

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

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| <b>Application Number:</b> | DA2022/1164 |
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| <b>Responsible Officer:</b>               | Alex Keller  |
| <b>Land to be developed (Address):</b>    | Lot B DP 102407, 34 - 35 South Steyne MANLY NSW 2095<br>Lot 2 DP 861591, 34 - 35 South Steyne MANLY NSW 2095 |
| <b>Proposed Development:</b>              | Demolition and construction of a commercial building   |
| <b>Zoning:</b>                            | Manly LEP2013 - Land zoned E1 Local Centre   |
| <b>Development Permissible:</b>           | Yes  |
| <b>Existing Use Rights:</b>               | No   |
| <b>Consent Authority:</b>                 | Northern Beaches Council   |
| <b>Delegation Level:</b>                  | NBLPP  |
| <b>Land and Environment Court Action:</b> | No   |
| <b>Owner:</b>                             | Gwynvill Properties Pty Ltd  |
| <b>Applicant:</b>                         | 34-35 South Steyne Pty Limited   |

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| <b>Application Lodged:</b>       | 28/07/2022                   |
| <b>Integrated Development:</b>   | Yes                          |
| <b>Designated Development:</b>   | No                           |
| <b>State Reporting Category:</b> | Commercial/Retail/Office     |
| <b>Notified:</b>                 | 13/03/2023 to 18/04/2023     |
| <b>Advertised:</b>               | 17/03/2023                   |
| <b>Submissions Received:</b>     | 19                           |
| <b>Clause 4.6 Variation:</b>     | 4.3 Height of buildings: 42% |
| <b>Recommendation:</b>           | Approval                     |

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| <b>Estimated Cost of Works:</b> | \$ 11,075,000.00 |
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### EXECUTIVE SUMMARY

This development application seeks consent for demolition works and construction of a commercial building, including basement levels and underground carparking. The site is located within the Heritage Conservation Area and fronts South Steyne at Manly, with rear frontage to Rialto Lane.

The application is referred to the *Northern Beaches Local Planning Panel* (NBLPP) due to more than 10 objections and a building height variation that exceeds 10%.

Concerns raised in the objections predominantly relate to views, traffic and parking, dilapidation risk, building height, safety (during construction), building bulk and public amenity of foreshore area.

Critical assessment issues included views, building height variation, traffic and carparking, streetscape within the heritage conservation area, facade design (including awnings), residential amenity (during works) and construction management. To address view sharing / view loss the applicant re-approached the building design and view issues after concerns were raised about different viewing angles. The applicant undertook further analysis of view lines in context with overall proposed design, DCP and LEP controls. This resulted in reshaping the top storey to prioritise a diagonal view line (north) toward Queenscliff headland and limiting the movement of floor space forward, that would affect other sensitive views (east) directly in front, by other apartments behind the site. The roof area was also simplified with less 'clutter', deleting a rooftop pool proposed and revising the rooftop planting component to assist amenity.

The 4.6 request for the non-compliance with height standard arises from the dual height control envelope (10m and 12m) across the site, view considerations to accommodate competing view elements, as well as the permitted FSR for the zone and standard commercial floor to ceiling height that influence overall height and bulk. The proposal has been amended during the assessment period to rationalise floor layouts as well as accommodate views. The design response includes a front terrace area with the upper storey reshaped but still above the 10m height control and partly above the 12m height control at the rear.

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

## PROPOSED DEVELOPMENT IN DETAIL

This application seek approval for the following development work and land use:

- Demolition of the existing site structures site preparation and excavation works,
- Construction of a 3-4 storey commercial building over 2 basement levels, comprising:
- **Basement Level 2 RL -7.0:** commercial bin store, lift stair access and 13 car parking spaces, plus a loading dock, an EV charging space. (Note: The above parking arrangement includes 2 "carshare/rideshare" spaces, and 2 x car stackers in the lower basement level shown)
- **Basement Level 1 RL 2.0 to 2.347:** 137.851m<sup>2</sup> of commercial floor space, vehicle ramp, storage, bin rooms, amenities, plant service rooms, water tank, end of trip (EOT) facilities & bicycle storage, lift and stair access, car stacker head-room, vent shaft.
- **Ground Level RL 4.8 to 5.12:** 361.37m<sup>2</sup> of retail floor space (including service area for food and beverage) presenting to both South Steyne and Rialto Lane, basement entry from Rialto Lane, through site link connecting South Steyne and Rialto Lane, lift and stair access, storage, riser, services and lobby for upper level commercial space, fire hydrant.
- **Level 01 RL 8.75:** 520.6m<sup>2</sup> of commercial floor space, amenities, services, balcony to South Steyne (within boundary), light well/courtyard lift and stair access, void, landscaped street awning.
- **Level 02 RL 12.0:** 551.17m<sup>2</sup> of commercial floor space, amenities, services, balcony to South Steyne (within boundary), light well lift and stair access.
- **Level 03 RL 15.75:** 220.38m<sup>2</sup> of commercial floor space, amenities, services, plant equipment, and roof terrace, roof planting, lift and stair access, light well.

(Originally the proposal included an outdoor pool on Level 3 however this has been deleted)

- **Upper Roof RL 19.0:** Roof plant enclosure and Lift overrun at RL19.7.
- Total Commercial Floor Space of 1,791sqm (see floor plans)
- No signage is proposed and no 'hours of operation' are nominated for F&B or office areas.
- Landscaping elements (upper landscaped planter edges RL16.3), stormwater infrastructure and ancillary site works.
- Site consolidation (by condition).

(Note: Architectural drawing index dates for revision DA-D is "31.7.27" which appears to be a misprint given the print date is "9.8.2023". Therefore, the revision date is considered to be 27.7.2023, as per previous revision date formats.)

## **ASSESSMENT INTRODUCTION**

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

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

## **SUMMARY OF ASSESSMENT ISSUES**

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards  
Manly Local Environmental Plan 2013 - 5.10 Heritage conservation  
Manly Local Environmental Plan 2013 - 6.1 Acid sulfate soils  
Manly Local Environmental Plan 2013 - 6.2 Earthworks  
Manly Local Environmental Plan 2013 - 6.11 Active street frontages  
Manly Local Environmental Plan 2013 - 6.12 Essential services  
Manly Local Environmental Plan 2013 - 6.13 Design excellence  
Manly Local Environmental Plan 2013 - 6.16 Gross floor area in Zone B2

- Manly Development Control Plan - 3.1 Streetscapes and Townscapes
- Manly Development Control Plan - 3.1.3 Townscape (Local and Neighbourhood Centres)
- Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
- Manly Development Control Plan - 3.4.2 Privacy and Security
- Manly Development Control Plan - 3.4.3 Maintenance of Views
- Manly Development Control Plan - 3.9 Mechanical Plant Equipment
- Manly Development Control Plan - 4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2)
- Manly Development Control Plan - 4.2.3 Setbacks Controls in LEP Zones B1 and B2
- Manly Development Control Plan - 4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor
- Manly Development Control Plan - 4.2.5.1 Design for Townscape
- Manly Development Control Plan - 4.2.5.2 Height of Buildings: Consideration of Townscape Principles in determining exceptions to height in LEP Zone B2 in Manly Town Centre
- Manly Development Control Plan - 4.4.3 Signage
- Manly Development Control Plan - 4.4.4.1 Awnings in LEP B1 and B2 Business Zones
- Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)
- Manly Development Control Plan - 5 Special Character Areas and Sites

**SITE DESCRIPTION**

|                                   |  |
|-----------------------------------|--|
| <b>Property Description:</b>      | Lot B DP 102407 , 34 - 35 South Steyne MANLY NSW 2095<br>Lot 2 DP 861591 , 34 - 35 South Steyne MANLY NSW 2095   |
| <b>Detailed Site Description:</b> | <p>The site is irregularly shaped and comprises two Torrens Title lots with a combined 15.305m wide frontage to South Steyne and a maximum depth of 46.815m and a total combined area of 690.2 square metres (sqm). The site is generally level and is partially affected by flooding influenced by the surrounding stormwater systems, ground water table and low lying position of the land adjacent the ocean mean high water mark.</p> <p>A two storey commercial building currently occupies the site, with at-grade parking at the rear. The site has narrow frontage to Rialto Lane at the rear with a 3.0m right of way that links to No.94 The Corso.</p> <p>The site is located within the <i>Manly Town Centre Conservation Area</i> and in the vicinity of a number of heritage items but the site itself contains no LEP listed heritage items.</p> <p>Surrounding development comprises retail, commercial, shops and restaurants. Some premises are low rise shop top housing or mixed uses near the site. A large mixed use development at No.17-25 Wentworth Street overlooks the site for residential apartment in the northern corner of that building. Ocean views in an easterly and northern-easterly direction are gained from various apartments that overlook the site toward Manly beach seashore and the coastal interface / foreshore reserve.</p> |

Map:



## SITE HISTORY

The applicant undertook a prelodgement meeting (PLM No.2022/0084) for the subject DA. The PLM provided the following concluding comments:

*"In principle, the concept of a high quality commercial building in this location is supported and it is acknowledged the high level of detail and analysis the applicant has done to date. The inclusion of a pedestrian link to Rialto Lane is supported and the comments provided by Council's traffic engineer to address pedestrian safety at the junction of Rialto lane are to be resolved by the applicant.*

*Council's planner and heritage advisor have concerns regarding the façade presentation in the context of the site being within the heritage conservation area and responding to the wider Townscape of the Manly Corso and South Steyne area given the high use of glazing. The applicant is to review and incorporate the feedback and suggestions provide by Council in regard to the façade presentation prior to lodgement of the application.*

*The breach of building height at the front façade to match the adjoining buildings is considered reasonable and the applicant is to provide further supporting justification and environmental planning grounds within the Clause 4.6 for the breach of the 12m building height at the rear. View sharing should be maintained for the affected properties as a result of any breach of building height.*

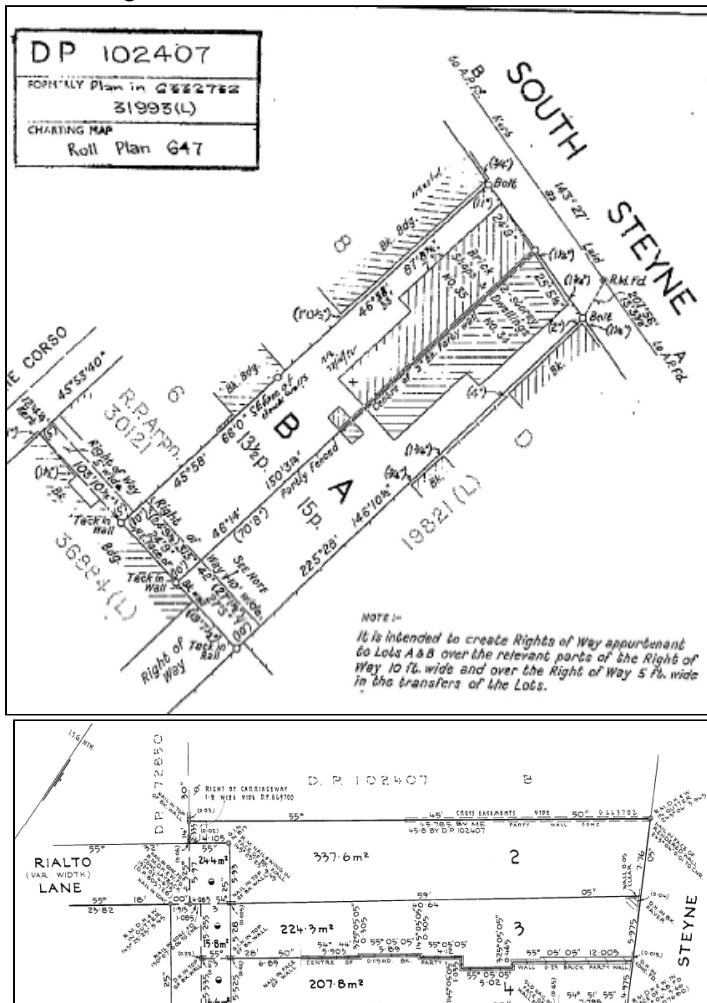
*The deficiency of car parking is of concern to Council's traffic engineer and whilst some concession could be provided, the parking provision must be increased or floor area reduced (such as the basement GFA) to provide an appropriate quantum of parking."*

### Comment on PLM

The applicant has amended the design and provided a series of supplementary reports / additional information to address concerns raised within the PLM advice and to accommodate the review advice by DSAP.

The subject land comprises 2 lots originally occupied by dwelling houses (semi-detached). In 1996

part of Lot A (Now Lot 2) was acquired for road widening to Rialto Lane. Both lots will be required to be consolidated as part of the new redevelopment of the land. The existing 2 storey commercial building was constructed pre 1990 and has undergone a series of alterations by way of various tenancy fitouts / use changes over in recent decades.



The proposal involves complete demolition and excavation works on the site for an entirely new building. Therefore, previous building or development approvals on the site are not relevant as the property is not a heritage item.

The proposal was reviewed by Council's Design and Sustainability Advisory Panel as part of the PLM process and again after the DA was lodged. formerly (See heading "Internal Referrals - DSAP)

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

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

| Section 4.15 Matters for Consideration  | Comments   |
|---|--|
| Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument | See discussion on “Environmental Planning Instruments” in this report.<br><br>The NSW employment zones reforms have been made and came into force on 26 April 2023. These reforms will result in this property |

| Section 4.15 Matters for Consideration  | Comments   |
|---|--|
|   | changing from a B1 zone to a E1 zone. The proposed use will remain permissible in the new zone. (DCP/LEP references are therefore interchangeable in transitioning to the changes made by the Department of Planning)  |
| Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument                                      | There are no current draft environmental planning instruments.   |
| Section 4.15 (1) (a)(iii) – Provisions of any development control plan  | Manly Development Control Plan applies to this proposal.   |
| Section 4.15 (1) (a)(iiiia) – Provisions of any planning agreement  | None applicable.   |
| Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021) | <p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Following initial Advertising and notification, information was requested in relation to Council DSAP review, traffic engineering issues, heritage, streetscape and view impacts (including objection concerns). The applicant also made changes to simplify the design and layout elements including altering the internal stair foyer, deletion of the roof pool and rationalising floor layouts. The amended plans (Revision DA-D 27 Jul) were re-notified pursuant to the Community Participation plan to address view sharing issues at the top storey and minor revisions prompted by Council referral / assessment to improve amenity.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application as there is not residential component.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> |
| Section 4.15 (1) (b) – the likely impacts of the development,   | (i) <b>Environmental Impact</b><br>The environmental impacts of the proposed development on the  |

| Section 4.15 Matters for Consideration   | Comments  |
|--|---|
| including environmental impacts on the natural and built environment and social and economic impacts in the locality | <p>natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b><br/>The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. Nominal hours are included (by conditions) to provide operating framework for the building (e.g business activity, occupancy of land use) consistent with MDCP.</p> <p>(iii) <b>Economic Impact</b><br/>The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>                           |
| Section 4.15 (1) (c) – the suitability of the site for the development   | <p>The site is considered suitable for the proposed development. having considered the applicable planning controls in context with the urban surroundings, amendment made and referral considerations, including public considerations. Conditions are recommended to address relevant matters as appropriate.</p> <p>The new building and basement will be constructed across 2 Lots and therefore site consolidation should be implemented for the orderly development of the land. This is addressed by condition (prior to occupation).</p>  |
| Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs                               | See discussion on “Notification & Submissions Received” in this report.   |
| Section 4.15 (1) (e) – the public interest   | <p>No matters have arisen in this assessment that would justify the refusal of the application in the public interest. Detailed consideration of submissions are made within this report or summarised and addressed as appropriate within relevant DCP/LEP section / conditions. Submissions of objection and support were received by Council. All submissions have been read as part of the assessment.</p> <p>The proposal was Advertised and notified as "Nominated Integrated" development pursuant to the <i>Water Management Act 2000</i>, for a minimum of 28 days. WaterNSW has provided GTA's to address nominated integrated matters as a public authority.</p> |

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.



## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 13/03/2023 to 18/04/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 19 submission/s from:

| <b>Name:</b>   | <b>Address:</b>  |
|--|--|
| Mrs Rosemary Barbara Dawson                            | 633 / 25 Wentworth Street MANLY NSW 2095                     |
| Mr Brian Gregory Fitzgerald                            | 440 / 25 Wentworth Street MANLY NSW 2095                     |
| Mrs Elizabeth Kathleen Young                           | 538 / 25 Wentworth Street MANLY NSW 2095                     |
| Mr Gerard Joseph McMahon                               | 831 / 25 Wentworth Street MANLY NSW 2095                     |
| Mr James Edward Morell<br>Lloyd<br>Mrs Susan Joy Lloyd | 733 / 25 Wentworth Street MANLY NSW 2095                     |
| Kn Planning Pty Limited                                | Po Box 3372 WAREEMBA NSW 2046                                |
| Mr Wayne Edward Dearing                                | PO Box 1232 MANLY NSW 1655                                   |
| Strata Partners Pty Ltd                                | PO Box 3046 WILLOUGHBY NORTH NSW 2068                        |
| Mr James Martin Carter                                 | 535 / 25 Wentworth Street MANLY NSW 2095                     |
| Mrs Belinda Kay Eady                                   | 69 Bungaloe Avenue BALGOWLAH NSW 2093                        |
| Christian D'offay                                      | 25 Wentworth Street MANLY NSW 2095                           |
| Mrs Tanja Gallate                                      | 3723 West Michael Dr, Unit 4 TETON VILLAGE WYOMING NSW 83025 |
| Mr Efstathios George Gallate                           | 631/11-27 Wentworth Street MANLY NSW 2095                    |
| Mr Graeme Leslie Henson                                | 231 / 25 Wentworth Street MANLY NSW 2095                     |
| Mrs Penelope Blackburne Berents                        | 635 / 25 Wentworth Street MANLY NSW 2095                     |
| Mrs Lisle Frances Fortescue                            | 632 / 25 Wentworth Street MANLY NSW 2095                     |
| Mr John Cumming  | 533 / 25 Wentworth Street MANLY NSW 2095                     |
| Mr John Edward Coady                                   | 7 / 19 - 21 A Addison Road MANLY NSW 2095                    |
| Manly Business Chamber                                 | 52 Raglan Street MANLY NSW 2095                              |

(Multiple submission on or on behalf of (i.e. Planning consultant) the same property are addressed collectively as a single submission issue. All submissions are read as part of the assessment considerations in context with relevant DCP / LEP controls.) Submissions of support are acknowledged by Council and noted as part of overall considerations in the public interest.

The following issues were raised in the submissions:

1. Views
2. Traffic and parking
3. Dilapidation risk
4. Building height

5. Laneway safety
6. Overdevelopment
7. Development precedent
8. Overshadowing of foreshore

The above issues are addressed as follows:

- *1. The submissions raised concerns that there is view loss and view sharing impacts across the site from properties adjacent that have views across the subject land toward Manly beach, ocean / coastal area and views toward Queenscliff.*

Comment:

This issue is addressed in detail under the heading *3.4.3 Maintenance of views* within this report. In summary, the application has been substantially amended across the upper storey level to address view considerations. This includes reshaping of the top storey which had implications also for height variations and floor arrangements in the lower storeys. Generally views are impacted directly in front, toward the Manly beach / surf line and toward a viewing angle of Queenscliff. Originally the view impact was very severe, particularly due to top storey arrangement within the proposal and a 'devastating' impact to Level 5 corner apartment behind the site. However, with amendments this has been moderated with amendments with a merit design approach that however places a much greater height non-compliance within the central part of the site, in order to retain a diagonal view line. The design changes seek to accommodate competing view lines from adjacent residential apartments and gives weight to the diagonal view along Manly beach (toward Queenscliff) while also seeking to minimise view loss directly in front along the Manly foreshore area since the direct eastern view also has weight to units above level 5.



Image: Level 5 within No.25 Wentworth Street diagonal view corridor toward Queenscliff retained by shifting FSR forward (increasing non-compliance within 10m height plane) and redesigning building elements including light well, rooftop plant, front terrace, rear roof treatment and minimising additional impact on Units above. Comprehensive view analysis photomontages and supporting analysis has been provided by the applicant to demonstrate view considerations.

- *2. The submissions raised concerns that parking is inadequate for the development (floor space capacity) and the proposal will also impact local traffic congestion, particularly in Rialto Lane.*

Comment:

This issue is addressed in detail by Council's Traffic Engineer under the heading "Internal referrals" within this report. In summary, the proposal has been provided with a detailed traffic and parking report and being within the Manly CBD area relies partly of the available access to public transport, pedestrian / bicycle access, local public parking and basement parking / loading. Basement parking has been amended during the assessment period and Council's Traffic Engineer supports the proposal, subject to conditions.

- *3. The submissions raised concerns that there is a high dilapidation risk for construction, given the boundary to boundary construction and excavation work as well as completed demolition process required.*

Comment:

This issue is addressed by conditions and is routinely managed during the preparation site works stage (demolition) and throughout the construction phase. This requires dilapidation surveys of surrounding properties and appropriate demolition / construction safeguards to be implemented as well as compliance with Australian Standards / OHS and relevant, industry work methods (as standard a standard process) and use of a detailed construction / demolition management plan. The applicant has provided general outline of these matters and conditions are recommended to ensure compliance during works.

- *4. The submissions raised concerns that the building exceeds the maximum building height at both the front and rear sections defined by the MLEP 2013.*

Comment:

This issue is addressed in detail pursuant to "Clause 4.6" of the Manly LEP 2013 within this report. In summary, the proposed upper level has been revised in order to accommodate views. However this has increased the non-compliance within the 10m height plane that covers the front part of the site. Building-out the entire rear 12m envelope at the rear would devastate the view corridor across the site. Overall the non-compliance maintains consistency with the objectives of the E1 Local Centre zone and does not unreasonably impact other considerations of overshadowing, privacy, setbacks, streetscape and views.

