

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/1021
Responsible Officer:	Kent Bull
Land to be developed (Address):	Lot 2 DP 1019352 & Lot 7340 DP 11441010, West Esplanade MANLY NSW 2095
Proposed Development:	Alterations and additions to an existing cafe and signage
Zoning:	RE1 Public Recreation, W2 Environmental Protection
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Roads & Maritime Services NSW Government - Minister Administering the Crown Land Act 1989
Applicant:	Tracey O'Sullivan
Application Lodged:	16/09/2019
Integrated Development:	Yes
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	21/12/2019 to 10/02/2020
Advertised:	21/12/2019
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 59,500.00

### EXECUTIVE SUMMARY

The proposal seeks consent for alterations and additions to an existing cafe and signage. As the Reserve Trust Managers for the site (Lot 7340 DP 1144101), Northern Beaches Council has a conflict of interest in determining this application. As such, the application is referred to the Northern Beaches Local Planning Panel for determination.

### PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for the alterations and additions to an existing cafe and signage. In particular the works include:

- Internal reconfiguration to include a new commercial kitchen, service area, seating and office;
- Replacement of existing bi-fold doors at the front with new aluminium bi-fold doors;
- Seating - Outdoor seating within lease area for 24 patrons, with landscaping in movable planter boxes;
- Indoor seating for 24 patrons;
- Back-lit LED business identification sign anchored vertically to the northern elevation of the external wall; and
- Proposed hours of operation 7am to 10pm.

## 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

Assessment - Foreshore and Waterways Planning and Development Advisory Committee  
 Manly Local Environmental Plan 2013 - Zone RE1 Public Recreation  
 Manly Local Environmental Plan 2013 - 4.3A Special height provisions  
 Manly Local Environmental Plan 2013 - 5.10 Heritage conservation  
 Manly Local Environmental Plan 2013 - 6.10 Limited development on foreshore area  
 Manly Development Control Plan - 3.1.3 Townscape (Local and Neighbourhood Centres)  
 Manly Development Control Plan - 3.4.2 Privacy and Security  
 Manly Development Control Plan - 3.6 Accessibility  
 Manly Development Control Plan - 3.9 Mechanical Plant Equipment  
 Manly Development Control Plan - 4.4.3 Signage

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 2 DP 1019352 , 0 West Esplanade MANLY NSW 2095
<b>Detailed Site Description:</b>	<p>The site consists of two (2) allotments, being Lot 7340 in DP 1144101 and Lot 2 DP 1019352.</p> <p>Lot 7340 in DP 1144101 consists of area above Mean High Water Mark (MHWM) which is known as Lauderdale Avenue, Fairlight and includes the public reserves and foreshore areas between Manly Wharf towards North Harbour Reserve in Balgowlah. This land holding is irregular in shape with an approximate area of 5.6 Hectares (55376.0 m<sup>2</sup>).</p>

Lot 2 DP 1019352 consists of the area below MHWL, which is known as West Esplanade Manly and includes Manly Cove Pavilion and Manly Surf n Slide. This land holding is also irregular in shape with an approximate area of 1622.0 m<sup>2</sup>.

The site is located within the RE1 Public Recreation zone for the portion of the site above MHWL and within the W2 Environmental Protection zone for the portion of the site below MHWL. The site is situated on the eastern end of a building complex known as Manly Pavilion. This portion of the site is presently occupied by 'Manly Surf n Slide' and accommodates a cafe premises known as 'Sliderz Cafe'. To the rear is a ticketing office where the associated water slides and pool are also located. Sliderz Cafe is within a single storey rendered building that is attached to a two storey rendered building.

The site is located partly within the State Heritage Register curtilage of item I249 "Manly Cove Pavilion" and local heritage item I250 "Manly Cove Amenities Block", and listed within Schedule 5 of the Manly Local Environment Plan 2013.

#### **Landowners Consent**

With regard to Lot 7340 in DP 1144101, email correspondence was received by Crown Lands on the 24th October 2019 indicating that consent is taken to have been given for lease/licence holders in relation to any development applications relating to a range of development that would include the proposed works, pursuant to Section 2.23 of the Crown Land Management Act 2016.

