,*
- (c) suitability of development given its type, location and design and its relationship with and impact on the foreshore,*
- (d) measures to reduce the potential for conflict between land-based and water-based coastal activities.*

Comment:

Complies - the site is located within the foreshore scenic protection area map. The proposed works relate to the replacement of existing concrete balustrades with glass balustrades. The proposed development is considered to be minor and will have no adverse impacts to the scenic area.

The proposed works protect the visual aesthetic amenity and do not impact views to or from Sydney Harbour, the Pacific Ocean and the foreshore in Manly. The proposed alterations meet the objectives of Clause 6.9.

6.12 Essential services

(1) Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required—

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

(2) This clause does not apply to development for the purpose of providing, extending, augmenting, maintaining or repairing any essential service referred to in this clause.

Comment:

Complies - the site maintains access to the relevant essential services under clause 6.12.

6.16 Gross floor area in certain areas

(1) The objective of this clause is to provide for the viability of the land to which this clause applies and encourage the development, expansion and diversity of business activities, that will contribute to economic growth, retention of local services and employment opportunities in local centres.

(2) This clause applies to land identified as “Gross Floor Area for Certain Commercial Premises” on the [Key Sites Map](#).

(3) Development consent must not be granted to the erection of a building on the land to which this clause applies unless the consent authority is satisfied that at least 25% of the gross floor area of the building will be used as commercial premises.

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

Comment:

Not applicable – the proposal does not change the existing floor space within the building.

4.4 Manly Development Control Plan (MDCP)

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

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

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

Part 3: General Principles of Development

3.1 Streetscapes and Townscapes

3.1 Streetscapes and Townscapes

Relevant DCP objectives to be met include the following:

Streetscape

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

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

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

Townscape

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

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

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

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

Comment:

Complies - the site is located within an established mixed-use precinct and involves alterations and additions to the residential component of the existing mixed-use building. The works will not alter existing streetscape or boundary setbacks. The proposal is for alterations namely the replacement of outdated concrete balustrades with glass balustrades, therefore it is considered to implement a contemporary approach to the area and will positively contribute to the quality of the existing residential accommodation in Manly. The proposal complies with Clause 3.1: Streetscape and Townscape within the Manly Development Control Plan 2013.

3.1.1 Streetscape (Residential areas)

Streetscape is defined (see Dictionary in this plan) and represents the inter-relationship between buildings, landscape and open spaces in the street scene. Local amenity and identity are closely linked to streetscape character. Development should recognise predominant streetscape qualities, such as building form, scale, patterns, materials and colours and vegetation which contributes to the character of the local area.

Comment:

Complies - the proposed works will not significantly alter the existing streetscape. The proposed external alterations and additions are minor in detail relating to the replacement of concrete balustrades with new glass balustrades. These external alterations and additions will match the existing front façade of the building and development in the immediate vicinity.

3.1.1.1 Complementary Design and Visual Improvement

- a) *Development in the streetscape (including buildings, fences and landscaping) should be designed to:*
- i) *complement the predominant building form, distinct building character, building material and finishes and architectural style in the locality;*
 - ii) *ensure the bulk and design of development does not detract from the scenic amenity of the area (see also paragraph 3.4 Amenity) when viewed from surrounding public and private land;*
 - iii) *maintain building heights at a compatible scale with adjacent development particularly at the street frontage and building alignment, whilst also having regard to the LEP height standard and the controls of this plan concerning wall and roof height and the number of storeys;*
 - iv) *avoid elevated structures constructed on extended columns that dominate adjoining sites such as elevated open space terraces, pools, driveways and the like. See also paragraph 4.1.8 Development on Sloping Sites and paragraph 4.1.9 Swimming Pools, Spas and Water Features;*
 - v) *address and compliment the built form and style any heritage property in the vicinity to preserve the integrity of the item and its setting. See also paragraph 3.2 Heritage Considerations;*
 - vi) *visually improve existing streetscapes through innovative design solutions; and*
 - vii) *incorporate building materials and finishes complementing those dominant in the locality. The use of plantation and/or recycled timbers in construction and finishes is encouraged. See also paragraph 3.5.7 Building Construction and Design.*