- *5. The submissions raised concerns that the proposal will reduce safety within Rialto Lane, including potential conflict with delivery trucks, pedestrians.*

Comment:

This issue is addressed by conditions including requirements for a detailed *demolition and construction management plan*. Council's Traffic Engineer has addressed this issue under the heading "internal referrals" within this report. This issue does not warrant refusal of the application.

- *6. The submissions raised concerns that the proposal is an overdevelopment of the site which will impact surrounding residential amenity.*

Comment:

The site breaches both the 10m and 12m building height envelopes that affect the, site but does not exceed the permitted FSR. The proposed building includes basement areas for parking, commercial / retail use, end of trip (EOT) facilities and a pedestrian link to Rialto Lane.

Height considerations have also sought to accommodate preferred commercial floor to ceiling heights (similar to the ADG) but no residential use is proposed. The proposal is consistent with the E1 Zone objectives and conditions are recommended to address associated amenity concerns that have not been fully detailed (such as treatment of rear windows, signage and the like). In summary, this issue does not warrant refusal of the application.

- 7. *The submissions raised concerns that adjacent development at No.31 to No.33 South Steyne created an undesirable precedent of impacts on adjacent land, including view loss.*

Comment:

The pattern of surrounding development has been considered as part of the overall development assessment. Conditions are included to ensure heights are not increased during construction, as may have been varied on adjacent land by modification. View loss considerations have been addressed in detail within this report under the heading "3.4.3 Maintenance of views". Subject to conditions this issue does not warrant refusal of the application.

- 8. The submissions raised concern that the proposal will increase overshadowing of the foreshore reserve and affect wind patterns close to the building.

Comment:

This issue is addressed within this report under the heading 3.4.1 'Sunlight access and overshadowing'. In summary, the shadow diagrams demonstrate that the proposal will not create unreasonable additional overshadowing to the beachfront reserve area. Consideration of wind effects near the building (such as along Rialto Lane) are not evident due to the similarity of the built form of the adjacent buildings along South Steyne. Therefore, the building does not "funnel" ocean breezes into the laneway area accessed from Wentworth Street. This issue does not warrant refusal of the application.

## REFERRALS

| Internal Referral Body                   | Comments   |
|--|--|
| Design and Sustainability Advisory Panel | <p><b>PANEL CONCLUSION</b></p> <p><i>"The Panel supports the proposal in general but considers further refinements are needed.</i></p> <p><i>In particular:</i></p> <ul style="list-style-type: none"> <li><i>• Investigate recessing of glazing and the introduction of some solid elements to the eastern façade to better relate to adjoining and nearby buildings</i></li> <li><i>• Increase the amount of natural light entering the through site link and the extent of the double height volume</i></li> <li><i>• The applicant is strongly encouraged to investigate ways of minimising CO2-e emissions in operation"</i></li> </ul> <p><u>Planning Assessment Comment:</u></p> <p>The proposal has been amended during the assessment process to accommodate DSAP comments, however due to view considerations some recommendations are not included. Conditions are used to address residual issues with the revisions made to address streetscape, reflectivity and townscape considerations.</p> |

| Internal Referral Body | Comments  |
|------------------------|---|
|                        | <p><b>Strategic context, urban context: surrounding area character</b><br/> <i>The site achieves 0.5:1 bonus by virtue of its commercial use. This additional area is difficult to achieve within the designated height controls. As previously noted, the Panel believes that the building would be a good urban fit, and appropriate to its location in a heritage conservation area. The Panel did comment specifically on the amount of glazing:</i></p> <p><i>The proposal is within the foreshore scenic protection area and Heritage Conservation Area of Manly although not itself of heritage significance. In accordance with Manly LEP 2013 cl 5.10 (4) the consent authority must consider the impact of the proposed development on the heritage significance of the item or area concerned.</i></p> <p><i>The subject site is on the very edge of the HCA. The proposal for a completely glazed eastern façade is in stark contrast to the adjoining buildings although having architectural merit.</i></p> <p><i>The Panel was of the view that recessing the glass to provide some articulation to the façade in addition to that provided by the curved glass sections could be desirable, as would the introduction of some solid sections or masonry blades to relate to the adjoining buildings and most buildings in the HCA.</i></p> <p><u>Recommendation:</u></p> <ul style="list-style-type: none"> <li>• <i>Investigate recessing of glazing and the introduction of some solid elements to the eastern façade to better relate to adjoining and nearby buildings.</i></li> <li>• <i>Has not been pursued, no alternative treatments were presented. It remains the view of the Panel that alternative façade treatments should be investigated. The application is accompanied by a design statement that sets out the overall approach and includes the following:</i></li> <li>• <i>The proposal is a contemporary response to its context and use. The fine grain scale of the openings reflects rather than imitates the scale of the street wall, creating a contemporary office environment with generous views and terraces.</i></li> </ul> <p><i>The Panel remains of the view that alternatives should be investigated for the following reasons:</i></p> <ul style="list-style-type: none"> <li>• <i>A contemporary response does not necessarily rely on a fully glazed façade</i></li> <li>• <i>The size of the openings and glazing can in no way be considered 'fine grain' when seen in the context of surrounding buildings</i></li> </ul> <p><u>Recommendation</u></p> |

| Internal Referral Body | Comments  |
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|                        | <ul style="list-style-type: none"> <li>• <b>1.</b> Investigate recessing of glazing and the introduction of some solid elements to the eastern façade to better relate to adjoining and nearby buildings.</li> </ul> <p><u>Planning Assessment Comment:</u><br/> These recommendations above have been substantially achieved by revised facades and materiality changes, including fenestration. Council's Heritage Officer supports the front elevation appearance, however conditions are recommended to address other considerations of structures overhanging Council's footpath (Council land/road reserve). Conditions are also recommended to address Rialto Lane appearance as part of the MDCP objectives for Townscape in the HCA.</p> <p><b>Scale, built form and articulation</b><br/> <i>The Panel is generally supportive of the scale and built form of the proposal.</i><br/> <i>The Panel notes that the permissible heights and allowable FSR including bonuses for commercial use are not aligned; it is simply not possible to achieve the FSR within the height limits. Additionally, the Panel is supportive of generous floor to floor heights. The 0.5m increase in height from the Pre-DA scheme is noted but is considered to have insignificant additional impact.</i></p> <p><i>It is not clear how much natural light would actually penetrate into the through site link. The applicant is encouraged to maximise the amount of glazing between the circular court and the through site link. This would appear possible on level 01 between grids 4 and 5 with possible extension right through to the proposed 'void to TSL' at the eastern end with minimal loss of floor area.</i></p> <p><i>Some changes have been made but how the basement would function for food and beverage or as a gym is not clear given that these spaces would need to be accessible.</i></p> <p><i>The Panel appreciates the attempt to introduce natural light and ventilation to the basement through the introduction of a 'skylight' but considers this insignificant and consequently could be deleted. This leaves the question of the use of the basement level.</i></p> <p><u>Recommendations</u></p> <ul style="list-style-type: none"> <li>• <b>2.</b> The Panel is supportive of the habitable awning and the clear demarcation of the entry to the through site link. Consideration could be given to aligning the southern edge with the subtended extension of the boundary line.</li> <li>• <b>3.</b> Maximise the natural light and extent of the double height portion of the through site link</li> <li>• <b>4.</b> Consider conditions accompanying the approval to restrict the uses of the basement to not include commercial (office) working space</li> </ul> |

| Internal Referral Body | Comments  |
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|                        | <p><u>Planning Assessment Comment:</u><br/>           These recommendations have been addressed in that the front awning is not longer trafficable but narrow terrace sections are integrated behind (within the site boundary). Conditions are recommended to reduce the width of the landscaping overhanging Council footpath and include a regular forward edge to the awning to reduce the discontinuity in appearance with No.36-38 South Steyne as both properties are within the HCA. The visual definition of the 'walk-through' link is acceptable for the awning/ facade, including natural light voids. A condition is included to limit the basement floor space as commercial office.<br/>           Restricting use of the basement from permissible uses is contrary to planning provisions that otherwise make those uses permissible with development consent.</p> <p><b>Access, vehicular movement and car parking</b><br/> <i>No further comment, the Panel remains supportive of the reduced car parking numbers given the location, its accessibility and constraints imposed by the geometry and dimensions of the site.</i></p> <p><i>The Panel is very supportive of the bicycle parking and commitment to end of trip facilities.</i></p> <p><i>The Panel also commented on the arrangement of services in relation to Rialto Lane. The Panel makes no further comment as any technical issues will be resolved in discussion with Council.</i></p> <p><b>Landscape</b><br/> <i>Generally, the landscape treatments appear suitable in relation to their conditions and location and the appropriate soil depths appear to be provided. The rooftop is a simple refined space which will provide flexibility of use and a quality communal space.</i></p> <p><i>Pool accessibility and fencing is unclear.</i></p> <p><i>The awning terrace is considered a positive for activation of the public domain.</i></p> <p><u>Recommendations</u></p> <ul style="list-style-type: none"> <li>• <b>5.</b> Consider the detailed integration of the pool fencing and provision of universal accessibility to the pool so it is beautifully designed in.</li> </ul> <p><u>Planning Assessment Comment:</u><br/>           The pool has been deleted and a landscaped terrace only for Level 3 with planter box edge.</p> <p><b>Amenity</b><br/>           Issues related to exhausts have been addressed.</p> |

| Internal Referral Body | Comments  |
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|                        | <p data-bbox="523 342 948 376"><u>Planning Assessment Comment</u></p> <p data-bbox="523 376 1398 445">Exhausts have been revised and roof plant re-positioned as part of view considerations.</p> <p data-bbox="523 483 927 517"><b>Façade treatment/Aesthetics</b></p> <p data-bbox="523 517 1426 551">Refer to previous comments about contextual fit (recommendation 1)</p> <p data-bbox="523 589 948 622"><u>Planning Assessment Comment</u></p> <p data-bbox="523 622 764 656">Addressed above.</p> <p data-bbox="523 694 719 728"><b>Sustainability</b></p> <p data-bbox="523 728 1137 761"><i>The proposal complies with the NCC.section J.</i></p> <p data-bbox="523 799 1362 869"><i>There has been no commitment to, or investigation of whether it might be possible to achieve Net Zero in operation.</i></p> <p data-bbox="523 869 1410 1041"><i>It would appear that the 15KW that is included in the proposal could be doubled given the amount of roof area available This would reduce the annual CO2-e from the proposed 119,000kg CO2-e emissions by approximately 22,772 kg (refer to p 28of Energy Efficiency report).</i></p> <p data-bbox="523 1041 1410 1149"><i>This is still a long way from carbon neutrality, however it is not clear what other strategies or approaches have been explored to further reduce CO2-e emissions beyond compliance with the NCC.</i></p> <p data-bbox="523 1187 1410 1395"><i>We are living in a climate emergency – all new buildings should be designed to be as naturally comfortable as possible without heating and cooling (passive design) and should not rely on energy from fossil fuels. This should be possible in a coastal location like Manly that has a very different climate from Observatory Hill that is the weather station used in the Section J assessment.</i></p> <p data-bbox="523 1433 1426 1776"><i>The impacts of climate change and the changes to energy supply and security are out-pacing policy and regulation. The role of the Panel is to advise on ‘design (quality) and sustainability’ and is not confined to existing legislation or the approaches of the past. Accordingly, the Panel believes it is appropriate and necessary for it to provide ‘forward-thinking advice’ to both proponents and to council staff involved in the assessment of development. With the current massive spikes in energy from uncertain times, the advisability to build the comfort and energy resilience of projects is even more obvious.</i></p> <p data-bbox="523 1776 1410 1955"><i>With the regulatory environment changing in the near future – for efficiency, electrification and mandatory disclosure – these investments at this time will be worthwhile both for future residents and the developers’ reputation, market position and marketability of the building.</i></p> <p data-bbox="523 1993 772 2027"><u>Recommendations</u></p> <ul data-bbox="563 2056 1102 2089" style="list-style-type: none"> <li data-bbox="563 2056 1102 2089">• <b>6.</b> Double the amount of PV to 30kW</li> </ul> |



| Internal Referral Body                             | Comments  |
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|  | <ul style="list-style-type: none"> <li>• <b>7.</b> Increase the number of bi-directional EV charging points<br/>Car spaces 5, 7, 9, 10 and 11 would also be suitable for points</li> <li>• <b>8.</b> All services should be electric – gas for cooking, hot water and heating should be avoided.</li> <li>• Heat pump systems for electric hot water should be considered</li> <li>• The storage of hot water can be considered a de-facto battery if heated by PVs during the day</li> <li>• Note the risk of gas reticulation becoming a ‘stranded asset’ and the possibility of additional costs to remove gas and rewire the building</li> <li>• <b>9.</b> Consider site battery storage has benefits for the grid and may be a highly desirable back-up during the transition to a de-carbonised grid</li> </ul> <p><u>Planning Assessment Comment:</u><br/>The use of PV on the upper roof will increase view impacts on overlooking apartments. The applicant has removed "clutter" from the roof design and included low roof planting at the rear and neutral roof colour (subject to conditions).<br/>EV charging is now included in the basement carpark.<br/>Heat pump and battery storage are subject to construction certificate specification stage. Space is available in basement service rooms for installation. Food and beverage cooking facilities are subject to fitout / future lease occupancy specification.</p> |
| Building Assessment - Fire and Disability upgrades | <p><b>Supported with conditions.</b></p> <p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at <i>Construction Certificate</i> Stage.</p>   |
| Environmental Health (Acid Sulfate)                | <p><b>Supported with conditions.</b></p> <p><u>General Comments</u><br/>The site is designated <i>Class 4 Acid sulfate</i>. The applicant has submitted an acid Sulfate report. Bore holes to proposed excavation depths have not found any acid sulfate soils. Therefore, Environmental Health supports the proposal subject to conditions.</p>  |
| Environmental Health (Industrial)                  | <p><b>Supported with conditions.</b></p> <p><u>General Comments</u><br/>The acoustic review states that the future noise implications from the development and to the currently undesignated occupants will need</p>  |

| Internal Referral Body | Comments  |
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|                        | <p>to be assessed the time of tenancy. Likewise, air conditioning and ventilation motors, pool pump equipment and the like will need to be assessed at the time of purchase and installation taking into consideration requirements of the acoustic report.</p> <p>On this basis potential noise and environmental impacts from and too the development can be reasonably expected to be resolved prior to occupation of the development and therefore Environmental Health supports the application</p> <p>Excavation and Construction noise will have a significant impact on adjoining businesses and particularly residences during daytime occupation.<br/>The main area to be impacted with be the area adjoining Rialto Lane.</p> <p>Although no realistic alternatives are possible and it is noted that a construction management plan has been provided, whereby trucks for excavation will be required to wait offsite until needed.</p> <p>It is important that this system be maintained for concrete pours, concrete structural components as well , concrete delivery vehicles will need to idle during wait times.</p> <p>Residents in Rialto Lane have been impacted previously by vehicles idling in the laneway with exhaust stack , exhaust fumes and noise near balcony and window levels.</p> <p>It is critical that affected neighboring occupiers are advised well in advance of noisy activity periods as some may wish to relocate or business close down during this times.</p> <p>On this basis potential noise and environmental impacts from and too the development can be reasonably expected to be resolved prior to occupation of the development and therefore Environmental Health supports the application.</p> <p>Environmental Health recommend conditions be applied for certification of the pool design and registration prior to OC.</p> <p><u>Planning Comment</u><br/>The roof terrace swimming pool has been deleted as part of view loss considerations that required reshaping Level 3. (Associated pool condition are deleted)</p> |
| Landscape Officer      | <p><b>Supported with conditions.</b></p> <p>The application seeks consent for demolition and construction of a commercial building. The plans indicate that no significant landscape features are affected by the proposed works. Landscape Plans prepared by <i>Wyer &amp; Co.</i> are noted. The plans indicate planting suitable for the site and building.</p>  |

| Internal Referral Body         | Comments  |
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|                                | No objections are raised with regard to landscape issues subject to conditions.   |
| NECC (Development Engineering) | <p><b>Supported with Conditions</b></p> <p><u>Original Development Engineering Referral Comments</u><br/> The proposal is for a commercial development including basement level carpark. The submitted stormwater plan proposes to discharge to an existing stormwater pit in Rialto Lane. However Council's asset data do not have any information on the stormwater pit in Rialto Lane. According to Council records, the closest pit is located at the corner of Wentworth Street and Rialto Lane.</p> <p>The Applicant shall provide pipe survey, by a service locating contractor and registered surveyor, to demonstrate that the pit in Rialto Lane has a pipe connection to the Council system at the corner of Wentworth Street. The survey shall include the location, size and depth of the pipe in Rialto Lane.</p> <p>Alternatively a new connection shall be proposed from the site to the Council system at the corner of Wentworth Street.</p> <p>The proposed application cannot be supported by Development Engineering due to lack of information to address:</p> <ul style="list-style-type: none"> <li>• <i>Stormwater drainage for the development in accordance with Council's Water Management for Development Policy.</i></li> </ul> <p><u>Development Engineering Review 29/5/2023</u><br/> The Applicant has provide pipe survey indicating an existing pipe connection from the pit in Rialto Lane to the Council pit at the corner of Wentworth Street. No objections to approval subjection to conditions as recommended.</p> |
| NECC (Flooding)                | <p><b>Supported with conditions.</b></p> <p>The development proposes to build four levels of above ground commercial space, a below ground commercial level and a basement carpark.</p> <p>Subject to conditions the development is complying to Council's development [flood] controls.</p>  |
| NECC (Water Management)        | <p><b>Supported with conditions.</b></p> <p>The application seeks consent for demolition and construction of a commercial building. No objections are raised with regard to water</p>   |

| Internal Referral Body                          | Comments   |                   |                                   |
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|   | <p>management issues subject to conditions.</p> <p>The geotechnical documentation is lacking details on the interaction of the project with the groundwater table. Additional geotechnical investigation are required and should document the need to get a licence or approval for construction dewatering from WaterNSW.</p> <p>Refer to Minimum requirements for building site groundwater investigations and reporting Information for developers and consultants, October 2022, from NSW Department of Planning and Environment.</p> <p>A council dewatering permit prior the start of the construction will be required.</p>   |                   |                                   |
| Parks, reserves, beaches, foreshore             | <p><b>Supported without conditions.</b></p> <p>The proposed development is opposite public land managed by Council. The proposed development in form and height is similar to adjoining properties, without providing comment on the architectural merit of the design. As viewed from the North Steyne promenade and beachfront, the development is not detrimental to the established landscape scenic character of North Steyne promenade and beachfront.</p>   |                   |                                   |
| Property Management and Commercial              | <p><b>Supported without conditions.</b></p> <p>Property has no concerns with the proposal provided the awning over the footpath is not a trafficable space.</p>  |                   |                                   |
| Road Reserve                                    | <p><b>Supported with conditions.</b></p> <p><u>Comment on amended plans.</u><br/>Private use of the public road reserve airspace for balcony is not supported.</p> <p><u>Previous comments 22/3/23</u><br/>If trafficable awning over Council's public road reserve is considered and supported by the Property Team and Development Assessment, the Property Team must provide conditions to ensure the commercial terms and return to Council for the use of its air space is satisfactorily resolved. It is understood this would require a Stratum Subdivision of the airspace to enable such a lease to be granted for more than 5 years.</p> <p><u>Planning comment:</u><br/>The proposal has been amended with no trafficable are on the balcony overhanging the footpath area.</p> |                   |                                   |
| Strategic and Place Planning (Heritage Officer) | <p><b>Supported with conditions.</b></p> <table border="1" data-bbox="528 2049 1439 2121"> <tr> <td data-bbox="528 2049 1439 2085">HERITAGE COMMENTS</td> </tr> <tr> <td data-bbox="528 2085 1439 2121">Discussion of reason for referral</td> </tr> </table>  | HERITAGE COMMENTS | Discussion of reason for referral |
| HERITAGE COMMENTS                               |  |                   |                                   |
| Discussion of reason for referral               |  |                   |                                   |

| Internal Referral Body | Comments   |
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|                        | <p>The proposal has been referred to Heritage as the subject property is located within the <b>Town Centre Conservation Area</b> and adjoins a heritage item, being <b>Item I106 - Group of commercial buildings</b> - All numbers, The Corso, listed in Schedule 5 of Manly Local Environmental Plan 2013. It is also within the vicinity of a number of heritage items, including:</p> <p><b>Item I168 - Ocean foreshores</b> - Manly municipal area, boundary adjacent to the ocean</p> <p><b>Item I174 - Beach Reserve</b>—Merrett Park North Steyne and South Steyne</p> <p><b>Details of heritage items affected</b></p> <p>Details of the conservation area and the items in the vicinity, as contained within the Heritage Inventory are:</p> <p><b>C2- Manly Town Centre Conservation Area</b><br/> <u>Statement of significance:</u><br/> The Manly Town Centre Conservation Area (TCCA) is of local heritage significance as a reflection of the early development of Manly as a peripheral harbor and beachside village in the fledgling colony of New South Wales. This significance is enhanced by its role as a day-trip and holiday destination during those early years, continuing up to the present time, and its association with H G Smith, the original designer and developer of the TCCA as it is today. The physical elements of the TCCA reflect this early development and its continued use for recreational purposes, most notably the intact promenade quality of The Corso and its turn of the century streetscape, as well as key built elements such as hotels, and remaining original commercial and small scale residential buildings.</p> <p><u>Physical description:</u><br/> The Manly TCCA has a mixed character and comprises three key zones. The triangular zone north-west of The Corso, bound by Belgrave Street and Sydney Road, including Market Square, generally comprises small scale commercial buildings.</p> <p>The second zone comprises The Corso, which is the iconic focus for the Manly Town Centre Conservation Area. Extending from Manly Wharf north-east to Ocean Beach, The Corso is a grand promenade, now primarily pedestrian, lined with predominantly low rise commercial buildings. The majority date to the late Nineteenth Century through to the 1930s, and are generally on narrow allotments.</p> <p>The third zone, which lies south east of The Corso along Darley Road is predominantly mixed development progressing south eastward into residential, and is quite diverse with regard to building form.</p> <p>Significant vistas adjacent to the boundary of the Manly TCCA</p> |