Landowners consent was provided by Roads and Maritime Services on 13 September 2019 for the proposed works on Lot 2 in DP 1019352.

#### **Detailed Description of Adjoining/Surrounding Development**

Adjoining and surrounding development is characterised by a water park known as 'Manly Surf n Slide' located to the rear (west) of the cafe premises. Manly Cove Pavilion and Manly Sea Life Sanctuary (now closed) is located to the south. To the north is the Manly Cove Amenities Block, and Manly Art Gallery and Museum.

Map:



## **SITE HISTORY**

The land has been used for commercial purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

### 3 October 2002

Development Application No. 118/02 for a refreshment kiosk and ticketing booth was granted consent on 3 October 2002.

### 16 October 2002

Section 96 (1A) of Development Application No. 118/02 for modification of approved plans was granted consent on 16 October 2002.

### 22 January 2003

Construction Certificate No. 2003/13 was issued for the works approved with Development Application No. 118/02.

## **APPLICATION HISTORY**

### 16 September 2019

The subject development application received by Council.

### 20 September 2019 - 21 October 2019

Email correspondence between Development Assessment and Council's Property, Commercial & Tourist Assets division concerning landowners consent requirements.

### 14 October 2019

Notification letters sent.

### 21 October 2019

Photo evidence of the notification sign being appropriately placed on site received by Council.

22 October 2019

Phone and email correspondence from the Development Assessment Officer to the Applicant identifying that Land Owners consent from Crown Lands (Department of Planning, Industry and Environment) would be required.

24 October 2019

Email correspondence provided by Crown Lands detailing that consent is taken to have been given for lease/licence holders in relation to any development applications relating to a range of development that would include the proposed works, pursuant to Section 2.23 of the Crown Land Management Act 2016.

25 October 2019

Site inspection undertaken by the Development Assessment Officer. Applicant present on site.

1 November 2019

Email sent by the Development Assessment Officer to Foreshores and Waterways Planning and Development Advisory Committee requesting an update on referral response.

14 November 2019

Referral comments received by Council's Heritage Advisor detailing that part of the site was within the State Heritage Register curtilage of Manly Cove Pavilion, and therefore would require the approval of Heritage NSW.

14 November - 18 November 2019

Email correspondence between the Development Assessment Officer and Applicant detailing that the application would require an integrated referral to Heritage NSW in accordance with Section 57 (1) of the Heritage Act 1977 as well as advertisement for 28 days in accordance with the Environmental Planning & Assessment Regulations 2000.

28 November 2019

Referral response received from the Foreshore and Waterways Planning and Development Advisory Committee.

29 November 2019

Letter issued by Council to the Applicant detailing that amendments to the development application form, submitted plans (signage) as well as additional fees for the Heritage NSW integrated referral and advertisement of the application.

6 December 2019

Additional fees paid by the Applicant.

11 December 2019

Additional information in the form of amended plans and an amended development application received by Council and accepted.

21 December 2019

Re-notification of the application as advertised development.

23 December 2019

Photo evidence of the notification sign being appropriately placed on site received by Council.

22 January 2020 - 17 February 2020

Email correspondence between the Development Assessment Officer and the Senior Heritage Assessment Officer at Heritage NSW regarding the proposal.

10 February 2020

Submission period closes.

17 February 2020

Heritage NSW provides General Terms of Approval.

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

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

<b>Section 4.15 Matters for Consideration'</b>	<b>Comments</b>
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
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)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 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 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p>

	<p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 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> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition of the application Council received no submissions.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	The application has been reviewed and there are no objections to granting consent subject to standard Consent conditions.