Setback Principles in Higher Density Areas

- c) *In higher density areas (including LEP Zones R1 & R3), careful consideration should be given to minimising any loss of sunlight, privacy and views of neighbours. This is especially relevant in the design of new residential flat buildings adjacent to smaller developments. See also paragraph 3.4 Amenity.*

Comment:

Complies - the proposed alterations and additions will result in a contemporary and modern alternative to the existing concrete balustrades which do not comply with the BCA. The proposal implements a contemporary approach to the design of the balconies having regard to the compatibility with the precinct in terms of future desired character and will have no adverse impacts to the visual quality of the area.

3.2 Heritage

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

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

- *significant fabric, setting, relics and view associated with heritage items and conservation areas;*

- *the foreshore, including its setting and associated views; and*
- *potential archaeological sites, places of Aboriginal significance and places of natural significance.*

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

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

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

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

Comment:

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

3.3 Landscaping

3.3.1 Landscape Design

Objective 1) To encourage appropriate tree planting and maintenance of existing vegetation.

Objective 2) To retain and augment important landscape features and vegetation remnant populations of native flora and fauna.

3.3.2 Preservation of Trees or Bushland Vegetation

Objective 1) To protect and enhance the urban forest of the Northern Beaches.

Objective 2) To effectively manage the risks that come with an established urban forest through professional management of trees.

Objective 3) To minimise soil erosion and to improve air quality, water quality, carbon sequestration, storm water retention, energy conservation and noise reduction.

Objective 4) To protect and enhance bushland that provides habitat for locally native plant and animal species, threatened species populations and endangered ecological communities.

Objective 5) To promote the retention and planting of trees which will help enable plant and animal communities to survive in the long term.

Objective 6) To protect and enhance the scenic value and character that trees and/or bushland vegetation provide.

Comment:

Not applicable – the proposal will not alter existing landscape or vegetation.

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

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

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

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

Designing for Amenity

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

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

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

Comment:

Complies – the proposed alterations and additions are minor and will have no impact to views, overshadowing, overlooking, privacy or noise.

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

Relevant objectives in relation to this part include the following:

Objective 1) To ensure the principles of ecologically sustainable development are taken into consideration within a consistent and integrated planning framework that achieves environmental, economic and social sustainability in the short, medium and long term.

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

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

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

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

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

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

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

See also Council's Administrative Guidelines

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

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

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

Comment:

Not applicable – the proposal relates to the balcony balustrades only with no sustainability measures required with the proposal.

3.6 Accessibility

Comment:

Not applicable – the proposed works do not change the existing provisions to the building.

3.7 Stormwater Management

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

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

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

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

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

Comment:

Not applicable - The proposed development will retain the existing stormwater management systems onsite with the proposal relating to the balcony balustrades only.

3.8 Waste Management

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

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

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

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

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

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

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

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

Objective 7) To discourage illegal dumping.

Comment:

Complies - the proposed demolition works, alterations to an existing building will be completed as per the requirements of Councils Waste Management policies. A Waste Management Plan has been submitted to the Northern Beaches Council with respect to the construction waste that is associated with the proposed works. All waste generated during the construction of the building will be reuse, recycle and dispose of waste in an environmentally friendly and sustainable manner.

3.9 Mechanical Plant Equipment

Comment: Not applicable.

3.10 Safety and Security

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

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

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

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

Comment:

Complies - the development has been designed with due regard to safety and security for both the occupants of the dwelling and adjoining neighbours.

Part 4: Development Controls and Development Types

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

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

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

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

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

4.2.1 FSR (Consideration of Exceptions including Arcades)

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

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

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

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

4.2.1.1 Exceptions to FSR for Arcades

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

4.2.1.2 Exceptions to FSR for Plant Rooms

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

Comment:

Not applicable – the proposal retains existing GFA to the site.

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

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

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

4.2.2.1 Exceptions to Height for Design Excellence

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

Comment:

Merit assessment – the proposed alterations and additions do not change the existing maximum building height on site. The proposed works include the removal and replacement of concrete balustrades with glass balustrades above the 25m building height requirement. Refer to assessment under Clause 4.3 Height of Buildings and Clause 4.6 Variation to Development Standards.