| Internal Referral Body   | Comments   |  |                                  |  |  |  |    |  |                              |    |  |                             |    |  |
|--|--|--|----------------------------------|--|--|--|----|--|------------------------------|----|--|-----------------------------|----|--|
|  | <p>include:</p> <ul style="list-style-type: none"> <li>• Vistas north east and south west along Victoria Parade from Darley Road. Despite various unsympathetic infill developments along Victoria Parade, the wide boulevard style street width, the street plantings and medium scale residential buildings reminiscent of historical use primarily as holiday accommodation, all add to the significance of the precinct.</li> <li>• Vistas north and south along North and South Steyne from the north eastern end of The Corso;</li> <li>• Vista south along Belgrave Street towards Manly Wharf;</li> <li>• Vista north along Belgrave Street from Manly Wharf;</li> <li>• Vista north west along West Esplanade.</li> </ul> <p>Associated contributory cultural landscape elements adjoining the boundary of the Manly TCCA include:</p> <ul style="list-style-type: none"> <li>• Beach Reserve, including Merrett Park, and The Steyne (North and South)</li> <li>• The water front parks along East and West Esplanade</li> <li>• Gilbert Park</li> <li>• Ivanhoe Park</li> </ul> <p>This listing also includes any significant interior elements (including original room layout, decorative elements, finishes, fittings and fixtures) of all buildings within the Manly TCCA.</p> <p><b>Item I106 - Group of commercial buildings</b></p> <p><u>Statement of significance:</u></p> <p>The streetscape and its special qualities are of major significance to the state. The Corso has important historical links to the development of tourism and recreation which is still present and likely to continue. It's role as the pedestrian link between harbour and ocean, city and sea - for the tourist, is fundamental to Manly's status as a resort.</p> <p><u>Physical description:</u></p> <p>The Corso is the NE-SW link between Manly Beach and Manly Cove. It acts as a low scale horizontal corridor which steps down from the harbour to the ocean. It has a cohesive character resulting from generally low scale of development on its principle streets, Construction to the property boundaries, slightly higher and distinctive corner buildings and a good level of pedestrian protection and amenity generated by footpath awnings and through-block arcades has produced strongly defined and comfortable urban spaces.</p> <table border="1" data-bbox="528 1787 1439 2112"> <thead> <tr> <th colspan="3" data-bbox="528 1787 1439 1821">Other relevant heritage listings</th> </tr> </thead> <tbody> <tr> <td data-bbox="528 1821 858 1962">Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td> <td data-bbox="858 1821 951 1962">No</td> <td data-bbox="951 1821 1439 1962"></td> </tr> <tr> <td data-bbox="528 1962 858 2033">Australian Heritage Register</td> <td data-bbox="858 1962 951 2033">No</td> <td data-bbox="951 1962 1439 2033"></td> </tr> <tr> <td data-bbox="528 2033 858 2112">NSW State Heritage Register</td> <td data-bbox="858 2033 951 2112">No</td> <td data-bbox="951 2033 1439 2112"></td> </tr> </tbody> </table> |  | Other relevant heritage listings |  |  | Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 | No |  | Australian Heritage Register | No |  | NSW State Heritage Register | No |  |
| Other relevant heritage listings                                   |  |  |                                  |  |  |  |    |  |                              |    |  |                             |    |  |
| Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 | No   |  |                                  |  |  |  |    |  |                              |    |  |                             |    |  |
| Australian Heritage Register                                       | No   |  |                                  |  |  |  |    |  |                              |    |  |                             |    |  |
| NSW State Heritage Register  | No   |  |                                  |  |  |  |    |  |                              |    |  |                             |    |  |

| Internal Referral Body   | Comments  |    |  |
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|  | National Trust of Aust (NSW) Register                   | No |  |
|  | RAIA Register of 20th Century Buildings of Significance | No |  |
|  | Other   | No |  |
| <b>Consideration of Application</b>  |   |    |  |
| <p>The proposal seeks consent for the demolition of the existing structures and the construction of a 3(front) and 4(rear) storey commercial development with two level basement parking on the subject site. The proposal also includes a lap pool on the roof terrace.</p>   |   |    |  |
| <p>The subject site is located within the conservation area and is in the vicinity of a number of heritage items. There are no objections to the bulk and scale of the proposed building, however Heritage raised concerns in relation with the front façade treatment. It was suggested in the PLM advice, that providing some masonry around the sides of the windows would allow a concession to the older fenestration of the facade. The rear elevation is not of that concern but the street façade is considered to be losing the fine texture that the older buildings have along the street, in terms of the proportions of the masonry and glazing on the front facade. It is noted that the proposal with this application has not provided any changes or improvement regarding the Heritage concern in relation with the fenestration and the facade treatment to South Steyne.</p> |   |    |  |
| <p><b>Revised Comments - 22 February 2023</b></p>  |   |    |  |
| <p>Amended documents received on 02 February 2023, with revision DA-B, have resolved the main issue that Heritage had with the proposal. The amended plans provide a higher level of solidity and reflects the form and rhythm of the older building's façade treatment. It is considered that the proposed fenestration of the front façade has been improved; now responds to the massing of the older building and therefore better relates to the heritage context.</p>  |   |    |  |
| <p>The proposed link is supported by Heritage, as it connects the beach front to Rialto Lane that complements its historic use. However, a preferred approach would had been; to allow an appropriate activation (active shop fronts without the entry to the basement parking) on the ground level and to add some solidity to the upper levels of the Rialto Lane frontage.</p>  |   |    |  |
| <p>Although, the use of concrete and glass facade treatment does not reflect the historic character of the conservation area, it is considered to reflect the seaside context and the proposed neutral colour scheme is considered complementary to the context.</p>   |   |    |  |

| Internal Referral Body | Comments  |
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|                        | <p>Given the proposed building is clearly contemporary, but responds to the scale and form of the older buildings and adds sympathetically to the streetscape and the grain of the area, the impact of the proposal, upon the significance of the HCA and the heritage items in the vicinity, is considered acceptable.</p> <p>Therefore, no objections are raised on heritage grounds and no conditions required.</p> <p><u>Consider against the provisions of CL5.10 of Manly LEP 2013.</u><br/> Is a Conservation Management Plan (CMP) Required? No<br/> Has a CMP been provided? No<br/> Is a Heritage Impact Statement required? Yes<br/> Has a Heritage Impact Statement been provided? Yes</p> <p><b>Further Comments</b></p> <p>Nil</p>  |
| Traffic Engineer       | <p><b>Supported with conditions.</b></p> <p><u>Additional comments relating to traffic and parking addendum and further revised plans received 22/3/23</u></p> <p>The additional information has addressed the following concerns raised in the previous referral comments:</p> <ol style="list-style-type: none"> <li>1. A compliant pedestrian sight line triangle is available at the point where the pedestrian through site link meets Rialto Lane</li> <li>2. A traffic signal system has been included to manage traffic movements in and out of the carpark. The signal will display as red when activated by a vehicle exiting the carpark requiring a vehicle seeking to enter to wait and/or circulate until the ramp is clear. As the creation of an internal waiting bay, as requested, would result in loss of parking and as the number of movements to and from the site will be low, the proposed arrangement is acceptable.</li> <li>3. There is sufficient overhead clearance over the loading bay to allow for rear loading of the intended waste collection vehicle</li> <li>4. There is adequate clearance over parking space No.8 to meet the requirements of AS/NZS2890.1 clause 5.3.1</li> </ol> <p>The remaining outstanding traffic issue relates to the shortfall in parking. The DCP requires 40 parking spaces to support the proposed uses on the site with the developer proposing 13 parking spaces including 2 staff car pool spaces and 2 car stackers. A loading/servicing bay is also proposed. The parking provisions are therefore well below DCP requirements however the applicant has presented the reduced level of parking in a positive light arguing that it encourages workers to travel via sustainable transport and reduces</p> |



| Internal Referral Body | Comments   |
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|                        | <p>car trip rates in the pedestrian dominated environment in Rialto Lane. These arguments are accepted noting that removing the basement commercial is likely to result in excessively steep ramps, additional but tighter parking arrangements and loss of the below ground loading bay. Given the above the 13 parking spaces are accepted in this instance</p> <p>The development is therefore supported of traffic grounds subject to conditions</p> <p><b>Amended comments relating to amended report and plans – 07/03/2023</b></p> <p><b>Proposal description:</b> Demolition and construction of a commercial building</p> <p>The applicant has made some amendments and provided further information in relation to the concerns raised in Traffic Referral Response on 11 November 2022.</p> <p>Some of the amendments/further information include:</p> <ul style="list-style-type: none"> <li>• Adjustments to the Restaurant Serviced floor areas and commercial floor areas.</li> <li>• A total of 13 parking spaces, including 2 tandem stackers, 2 car share spaces plus a separate loading bay (for loading/delivery vehicles up to the size of a 6.4m long Waste Wise Mini Garbage Truck) has been provided for the development.</li> <li>• It is proposed to allocate the car parking spaces to the employees and staff of the commercial offices and restaurants. The proposed parking arrangements would therefore minimise the level of traffic activity in Rialto Lane by restricting traffic flows to the less intensive employee and staff uses only, without the more intensive levels of traffic activity which would be generated by customer uses of those parking spaces. The constrained nature of the carpark and the presence of car stackers also means the layout of the carpark is more suitable for those who might use the facility on a regular basis.</li> <li>• The applicant's traffic consultant advises that Council's traffic engineer has "indicated that car share spaces would be considered equivalent to 3 parking spaces each". This is not the case. The outcome of the discussion was that Council did not support the use of car share in this location as there was already a significant number of car share vehicles operating within</li> </ul> |

| Internal Referral Body | Comments  |
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|                        | <p>the Manly Town Centre. If the applicant wanted to allocate the spaces for employee pool car use, this was not opposed however no reduction in parking requirements would apply as a result of such use. While consideration to approval of a lower level of parking than DCP rates would be given, in view of the site constraints, it was not envisaged that anything less than a 50% reduction in the required parking would be supportable.</p> <ul style="list-style-type: none"> <li>The proposed new mixed-use building is expected to be serviced by a variety of light commercial vehicles such as the Hyundai iLoad or similar white vans, and small trucks up to and including the 6.4m long Waste Wise Mini Garbage Truck which requires an overhead clearance of 2.08m.</li> </ul> <p>The Traffic team has reviewed the following documents:</p> <ul style="list-style-type: none"> <li>Plans (Master Set), Amended – issue for DA, designed by DURBACH BLOCK JAGGERS, dated 10/01/2023,</li> <li>Amended Traffic and Parking Assessment report prepared by Varga Traffic Planning dated 23 January 2023,</li> <li>Addendum Statement of Environmental Effects prepared by Boston Blyth Fleming Town Planners dated 27<sup>th</sup> January 2023, and</li> <li>Traffic Referral Responses to DA2022/1164 dated 11/11/2022.</li> </ul> <p>There were a number of traffic concerns raised in the Traffic referral comments dated 11 November 2022 that have not been adequately addressed in the Amended Traffic and Parking Assessment Report.</p> <p><b><u>Parking Requirements and Design</u></b></p> <ul style="list-style-type: none"> <li>The parking requirements for the development are 39.6 parking spaces (rounded up to 40). The development proposes a total of 13 car parking spaces including two (2) carshare parking spaces, and two (2) tandem stackers. There is therefore a shortfall of 27 parking spaces.</li> <li>As outlined in the Traffic Referral comments dated 11/11/2022, a 50% reduction in parking requirements is considered the maximum that could be supported and the use of car share spaces at this site is not supported. The allocation of spaces for staff car pool use (as opposed to car share) is not opposed but this does not reduce the development's parking requirements. In the original Traffic Referral comments, it was suggested that the removal of the basement commercial floor space could potentially free up space below ground for</li> </ul> |

| Internal Referral Body | Comments   |
|------------------------|--|
|                        | <p>additional parking/loading areas as well as reducing parking requirements associated with the development.</p> <ul style="list-style-type: none"> <li>• Swept path plots for access to and from the development have been provided for the largest vehicle (6.4m long Waste truck) entering/exiting the site from Rialto Lane and then entering/exiting the carpark ramp. It is noted that that this turning path is based upon entry via eastbound travel on Rialto Lane (which is appropriate) with sufficient space to pass a parked truck within the Loading Bay on the north side of Rialto Lane.</li> <li>• Given that the ramp and the carpark circulation roadway are single-width, and as the carpark appears to have no where for opposing vehicles to pass, vehicles may encounter on another on the access ramp or in the carpark and be unable to pass. A waiting bay inside the carpark and a signal system to manage ingress/egress movements should be included in the amended plans. The above will ensure that passing opportunities for vehicles in opposing directions will be available and shall be demonstrated by swept path plots for a B99 passing a B85 vehicle.</li> <li>• A vertical clearance assessment on the driveway ramps has been undertaken and demonstrates that the proposed waste truck can access the carpark with adequate clearance.</li> <li>• It is noted that stairs are proposed above car space number 8. For compliance with AS2890.1 section 5.3.1, the height between the floor and an overhead obstruction shall be a minimum of 2.2m. This should be confirmed for this space.</li> </ul> <p><b><u>Loading/servicing</u></b></p> <ul style="list-style-type: none"> <li>• The Traffic report attaches a letter from a waste service provider confirming that their rear-loading vehicle is 6.4m in length and 2.2m in height. A dimension diagram attached to that letter shows an overhead clearance of 2.08m. The traffic report also advises that it requires an overhead clearance of 2.08m. As noted in the original Traffic Referral comments, it is unclear if the rear loading of the vehicle requires an increased overhead clearance beyond the quoted 2.2m. Further information clarifying the clearance height required when bins are emptied into the waste vehicle is required. This must confirm that there is adequate overhead clearance (2.5m) above the loading bay to cater for rear loading.</li> <li>• Some information regarding future deliveries/loading arrangements, together with details of the delivery arrangements for the proposed development are required. This should include an analysis of future</li> </ul> |

| Internal Referral Body | Comments  |
|------------------------|---|
|                        | <p>delivery frequency and the suitability of the proposed loading bay to cater for such deliveries including overhead clearance requirements. It is required to demonstrate that the development can operate effectively without any reliance on an on-street loading bay.</p> <p><b><u>Pedestrian through Site Link</u></b></p> <ul style="list-style-type: none"> <li>As per the Traffic Referral comments, for the pedestrian through site link, measures to enhance the Shared Zone and cater for pedestrian safety at the junction with Rialto Lane should be considered. The corner splay and the sight line triangle should be plotted and dimensioned on the plans.</li> </ul> <p>The amended plans and traffic report in their current form remain unacceptable given the concerns relating to the adequacy of the off-street parking and internal circulation arrangements. There are also areas where additional information is required to confirm the adequacy of the proposed arrangements.</p> <p>The proposal therefore remains unsupported.</p> <p>----</p> <p><b>Comments - 11/11/2022</b></p> <p><b>Proposal description:</b> Demolition of existing structures and construction of a multistorey commercial building at 34 - 35 South Steyne, Manly, including 4 levels of above-ground commercial, a below-ground commercial and a basement carpark.</p> <p>The traffic team has reviewed the following documents:</p> <ul style="list-style-type: none"> <li>Plans (Master Set) – issue for DA, designed by DURBACH BLOCK JAGGERS, dated 22/06/2022,</li> <li>Traffic and Parking Assessment report prepared by Varga Traffic Planning dated 30 June 2022,</li> <li>Statement of Environmental Effects prepared by Boston Blyth Fleming Town</li> </ul> |

| Internal Referral Body | Comments   |
|------------------------|--|
|                        | <p>Planners dated July 2022, and</p> <ul style="list-style-type: none"> <li>· Pre-Lodgement Advice (PLM2022/0084) dated 09 June 2022.</li> </ul> <p>It is noted that:</p> <ul style="list-style-type: none"> <li>· Vehicular access to the off-street parking facilities is provided via a new combined entry/exit driveway off Rialto Lane.</li> <li>· Off-street parking for the proposed development is provided for a total of 12 cars, including 2 car share spaces and 5 bicycles in a basement parking area beneath the building.</li> <li>· Loading and servicing will be undertaken by commercial vehicles up to and including the 6.4m long Waste Wise Mini Garbage Truck with an overhead clearance of 2.08m.</li> <li>· The applicant's traffic consultant advises that Council's traffic engineer has 'indicated that a reduction of 50% (in DCP parking rates) would be considered acceptable and that car share spaces would be considered equivalent to 5 parking spaces each" . This is not the case. The outcome of the discussion was that Council would give consideration to a lower parking rate given the site constraints however anything less than a 50% reduction would be unacceptable. It was acknowledged that Council has accepted a privately operated car share space in lieu of up to 5 car car spaces when assessing some other development application and it was suggested that the use of one or two car share spaces may be a means of reaching that 50% figure. It was NOT suggested that car share spaces could be used to provide even less than 50% of the required parking under the DCP.</li> </ul> <p>There were a number of traffic concerns raised in the Prelodgement meeting (PLM) traffic referral comments dated 9 June 2022 that have not been adequately addressed in the Traffic and Parking Assessment Report.</p> <p><b>Parking Requirements and Design</b></p> |

| Internal Referral Body | Comments  |
|------------------------|---|
|                        | <ul style="list-style-type: none"> <li data-bbox="762 376 1428 996"> <p>· The parking requirements for the development comprising 199.4m<sup>2</sup> GFA of Restaurant Serviced Area and 1,386.5m<sup>2</sup> GFA of commercial premises (a total of 1,585.9m<sup>2</sup> GFA) are 39.6 parking spaces (rounded up to 40). The development proposes a total of 12 car parking spaces including two (2) carshare parking spaces, and one (1) shared loading/waste/retail parking space. It is noted that the size of the waste collection vehicle that will service the development is only small and regular servicing will therefore be required. The loading/waste bay cannot be considered a parking space as it will be in regular use for waste collection and deliveries. The development therefore provides only 11 parking spaces and, accordingly, there is a shortfall of 29 parking spaces.</p> </li> <li data-bbox="762 1032 1428 1727"> <p>· The use of car share parking on-site was suggested at the PLM meeting as a potential means to offset some of the development's parking requirements. The developer proposes two (2) car share parking spaces, and the developer wishes to consider these spaces the equivalent of five (5) parking spaces each. Upon further reflection, the use of car share spaces at this site is not supported. This part of Manly is well served by car share already as highlighted in the developers traffic report and while commercial tenants of the development are encouraged to sign up for individual or corporate membership of a car share organisation operating in Manly, the dedication of two spaces for car share use is now considered undesirable and unnecessary. The developer may elect to dedicate two of the spaces for pool car use which would make vehicles more accessible for workers in the building but this does not reduce the development's parking requirements.</p> </li> <li data-bbox="762 1762 1428 2072"> <p>· While some relaxation of DCP requirements in this location could be considered to reduce traffic levels and to encourage greater use of sustainable transport modes, having regard to the proximity of the site to good public transport, shops and recreational uses and the high level of walking and cycling activity in the vicinity, a 50% reduction in parking requirements is considered the maximum that could be supported.</p> </li> </ul> |

| Internal Referral Body | Comments   |
|------------------------|--|
|                        | <ul style="list-style-type: none"> <li data-bbox="751 309 1441 797">· Section 4.2.5.4 of Manly DCP gives some exceptions to parking rates/ requirements in Manly Town Centre (including commercial premises) where the constraints of the site preclude the provision of some or all of the required parking spaces and where the movement of vehicles to/from the site would cause unacceptable conflict with pedestrian movements. This is not the case at this site as it is not constrained in terms of its ability to provide parking. The removal of the basement commercial floor space would free up space below ground for additional parking/loading areas as well as reducing parking requirements associated with the development.</li> <li data-bbox="751 831 1441 965">· The development is not for alterations and additions to an existing building or change of use of an existing structure, and it is not unreasonable to expect that the developer should provide parking</li> <li data-bbox="751 987 1441 1155">· As outlined at prelodgement stage, there is no longer any capacity to levy contributions for parking from the Manly Section 94 Contributions plan, therefore each DA must now be considered on its merits in terms of the adequacy of parking.</li> <li data-bbox="751 1178 1441 1312">· Any increased parking demand on-street as a result of parking shortfall for this development will exacerbate existing high levels of parking congestion in the Manly Town Centre.</li> <li data-bbox="751 1346 1441 1834">· The driveway at the property line is measured to be approximately 6.1 metres wide, reducing to about 4.4 meters wide inside the property on the ramp. No plots for access to and from the development have been provided. As also outlined in the PLM referral, a swept path plot must be provided for B99 vehicles entering/exiting the site from Rialto Lane and then entering/exiting the carpark ramp. Noting that this must be based upon entry via eastbound travel on Rialto Lane past a parked truck within the Loading Bay on the north side of Rialto Lane. Entry from the south is not permissible under existing travel flow arrangements in Rialto Lane.</li> <li data-bbox="751 1868 1441 2112">· The ramp and the carpark circulation roadway are single-width. There will therefore be no capacity for vehicles to pass on the ramp and through the circulation roadway. A waiting bay inside the carpark and a signal system to manage ingress/egress movements should be included in the amended plans. Passing opportunities for</li> </ul> |