	<p>Note: Whilst the development may not fully address all requirements of the BCA, any matters arising may be determined at Construction Certificate stage where required for BCA (Part E - Essential Services).</p>
Environmental Health (Industrial)	<p><b>General Comments</b></p> <p>Further to the Environmental Health response dated 25 September 2019, we have been requested to comment on the operating hours of the proposed upgrade to the existing cafe facility.</p> <p>Information provided states:</p> <ul style="list-style-type: none"> <li>operating hours are to remain the same as existing consent - 7 am to 10 pm.</li> <li>relevant development controls allow "Hours of operation- Restaurants and Food Outlets etc-normal maximum hours from 5am to 1am."</li> </ul> <p>Environmental Health is not aware of any existing/previous noise complaints, it's likely that noise will be projected towards the Harbour.</p> <p>Based on the information provided Environmental Health recommends Approval - no conditions.</p> <p><b>Recommendation</b></p> <p>APPROVAL - no conditions</p>
Environmental Health (Food Premises, Skin Pen.)	<p><b>General Comments</b></p> <p>The proposal in summary is refurbishment of a previous similar cafe. No objection subject to conditions.</p> <p><b>Recommendation</b></p> <p>APPROVAL - subject to conditions</p>
NECC (Bushland and Biodiversity)	<p><b>General Comments</b></p> <p>The following biodiversity provisions apply to the site:</p> <ul style="list-style-type: none"> <li>- NSW Biodiversity Conservation Act 2016</li> <li>- SEPP (Coastal Management) Coastal Environment Area</li> <li>- Manly LEP Clause 6.5 (Terrestrial Biodiversity)</li> </ul> <p>The proposed development is located within 100m of known breeding habitat for individuals associated with the endangered population of Little Penguins at Manly, as declared under Schedule 1 of the NSW Biodiversity Conservation Act 2016 (BC Act). As such, a test of significance ('five-part test') for impacts to Little Penguins is required to be prepared in accordance with Section 7.3 of the BC Act. The submitted plans and documentation indicate that works will be limited to the existing development footprint. Given that proposed works are generally internal, this assessment has been undertaken by Council's Bushland &amp; Biodiversity staff. The test of significance concludes that, subject to recommended mitigation measures, the proposal can be undertaken without resulting in a significant impact to the endangered population of Little Penguins.</p>

### **Test of Significance for Impacts to Little Penguins ('five-part test')**

*Section 7.3 Test for determining whether proposed development or activity likely to significantly affect threatened species or ecological communities, or their habitats:*

(1) The following is to be taken into account for the purposes of determining whether a proposed development or activity is likely to significantly affect threatened species or ecological communities, or their habitats:

(a) in the case of a threatened species, whether the proposed development or activity is likely to have an adverse effect on the life cycle of the species such that a viable local population of the species is likely to be placed at risk of extinction,

**Response:** the proposed development is generally located within the existing building footprint and is therefore unlikely to impact upon the life cycle of any Little Penguins which may attempt to breed within habitat below and in proximity to the subject site. Construction access is to be limited to the Manly Scenic Walkway.

(b) in the case of an endangered ecological community or critically endangered ecological community, whether the proposed development or activity:

(i) is likely to have an adverse effect on the extent of the ecological community such that its local occurrence is likely to be placed at risk of extinction, or

(ii) is likely to substantially and adversely modify the composition of the ecological community such that its local occurrence is likely to be placed at risk of extinction,

**Response:** no endangered ecological communities or critically endangered ecological communities (listed under the BC Act) have been identified within the subject site.

(c) in relation to the habitat of a threatened species or ecological community:

(i) the extent to which habitat is likely to be removed or modified as a result of the proposed development or activity, and

(ii) whether an area of habitat is likely to become fragmented or isolated from other areas of habitat as a result of the proposed development or activity, and

(iii) the importance of the habitat to be removed, modified, fragmented or isolated to the long-term survival of the species or ecological community in the locality,

**Response:** no penguin habitat is proposed to be removed, modified, fragmented or isolated as a result of the development.

(d) whether the proposed development or activity is likely to have an adverse effect on any declared area of outstanding biodiversity value (either directly or indirectly),

**Response:** The proposed development is not within any declared area of outstanding biodiversity value. Works will be limited to within the existing building footprint and will not be within known penguin habitat.

(e) whether the proposed development or activity is or is part of a key threatening process or is likely to increase the impact of a key threatening process.

**Response:** The proposed development will be limited to works within the existing building footprint and will therefore minimise disturbance to known penguin habitat and penguins potentially attempting to breed, moult and loiter within the vicinity of the subject site.

NECC (Coast and Catchments)

The application has been assessed in consideration of the *Coastal Management Act 2016*, State Environmental Planning Policy (Coastal Management) 2018, Sydney Harbour Catchment Regional Environment Plan, 2005 and Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005. It has also been assessed against requirements of the Manly LEP and DCP.

