

## Property and Commercial Development Referral Response

Application Number:	DA2019/0769
To:	Adam Croft
Land to be developed (Address):	Lot 4 DP 39426 , 110 - 112 The Corso MANLY NSW 2095

### Reasons for referral

This application seeks consent on land being adjoining or adjacent to any Council

Assets/Property/Facilities

And as such, Councils development engineers are required to consider the likely impacts on drainage regimes.

### Officer comments

The proposal is for the change of use of the upper levels of the building from a restaurant/bar to offices.

DA 85/2014, was an application for change of use with fitout from retail shop to café on ground floor, restaurant/bar on levels 1 & 2, alterations and additions to the existing building to include trafficable awning balcony at level 1, replace existing canopy at level 2 and outdoor seating along South Steyne, which was approved by the Manly Independent Assessment Panel (MIAP) on 20 November 2014. Condition ANS16 of this consent requires the following:

**An airspace lease must be obtained from Council for the use of airspace below the proposed second floor balcony as proposed prior to the issue of any Occupation Certificate. This lease may not allow for smoking to be undertaken on the balcony due to restriction on such activity to the Corso and in accordance with local policy.**

**Reason: To protect and manage the public space in accordance with local policy and requirements.**

No airspace lease has been entered into to date between Council and the owners of the building. The grant of any occupation certificate without this lease would be in contravention of the above condition of consent.

Furthermore, while it is noted that the submitted plans indicate the balcony will not be used, there are four (4) sets of French doors opening onto the balcony, and Property is concerned that without an airspace lease in place for the balcony, there would be significant liability issues for Council, as the owner of the structure, if people were to access the balcony and injure themselves.

DAs usually require an airspace lease prior to construction to avoid instances where Council has no agreement over the structure. As this was not the case for the original DA it is imperative that no Occupation Certificate be granted without this Airspace Lease being entered into.

As such, it is recommended that consent be withheld until such time as an airspace lease for the use of the balcony has been entered into between the property owner and Council, in accordance with Condition ANS16 of Development Consent 85/2014.

### Referral Body Recommendation

Refusal

**Parks, Reserves and Foreshores Conditions:**

Nil.