| Internal Referral Body | Comments  |
|------------------------|---|
|                        | <p>vehicles passing in opposing directions within the carpark are to be available and shall be demonstrated by swept path plots for a B99 passing a B85 vehicle.</p> <ul style="list-style-type: none"> <li>· A vertical clearance test has been shown for the Waste Collection vehicle, which shows that this vehicle can negotiate the driveway. A vertical clearance assessment on the driveway ramps should be undertaken, using traffic engineering software such as Autotrack/Autoturn, for a B99 car entering and accessing the carpark to show any scraping and bottoming.</li> </ul> <p><b>Loading/servicing</b></p> <ul style="list-style-type: none"> <li>· Provision has been made for an off-street loading bay to cater for deliveries to the proposed commercial/ retail premises. The loading bay length is measured approx. 5.4m which is not sufficient length to accommodate a 6.4m SRV. The traffic report attaches a letter from a waste service provider confirming that their rear loading vehicle is 6.4m in length and 2.2m in height. The traffic report however advises that it requires an overhead clearance of 2.08m The letter also advises that a dimension diagram is attached but this has not been provided to Council. There is a lack of clarity regarding the required dimensions for the waste service. In particular it is unclear if the rear loading of vehicle requires an increased overhead clearance beyond the quoted 2.2m. Further information clarifying the space requirements and in particular enclosing the dimension diagram is required to verify that the loading bay is appropriately sized and that the 2.5m overhead clearance above the loading bay is adequate.</li> <li>· As noted in the PLM referral, the shared use of a parking bay/loading bay is not supported given that access for loading/waste collection is not feasible if the parking bay is occupied and noting the frequent waste collection regime that will be required as a result of the limited capacity of the vehicle. The parking bay should be reallocated a Loading Bay.</li> <li>· It is reported in the traffic report that loading/servicing for the proposed development is</li> </ul> |



| Internal Referral Body | Comments  |
|------------------------|---|
|                        | <p>expected to be undertaken by a variety of light commercial vehicles and small to medium-sized trucks up to and including the 6.4m long Waste Wise Mini Garbage Truck. Council requires clarification on the intended loading/unloading arrangements that will apply noting that the loading bay and overhead clearance is unsuitable for servicing by most small trucks and by no medium sized trucks. Some information regarding future deliveries/loading arrangements, together with details of the delivery arrangements for the proposed development are required. This should include an analysis of future delivery frequency and the suitability of the proposed loading bay to cater for such deliveries. It is required to demonstrate that the development can operate effectively without any reliance on an on-street loading bay. The loading bay should be plotted to conform with the dimensions of the largest vehicle anticipated to require access the site. Use of Loading Zones in Rialto Lane which are already overused is not appropriate</p> <ul style="list-style-type: none"> <li>· As noted in the PLM comments, the bin store room is not located adjacent to the waste collection bay and requires waste collection staff to transport bins through the circulation area to reach the waste collection vehicle. This is unsafe and impractical.</li> </ul> <p><b>Pedestrian through Site Link</b></p> <ul style="list-style-type: none"> <li>· As per the PLM referral comment, for the pedestrian through site link: <ul style="list-style-type: none"> <li>o measures to enhance the Shared Zone and cater for pedestrian safety at the junction with Rialto Lane should be considered eg. Contrasting paving, warning signage and markings.</li> <li>o For compliance with AS2890.1 clause 3.2.4 (b), the corner splay at the point where the pedestrian through sight link meets Rialto Lane should be 2.5m x 2.0m which will allow for visibility to/from pedestrians exiting the through site link onto Rialto Lane. The sight line triangle should be plotted and dimensioned on the plans</li> </ul> </li> </ul> |

| Internal Referral Body | Comments   |
|------------------------|--|
|                        | The plans and the traffic report in their current form are unacceptable due to the inadequacy of the provided information as outlined above.   |
| Waste Officer          | <p><b>Supported with conditions.</b></p> <p><u>Waste Management Assessment - Amended Plans (submitted 2/2/23)</u><br/>Supported, subject to conditions</p> <p><u>Previous Waste Management Assessment Recommendation - Unacceptable.</u></p> <p>Specifically:<br/>No clear explanation is provided as to how the retail bins (restaurant) will be accessed by the waste collection vehicle. When the waste collection vehicle enters the building it parks in a service bay on basement level 2. The retail bins are stored in a room on basement level 1 to which there is no truck access.<br/>The proposal is for 4 x 1100 litre bins which will require 3 truck movements per week for emptying.</p> |

| External Referral Body  | Comments   |
|---|--|
| Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48   | The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.   |
| Nominated Integrated Development - WaterNSW - Water Management Act 2000, s90(2) - Water management works approval to construct and use a specified water supply/drainage/flood work at a specified location | The proposal was referred to WaterNSW for advice and General Terms of Approval (GTA's) regarding dewatering processes due to excavation below the water table. <i>WaterNSW</i> provided its GTA's which are included as part of the recommended (External Authority) conditions of consent. GTA's were issued on 3/10/2023 IDAS1150821 as " <i>General Terms of Approval for proposed development requiring approval under S89,90 or 91 of the Water Management Act 2000</i> " by letter from <i>Water NSW</i> . |

### ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)\*

All, Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPs),

Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

## **State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)**

### **SEPP (Transport and Infrastructure) 2021**

#### **Ausgrid**

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

#### **Comment:**

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

#### **Other Service Infrastructure Authorities**

The application was not required to be referred to *Transport for NSW* and no other Service authority referral issues are raised. The requirements of *Sydney Water* are managed by separate administrative processes directly with *Sydney Water*.

### **SEPP (Resilience and Hazards) 2021**

#### **Chapter 2 – Coastal Management**

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

#### **Division 3 Coastal environment area**

##### **2.10 Development on land within the coastal environment area**

- 1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:
  - a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,

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

Comment:

The proposal is within the surroundings of the Manly CBD and opposite the ocean beachfront reserve. The development will not create an adverse management impact on the beach / ocean interface or any associated management plans for the precinct. The coastal use area extends across the site and surrounding land however the land is fully developed for commercial urban uses and does not have any remnant vegetation, special coastal landforms or rock outcrops and the like. Dewatering considerations are addressed by the GTS's provided by WaterNSW. The proposal is consistent with the requirements of development on land within the coastal environment area.

**Division 4 Coastal use area**

**2.11 Development on land within the coastal use area**

- 1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
  - a) has considered whether the proposed development is likely to cause an adverse impact on the following:
    - i) existing, safe access to and along the foreshore, beach, headland or rock 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,
    - iv) the visual amenity and scenic qualities of the coast, including coastal headlands, Aboriginal cultural heritage, practices and places, cultural and built environment heritage, and
  - b) is satisfied that:
    - i) the development is designed, sited and will be managed to avoid an 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
  - c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The coastal use area extends across the entire site and 80m landward of the site. The development is designed to fit in context with existing adjacent buildings fronting the beach and does not have an adverse impact on shadowing or views *from* the public reserve, public places. The building scale,

colour and external design has been designed to respond to surrounding considerations of streetscape, public access, the beachfront location and heritage conservation area. The proposal is consistent with development on land within the coastal area.

### **Division 5 General**

#### **2.12 Development in coastal zone generally—development not to increase risk of coastal hazards**

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

The site is not affected by the foreshore building line and will not create increased hazards within the coastal environment. Structural support for adjacent buildings must be provided during demolition and site works to ensure safety of adjacent land in the sandy soil. This is addressed by geotechnical report provided by the applicant, conditions and recommendations.

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

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

Comment:

The proposal is consistent with coastal management of the beachfront land, including management of stormwater (subject to GTA's), excavation and access, subject to conditions.

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

### **Chapter 4 – Remediation of Land**

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential (2 dwellings) and later redeveloped commercial purposes (restaurant and commercial) for a significant period of time with no prior land uses. In this regard, it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the commercial land use.

An Acid Sulfate soils investigation was conducted which concluded that:

*"Based on the findings of this investigation, ASS do not appear to be present at the site. An Acid Sulfate Soils Management Plan (ASSMP) is therefore not required for the site."*

Council is satisfied that the land can be made suitable for the purpose for which the development is proposed to be carried out.

### **Manly Local Environmental Plan 2013**

|                                 |     |
|---------------------------------|-----|
| Is the development permissible? | Yes |
|---------------------------------|-----|

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

Principal Development Standards

| Standard             | Requirement   | Proposed   | % Variation          | Complies          |
|----------------------|---|--|----------------------|-------------------|
| Height of Buildings: | <b>10m height plane</b><br>(front portion facing Manly Beach)<br><b>12m height plane</b><br>(rear portion fronting Rialto Lane) | 11.3m to 14.2m   | 13% to 42%           | No*               |
|                      |   | 11.3m (roof),<br>14.7m (lift)<br>14.7m (plant)   | 0%<br>18.3%<br>19.2% | Yes<br>No*<br>No* |
|                      |   |  |                      |                   |
| Floor Space Ratio    | <b>2.5:1</b><br>(Clause 4.4(2A) of MLEP permits additional 0.5 floor space in the zone if 50% GFA is commercial)                | Site area 1,757.04 sqm<br>(up to 2,070.6sqm FS permitted by clause 4.42A)<br><b>FSR</b><br>1,791.06 sqm ( <b>0.3:1</b> )<br><b>Proposed : 2.59:1</b> | Nil                  | Yes               |

Building height limits as shown below (red dashed line images below) measured to existing ground level (EGL).

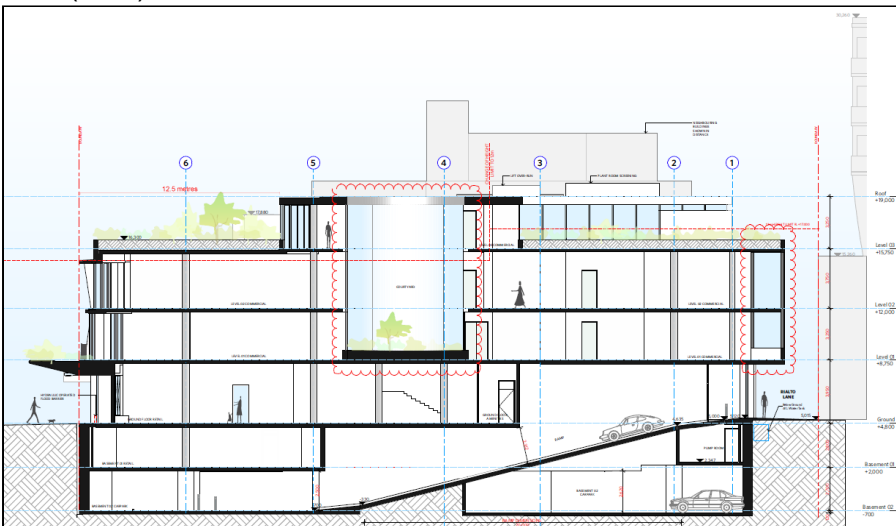
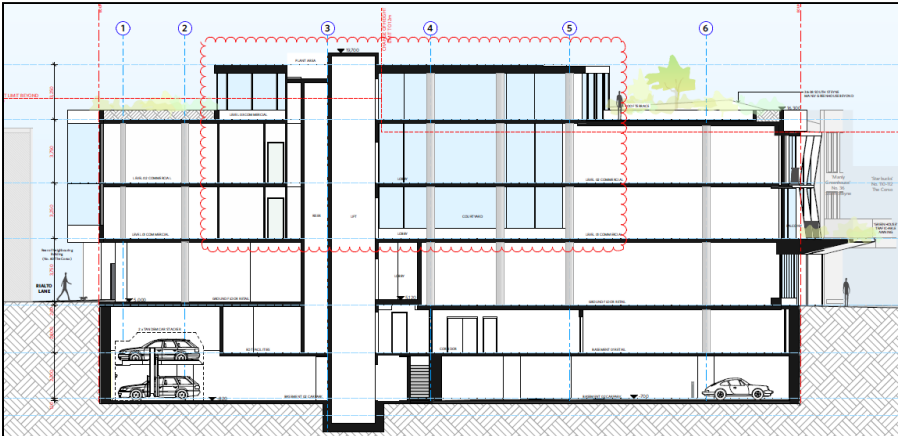


Image: Section showing void (near north elevation and height variation between rear (12m envelope) and front (10m envelope)



Section showing stair core changes (clouded). Height variation between rear (12m envelope) and front (10m envelope) on front (east) edge of lift / stair core.

**Compliance Assessment**

| Clause   | Compliance with Requirements |
|--|------------------------------|
| 2.7 Demolition requires development consent        | Yes                          |
| 4.3 Height of buildings                            | No                           |
| 4.4 Floor space ratio                              | Yes                          |
| 4.5 Calculation of floor space ratio and site area | Yes                          |
| 4.6 Exceptions to development standards            | Yes                          |
| 5.10 Heritage conservation                         | Yes                          |
| 5.21 Flood planning                                | Yes                          |
| 6.1 Acid sulfate soils                             | Yes                          |
| 6.2 Earthworks                                     | Yes                          |
| 6.4 Stormwater management                          | Yes                          |
| 6.8 Landslide risk                                 | Yes                          |
| 6.9 Foreshore scenic protection area               | Yes                          |
| 6.10 Limited development on foreshore area         | Yes                          |
| 6.11 Active street frontages                       | Yes                          |
| 6.12 Essential services                            | Yes                          |
| 6.13 Design excellence                             | Yes                          |
| 6.16 Gross floor area in Zone B2                   | Yes                          |
| Schedule 5 Environmental heritage                  | Yes                          |

**Detailed Assessment**

**4.6 Exceptions to development standards**

Description of non-compliance:

|                       |                     |
|-----------------------|---------------------|
| Development standard: | Height of buildings |
|-----------------------|---------------------|

|                                      |  |
|--------------------------------------|--|
| Site Requirement:                    | 10m (front portion) and 12m (rear portion)   |
| Proposed:                            | 10m envelope - Up to 14.2m height being 4.2m over.<br><br>12m envelope - Compliant in part and up to 14.7m (lift) being 2.7m over. |
| Percentage variation to requirement: | 42% - front portion (10m envelope)<br><br>0% to 19.2% - rear portion (12m envelope)  |

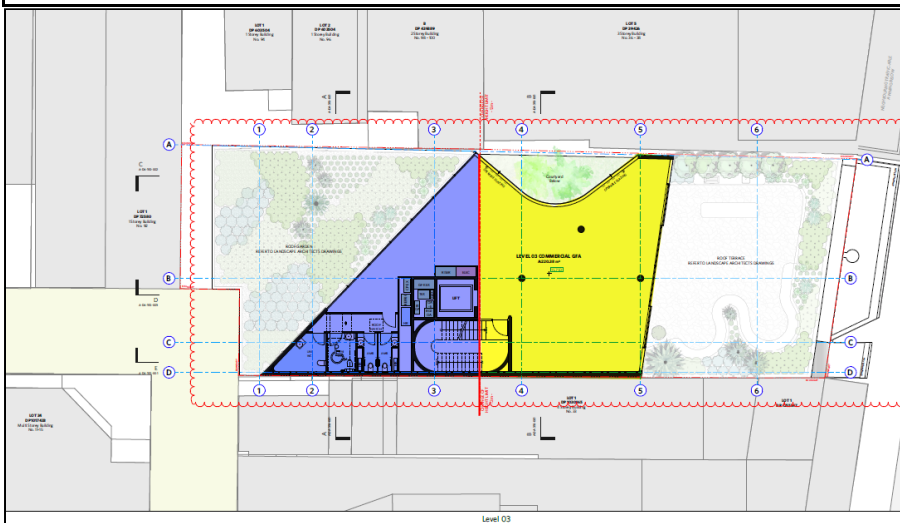


Image: Height limit control line (red) though mid section with rear 12m (blue) Level 3 floor space being partly above maximum height and at front 10m (yellow). Noted the corner balcony position of apartments behind in Rialto Lane shown Open terrace at front of proposed building is also above 10m height control.

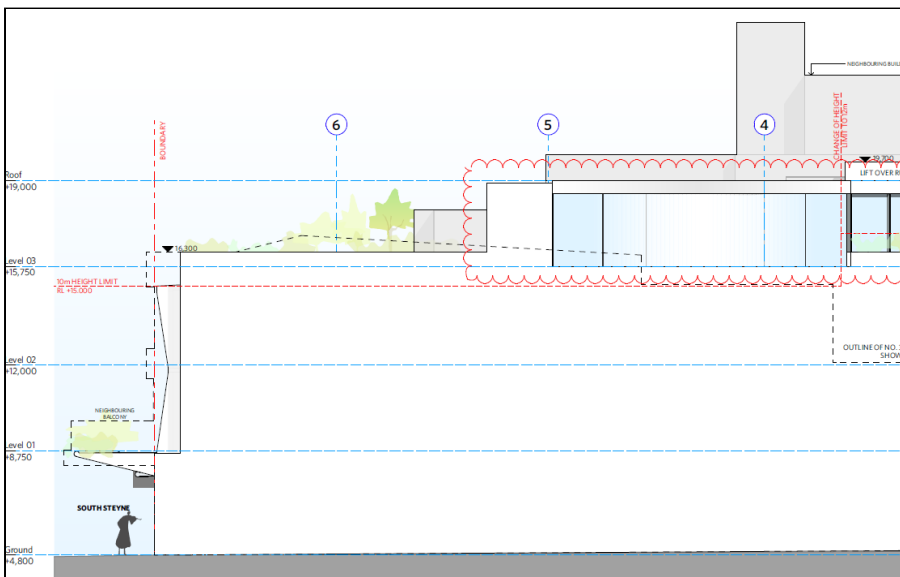


Image: Side elevation (north) at 10m height line (front).



Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 – Height of Buildings development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

Clause 4.3 – Height of Buildings development standard is not expressly excluded from the operation of this clause.

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

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

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

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

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

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

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

Comment:

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

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

*1.3 Objects of Act(cf previous s 5)*

*The objects of this Act are as follows:*

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

The applicants written request argues, in part:

- "The proposed development is maintained well below the maximum permitted floor space ratio, which is the primary development standard to control the bulk and scale of development.
- The front parapet height of the development has been designed to marry with the height of adjoining buildings.
- The proposed development has been designed to align with the levels of adjoining buildings, with views of the ocean and the Norfolk Island Pines that line the foreshore maintained over the top of the proposed development. Disruptions to views haven been reasonably minimised.
- The non-compliant elements of the proposed development do not result in any adverse impacts upon the amount of sunlight received by adjoining properties.
- The proposal has been reviewed by Council's Design and Sustainability Advisory Panel, who raised no objection to the height of the proposed development, or the variations proposed.
- The increased height at the rear of the development is set back from the primary street frontage and will not be readily visible as seen from South Steyne.
- The height of the building presenting to Rialto Lane is contextually appropriate, having regard to the increased height anticipated by MLEP 2013 and the height of surrounding and nearby development."

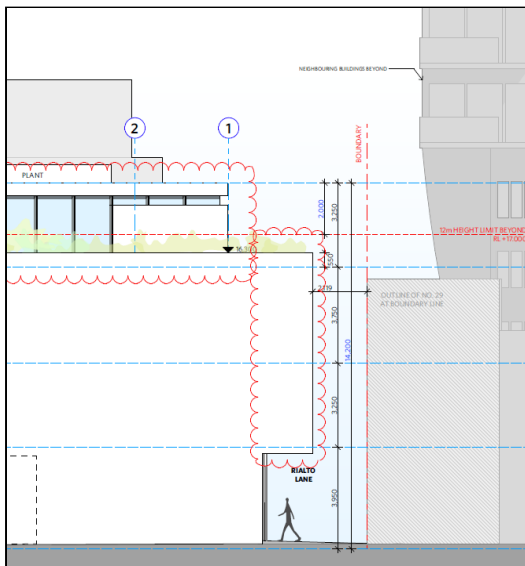
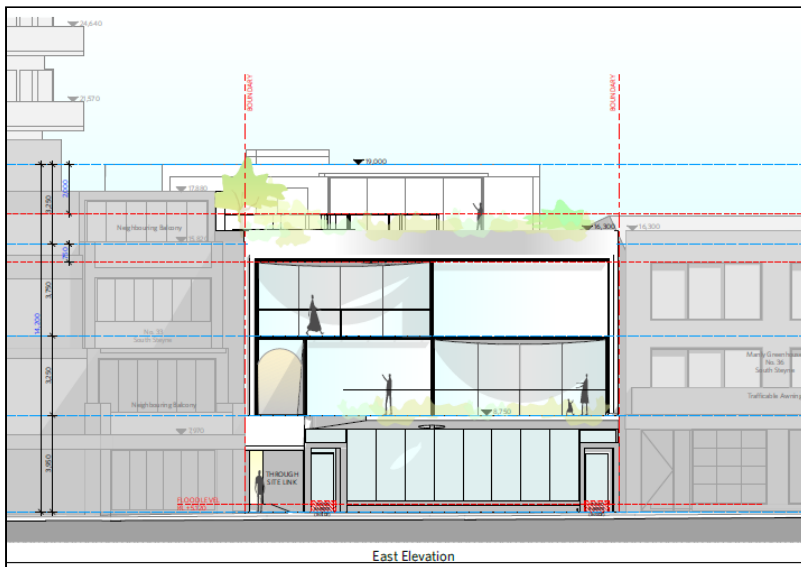


Image: East elevation of the building viewed from South Steyne. Image: Side elevation (north) at 12m height line ( toward Rialto Lane).

Comment:

- The E1 Local Centre zone is not a recreation or environmental protection zone however the height non-compliance does not create unreasonable loss of sunlight to the beach area in the afternoon period.
- The height line mapped in the LEP creates an inconsistent development pattern between adjacent sites being off-set and without any view appreciation. The proposal responds to view concerns in seeking to share the view line and particular elements such as views to Queensliff headland without unreasonably affecting other views across the site from higher level apartments overlooking the site (above RL17.0).

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

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

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

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

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

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

Comment:

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

**Objectives of development standard - Height of Buildings**

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the MLEP 2013 are:

(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,*

Comment:

The topographic landscape is a coastal beachfront environment within the central business district area of Manly and building heights within the heritage conservation area (HCA) are generally lower than the outer surroundings. The desired future character (DFC) encourages similarities in parapet and building heights along the primary street frontages with higher elements setback to minimise visual impact on the public domain within the HCA. Views toward the ocean and harbour are important considerations in the pattern of development for the DFC. The proposal has reshaped the top floor which involves a larger non-compliance in building height (of the upper built form) being transferred forward within the 10m height limit area, closer to the beach front. This has been considered acceptable in that it assists to accommodate residential view issues (diagonal views) across the rear of the site, however the top storey is still stepped back sufficiently to ensure it is not overbearing to the beach front and is positioned similar to the prevailing higher setback and upper storey alignments along No.30-33 South Steyne. A lesser non-compliance is also proposed across the parapet line due to the roof terrace area that forms a landscaped terrace and balustrade toward the beach front. However this height line matching is consistent with the adjacent building to the north (No.36 South Steyne).