The application has also been assessed using Northern Beaches SREP assessment template.

***Coastal Management Act 2016***

The subject site has been identified as being within the coastal zone and therefore *Coastal Management Act 2016* is applicable to the proposed development.

The proposed development is in line with the objects, as set out under Clause 3 of the *Coastal Management Act 2016*.

**State Environmental Planning Policy (Coastal Management) 2018**

As the subject site has been identified as being within the coastal zone and therefore SEPP (Coastal Management) 2018 is also applicable to the proposed development.

The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps but not been included on the Coastal Vulnerability Area Map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Clauses 13 (coastal environment area) and 14 (coastal use area) do not apply as the site is also located within the SREP area. Hence, only Clause 15 of the CM SEPP apply for this DA.

Comment:

On internal assessment the DA satisfies requirements under Clause 15 of the CM SEPP.

As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

**Sydney Regional Environment Plan (Sydney Harbour Catchment), 2005**

The subject site is located within W2 (Environmental Protection).

As assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Colco Consulting Pty Ltd dated 12 August 2019 and Council accepts the assessment. It is determined that the objectives and assessment criteria of the zone have been met.

**Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005**

Landscape character Assessment

The subject site is located within the Landscape Character Type 8

On internal assessment/ As assessed in the submitted Statement of

	<p>Environmental Effects (SEE) report prepared by Colco Consulting Pty Ltd dated 12 August 2019 and Council accepts the assessment, it is determined that the proposed development within the landscape satisfy the relevant criteria.</p> <p><b>Manly LEP 2013 and Manly DCP</b></p> <p>No issues identified.</p>					
NECC (Development Engineering)	<p>The application proposed internal changes of the existing building.</p> <p>Development Engineer has no objection to the application.</p>					
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>The proposed development application generally complies with the flood controls in the LEP and DCP.</p>					
Parks, reserves, beaches, foreshore	<p>No issues with the proposal, a working on reserves permit will be required prior to issue of the construction certificate.</p>					
Property Management and Commercial	<p>The proposal is for alterations and additions to an existing cafe on West Esplanade, Manly.</p> <p>The outdoor dining is located on Crown land within the existing leasehold area and as such Property have no issues with the proposal as submitted.</p>					
Strategic and Place Planning (Heritage Officer)	<table><tr><th>HERITAGE COMMENTS</th></tr><tr><th>Discussion of reason for referral</th></tr><tr><td><p>This application has been referred to heritage as it is listed as a heritage item, partly covered by a State heritage listed item - I249 and partly covered by a local heritage listed Item - I250 both at West Esplanade, Manly, and listed within Schedule 5 of Manly Local Environmental Plan 2013.</p></td></tr><tr><th>Details of heritage items affected</th></tr><tr><td><p>Details of these heritage items contained within the Manly Heritage Inventory are:</p><p><u>Statement of Significance:</u></p><p><b>Item I250 "Manly Cove Amenities Block"</b> - Public toilet block significant for its association with the Manly Pavilion and its complementary simplified Inter War Spanish Mission style.</p><p><b>Item I249 "Manly Cove Pavilion"</b> - The Manly Cove Pavilion is a rare surviving relic of the private pleasure-grounds and recreation resorts that were once common in the Sydney region in the late nineteenth and early twentieth centuries and which were, in their day, the focus of public recreation activity. It demonstrates the typical features and characteristics of architecture of the type and is important locally as a substantial remnant of the once extensive recreation facilities established by the Port Jackson and Manly Steamship Company that were a feature of Manly Cove and key elements in the history of the development of the suburb.</p><p><u>Physical Description:</u></p><p><b>Item I250 "Manly Cove Amenities Block"</b> - Single storey freestanding rendered brick building containing public toilets for men and women. Features a hipped, multicoloured terracotta tile roof with gable vents, timber</p></td></tr></table>	HERITAGE COMMENTS	Discussion of reason for referral	<p>This application has been referred to heritage as it is listed as a heritage item, partly covered by a State heritage listed item - I249 and partly covered by a local heritage listed Item - I250 both at West Esplanade, Manly, and listed within Schedule 5 of Manly Local Environmental Plan 2013.</p>	Details of heritage items affected	<p>Details of these heritage items contained within the Manly Heritage Inventory are:</p> <p><u>Statement of Significance:</u></p> <p><b>Item I250 "Manly Cove Amenities Block"</b> - Public toilet block significant for its association with the Manly Pavilion and its complementary simplified Inter War Spanish Mission style.</p> <p><b>Item I249 "Manly Cove Pavilion"</b> - The Manly Cove Pavilion is a rare surviving relic of the private pleasure-grounds and recreation resorts that were once common in the Sydney region in the late nineteenth and early twentieth centuries and which were, in their day, the focus of public recreation activity. It demonstrates the typical features and characteristics of architecture of the type and is important locally as a substantial remnant of the once extensive recreation facilities established by the Port Jackson and Manly Steamship Company that were a feature of Manly Cove and key elements in the history of the development of the suburb.</p> <p><u>Physical Description:</u></p> <p><b>Item I250 "Manly Cove Amenities Block"</b> - Single storey freestanding rendered brick building containing public toilets for men and women. Features a hipped, multicoloured terracotta tile roof with gable vents, timber</p>
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framed double hung obscure glass windows, external frieze of blue and cream glazed tiles with wave and water lily motifs, glazed terracotta tiles and panels decorating the facade. The entries to the areas for each gender, are defined by small timber pergolas carried on 4 doric columns. Internally, there are original cream interior wall tiles and beige terrazzo cubicles.