4.2.3 Setbacks Controls in LEP Zones B1 and B2

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

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

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

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

- a) an alternative setback is identified on the townscape and opportunities maps or having regard to established building lines and whether they contribute positively to the streetscape; or*
- b) the applicant can demonstrate to the satisfaction of the Council that an alternative setback will not conflict with overall townscape objectives, reduce the general availability of retail frontage or remove weather protection for pedestrians; or*
- c) the stipulated setback would be undesirable in terms of the amenity of any residential uses existing on adjoining land or proposed for inclusion in the development. In such cases the planning principles in this plan for residential development at paragraph 3.1.1 will also apply. In relation to setbacks in Neighbourhood Centres, see also paragraph 4.2.8.2 which includes guidance for when development adjoins land zoned residential in the LEP.*
- d) Council considers the need for building works to be setback at corner lots/street intersections to provide for an unobstructed splay for the purpose of improved traffic visibility. The maximum dimension of this triangular shaped splay would be typically up to 3m along the length of the site boundaries either side of the site corner.*

Comment:

Not applicable - no change to existing building setbacks.

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

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

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

Comment:

Not applicable – no change to existing parking and loading on-site.

4.2.4.1 Car Parking

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

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

Comment:

Not applicable – no change to existing parking and loading on-site.

4.2.4.2 Vehicular Access

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

Comment:

Not applicable – no change to existing vehicular access points.

4.2.4.3 Loading bays

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

Comment:

Not applicable – no change to existing loading areas.

4.2.5.1 Design for Townscape

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

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

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

Comment:

Complies - the proposal meets the requirements for 4.2.5.1 through the refurbishment of the existing residential component through the removal of existing concrete balustrades and replacement with a compliant balustrade and a better architectural design to complement other buildings with a glass balustrade.

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

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

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

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

Comment:

Not applicable - no change to existing building height.

4.2.5.3 Security Shutters

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

Comment:

Not applicable – the proposal does not include security shutters.

4.2.5.4 Car Parking and Access

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

See also Schedule 3 Minimum Parking Rates/ Requirements.

Exceptions to parking rates/ requirements in Manly Town Centre

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

- (i) in the case of all uses other than dwellings, the dimensions or topography of the site would physically prevent the provision of some or all of the required spaces;*
- (ii) the required access interferes with the continuity of retail frontage or interrupts the frontage of the property in other ways such that there would be a conflict with any other provisions of this DCP in particular the townscape objectives; or*
- (iii) the movement of vehicles to and from the site would cause unacceptable conflict with pedestrian movements, special servicing arrangements for pedestrianised areas or contribute to congestion at key intersections.*

Application of Manly Section 94 Contributions Plan

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

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

Location of Driveways

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

Comment:

Not applicable – the proposal does not alter existing car parking provisions on-site.

4.2.5.5 Backpackers' Accommodation

Comment:

Not applicable – the proposal is not for backpackers accommodation.

4.2.5.6 Late Night Venues

Comment:

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

Part 4.4 Other Development (all LEP Zones)

4.4.1 Demolition

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

Objective 1)

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

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

a) Meet ecologically sustainable development principles by conserving resources and energy and reducing waste from any demolition process; and

b) Conserve the cultural heritage of the existing building and that of the locality. An appropriate assessment of potential heritage significance must accompany any DA in relation to demolition. If the property has merit as a potential heritage item, the heritage controls and considerations in this plan apply, and

c) Comply with the requirements of the Northern Beaches Waste Management Policy

Comment:

Complies - the proposal includes demolition works as required for the external works, as per architectural plans prepared by Urbaine Architecture. Where possible the building will retain materials for reuse, otherwise as per the Waste Management Plan they will be reused or recycled off-site.