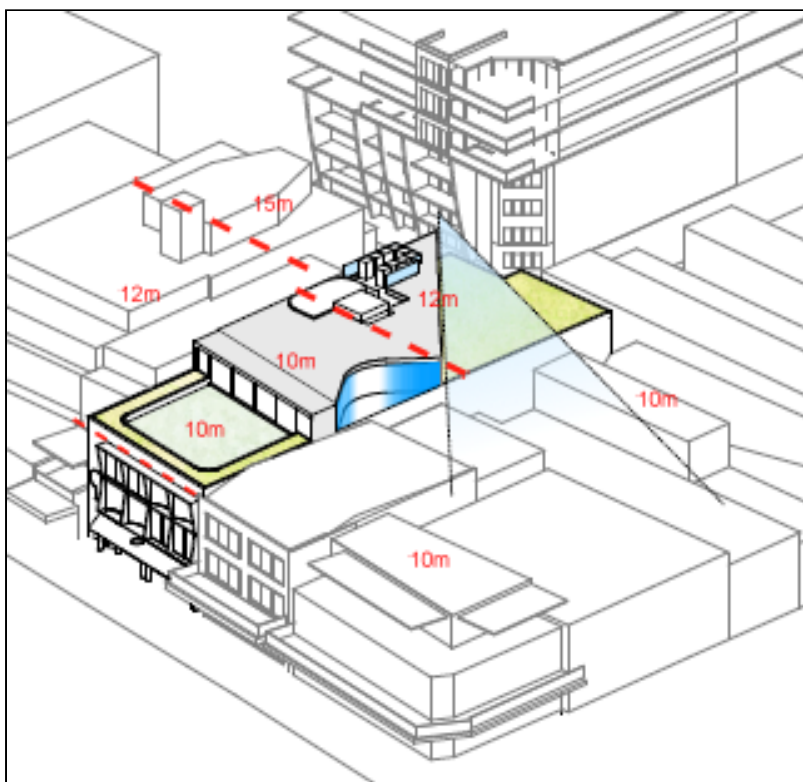


Image: LEP Height of building areas adjacent along South Steyne and the 10m to 12m division line across middle of site with bulk / FSR pushed forward for view sharing response. (Roof landscaping shown (green) and lightwell shown (blue) for the building proposal)

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

Comment:

The proposal has been revised during the assessment period to rationalise the floor space arrangements and accommodate view lines. The MLEP envisages a higher storey at the rear fronting Rialto Lane with the building bulk setback from the beachfront however the application assessment, including consideration of height variation considers view issues also from the properties overlooking the site. Therefore, the upper building bulk has been partially pushed forward (and reshaped) from within the 12m height control area to within the lower 10m height

control envelope.

The building remains compliant with the permitted FSR but the distribution of FSR has required an alternative design approach to achieve design considerations to accommodate views. The design controls from Manly also seek a balance of masonry and glazing to be proportionate for townscape considerations that assist with bulk and scale considerations such as avoiding large continuous flat glass wall planes by breaking up facades with different design elements appropriate for the HCA. The proposal has been revised to better address this and subject to additional conditions, is satisfactory.

*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:

A comprehensive view analysis has been provided by *Urbaine Design Group* to respond to the objectives of this clause and inform the design approach that triggered amendments to the upper storey in order to accommodate competing view lines. This includes views from the most critically affected Units at level 5 and 6 and in this regard views across the site are toward the north and east with a distinct diagonal view line toward Queenscliff. However the closeness of the beachfront (downward view) is also a principal consideration to minimising view impact along the close foreshore area that is also a consideration for Level 6 & 7 units behind the site. Overall across part of the rear 12m envelope area the building envelope has been complied with and this higher envelope contains the lift shaft positioned near the southern side. Retaining a diagonal viewline toward Queenscliff (north) has been achieved by taking a pragmatic approach to the DCP / LEP height controls. Across the lower 10m envelope area toward the front the height variation is greater as part of top floor has been shifted forward due to the rear changes. View impacts (east to foreshore zone) have been minimised by considering the parapet heights, rooftop equipment and rationalising floor space layouts.

*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 non-compliance with the 10m and 12m height line shown will not create unreasonable loss of sunlight to the Manly foreshore / beachfront reserve or adjacent private open space. The upper storey (Level 3) is setback 12.5m from the front boundary and the parapet height at the beachfront is consistent with the adjacent property of No.36-38 South Steyne.

*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:

The building is not within an LEP recreation zone or environmental protection zone where there is steep topography or bushland areas with significant vegetation. The proposed building height (and variations proposed) will not impact the Norfolk Pine or coastal reserve vegetation along the beachfront.

## **Zone objectives**

The underlying objectives of the E1 Local Centre zone are:

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

Comment:

The proposal is for commercial use and will promote retail activity, food and beverage and employment (commercial / offices) within the area. The building has EOT facilities and is consistent with this objective. The non-compliance does not unreasonably detract from this objective. Eliminating Level 3 entirely (for views or other reasons) would further limit this objective given the FSR allowances on the site.

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

Comment:

The proposal is of a contemporary design which includes particular design features to encourage a high quality working environment. The site benefits from the surrounding beachfront amenity which has influenced the design. The non-compliant building height seeks consideration to distribute commercial floor space in response to site considerations and surrounding residential amenity considerations. The height variation is not inconsistent with this objective.

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

Comment

The proposed use includes food and beverage use as well as activation of the street frontage and through access for pedestrians. The proposal does not include any residential use.

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

Comment

The proposed ground floor of the building is consistent with this objective and the height non-compliance does not adversely affect future business use of the ground floor.

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

Comment

The top floor non-compliant elements are proposed as commercial (office style use) and the basement area allows for delivery and internal transfer of to 'back-of-house areas'. The plant machinery is concealed / screened and co-located with adjacent (similar) building elements to minimise disruption and view / amenity impacts. The upper terrace area includes landscaped planter box setbacks and faces the oceanfront (away from residential apartments in Rialto Lane). The rear roof section is partially covered with landscape treatment for amenity of views that occur diagonally across the site. (This triangular roof area at the rear is below the 12m height control and provides a more suitable roof treatment to a bare reflective surface)

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

Comment

The proposal achieves this objective by way of through access for pedestrians along the southern passageway that is clearly defined and the operable shop fronts to Rialto Lane and

South Steyne.

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

Comment:

The proposal includes landscaped treatment at roof level across part the rear of the building and for the terrace at the front. The front terrace height non-compliance includes landscape elements and assist to match the parapet level to the adjacent building to the north that is within the HCA. The lowering of the parapet planter box to comply with the 10m height line does not achieve significant view gain for apartments that overlook the site from Rialto Lane. The placement of PV cells on the roof is likely to add "clutter" and contribute to view impacts and therefore this is not conditioned in this circumstance.

Conclusion:

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

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

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

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

**5.10 Heritage conservation**

The objectives and requirements of clause 5.10 *Heritage conservation* are considered as follows:

- *to conserve the environmental heritage of Manly,*
- *to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*
- *to conserve archaeological sites,*
- *to conserve Aboriginal objects and Aboriginal places of heritage significance.*

Assessment Comments

- The site not a heritage item and does not abut any heritage items that would be placed at risk by the proposed work / demolition or built form.
- The site is not a heritage item but is situated close to the Corso and other heritage buildings that "read" collectively from the public domain as part of the wider streetscape near the building. The site is within the Heritage Conservation Area and in this regard, colours,



materials, detailing, window styles, wall massing, height and general appearance of the building should be responsive and sympathetic to the desired future character. The new building is contemporary in its modern styling and internal floor components. A number of refinements to the design have been made to ensure the building is not jarring or copies other unsympathetic responses to the LEP. Additional special conditions are recommended for the HCA streetscape.

- No known archaeological sites (European or Aboriginal) have been identified on the site.
- The site is not adjacent or contain any known archaeological objects. Should objects be found during excavation, conditions are included to ensure appropriate management and handling of any relics.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the design (as amended) is supported.

### **6.1 Acid sulfate soils**

Clause 6.1 - 'Acid sulfate soils' requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works. Works at depths beyond 2.0m below the natural ground surface and/or works by which the watertable is likely to be lowered more than 2.0 metres below the natural ground surface within a Class 4 acid sulfate soil area are required to be assessed to determine if any impact will occur.

The site is located in an area identified as Acid Sulfate Soil Class 4, as indicated on Council's Acid Sulfate Soils Planning Map and the applicant has provided a detailed geotechnical report addressing acid sulfate soils management. Council's Environmental Health Officer has reviewed the details and provided comments and conditions. (See heading - Internal Referrals within this report)

### **6.2 Earthworks**

The objectives of clause 6.2 *Earthworks* are considered as follows:

- *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,*
- *to allow earthworks of a minor nature without requiring a separate development consent.*

#### Assessment comment:

- The site is within area "G3" for landslip risk and is a coastal (sandy) location for earthworks. In consideration, due to the basement depth and excavation the proposal was referred to WaterNSW for groundwater impact assessment and WaterNSW has provided *General Terms of Approval* to address nominated integrated referral requirements pursuant to the *Water Management Act 2000*.

- Currently the site has no basement area and therefore supporting works for excavation and basement (including dewatering) will be required that have been addressed by conditions (including recommended dilapidation surveys prior to work and construction management program).
- The proposal has been provided with a geotechnical assessment by engineering consultants to address soils and excavation including potential risk to adjacent development. Additionally protection measures (including bonds) will be required for council assets (footpath / road area).
- The proposal does not require landfill / backfill to reshape the land surface / landscaped ground level areas.
- The likelihood of disturbing relics is low given the prior re-development of the land from housing to the existing commercial building. However, conditions are recommended to ensure that any relics if uncovered / identified by future site excavation works that they are appropriately managed / identified.
- The proposed excavation works are not likely to adversely impact any waterways or drinking water catchment and water quality considerations are subject to recommended conditions by Council's water quality referral (see details under the heading "internal referrals" within this report).
- Appropriate conditions are recommended to avoid, minimise and mitigate impacts of the development.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the design is supported subject to conditions.

### 6.11 Active street frontages

The proposal will maintain its active street frontage to Manly Beach front and South Steyne sidewalk with open plan ground floor area and a walk-through passageway that will connect to Rialto Lane. The passageway and rear frontage (to Rialto Lane) is open to assist activation of the laneway area. Generally services are concealed or confined to basement areas to encourage a more attractive laneway area. Conditions are recommended to enhance the rear (massed wall glazing) elevation to be more sympathetic to the current laneway appearances in Rialto Lane and other parts of the CBD Heritage Conservation Area, to include more traditional style fenestration window to masonry proportions and styling) and not a flat massed glass wall elevation (as shown).

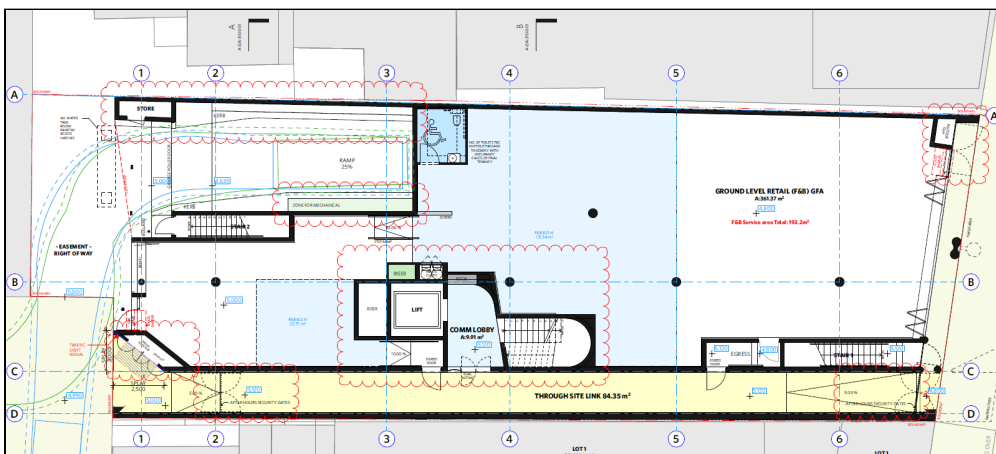


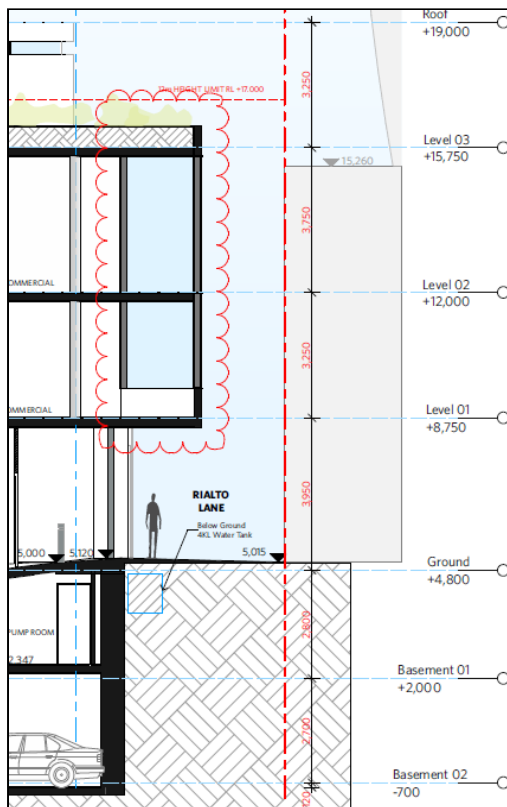
Figure: Ground floor shows walk through link between Rialto Lane and the beachfront. The passageway has security gates / doors manage access hours and within the ground floor retail / commercial space (white) and food and beverage "back of house" areas are shown (blue). Vehicles

access to the basement is via ramp along the right of way on the western (left) setback. The beachfront ground floor and lane openings have retractable shopfront door.

### 6.12 Essential services

The objectives and requirements of *Clause 6.12 Essential services* are considered as follows:

- The site has existing connections to Sydney Water for sewerage and water supply (Sydney water requirements are managed by separate administrative processed directly with Sydney Water).
- Electricity supply requirements (including safety and change to lines / Ausgrid assets) have been provided via referral response from Ausgrid. (See details under the heading 'External referrals' within this report.)
- Council's Stormwater Engineers are satisfied stormwater management, stormwater plans and flood risk considerations subject to conditions as recommended. (See details provided under the heading "Internal referrals" within this report.
- Access, parking and traffic considerations have been addressed by Council's Traffic Engineer, including vehicle access construction management and requirements or a construction traffic management plan.



- The rear of the site is burdened by a right of way and the amended design shows a water tank and building levels (1 and 2) protruding within Right of way area. Clearance allows for commercial vehicles to pass under Level 1 with 3.5m height space.

Conditions are included to ensure reasonable traffic access is maintained along Rialto Lane during works and construction management is coordinated to ensure minimal disruption to the laneway and pedestrian access (including South Steyne).

### 6.13 Design excellence

The objectives and requirements of *Clause 6.13 Design Excellence* are considered as follows:

- *The objective of this clause is to deliver in Manly the highest standard of architectural and urban design of buildings and public spaces. Development consent must not be granted for development to which this clause applies unless the consent authority considers that the development exhibits design excellence.*

#### Assessment comment:

- The proposal has been reviewed by DSAP and pre-lodgement process. DSAP and pre-lodgement assist to commence the assessment issues that are considered throughout the DA process. Detailed considerations that have required further changes commonly include matters of public interest raise in submission and internal referrals as well as development assessment matters. In this regard the DA has been subject to amendments and conditions area recommended to further address design excellence considerations. These generally relate to minor refinements to the facade / glazing / materials and ancillary elements of the building. Overall the building design has been subject to adjustments to rationalise floor space, improve building services installations / internal access arrangements / amenity / vehicle parking and the like.
- Substantial reshaping of the top floor has occurred during the assessment process to assist with view considerations and amenity for adjacent residential properties. This includes simplifying roof top elements such as the use of roof landscape planting, deleting the roof pool, removing "clutter" and alignment of facade elements.
- Additional detailed consideration is also provided pursuant to *4.2.5.1 Design for Townscape, Clause 4.2.5.2 Height of Buildings: Consideration of Townscape Principles, Clause 5 Special Character Areas and Sites, and Clause 5.4.1 Foreshore Scenic Protection Area* within this report.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the design is supported and subject to conditions.

### 6.16 Gross floor area in Zone B2

Clause 6.16 includes requirements in the B2 Zone (now termed "E1") for gross floor area to encourage development for diverse business activities, including retention of local services and employment.

The Zone B2 Local Centre encourages that at least 25% of the gross floor area will be used as commercial premises which the proposal achieves. The maximum GFA permitted is 2,070.6sqm (3:1). The amended development has a gross floor area of 1,791.06m<sup>2</sup> and a floor space ratio of 2.59:1.

The zone however also restricts retail floor space on the land to less than 1,000sqm. In this case, the revised floor layout includes 137.51sqm retail in the basement (see image below) and 361.37 sqm at

ground level. (Total 498.88sqm).

The commercial floor space provided totals 1,292.18sqm which is 72% of the proposed building floor space (for use as commercial premises).

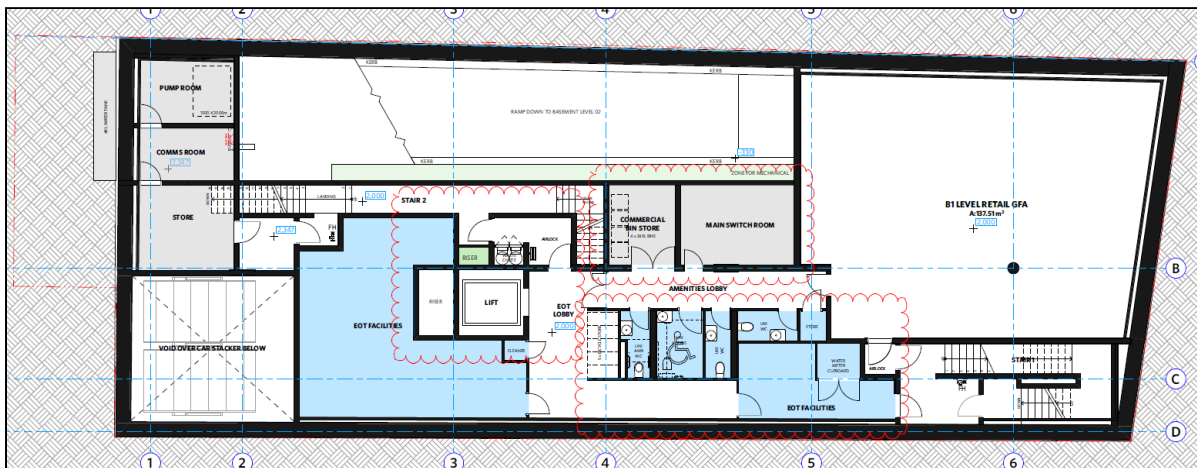


Figure: Upper basement level includes retail area, "end of trip" facilities for staff, services equipment space and carpark ramp access.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the design is supported subject to conditions (to ensure nominated commercial to retail space remains consistent when the building is occupied; see DSAP comments).

### Manly Development Control Plan

#### Built Form Controls

| Built Form Controls - Site Area:                          | Requirement  | Proposed  | % Variation* | Complies |
|---|--|---|--------------|----------|
| 4.2.1 FSR (Consideration of Exceptions including Arcades) | Arcade and plant rooms exceptions                              | Building includes walk through arcade and equip.plant rooms                         | N/A          | Yes      |
| 4.2.2 Height of Buildings in Business zones               | Exceptions considered for "design excellence"                  | Split height plane of 10m and 12m across site. Variation proposed accomodate views. | 13% to 39%   | No*      |
| 4.2.3 Setback Controls B1 and B2 zones                    | Nil - Established building line and townscape principles apply | Consistent with prevailing setback Fire rated sidewall masonry / concrete           | N/A          | Yes*     |
| 4.2.3 Active Street frontages (Rialto Lane)               | Townscape Principles apply                                     | Open style frontage to beachfront and Rialto Lane                                   | N/A          | Yes*     |

|  |  |   |            |      |
|--|--|---|------------|------|
| 4.2.8.1 B2 Local Centre - Height                       | Demonstrated townscape improvement<br>No unreasonable loss of sunlight, views, privacy | Height variation proposed to 10m and 12m control  | 13% to 39% | No*  |
| 4.2.8.2 B2 Local Centre - Setbacks                     | Conforms to established building alignments  | No adjacent residential zone<br>Wall setback on boundary line                           | N/A        | Yes* |
| 4.2.8.3 B2 Local Centre - Landscaping                  | 20sqm per dwelling   | No dwellings.<br>Landscaping part of building design                                    | N/A        | N/A  |
| 4.2.8.4 B2 Local Centre - Residential Density          | Density may be varied subject to clause 4.1.1.1  | No residential component proposed   | N/A        | N/A  |
| 4.2.8.5 B2 Local Centre - Carparking, Vehicular Access | Lane access should be used<br>Loading bay appropriately placed.                        | Rialto Lane access<br>Loading bay in basement   | N/A        | Yes* |
| 4.2.8.6 B2 Local Centre - Hours of Operation           | Acoustic privacy and deliveries<br>Hours of operation consider adjacent residential    | Commercial use.<br>Basement delivery dock<br>Subject to plan of management / "Use" DA). | N/A        | Yes* |
| 4.2.8.7 B2 Local Centre - Packaged Premises / Outlets  | Serving of Alcohol require community impact statement                                  | Subject to community impact statement and licencing laws                                | N/A        | Yes* |
| 4.2.8.8 B2 Local Centre - Waste Management             | Waste minimisation<br>Garbage store design   | Subject to plan of management for use.<br>Complies with Council Waste services          | N/A        | Yes  |
| 4.2.8.9 B2 Local Centre - Signage                      | Subject to Heritage conservation area<br>A Frames / wall signs / illumination          | Subject to general requirements as per Clause 4.4.3                                     | N/A        | Yes* |
| 4.2.8.10 B2 Local Centre - Local Character             | Subject to Townscape Design Principles   | Local site characteristics applied  | N/A        | Yes* |
| 4.1.4.5 Foreshore Building Lines and Foreshore Area    | Manly foreshore and scenic protection area   | Not within foreshore building line.<br>Scenic protection area                           | N/A        | Yes  |
| 4.2.5.4 Car Parking and Access                         | Basement permitted   | Basement by ramp - Rialto Lane  | N/A        | Yes  |
| 4.4.5 Earthworks                                       | Not within 0.9m of side and rear   | 0.0m to side boundaries   | 100%       | No*  |

|                                 |  |  |                  |      |
|---------------------------------|--|--|------------------|------|
|                                 | boundaries                                 | 1m depth except for parking                                |                  |      |
| Schedule 2 Townscape principles | Pedestrian links<br>Laneway revitalisation | Pedestrian link arcade link to Rialto Lane from beachfront | N/A              | Yes* |
| Schedule 3 Parking and Access   | Parking exceptions considered on merit     | 13 carspace + Loading bay + 5 bike racks.                  | N/A              | No*  |
|                                 | Loading bays 7.6m x 3m x 3.4m              | (7m x 3m x 2.5m)   | Height and depth | No*  |

\* See detailed merit assessment under the relevant section heading within this report.