**Item I249 "Manly Cove Pavilion"** - The Manly Cove Pavilion on the West Esplanade was built in 1932-33 by the Port Jackson and Manly Steamship Company and opened in October 1933. Largely intact exterior retaining the ambience of the interwar Mediterranean style; white painted rendered brick, decorative ceramic tile insets and arched colonnade.(Anglin 1990:1047) Ferro-concrete two storey tiled roof pavilion built on pier. Colonnade to ground floor. Capitals to columns have fish, shell and acanthus leaf decoration; original wrought iron balustrading between columns beside water. Pavilion walls have decorative tile inlays using burnt orange and ultramarine ceramic tiles. A Greek key motif pattern is surmounted by semi-circular tiles which is in turn surmounted by ceramic decoration in scrolls and by urns. There is a strong Spanish influence throughout. The toilet block is of the same period. Special elements include the tile inlay bearing the letter "M", the floral motif in cornice decoration, original tiling to walls and the timber pagoda-style entry.(Blackmore, Ashton, Higginbotham, Rich, Burton, Maitland, Pike1986)

#### Other relevant heritage listings

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
Australian Heritage Register	No	
NSW State Heritage Register	Yes	
National Trust of Aust (NSW) Register	No	
RAIA Register of 20th Century Buildings of Significance	No	
Other	No	

#### Consideration of Application

The proposal is for alterations and additions to the existing Café in West Esplanade, Manly. The cafe is adjacent to the water slides which is next to the Manly Pavilion - State heritage listed item. The proposal relates to the cafe area only which is located at the northern part of the Manly Pavilion. The proposal includes internal changes and replacement of existing external bi-fold doors and a new signage to the northern wall of the existing cafe. It is considered that the proposal is acceptable on heritage grounds subject to the following:

- Signage to be consistent with the Clauses 4.4.3.2 *Signage on Heritage listed items and in Conservation Areas* and other controls outlined in Section 4.3.3 of Manly DCP 2013, additional details to be provided for approval of the heritage advisor.
- Colours and finishes related to the new bi-fold doors replacing the

- existing, to be provided for approval.
- Details of proposed new glazing graphics replacing the existing to be provided for approval.

**Please note**, the proposal is partly covered by a State heritage item and therefore it may require approval of the Heritage NSW.

**Updated referral response; 15 January 2020.**

Heritage has examined the revised drawings which are demonstrating compliance with the conditions, therefore the proposal is supported on heritage grounds.

Consider against the provisions of CL5.10 of MLEP.

Is a Conservation Management Plan (CMP) Required? No

Has a CMP been provided? No

Is a Heritage Impact Statement required? Yes

Has a Heritage Impact Statement been provided? Yes

**Further Comments**

COMPLETED BY: Oya Guner, Heritage Advisor

DATE: 15 January 2020

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.
Nominated Integrated Development – NSW Office of Environment and Heritage	General terms of approval were issued by Heritage NSW on 17 February 2020, and have been included in the draft determination, attached.