4.4.2 Alterations and Additions

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

Extent to which this Plan Applies to Alterations and Additions

a) This paragraph defines alterations and additions in respect of how much of the building is to be demolished. If alterations and additions involve demolition of more than half of the building then the development will be assessed as new work and the controls of this plan will apply to the whole building i.e. to both existing and new development.

b) In paragraph a) above, the extent of demolition is calculated as a proportion of the existing external fabric being demolished including the surface area of the walls, the roof measured in plan form and the area of the lowest habitable floor.

Comment:

Complies - the proposal is for alterations and additions to an existing development to allow for the replacement of existing concrete balustrades with glass balustrades. The alterations and additions are considered to be minor and enhance the streetscape through a sympathetic solution to the existing non-compliant concrete balustrades on the building.

4.4.4.1 Awnings in LEP B1 and B2 Business Zones

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

In particular, awnings may be permitted where:

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

Comment:

Not applicable – the proposal does not include any awnings.

4.4.5 Earthworks (Excavation and Filling)

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

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

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

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

See also paragraph 3.3.2 Preservation of Trees and Bushland V.

Comment:

Not applicable – the proposal does not include excavation works.

Part 5 – Special Character Precincts, Areas and Sites

5.4.1 Foreshore Scenic Protection Area

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

5.4.1.1 Additional matters for consideration

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

a) Further to matters prescribed in the LEP, the development in the Foreshore Scenic Protection Area must also:

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

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

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

Comment:

Complies – refer to assessment under Clause 6.9.

5.4.3 Flood Prone Land

Objectives

Protection of people.

Protection of the natural environment.

Protection of private and public infrastructure and assets.

Requirements

1. Development must comply with the prescriptive controls set out in the Matrix below. Where a property is affected by more than one Flood Risk Precinct, or has varying Flood Life Hazard Category across it, the assessment must consider the controls relevant at each location on the property.
2. Development on flood prone land requires the preparation of a Flood Management Report by a suitably qualified professional.

Comment:

Not applicable – the proposed alterations and additions relate to the residential component of the building that is situated a minimum of 18.9m from the existing ground level.

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

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

Application of Parking Rates/Requirements:

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

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

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

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

Guide to Traffic Generating Developments – RTA (now RMS)

5.9.2 Gymnasiums

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

Comment:

Not applicable – no change to existing parking rates or access.

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

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

(a) The provisions of:

(i) The provision of any Environmental Planning Instrument

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

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

Comment: Not applicable.

(iii) Any development control plan

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

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

Comment: Not applicable.

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

Comment: Not applicable.

(v) (repealed)

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

Context and Setting:

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

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

Comment: The proposed alterations and additions increase the scenic quality of the locality and are in line with the desired future character of the precinct.

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

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

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

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

Access, transport and traffic:

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

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

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

Public Domain

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

Utilities

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

Flora and Fauna

Comment: The proposal does not impact flora and fauna.

Waste Collection

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

Natural hazards

Comment: The site is identified as flood prone land. The proposed works are not impacted by potential flood hazards.

Economic Impact in the locality

Comment: The proposed development will not have any significant impact on economic factors within the area notwithstanding that it will generate additional employment opportunities through the construction period with respect to the proposed works.

Site Design and Internal Design

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

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

Comment: These matters have been discussed in detail earlier in this report. The proposed alterations and additions are suitable for the locality and intend to enhance the existing streetscape.

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

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

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

Construction

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

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

Comment: The proposal will employ normal site safety measures and procedures will ensure that no safety or environmental impacts will arise during construction.

(c) The suitability of the site for the development

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

Comment: The site is located in an established Town Centre. The proposed works will not result in unmanageable transport demands.

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

Comment: No submissions are available at this time.

(e) The public interest

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

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

6. Summary and Conclusion

The proposal for alterations and additions to the existing mixed-use development is permissible and consistent with the intent of the built form controls as they are reasonably applied to the proposed works. It is considered that the proposal is appropriate and is worthy of the granting of development consent for the following reasons:

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

Accordingly, the proposal for alterations and additions to existing mixed-use building (Balcony Balustrades) at 22 Central Avenue, Manly, within Strata Plan 7114 and Strata Plan 13245, is acceptable from environmental, social, and planning perspectives and approval should therefore be granted by Council.