### Compliance Assessment

| <b>Clause</b>  | <b>Compliance with Requirements</b> | <b>Consistency Aims/Objectives</b> |
|--|-------------------------------------|------------------------------------|
| 3.1 Streetscapes and Townscapes  | No                                  | Yes                                |
| 3.1.3 Townscape (Local and Neighbourhood Centres)  | Yes                                 | Yes                                |
| 3.2 Heritage Considerations  | Yes                                 | Yes                                |
| 3.3.1 Landscaping Design   | Yes                                 | Yes                                |
| 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)  | Yes                                 | Yes                                |
| 3.4.1 Sunlight Access and Overshadowing  | Yes                                 | Yes                                |
| 3.4.2 Privacy and Security   | Yes                                 | Yes                                |
| 3.4.3 Maintenance of Views   | No                                  | Yes                                |
| 3.4.4 Other Nuisance (Odour, Fumes etc.)   | Yes                                 | Yes                                |
| 3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design) | Yes                                 | Yes                                |
| 3.5.1 Solar Access   | Yes                                 | Yes                                |
| 3.5.3 Ventilation  | Yes                                 | Yes                                |
| 3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)  | Yes                                 | Yes                                |
| 3.5.5 Landscaping  | Yes                                 | Yes                                |
| 3.5.6 Energy efficiency/conservation requirements for non-residential developments                         | Yes                                 | Yes                                |
| 3.5.7 Building Construction and Design   | Yes                                 | Yes                                |
| 3.6 Accessibility  | Yes                                 | Yes                                |
| 3.7 Stormwater Management  | Yes                                 | Yes                                |
| 3.8 Waste Management   | Yes                                 | Yes                                |
| 3.9 Mechanical Plant Equipment   | Yes                                 | Yes                                |
| 3.10 Safety and Security   | Yes                                 | Yes                                |
| 4.2 Development in Business Centres (LEP Zones B1 Neighbourhood Centres and B2 Local Centres)              | Yes                                 | Yes                                |
| 4.2.1 FSR (Consideration of Exceptions including Arcades)  | Yes                                 | Yes                                |

| Clause   | Compliance with Requirements | Consistency Aims/Objectives |
|--|------------------------------|-----------------------------|
| 4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2)                                 | No                           | Yes                         |
| 4.2.3 Setbacks Controls in LEP Zones B1 and B2   | Yes                          | Yes                         |
| 4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor                       | No                           | Yes                         |
| 4.2.5 Manly Town Centre and Surrounds  | Yes                          | Yes                         |
| 4.2.5.1 Design for Townscape   | Yes                          | Yes                         |
| 4.2.5.2 Height of Buildings: Consideration of Townscape Principles in determining exceptions to height in LEP Zone B2 in Manly Town Centre | No                           | Yes                         |
| 4.2.5.3 Security Shutters  | Yes                          | Yes                         |
| 4.2.5.4 Car Parking and Access   | Yes                          | Yes                         |
| 4.4.1 Demolition   | Yes                          | Yes                         |
| 4.4.3 Signage  | Yes                          | Yes                         |
| 4.4.4.1 Awnings in LEP B1 and B2 Business Zones  | No                           | Yes                         |
| 4.4.5 Earthworks (Excavation and Filling)  | Yes                          | Yes                         |
| 5 Special Character Areas and Sites  | No                           | Yes                         |
| 5.1.1 General Character  | Yes                          | Yes                         |
| 5.1.2 The Corso  | Yes                          | Yes                         |
| 5.4.1 Foreshore Scenic Protection Area   | Yes                          | Yes                         |
| Schedule 1 – Maps accompanying the DCP   | Yes                          | Yes                         |
| Schedule 2 - Townscape Principles  | Yes                          | Yes                         |

## Detailed Assessment

### **3.1 Streetscapes and Townscapes**

The objectives of *Clause 3.1 Streetscape and Townscape* are considered as follows:

- *To minimise any negative visual impact of walls, fences and carparking on the street frontage.*
- *To ensure development generally viewed from the street complements the identified streetscape.*
- *To encourage soft landscape alternatives when front fences and walls may not be appropriate.*
- *To ensure that all parking provision is designed and sited to respond to and respect the prevailing townscape.*
- *To assist in maintaining the character of the locality.*
- *To recognise the importance of pedestrian movements and townscape design in the strengthening and promotion of retail centres.*
- *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.*

Merit consideration:



- The proposal will maintain wall alignments to the street, parapet and to adjacent land to ensure no unreasonable visual impact.
- The proposal has been amended to address streetscape considerations and conditions are included to ensure the proposal complements both South Steyne and Rialto Lane.
- The basement parking design maintains minimum visibility and impact on the townscape given the use of Rialto Lane for access. The size of the site creates a restriction on capacity to provide a full complement of car parking even with compliant FSR. The proposal will use car stackers and relies on available public transport, including walking access to the local public parking facilities.
- The subject site is located within the established Manly Town Centre area with the existing buildings on the site predating most other surrounding buildings. The commercial nature of the area and position close to the "Corso" means there is a mix of commercial and adjacent developments beyond the Corso has been accounted for in the design of the proposal and location at the edge of the HCA. The proposal is considered acceptable in relation to clause 3.1.3.
- The proposal is suitably designed to provide an active street frontage and maintain active streetscape contribution to South Steyne and remains consistent with this objective.
- The proposed upper level of the building is setback and has been amended to accommodate view lines without creating an unreasonable impact on the streetscape.

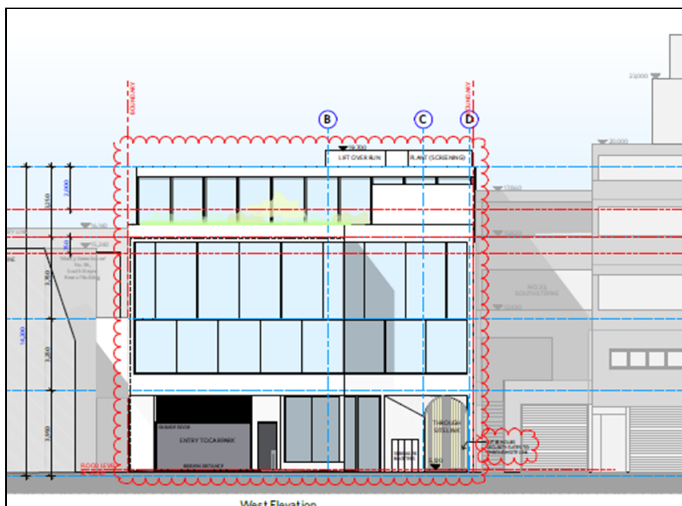
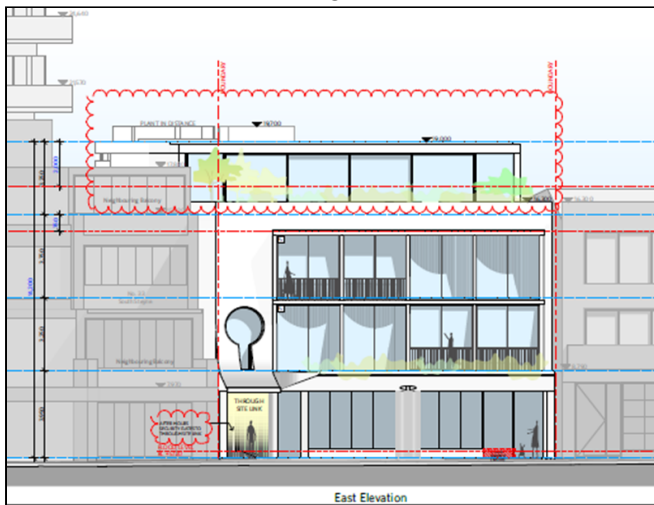


Image: South Steyne elevation appearance to adjacent buildings. Image: Rear (Rialto Lane) appearance and wall treatment.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the design is supported and subject to conditions has addressed previous concerns.

### 3.1.3 Townscape (Local and Neighbourhood Centres)

The development is considered against the underlying Objectives of *clause 3.1.3 Townscape (Local and Neighbourhood Centres)* as follows:



Image: Street facade facing South Steyne - photomontage with new awning, pedestrian link and occupancy.

- *To ensure that all parking provision is designed and sited to respond to and respect the prevailing townscape.*

#### Comment:

The parking design will minimise its visibility and impact on the townscape by maintain basement parking. Given high visibility of the site along the beachfront, in terms of its position close to The Corso, site width and identification to laneway connection including (activation / through access), the parking design and vehicular access is considered to be appropriate for the design and the changes during the assessment period proposed remain consistency with this objective to provide basement

parking on site.

- *To assist in maintaining the character of the locality.*

Comment:

The subject site is located within the established surroundings of Manly Town Centre and HCA. Development located within the central part of Manly is predominantly characterised by a mix of commercial and shop top housing developments with the majority varying between 3 to 6 storeys in height. The proposal is considered acceptable in relation to the LEP provisions for Townscape considerations and consistent with this objective, subject to conditions.

- *To recognise the importance of pedestrian movements and townscape design in the strengthening and promotion of retail centres.*

Comment:

The proposal is suitably designed to provide an active street frontage and activate this section of the established area around Manly Town Centre and remains consistent with this objective.

- *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:

The proposed upper level of the building is setback and the non-compliance with the height control is not significant enough to have an adverse visual impact on South Steyne with the amended plans, given the pattern of surrounding development and the way the building addresses street and its site characteristics. The subject land is a mid-street position and therefore not subject to more onerous considerations of being within 'The Corso', however the wider HCA contributes to the urban setting and assists to complement the public domain around the wider area.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal, subject to conditions, is supported.

### **3.4.1 Sunlight Access and Overshadowing**

The objectives and requirements for *Clause 3.4.1 for Sunlight access and Overshadowing* are addressed as follows:

- *To provide equitable access to light and sunshine.*
- *To allow adequate sunlight to penetrate: private open spaces within the development site; and private open spaces and windows to the living spaces / habitable rooms of both the development and the adjoining properties.*
- *To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by: encouraging modulation of building bulk to facilitate*

*sunlight penetration into the development site and adjacent properties; and maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.*

Comment:

- Detailed shadow diagrams DA-720-001 have been provided, dated 27.7.23 demonstrating that in the morning there is no unreasonable loss in solar access / overshadowing between 9am and 12pm on the 21 June for adjacent land, including Rialto Lane. Generally Rialto Lane at ground level is in self-shadow for the majority of the day on 21 June due to the narrow building separation and height of buildings. The adjacent premises of No.33 South Steyne (along the southern boundary of the site) is a commercial building and the principal outlook is toward the beachfront in that this building includes wide front balcony areas. The rear overshadowing between 12pm and 3pm does not create unreasonable loss of sunlight in the afternoon period given the density of surrounding development, changes to the upper storey made and applicable height controls.
- The changes to overshadowing will not cause unreasonable loss of light to solar collector systems or permanent clothes drying areas (including communal living spaces)
- The requirements of this clause also include consideration of potential reflectivity to adjacent land (nuisance glare or reflectivity nuisance). In this regard the rear elevation facing Rialto Lane has large sections of glazing that are unshielded and potentially create glare from western sun at times toward adjacent residents apartments on the opposite side of Rialto Lane. Conditions are recommended for increase shading / cosmetic changes to framing and window fenestration that will address clause 3.4.1.5.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the design is supported, subject to conditions.

### **3.4.2 Privacy and Security**

The requirements and objectives of *Clause 3.4.2 Privacy and Security* are addressed as follows:

- *To minimise loss of privacy to adjacent and by appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings and mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings. Balance outlook and views from habitable rooms and private open space.*
- *To increase privacy without compromising access to light and air.*
- *To encourage awareness of neighbourhood security.*

Assessment Comment:

- The proposal is for commercial use and hours of operation for the ground floor will consistent with food and beverage cafe / restaurant uses currently at the premises. Acoustic privacy is therefore manageable by operational controls for any future change of use at the ground level,

including limiting access late at night though to Rialto Lane. This is addressed by conditions for applicant to nominate for future "first use" DA. Hours of operation for the commercial floors (upper 3 storeys) are intended to be office based uses and therefore privacy is manageable by the use of custom screens / louvres to selected rear windows to minimise privacy impacts where floor levels are similar or higher than adjacent residential apartments. Limited detail is shown for privacy consideration of window glazing facing Rialto Lane and therefore conditions are recommended to address this issue.

- The upper floor are for commercial purposes and the building is constructed across with width of the site similar to adjacent commercial premises. The building height and upper storey areas have been shaped to assist with view corridors and do not create unreasonable loss of light to surrounding development. Privacy considerations toward the rear mainly arise from office areas at the upper levels that may view into or toward apartments on the opposite side of Rialto Lane. Conditions are included for adjustment to the fenestration / inclusion of selected screening (eg internal louvers or the like) to limit overlooking into adjacent apartments to the southwest.
- The proposal maintains suitable security and passive surveillance of the street front and the new pedestrian link to Rialto Lane by inclusion of security doors and the street activation with open shop front facing Manly Beach and Rialto Lane. The proposal is a commercial / retail development and therefore does not require additional residential access within the building.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the design is supported and subject to conditions.

### **3.4.3 Maintenance of Views**

This assessment considers view loss from the corner Units between level 5 and 7 of the "Peninsula Building" (No.25 Wentworth Street, Manly) as the principle view line angles and generally in the context of surrounding buildings (including adjacent apartments as per submissions). (Note: Where access is not possible due to availability, restrictions or the like, survey information and comparison with existing site assessment details and suitable vantage points is used including geographic related information, photos, diagrams and the like already held within Council's systems / files for DA2022/1164. A comprehensive view analysis has been provided by *Urbaine Design Group* to assist the view impact assessment with renders of the proposed building and changes made in consideration of the LEP/DCP controls).

#### Merit consideration:

The development is considered against the Objectives of the Control:

- *To provide for view sharing for both existing and proposed development and existing and future Manly residents.*
- *To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).*

- *To minimise loss of views, including accumulated view loss ‘view creep’ whilst recognising development may take place in accordance with the other provisions of this Plan.*

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*, are applied to the proposal.

***The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (for example of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, for example a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.***

Comment:

This assessment has considered the principal view lines outlined in terms of view corridors associated with sight lines toward Manly Beach including off shore areas and the more diagonal view toward Queenscliff headland. The dominant features of the view is the ocean area, Norfolk Pines and surf zone interface including distant headland view and closer elements of beach. A comprehensive range of view photos / photomontages was provided by the applicant as part of the view considerations and site inspections were also conducted to observe the various viewing angles and surrounding pattern of development.

The view analysis undertaken has prompted design changes during the assessment period in order to address the valued elements of the view and the present building height control permitted by the LEP on the subject site.



Images: View corridor across the site from Level 6 and Level 7 montage of proposed building.

Broad views are toward the north and east includes coastal surf area and ocean views toward Queenscliff Beach. Views of main Manly beach foreshore area also directly in front of the site. View also extends toward Shelly beach.

***The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.***

Comment:

The principle views of priority are from a standing position in the corner balconies at Level 5 Level 6 and Level 7. The views toward the north from these corner apartments are across Rialto Lane, the rear boundary and side boundaries of the site. Easterly views are also gained directly through the centre of the site which is also difficult to protect due to competing view lines in northerly direction and



easterly direction. Site inspection revealed that sitting views and views from other rooms toward the south of the corner balcony are more difficult to protect than standing views of the corner living area / balcony due to the pattern of surrounding development, including diagonal view line.

Other views considered include adjacent Units within No.25 Wentworth Street, as well as upper floors of No.30-33 South Steyne and No.36 South Steyne. For properties directly adjacent the site (fronting South Steyne) the retention of side views is unrealistic given the requirement to align building facades along the street frontage. However the upper setback (Level 3) proposed is setback with only a roof terrace area. The non-compliant height of the front parapet is associated with the landscape planter edge and aligning the parapet with the adjacent parapet to the north that is within the HCA.

***The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20 percent if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.***

Comment:

At Level 7 within No.25 Wentworth street broader views are available that include views toward Shelly Beach area and the urban outlook of north Manly area, including coastline toward Queenscliff and ocean area. Due to the higher viewing angle elements of the beachfront are also part of the view in a downward angle due to the lower existing building. The proposal will impact this view of beach foreshore due to the terrace balustrade and parapet edge that breaches the 10m height line. Considering the whole of the view, including adjacent rooms to the balcony, kitchen, eating areas the view impact from Level 7 is considered minor.

At Level 6 within No.25 Wentworth street broader views are available as per Level 7 however a more restricted view of the beachfront is available (and will be obstructed by the proposal in filling the existing "gap"). Views toward Shelly Beach are restricted by the previous re-development of No.30-32 South Steyne. Considering the whole of the view, including adjacent rooms to the balcony, kitchen, eating areas the view impact from Level 6 is considered moderate.

At Level 5 within No.25 Wentworth street views are generally more restricted in that Level 3 within the proposal will block any through views Manly beach shore area / ocean. However a viewline toward Queenscliff headland is above to be accommodated by reshaping of the top floor that increases the non-compliant floor space forward and further into the 10m height limit area. However due to the upper storey setback and the forward edge of the parapet and repositioned roof to services the impact is less severe. If the proposal was to build out the rear 12m height envelope the impact Unit 535 would be devastating view loss. This has been reduced to severe however given the 10m to 12m height control and permitted FSR the impact is considered acceptable.

***The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.***

### Comment:

The proposal breaches the height plane within the 12m height plane and the 10m height plane areas across the site. The non-compliance has been subject to redesign and reshaping of Level 3 within the proposal in order to accommodate competing view lines. In this regard the proposal has sought to provide a more skillful design by redistributing floor space forward to maintain an diagonal view corridor toward Queenscliff headland to address view impacts Unit 535 within No.25 Wentworth Street. This change however has sought to also minimise unreasonable impacts to northern corner Units 6 and 7 above that have broader coastal views and close views of the Manly beachfront.

### Conclusion on the view assessment.

A detailed view analysis in has been provided to indicate the main view lines at critical levels and angles for adjacent apartments. Site inspections and photos on file also provide overall view considerations from surrounding land at appropriate vantage points.

This assessment considers that the amended plans, dated 21.7.2023 and view analysis made by Urbaine Design Group (including Architectural montages by *Durbach Block Jagers*) with the re-submitted design achieves a more skillful design to minimise unreasonable impact on views including consideration of the height non-compliance, permitted building heights and pattern of surrounding development. (Refer to detailed site photos and montages with development application as reporting software tool cannot 'hold' additional complex images.)

## **3.9 Mechanical Plant Equipment**

In consideration of this clause, including *Clause 3.9.2 Roof-top Plant, Lift Towers* and *Clause 3.9.3 Noise from Mechanical Plant* the positioning and distribution of plant equipment, building service infrastructure and the like has been amended during the assessment period. The roof plant is now located in a screened enclosures in the mid section of the roof and the rear part of the roof replaced by a landscaped rooftop planting. Fire booster space is concealed or screened within the ground floor or basement area. Ducting space is also provided for to accommodate future likely uses such as restaurant. Conditions are recommended to ensure no use of the upper floors as restaurant / food and beverage or "club" style uses being that a significant consideration of the proposed re-development is for commercial office space which has lower parking and intensity of use (lower amenity impacts nearby apartments) than "venue-style" food and beverage uses.

Council's Environmental Health officer has assessed noise and acoustic impacts in accordance with the development application details and provided specific conditions to address environmental health considerations. See details within this report under the heading "Internal referrals".

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the design is supported, subject to conditions.

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

The proposal and building height variations have been considered pursuant to *clause 4.2.2.1 Exceptions to Height for Design Excellence* and the merit assessment by way of Section 4.56 and detailed assessment under Clause 4.6 of the LEP. Considerations of the circumstances, including "reasonableness" of the height variation, given the adopted LEP arrangement of building heights along



South Steyne and associated provisions to achieve FSR distributed within that permissible building height. The proposal has been amended to accommodate competing view considerations and requirements of the DCP of amenity and design controls. This is addressed under the heading "Height of Buildings" within this report.

In summary, this also includes broader considerations of the environmental planning grounds to justify contravening the development standard (LEP clause 4.6(3)) including the design principles at paragraph 3.1.3.1 *Design Principles* in this DCP. The height variation is supported, subject to conditions applying to the amended drawings, dated 27.7.23.