## **ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)\***

All, Environmental Planning Instruments (SEPPs, REPs 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, REPs 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 55 - Remediation of Land**

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council

records indicate that the subject site has been used for commercial purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the commercial land use.

## SEPP 64 - Advertising and Signage

Clauses 8 and 13 of SEPP 64 require Council to determine consistency with the objectives stipulated under Clause 3(1)(a) of the aforementioned SEPP and to assess the proposal against the assessment criteria of Schedule 1.

The objectives of the policy aim to ensure that the proposed signage is compatible with the desired amenity and visual character of the locality, provides effective communication and is of high quality having regards to both design and finishes.

In accordance with the provisions stipulated under Schedule 1 of SEPP 64, the following assessment is provided:

Matters for Consideration	Comment	Complies
<b>1. Character of the area</b> Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	The application seeks for one (1) vertical projecting wall sign that is to have concealed LED lighting. While this arrangement has been supported by Council's Heritage Officer, the Heritage Council of New South Wales has advised for this sign to be <i>'sympathetic to the appearance and interpretation of the Bathers Pavilion'</i> . Subject to compliance the conditions outlined within the General Terms of Approval and noting the existing signage arrangement of surrounding premises including 'Manly Surf n Slide', the resultant signage arrangement is seen to be compatible with the desired future character of area.	YES
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	As discussed above, an advisory note from the Heritage Council of New South Wales recommends <i>'that due to the visual association with Manly Cove Pavilion, a more sympathetic signage detail should be considered in place of the contemporary illuminated'</i> . Consideration has been given that compliance with the condition could result in greater consistency with outdoor advertising of the Manly Cove Pavilion.	YES
<b>2. Special areas</b> Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	The cafe premises falls partially within the State Heritage Register (SHR) curtilage of Manly Cove Pavilion. The Heritage Council of New South Wales did advise that the proposed sign is technically located outside the SHR curtilage. In order to ensure the proposal does not detract from the visual quality of the heritage buildings associated with Manly Cove Pavilion, compliance with General Terms of Approval is warranted. The proposal is identified within 100m of a known breeding habitat for the endangered population of Little Penguins. A number of biodiversity provisions therefore apply. Council's Natural Environment Officer has reviewed and supported the proposal, subject to compliance with conditions. It is therefore considered that the proposal does not detract from the relevant areas identified.	YES
<b>3. Views and vistas</b>	The proposed signage is located under an existing	YES

Does the proposal obscure or compromise important views?	awning of a single storey building that is located at the base of an escarpment. It is therefore considered that the proposal would not obscure or compromise on views or vistas.	
Does the proposal dominate the skyline and reduce the quality of vistas?	The proposed signage is located under an existing awning of a single storey building that is located at the base of an escarpment. It is therefore considered that the proposal would not dominate the skyline or reduce the quality of vistas.	YES
Does the proposal respect the viewing rights of other advertisers?	The proposed signage does not impinge on the viewing rights of other advertisers.	YES
<b>4. Streetscape, setting or landscape</b> Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	Subject to compliance with the General Terms of Approval, the proposed scale, proportion and form of the proposed signage is considered appropriate the context of this part of Manly Cove and the surrounding land uses.	YES
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	The proposed signage is limited to a white painted sign with laser cut lettering that is seen to provide visual interest. While the signage does not utilise bright or contrasting colours, it is recognised that the General Terms of Approval does advise that a more sympathetic signage detail could be considered to ensure the signage contributes towards the overall hertiage setting of the area.	YES
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	The existing cafe is currently without formal signage. Through limiting signage to one (1) vertical projecting wall sign, the proposal is seen minimise visual clutter.	YES
Does the proposal screen unsightliness?	The proposed signage does contribute towards screening out the entrance towards a bin storage area, and therefore can be considered that the proposal does screen unsightliness.	YES
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	No. As discussed above, the proposed signage is located under an existing awning of a single storey building that is located at the base of an escarpment and below the tree canopy.	YES
<b>5. Site and building</b> Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	Subject to compliance with the General Terms of Approval, the proposed scale, proportion and form of the resultant signage is expected to be compatible with characteristics of the heritage context of the area.	YES
Does the proposal respect important features of the site or building, or both?	As discussed above, subject to compliance with General Terms of Approval, the proposed signage arrangement is expected to be in keeping with the heritage significance of the area, particularly, the Manly Cove Pavilion.	YES
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	The proposal demonstrates innovation and imagination in relation to site and building through a coherent signage and colour arrangement.	YES
<b>6. Associated devices and logos with advertisements and advertising structures</b> Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on	The proposal signage is a contemporary design incorporates lazer cut lettering and concealed LED lighting.	YES