#### **4.2.3 Setbacks Controls in LEP Zones B1 and B2**

The objectives and requirements of this clause are addressed as follows:

- *To ensure unobstructed access between the private and public domain.*
- *To maintain the existing streetscape of building to the boundary.*

##### Detailed assessment

- The proposal will maintain consistency with the objectives in this clause to ensure unobstructed access between the private and public domain and maintain continuity in building alignment to the street boundary for South Steyne and Rialto Lane. Detailed consideration of the top storey where setbacks to the front and rear boundary do not align with the building height controls (10m to 12m alignments) is addressed in detail under Clause 4.6 of the WLEP and Clause 3.4.3 of the DCP.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the design is supported and subject to conditions

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

- The objectives and requirements of *Clause 4.2.4 to Clause 4.2.4.3* are considered as follows:
- *To ensure there is adequate provisions for car parking access and loading in future development and redevelopment in all business zones.*
- *To minimise conflicts between pedestrian and vehicular movement systems within the business areas.*

##### Assessment comment:

- The provisions of this clause allow exceptions to parking rate/ requirements based on merit considerations of landuse, operating hours, multi-use trips, available parking in the CBD, access and conservation values within the CBD. In this case, the applicant has revised the carparking and loading areas in response to Council's Traffic Engineering assessment. A substantial variation to the parking rate is proposed however the applicant has provided a detailed traffic / parking report and included considerations of basement parking, share

vehicles, end-of-trip facilities (change rooms), bicycle access, local CBD parking and land use. In summary, Council's traffic engineer are satisfied with the parking, access and loading arrangements, subject to conditions. (See detailed assessment under the heading "Internal referrals" within this report.

- The proposal includes a new basement area and will therefore increase traffic on the laneway and traffic safety requirements are included to ensure safe access along Rialto Lane. The proposal includes a pedestrian link between the beachfront and Rialto Lane that is clearly identifiable from the public domain and does not create unreasonable conflict between pedestrian and vehicular movement within the business area.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the design is supported, subject to conditions.

#### **4.2.5.1 Design for Townscape**

The site is within the area covered by *Schedule 2 - Map A* of the Manly DCP. In this regard, additional townscape objectives and requirements for Manly Town Centre and Surrounds that apply, are considered as follows:

- *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.*
- *Maintain existing setbacks. This is considered in terms of sunlight and privacy including spatial separation.*
- *New development to enhance townscape characteristics, disregarding existing unsympathetic buildings, including heritage considerations.*

#### Assessment Comment:

- The proposal maintains the existing site width of the current building (with use of materiality elements, terrace areas, glazing and other external elements to provide visual interest to wall plane and sympathetic elements (subject to conditions) for the HCA and surrounding built form.
- The proposal is consistent with established setbacks for the ground level, L1 and L2. At the upper level the roof terrace and top storey have been reshaped to accommodate impacts of building bulk (on views) and maintain alignments with adjacent buildings. Design refinements have also included townscape considerations to conceal roof plant / services and integrate the building to the streetscape / laneway areas.
- The proposal seeks completed demolition and new excavation work for basement area and therefore as a new build the styling, materials and floor layouts for each level have been reviewed to address townscape considerations as well as amenity considerations (views, privacy, noise, solar access) for the future building occupancy and adjacent land. Overall the

building maintains consistency with the townscape characteristics of Manly subject to conditions in context with the heritage conservation area. The external colours and materials have been reviewed and other design considerations made to address DSAP review of the proposal to ensure consistency with this objective.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the design is supported and subject to conditions.

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

The objectives and requirements of Clause 4.2.5.2 are considered as follows:

- *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.*
- *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.*
- *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.*
- *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.*

#### Assessment comment:

- The site is not in a corner position (cross road or T junction) and does not have an adverse impact on the end (corner) building at the Corso or Wentworth Street intersections with South Steyne. The upper storey is sufficiently stepped back to maintain consistency with No.38 and No.33 South Steyne.
- The proposal will impact views across the site due to the top floor levels (which includes roof space). Some residential apartments within the north east corner of No.11-25 Wentworth Street have views across Rialto Lane and the site, toward the coastline / offshore area. The site however has a 10m (front portion of site) to 12m (rear portion of site) height permissibility and to accommodate view concerns raised during the assessment process, reshaping of the upper storey has been achieved to assist view lines and minimise view loss impacts to apartments overlooking the site. As a result the upper floor area (originally within the 12 height control portion) has been shifted forward, which has increased height non-compliance within the 10m height control portion of the site.
- The proposal maintains compliance with the FSR requirements applicable to the site. The building envelope has been 'paired' with adjacent buildings within the heritage conservation

area in terms of the leading edge of the frontage along South Steyne. Toward the rear the Rialto Lane elevation has been altered during the assessment to extend partly across the right of way with appropriate clearance for delivery trucks to pass under the protruding floor space element.

- The proposed building is not an "end building" for the street block however is within the edge of the HCA and therefore minor design recommendations are recommended to ensure consistency with the objectives of this clause.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal, subject to conditions, is supported.

#### **4.4.3 Signage**

*Council must not grant development consent for signage unless it is satisfied that that the development is consistent and meets the objectives and assessment criteria of State Environmental Planning Policy (SEPP) No 64 - Advertising and Signage. Schedule 1 of that policy details assessment criteria in the regulation of signage to ensure that it is compatible with the desired amenity and visual character of an area and considered special areas, views and vistas, streetscape, setting or landscape, the site and building, associated devices and logos, illumination and safety.*

##### Assessment Comment:

No signage is proposed as part of the development application. Unless 'exempt' additional development consent will be required for particular signage, subject to future occupancy. Future occupancy (such as fitout if floor changes are required) and may be subject to *Exempt & Complying Development* SEPP or a specific development application.

#### **4.4.4.1 Awnings in LEP B1 and B2 Business Zones**

*This clause seeks that '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 dimension'.*

- The applicant has not proposed a continuous awning and the leading edge is inconsistent with the adjacent awning toward the Corso and within the Heritage Conservation Area. This is not consistent with the DCP and condition is recommended for the leading edge to be adjusted to be consistent / more regular (not necessarily exactly matching given the styling of the proposal). The DCP does not promote increasing irregularities in awning structures (but minor differenced may be suitable) In this case a more appropriate match is warranted given the close proximity to the Corso and very high public activity along the beachfront area.
- A break in the awning is shown toward the southern edge and this is also accentuated by a "keyhole" feature to visualise the through-site link. The break is a relatively small gap and at the outer edge of the HCA with a more irregular building pattern toward the south. Therefore the awning section at the through link is accepted pursuant to the DCP.

Having regard to the above assessment, it is concluded that the proposed development is consistent

with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the design is supported, subject to condition.

#### **4.4.5 Earthworks (Excavation and Filling)**

The proposal has been submitted with a detailed Geotechnical Investigation Report (#P2474\_01) addressing the geological conditions of the site, expected site conditions at sub-ground level and civil engineering precautions to be made for new basement design and building work. Additionally conditions are recommended to ensure compliance with Australian Standards for excavation works including support for neighbouring buildings, dilapidation survey and construction management to minimise risk to surrounding land. Excavations works are also subject to GTA (WaterNSW requirements) and Acid sulfate soils management considerations. Conditions are recommended to address these matters.

Subject to conditions the proposal is consistent with Clause 4.5 Earthworks of the DCP and as detailed under Clause 6.2(3)(a) to (h) of the Manly LEP, as applicable.

#### **5 Special Character Areas and Sites**

The objectives and requirements of this clause, including associated clauses 5.1.2 *The Corso* (including Heritage Conservation Area - HCA) and 5.4.1 *Foreshore Scenic Protection area* are considered

- *To identify the characteristics of certain areas and sites in Manly and ensure protection and to develop standards that encourage that protection.*
- *To ensure protection of environmentally sensitive localities.*
- *To encourage a responsible development approach resulting in design of architectural merit that interprets and complements site characteristics, streetscape and the surrounding built and natural environment.*
- *To ensure the scale of development is consistent with the existing and desired character of the residential areas.*

Assessment comment:

- The MDCP states that footpath awnings (solid, horizontal & with lighting) are required, but trafficable balconies and post-supported awnings and balconies are prohibited and considered to be an unnecessary intrusion on the available street space. The proposal has been amended to not include a trafficable overhanging awning area and conditions are included to address continuity between the forward edge appearance as per the MDCP.
- Within the Manly HCA and Corso area, the DCP encourages new shop-fronts should comprise a 'frame' established by masonry ends to read as vertical continuations of the façade above, and by a solid horizontal plinth between the ground and the window sill. The design of the space within this frame can reflect the use of the premises, and utilise contemporary design. For the proposal a contemporary design approach has been used however refinements have been made during the assessment period to better align with this clause of the MDCP. Conditions are also included to address similar considerations for the elevation facing Rialto Lane and for other reasons of privacy, reflection and fenestration.

- The DCP includes consideration that development to the rear of properties fronting The Corso will also have an impact on the character and pedestrian scale of either Market Lane or Rialto Lane that are within the HCA. The design of such new development is to be consistent with the relevant provisions of the *Manly Town Centre Urban Design Guidelines*. Subject to conditions the proposal will allow interaction between the building and the public street (and to provide natural ventilation), windows to upper floors may be openable (and still meet BCA) and balconies are not to be enclosed (placing FSR over the footpath). In consideration of the town centre guidelines, the proposed design has been amended to achieve consistency with this requirement, subject to conditions. As stated above this includes minor revisions to maintain consistency with the DFC including rear elevation treatment facing Rialto Lane, as recommended.
- The DCP seeks that 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. Overall the building height and scale is not inconsistent with the foreshore scenic protection area and appropriate materials and colours are to be used. The upper storey FSR has been setback to minimise visual impacts while allowing a terrace area for casual use. Conditions are recommended that the upper terrace not used for food and beverage, and remains for office amenity (open space) for staff within the building, as a commercial premises.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, subject to conditions.

## **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

## **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

## **POLICY CONTROLS**

### **Northern Beaches Section 7.12 Contributions Plan 2022**

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

A monetary contribution of \$110,750 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$11,075,000.

## **CONCLUSION**

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

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

## **PLANNING CONCLUSION**

This proposal, for demolition and construction of a commercial building with basement area and underground parking has been referred to the NBLPP due to height variation of 4.2m (42%) above the 10m height envelope affecting part of the site for Manly LEP 2013. The Rialto Lane frontage (rear of site) has a 12m height envelope however the proposal complies in part therein or the variation is much less

The concerns raised in the objections have been addressed during the assessment period by (the applicant) redesigning parts of the building layout including the upper storey (Level 3), revising floor layouts and changes to the proposed carparking areas.

The critical assessment issues views, traffic and carparking, streetscape within the heritage

conservation area, facade design (including awnings), residential amenity (during works), building height and construction / traffic management. Council's Traffic engineer is satisfied with the revised parking arrangements for the proposal. Competing view lines have been accommodated by the reshaping of the top floor. Conditions are also recommended for minor facade changes and external roof treatment to address streetscape and amenity considerations for Manly DCP.

Overall, the development is a quality of the design forms satisfactorily against the relevant objective and controls, subject to conditions. The proposal will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment, including the Manly Heritage Conservation Area. The proposal has therefore been recommended for approval.

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



## RECOMMENDATION

That Northern Beaches Council as the consent authority permits a contravention of clause 4.3 Height of Building development standard pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2022/1164 for Demolition and construction of a commercial building on land at Lot B DP 102407, 34 - 35 South Steyne, MANLY, Lot 2 DP 861591, 34 - 35 South Steyne, MANLY, subject to the conditions printed below:

### Terms and Reasons for Conditions

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

## GENERAL CONDITIONS

### 1. Approved Plans and Supporting Documentation

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

#### a) Approved Plans

| <b>Architectural Plans - Endorsed with Council's stamp</b> |                  |                      |
|--|------------------|----------------------|
| <b>Drawing No.</b>   | <b>Dated</b>     | <b>Prepared By</b>   |
| A-DA-101-001 Demolition Plan Issue D                       | 20.5.2022        | Durbach Block Jagers |
| A-DA-102-001 Bulk Excavation Plan Issue D                  | 20.5.2022        | Durbach Block Jagers |
| A-DA-110-000 Basement 2 Plan Issue DA-D                    | 9.8.2023 (print) | Durbach Block Jagers |
| A-DA-110-001 Basement 1 Plan Issue DA-D                    | 9.8.2023 (print) | Durbach Block Jagers |
| A-DA-110-003 Ground Plan Issue DA-D                        | 9.8.2023 (print) | Durbach Block Jagers |
| A-DA-110-004 Level 1 Plan Issue DA-D                       | 9.8.2023 (print) | Durbach Block Jagers |
| A-DA-110-005 Level 2 Plan Issue DA-D                       | 9.8.2023 (print) | Durbach Block Jagers |
| A-DA-110-006 Level 3 Plan Issue DA-D                       | 9.8.2023 (print) | Durbach Block Jagers |

|   |                  |                      |
|---|------------------|----------------------|
| A-DA 110-007 Roof Plan Issue DA-D   | 9.8.2023 (print) | Durbach Block Jagers |
| A-DA-210-001 North & South Elevations issue DA-D                            | 9.8.2023 (print) | Durbach Block Jagers |
| A-DA-210-002 East & West Elevations Issue DA-D                              | 9.8.2023 (print) | Durbach Block Jagers |
| A-DA-310-001 Sections AA,BB & EE Issue DA-D                                 | 9.8.2023 (print) | Durbach Block Jagers |
| A-DA-310-002 Sections CC Issue DA-D   | 9.8.2023 (print) | Durbach Block Jagers |
| A-DA-310-003 Section DD Issue DA-D  | 9.8.2023 (print) | Durbach Block Jagers |
| A-DA-810-001 Materials and Finishes (this drawing is subject to conditions) | 29.6.2022        | Durbach Block Jagers |

| <b>Engineering Plans</b>                   |              |                    |
|--|--------------|--------------------|
| <b>Drawing No.</b>                         | <b>Dated</b> | <b>Prepared By</b> |
| C-001 P2 Stormwater Management Plan        | 30.6.2022    | Edge               |
| C-101 P2 Sediment and Erosion Control Plan | 30.6.2022    | Edge               |
| C-301 P2 Ground Stormwater Layout          | 30.6.2022    | Edge               |
| C-302 P2 Basement 2 Stormwater layout      | 30.6.2022    | Edge               |
| C-391 P2 Pre and Post Catchment Plan       | 30.6.2022    | Edge               |

| <b>Reports / Documentation – All recommendations and requirements contained within:</b>                               |              |                            |
|---|--------------|----------------------------|
| <b>Report No. / Page No. / Section No.</b>  | <b>Dated</b> | <b>Prepared By</b>         |
| NCC Energy Efficiency (Section J) 1.2   | 29.6.2022    | IGS                        |
| Fire Safety Report 222007_FSS_02  | 5.7.2022     | Affinity Fire Engineering  |
| Geotechnical Investigation Report P2474_01 (Including Supplementary Geotechnical Information P2474_05 dated 1.9.2023) | 14.3.2022    | Morrow                     |
| Noise Impact Assessment VE-N22_017  | 19.6.2022    | IGS                        |
| Construction Management Plan 1.1  | 28.6.2022    | Lords Group                |
| BCA Compliance Assessment   | 30.6.2022    | Blackett Maguire Goldsmith |
| Acid Sulphate Soils Assessment 122073   | 27.6.2022    | Geosyntec                  |
| Flood Risk Management Report 220553R002   | 30.6.2022    | Edge Consulting            |

- b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.
- c) The development is to be undertaken generally in accordance with the following:

| <b>Landscape Plans</b>                |              |                    |
|---------------------------------------|--------------|--------------------|
| <b>Drawing No.</b>                    | <b>Dated</b> | <b>Prepared By</b> |
| DA-01 Site Plan - Landscaping*        | 27.6.2022    | Wyer & Co          |
| DA-02 Soil Depth Plan - Landscaping * | 27.6.2022    | Wyer & Co          |
| DA-03 Level 1 Landscape Plan*         | 27.6.2022    | Wyer & Co          |
| DA-04 Level 3 Landscape Plan*         | 27.6.2022    | Wyer & Co          |

\*Landscape plans are to be updated to be consistent with the Stamped Architectural Drawings for construction.

| <b>Waste Management Plan</b> |              |                    |
|------------------------------|--------------|--------------------|
| <b>Drawing No/Title.</b>     | <b>Dated</b> | <b>Prepared By</b> |
| Waste Management Plan        | 22.6.2022    | DK                 |

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

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

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

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

| <b>Other Department, Authority or Service</b> | <b>EDMS Reference</b>                          | <b>Dated</b> |
|---|--|--------------|
| Ausgrid                                       | Ausgrid Referral Response (Overhead Cables)    | 4.10.2023    |
| Ausgrid                                       | Ausgrid Referral Response (Underground Cables) | 4.10.2023    |
| WaterNSW                                      | Water NSW Referral Response (GTA's)            | 3.10.2023    |

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

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

## 3. **Approved Land Use**

Nothing in this consent shall authorise the use of site/onsite structures/tenancies as detailed on the Stamped Plans for this consent. Any land use of the site beyond the definition of a commercial premises, in accordance with the Dictionary of the Manly Local Environmental Plan 2013, as follows:

**commercial premises means any of the following:**

- (a) *business premises,*
- (b) *office premises,*
- (c) *retail premises.*

Any variation to the approved land use and/occupancy of any floor level beyond the scope of

the above definition will require the submission to Council of a new development application. Floor area useage is to conform to the location and areas nominated on approved plans.

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

**4. No Approval for any Signage**

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

Reason: Control of signage.

**5. No Approval for any Signage above the parapet / roof line**

No approval is granted under this Development Consent for the erection of any advertising or business identification signage located above the roof/parapet line.

Reason: Compliance with Warringah Local Environment Plan.

**6. Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - (i) showing the name, address and telephone number of the Principal Certifier for the work, and
  - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - (iii) stating that unauthorised entry to the work site is prohibited.Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
  - (i) in the case of work for which a principal contractor is required to be appointed:
    - A. the name and licence number of the principal contractor, and
    - B. the name of the insurer by which the work is insured under Part 6 of that Act,
  - (ii) in the case of work to be done by an owner-builder:
    - A. the name of the owner-builder, and

- B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
  - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
  - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
  - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

## 7. General Requirements

- (a) Unless authorised by Council:  
Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
  - i) Building/s that are to be erected
  - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
  - iii) Building/s that are to be demolished
  - iv) For any work/s that is to be carried out
  - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

- (i) Swimming Pools Act 1992
  - (ii) Swimming Pools Amendment Act 2009
  - (iii) Swimming Pools Regulation 2018
  - (iv) Australian Standard AS1926 Swimming Pool Safety
  - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
  - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
  - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewerred areas or managed on-site in unsewerred areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
  - (4) Swimming pools and spas must be registered with the Division of Local Government.

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

## **FEES / CHARGES / CONTRIBUTIONS**

### **8. Policy Controls**

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$110,750.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$11,075,000.00.

The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council's website at Northern Beaches Council - Development Contributions.

Reason: To provide for contributions in accordance with the Contribution Plan to fund the

provision of new or augmented local infrastructure and services.

## 9. **Security Bond**

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

## 10. **Construction, Excavation and Associated Works Bond (Drainage works)**

The applicant is to lodge a bond of \$2,000 as security against any damage or failure to complete the construction of stormwater drainage works as part of this consent.

Details confirming payment of the bond are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

# **BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE**

## 11. **Flooding**

In order to protect property and occupants from flood risk the following is required:

### Flood Effects Caused by Development – A2

There is to be no filling of the land or any other reduction of the available flood storage which results in a net loss of storage below the 1% AEP flood level of 5.12m AHD.

### Building Components and Structural Soundness – B1

All new development below the Flood Planning Level of 5.12m AHD shall be designed and constructed as flood compatible buildings in accordance with Reducing Vulnerability of Buildings to Flood Damage: Guidance on Building in Flood Prone Areas, Hawkesbury-Nepean Floodplain Management Steering Committee (2006).

### Building Components and Structural Soundness – B2

All new development must be designed to ensure structural integrity up to the Flood Planning



Level of 5.12m AHD, taking into account the forces of floodwater, wave action, flowing water with debris, buoyancy and immersion.

#### Building Components and Structural Soundness – B3

All new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed and/or located above the Flood Planning Level of 5.12m AHD. All existing electrical equipment and power points located below the Flood Planning Level must have residual current devices installed to cut electricity supply during flood events.

#### Fencing – F1

New fencing (including pool fencing, boundary fencing, balcony balustrades and accessway balustrades) shall be open to allow for the unimpeded movement of flood waters. It must be designed with a minimum of 50% open area from the natural ground level up to the 1% AEP flood level 4.82m AHD. Openings should be a minimum of 75mm x 75mm.

#### Storage of Goods – G1

Storage areas for hazardous or potentially polluting materials shall not be located below the Flood Planning Level 5.12m AHD unless adequately protected from floodwaters in accordance with industry standards.

#### Flood gate

Prior to the issue of the Construction Certificate, engineering details of the design, construction and maintenance of the flood gate are to be submitted to the Principal Certifier for approval and shall include installation details, the calibration of the structure and the ongoing maintenance regime, together with periodic compliance reports from an appropriate engineer.

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

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

### 12. **Stormwater Disposal**

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent in accordance with AS/NZS 3500 and Council's Water Management for Development Policy, prepared by an appropriately qualified and practicing Civil or Hydraulic Engineer who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG), indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to the Council pit in Rialto Lane.

Details demonstrating compliance are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for disposal of stormwater management arising from the development.

### 13. **Erosion and Sediment Control Plan**

An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the

requirements outlined in the Landcom publication *Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004)*. The ESCP must include the following as a minimum:

- Site Boundaries and contours
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities)
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls that must include sediment fences, stabilised site access, materials and waste stockpiles locations, location of any stormwater pits on the site and how they are going to be protected.
- North point and scale.

Details demonstrating compliance are to be submitted to the Principal Certifier for approval prior to the issue of the Construction Certificate.

Reason: Protection of the receiving environment.

#### 14. **Construction Traffic Management Plan**

As a result of the site constraints, limited vehicle access and parking, a *Construction Traffic Management Plan (CTMP)* and report shall be prepared by an RMS accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to issue of any Construction Certificate.

Due to heavy traffic congestion throughout the town centre, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm. Truck movements must be agreed with Council's Traffic and Development Engineer prior to submission of the CTMP.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- Make provision for all construction materials to be stored on site, at all times
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety

- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent
- Proposed protection for Council and adjoining properties
- The location and operation of any on site crane

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and are to be paid at the time that the *Construction Traffic Management Plan* is submitted.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.

**15. Mechanical Car Stacker**

The applicant is to provide information on the proposed mechanical car stacker, operation details, maintenance plan and contingency plan during a malfunction.

Details are to be provided to Council for approval

Details demonstrating compliance are to be reflected on the Construction Certificate plans and any supporting documentation for the endorsement of the Certifying Authority prior to the release of the Construction Certificate.

Reason: To ensure ongoing access to parking spaces

**16. Amendments to the Approved Plans - South Steyne elevation**

The following amendments are to be made to the plans for the construction certificate stage:

- i) The front awning vertical edge (above Council's road & kerb line) fronting South Steyne (north of the pedestrian walk-through) is to match the front vertical edge width / shape of the awning at No.36-38 South Steyne for consistency within the Manly DCP and heritage conservation area.
- iii) The roof planting structures on the main street awning span (above Council's sidewalk / road reserve) is limited to protecting a maximum 1.0 metre (m) forward from the property boundary. If natural plants are to be used on the street awning, the internal planter box depth (for soil) is to be limited to a maximum of 600 millimetres to limit bulky structures on awnings within the heritage conservation area.

Details are to be provided to the satisfaction of the Certifying Authority prior to the issue of a Construction Certificate.

Reason: To satisfy streetscape objectives of the Manly DCP 2013 within the Heritage Conservation Area.

**17. Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of a Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

**18. Services and Fire Hydrant Enclosure**

Prior to the issue of a Construction Certificate for works above ground slab level, the Certifying Authority is to be provided with plans demonstrating that all Services (Gas meter, water meter & fire hydrant and sprinkler booster valves and the like) are enclosed in a manner that compliments the building and in accordance with the requirements of EP1.3 & EP1.4 of the BCA.

Reason: To ensure essential services are appropriately screened.

**19. Building Code of Australia Fire Safety Requirements**

The Building Code of Australia fire safety measures for the building as detailed and recommended in the BCA Compliance Statement Report by Blackett, Maguire + Goldsmith dated 30/6/2022, including any Performance Solutions are to be considered as part of the assessment of the Construction Certificate. Details demonstrating compliance are to be provided to the Certifying Authority, prior to the issue of the Construction Certificate.

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

**20. Building Code of Australia Access**

Access and facilities to and within the building are to be provided for Persons with a Disability.

In this regard the recommendations contained in the Access Report prepared by Code Performance dated June 2022, Ref. 22223-R1.2, is to be taken into consideration as part of the assessment of the Construction Certificate. Details are to be provided to the Certifying Authority prior to the issue of the Construction Certificate and be implemented prior to occupation of the building.

Reason: To ensure adequate provision is made for access to and within the building for Persons with a disability.

**21. Vehicle Driveway Gradients**

The Applicant is to ensure driveway gradients within the private property are not to exceed a gradient of 1 in 4 (25%) with a transition gradient in accordance with AS2890.1 prior to a level parking facility.

Details demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To ensure suitable vehicular access to private property.

**22. Tanking of Basement Level**

The basement area is to be permanently tanked. The Applicant is to submit structural details of the tanking, prepared by a suitably qualified Engineer. Where temporary dewatering works are required on the development site during construction, the developer/applicant must apply for and obtain a bore license from the NSW Office of Environment and Heritage. The bore license must be obtained prior to commencement of dewatering works. All requirements of the NSW Office of Water are to be complied with and a copy of the approval must be submitted to the Certifying Authority. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To prevent ingress of sub-surface flows into the basement area and to comply with State Government Requirements.

**23. Dewatering for construction management**

Additional geotechnical investigation are required to confirm the need for a construction dewatering approval/licence from WaterNSW.

The geotechnical investigation report shall be submitted to the Principal Certifier prior to the release of the Construction Certificate.

Reason: Protection of the receiving environment and groundwater resources.

**24. Stormwater Drainage Application**

The applicant is to provide a stormwater drainage application under Section 68 of the Local Government Act 1993 to Council for approval. The submission is to include four (4) copies of Civil Engineering plans for the design of the connection to the Council inlet pit in Rialto Lane which are to be generally in accordance with the civil design approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1. The form can be found on Council's website at [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au) > Council Forms > Stormwater Drainage Application Form.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fees and Charges. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for disposal and maintenance stormwater management and compliance with the BASIX requirements, arising from the development.

25. **Acoustic Report Recommendations**

Prior to the issuing of any Construction Certificate, documentation is to be submitted to the satisfaction of the Principal Certifying Authority that recommendations within the acoustic report by IGS referenced as VE-N22\_017 and dated 29 June 2022 have been implemented/incorporated into the design of the premises.

Reason: To protect acoustic amenity of building occupants and surrounding premises.

26. **Compliance with Standards**

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

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

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

27. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Light colours such as off white, cream, silver or light grey colours are not permitted.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development. (DACPLC03)

28. **Amendments to the Approved Plans - Rialto Lane elevation**

The following amendments are to be made to the approved plans / elevations:

i) Window glazing below Level 3 is to include treatment, including louvres or similar facade treatment, to reduce solar reflection and provide to address privacy / overlooking and include thermal shading.

ii) A minimum of three (3) awning style windows (top hinged) are to be included for Level 1 and Level 2, fronting Rialto Lane to enhance cross ventilation options for the building.

iii) Revision to the window glazing is to include traditional framing elements appropriate to the Manly Townscape principles of the Heritage Conservation Area (HCA) and styling to enhance the heritage conservation values surrounding The Corso and Rialto Lane.

Details are to be provided to the satisfaction of the *Executive Manager of Development Assessment* prior to the issue of a Construction Certificate. The Construction Certificate is to be amended to incorporate the design inclusions.

Reason: Specialist requirements for Townscape, Design Excellence and Heritage considerations within the Manly HCA.

**29. Waste and Recycling Requirements**

Details demonstrating compliance with Northern Beaches Waste Management Guidelines, are to be submitted to and approved by the Certifying Authority prior to the issue of any Construction Certificate.

Note: If the proposal, when compliant with the Northern Beaches Waste Management Guidelines, causes inconsistencies with other parts of the approval i.e. architectural or landscaped plans, a modification(s) to the development may be required.

Reason: To ensure adequate and appropriate waste and recycling facilities are provided.

## **CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**

**30. Work Zones and Permits**

Prior to commencement of the associated works, the applicant shall obtain a Work Zone Permit where it is proposed to reserve an area of road pavement for the parking of vehicles associated with a construction site.

A separate application is required with a Traffic Management Plan for standing of construction vehicles in a trafficable lane

Reason: To ensure Work zones are monitored and installed correctly.

**31. Demolition Traffic Management Plan**

As a result of the site constraints, limited vehicle access and parking, a Demolition Traffic Management Plan (DTMP) shall be prepared by an suitably accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to commencing any demolition work.

Due to heavy traffic congestion throughout the area, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm.

The DTMP must:-

- Make provision for all construction materials to be stored on site, at all times.
- The DTMP is to be adhered to at all times during the project.
- Specify construction truck routes and truck rates. Nominated truck routes are to be distributed over the surrounding road network where possible.
- Provide for the movement of trucks to and from the site, and deliveries to the site. Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site is not permitted unless prior approval is granted by Council's Traffic Engineers.
- Include a Traffic Control Plan prepared by an RMS accredited traffic controller for any activities involving the management of vehicle and pedestrian traffic.
- Specify that a minimum fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measures.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes, structures proposed on the footpath areas (hoardings,

scaffolding or temporary shoring) and extent of tree protection zones around Council street trees.

- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the DTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities. These communications must be documented and submitted to Council prior to work commencing on site.
- Specify spoil management process and facilities to be used on site.
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of demolition. At the direction of Council, the applicant is to undertake remedial treatments such as patching at no cost to Council.

The DTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and are to be paid at the time that the Demolition Traffic Management Plan is submitted.

Reason: This condition is to ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems. The DTMP is intended to minimise impact of construction activities on the surrounding community, in terms of vehicle traffic (including traffic flow and parking) and pedestrian amenity adjacent to the site.

### **32. Pre-Construction Dilapidation Report**

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifier prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

Property / Properties:

- No.33 South Steyne, Manly
- No.36-38 South Steyne, Manly
- No.94-100 The Corso, Manly
- No.92 The Corso, Manly
- No.25 Wentworth Street, Manly (in so far as works are in close proximity)
- Any other adjacent private or public assets in close proximity that may be at risk of damage impact / dilapidation during works.

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifier and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifier must be satisfied that the requirements of this condition have been met prior to commencement of any works.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage arising from the works.



Details demonstrating compliance are to be submitted to the Principal Certifier prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

**33. Demolition Works Plan**

A Demolition Works Plan is to be prepared prior to the commencement of works and shall be implemented by the applicant / site work contractors to minimise amenity disruption to surrounding properties, including the public domain adjacent.

Measures to address are to include, but are not limited to:

- o Notification and communication contact with surrounding properties (to inform / advise) prior to commencement, and at critical stages of demolition / site preparation.
- o Heavy vehicle access and extended excavation / demolition work / piling timings.
- o Expected duration of high noise periods (e.g. jackhammering, heavy equipment use)
- o Safety measures to be used to protect adjacent property and pedestrian movement.
- o Other relevant matters, including compliance with OHS/ Australian Standards.

Reason: Residential amenity and safety

## DURING BUILDING WORK

**34. Unrecorded Sites of Significance**

Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office contacted to assess the finds.

Under Section 89a of the NPW Act should the objects be found to be Aboriginal, NSW Biodiversity and Conservation Division, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

Reason: Preservation of significant environmental features.

**35. Tree and Vegetation Protection**

- a) Existing trees and vegetation shall be retained and protected including:
  - i) all trees and vegetation located on adjoining properties,
  - ii) all road reserve trees and vegetation.
  
- b) Tree protection shall be undertaken as follows:
  - i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites including the provision of temporary fencing to protect existing trees within 5 metres of development,
  - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
  - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
  - iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,

- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- viii) any temporary access to or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
- ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Certifying Authority must ensure that:

- c) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites do not occur within the tree protection zone of any tree and any temporary access to or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained on the site during the construction is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

Note: All street trees within the road verge and trees within private property are protected under Northern Beaches Council development control plans except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking or removal of any tree(s) is prohibited.

Reason: Tree and vegetation protection.

### 36. **Road Reserve**

The applicant shall ensure the public footways and roadways adjacent to the site are maintained in a safe condition at all times during the course of the work.

Reason: Public safety.

**37. Dewatering Management**

A permit from Council is required prior to any dewatering of the site.

The construction certificate approved geotechnical report and proposed dewatering management plan are to be submitted to Council for assessment prior the release of Council dewatering permit.

The groundwater/tailwater to be discharged must be compliant with the General Terms of Approval/Controlled Activity permit issued by WaterNSW (if applicable), Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) (Blue Book), Council's Compliance and Enforcement Policy and legislation including Protection of the Environment Operations Act 1997 and Contaminated Lands Act 1997.

All approvals, water discharges and monitoring results are to be documented and kept on site. Copies of all records shall be provided to the appropriate regulatory authority, including Council, upon request.

Reason: Protection of the receiving environment and groundwater resources.

**38. Implementation of Demolition Traffic Management Plan**

All works and demolition activities are to be undertaken in accordance with the approved *Demolition Traffic Management Plan* (DTMP). All controls in the DTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation. Should the implementation or effectiveness of the DTMP be impacted by surrounding major development not encompassed in the approved DTMP, the DTMP measures and controls are to be revised accordingly and submitted to Council for approval.

A copy of the approved DTMP is to be kept onsite at all times and made available to the accredited certifier or Council on request.

Reason: To ensure compliance and Council's ability to modify the approved Construction Traffic Management Plan where it is deemed unsuitable during the course of the project.

**39. Implementation of Construction Traffic Management Plan**

All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to Council on request.

Reason: To ensure compliance of the developer/builder in adhering to the Construction Traffic Management procedures agreed and are held liable to the conditions of consent.

**40. Ongoing Management**

The applicant shall be responsible in ensuring that the road reserve remains in a serviceable state during the course of the demolition and building works.

Reason: To ensure public safety.

**41. Survey Certificate**

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

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

Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

42. **Acid Sulfate Soil**

Any new information revealed during excavation works that has the potential to alter previous conclusions about *Acid Sulfate Soils* shall be immediately notified to the Council and the Principal Certifying Authority prior to further commencement.

Reason: To protect the environment.

43. **Amenity during works - Mitigation measures**

Community notification is to take place at least seven (7) days before demolition or excavation and all-day concrete pours commences; notification advice to any likely affected residential or commercial neighbors shall be given.

The affected neighbours shall be supplied with a 24-phone contact number and email address for any enquiries or complaints. Concrete Pumps, generators and similar mechanical equipment shall be acoustically attenuated where the technology is available to reduce noise impact on neighboring businesses and residents.

The *Construction Management Plan* shall be amended to incorporate that all heavy vehicles are not to queue in Rialto line with engines idling while not in use and must remain off site until required.

Reason: To minimise the disturbance to the amenity of neighbours

44. **Waste/Recycling Requirements (Waste Plan Submitted)**

During demolition and/or construction the proposal/works shall be generally consistent with the submitted Waste Management Plan titled dated [INSERT].

Reason: To ensure waste is minimised and adequate and appropriate waste and recycling facilities are provided.

45. **Waste/Recycling Requirements (Materials)**

During demolition and/or construction the following materials are to be separated for recycling: timber, bricks, tiles, plasterboard, metal, concrete, and evidence of disposal for recycling is to be retained on site.

Reason: To ensure waste is minimised and recovered for recycling where possible.

## BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

### 46. **Landscape Completion**

a) Landscaping is to be implemented in accordance with the approved Landscape Plan.

b) Prior to the issue of any Occupation Certificate details (from a qualified horticulturalist, landscape architect or landscape designer) shall be submitted to the Principal Certifying Authority certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

### 47. **Restriction as to User and Positive Covenant over the self-actuating flood gate**

A restriction as to user shall be created on the title over the self-actuating flood gate in order to:

1. Prohibit the removal or modification of the self-actuating flood gate.
2. The flood protection offered by the self-actuating flood gate must be continuous and at a minimum level of 5.12m AHD. Such levels are to be detailed to Australian Height Datum on the Section 88B instrument and submitted to Council for approval.

Northern Beaches Council shall be nominated as the sole authority empowered to release, vary or modify such restriction.

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

### 48. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified Civil Engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development.

### 49. **Basement Garage Traffic Signal System**

To prevent conflicting vehicle flows on the internal basement garage ramp and avoid vehicles having to reverse up/ down the ramp, a traffic signal system must be installed on Rialto Lane to control entry to the carpark ramp, the signal designed to warn drivers about to enter the ramp of any conflicting vehicle using the ramp.

The signal system must;

- be clearly visible from Rialto Lane for vehicles about to enter the ramp,
- is to clearly indicate to an approaching driver, by way of red light or wording, that an opposing vehicle has entered the ramp,

Details of the system, including the system operation, components and placement within the development, must be specified by a practising Traffic Engineer. This engineer is to submit a compliance certificate to the Principal Certifying Authority that the system has been installed and operating as designed, in accordance with the requirements of this condition, prior to the issue of any Occupation Certificate issued for the development.

Reason: To ensure no vehicle conflicts within the basement carpark.

**50. Disabled Parking Spaces**

Where disabled parking spaces are provided they must be in accordance with AS2890.6:2009.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To ensure compliance with Australian Standards.

**51. Operational Management Plan**

An Operational Management Plan (OMP) is required to be prepared and submitted to Council detailing the operation of the development. The OMP shall include, but not be limited to the following:

- Vehicle access and egress.
- Through-site circulation of vehicle movements.
- Management of car parking areas in particular the 2 x carpool spaces.
- The location and content of directional signage.
- Complaints management.
- Noise management.
- Truck delivery times and methods of control to manage access to the loading bay and avoid conflict with waste collection.
- Waste management.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To ensure that the development operates with minimum disruption to the surrounding area.

**52. Post-Construction Dilapidation Report**

Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

- Compare the post-construction report with the pre-construction report,
- Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- Should any damage have occurred, suggested remediation methods.

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

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

Reason: To maintain proper records in relation to the proposed development.

**53. Geotechnical Certification Prior to Occupation Certificate**

A Geotechnical Engineer or Engineering Geologist is to provide written confirmation that they have inspected the site during construction or reviewed information relating to the construction and that they are satisfied that development referred to in the development consent has been

constructed in accordance with the intent of the Geotechnical Report referenced in Condition 1 of this consent.

Written certification is to be provided to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

54. **Site Consolidation**

Lot 2 DP 861591 and Lot B DP 102407 shall be consolidated and all rights of way / encumbrances transferred to the new consolidated Lot for the development site.

Details demonstrating that the consolidated Lot has been registered with the NSW Land Titles Office are to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

Reason: Orderly development of land.

55. **Positive Covenant for the Maintenance of Stormwater Pump-out Facilities**

The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification.

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance of the pump-out facility on the property being developed. Northern Beaches Council shall be nominated in the instrument as the only party authorised to release, vary or modify the instrument. Northern Beaches Council's delegate shall sign these documents prior to the submission to the NSW Land Registry Services. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the final Occupation Certificate.

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of final Occupation Certificate.

Reason: To ensure adequate provision is made for the stormwater pump out system to be maintained to an appropriate operational standard.

56. **Acoustic Report Certification**

Prior to any occupation certificate being issued, a further acoustic assessment is to be undertaken by a qualified and experienced person(s) to confirm compliance with the acoustic assessment by IGS referenced as VE-N22\_017 and dated 29 June 2022.

Any recommendations made by the consultant must be implemented prior to issuing the Occupation Certificate in order to achieve compliance with noted conditions of this consent.

Reason: To verify acoustic compliance.

**57. Garbage and Recycling Facilities**

All internal walls of the waste rooms shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.

Waste room floors shall be graded and drained to an approved Sydney Water drainage system.

Waste rooms shall be clear of any other services or utilities infrastructure such as gas, electricity air-conditioning, plumbing, piping ducting or equipment.

Reason: To prevent pollution of the environment, provide a safe workplace for contractors and residents and to protect the amenity of the area.

**58. House / Building Number**

The street building number is to be affixed to the building to be readily visible from the public domain.

(Note: A font height of between 20cm to 30cm is suitable near or above the main pedestrian entry point)

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

Reason: Proper identification of buildings.

**59. Waste and Recycling Facilities Certificate of Compliance**

The proposal shall be constructed in accordance with the Northern Beaches Waste Management Guidelines.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure waste and recycling facilities are provided.

**60. Waste/Recycling Compliance Documentation**

Evidence of disposal for recycling from the construction/demolition works shall be submitted to the Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure waste is minimised and recycled.

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

**61. Vehicle Parking and Loading**

- The car parking area shown on the approved drawings must be used for vehicle parking only (not obstructed by other fixtures / miscellaneous items). Thirteen (13) car spaces (marked) are to be provided as shown (including those for EV/ share car / disabled access / car stacker)
- One (1) Loading and unloading dock (marked) for vehicles and delivery of goods to the land must be provided as shown and kept available for such use.

Reason: To ensure the safety and amenity of the general public using public streets



**62. Staff and Contractor Parking**

The applicant is to make provision for parking for all construction staff and contractors for the duration of the project. All Staff and Contractors are to use the basement parking once available. All necessary facilities are to be provided to accommodate this requirement including lighting in the basement, security cameras, etc.

Reason: To ensure minimum impact of construction activity on local parking amenity.

**63. Roof areas, Terraces and Roof planting**

The following provisions apply:

i) Rooftop planting at the rear of Level 3 is to be maintained to a height not exceeding 0.3m above the parapet (planter box) edge.

ii) The Level 3 front roof terrace is not to be used for commercial food and beverage purposes.

iii) Solar voltaic cells are not to be placed on Level 3 roof top or the rear landscaped roof space toward Rialto Lane.

iv) The main upper roof surface of Level 3 is to minimise reflectivity to overlooking apartments. (White, light grey or similar colours are not to be used for finished roof treatment)

Reason: To ensure that the development remains consistent with Manly DCP townscape.

**64. Commercial Waste Collection Procedure**

Commercial waste and recycling bins are not to be placed at the kerbside on Rialto Lane awaiting

collection.

Waste collection arrangements must include a procedure whereby the collection contractor enters the

property with a vehicle to service the bins from the dedicated bin storage area and then returns to the bins to the

dedicated bin storage area immediately after emptying.

Reason: To maintain the public amenity of Rialto Lane.

**65. Future use Food Premises**

The final use of the commercial tenancies for Food Premises shall not be approved until such times as a Development Application is lodged with Council.

The application shall make reference to, but not be limited to :

- Noise implications (plant ,equipment, motors exhaust , customer noise, internal building vibration, hours of operation )
- Any fumes/smoke/odour
- Compliance with :

Australian Standard 4764-2004 (Design, Construction and Fit-out of a Food Premises),  
Australian Standard 1668.2-2012 (Mechanical Ventilation in Buildings),  
Food Safety Standard 3.2.2 (Food Safety Practices and General Requirements), and  
Food Safety Standard 3.2.3 (Food Premises and Equipment).

Reason: To ensure any food premises will comply with Legislation and Standards

66. **Commercial Uses**

No consent is granted for commercial use as part of this consent. A separate development application shall be lodged for future occupation of the commercial uses.

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

67. **Parking Permits**

Any businesses and/or tenants of the subject site are not eligible for business parking permits. This condition is to be provided on the property Title.

Reason: to ensure businesses premises/tenants are aware that they are not entitled to permits irrespective of the location of the development within a permit parking area