which it is to be displayed?		
<b>7. Illumination</b> Would illumination result in unacceptable glare, affect safety for pedestrians, vehicles or aircraft, detract from the amenity of any residence or other form of accommodation?	The physical separation to neighbouring residential accommodation along West Esplanade and the location of signage being below awnings, facing east, ensures that the illumination will not result in any unacceptable impacts on the surrounding safety or amenity.	YES
Can the intensity of the illumination be adjusted, if necessary?	Yes. Custom LED signage are generally capable of being dimmable if necessary.	YES
Is the illumination subject to a curfew?	No, however the hours of operation are proposed to be 7am - 10pm Monday to Sunday.	YES
<b>8. Safety</b> Would the proposal reduce the safety for any public road, pedestrians or bicyclists?	No. The proposed signage is not seen to reduce the safety of the area for pedestrians or bicyclists.	YES
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	No. The proposed signage is not seen to reduce the safety for pedestrians or children.	YES

Accordingly, the proposed signage is considered to be of a scale and design suitable for the locality. The proposal is therefore deemed to be consistent with the provisions of the SEPP and its underlying objectives.

## **SEPP (Infrastructure) 2007**

### Ausgrid

Clause 45 of the SEPP 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. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

## **Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005**

The proposed works are located partially within the W2 Environment Protection Zone under the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

The objectives of this zone are as follows:

- (a) to protect the natural and cultural values of waters in this zone,*
- (b) to prevent damage or the possibility of longer term detrimental impacts to the natural and cultural values of waters in this zone and adjoining foreshores,*
- (c) to give preference to enhancing and rehabilitating the natural and cultural values of waters in this zone and adjoining foreshores,*

*(d) to provide for the long-term management of the natural and cultural values of waters in this zone and adjoining foreshores.*

Comment:

The proposed internal building alterations and use of a premises are of a scale and extent that would ensure consistency with these objectives, subject to conditions.

The subject property is partially located within the Sydney Harbour Catchment therefore the provisions of this plan apply to this development.

An assessment of the proposal against Clause 2(1) (aims of the SREP), Clause 13 (nominated planning principles) and Clause 21 (relating to biodiversity, ecology and environmental protection) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP.

In accordance with the consent authority's statutory obligation as required under the SREP, the application was referred to the Foreshores and Waterways Planning and Development Advisory Committee (the Committee). A referral response was received by Council on the 28th November 2019. The Committee considered the proposed development to be a 'Category 2 matter' and raised no specific issues in relation to the proposed development.

**Land Use Permissibility under the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005**

The proposed development is land-based development under the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 and in accordance with clause 5 Council is the consent authority.

The proposal which relates to a *food and drink premises* is not listed as a permissible use within clause 18 and as a result an assessment pursuant to clause 18(2) is necessary to consider the permissibility of the development.

Clause 18(2) states the following:

"(2) Despite subclause (1), development not referred to in the Table to this clause may be carried out with development consent, but only if the consent authority is satisfied that the development:

- (a) is not inconsistent with the aims of this plan or the objectives of the zone in which it is proposed to be carried out, and
- (b) is not inconsistent with any other environmental planning instrument that applies to the land, and
- (c) will not otherwise have any adverse impacts."

Comment:

With regard to the above, the assessment of the proposal seeks to maintain its existing operations as a cafe. A restaurant or cafe are listed within the definition of a 'food and drink premises'. The cafe operation is considered acceptable given it is consistent with surrounding land uses such as the restaurant at 'Manly Pavilion', and by maintaining consistency with the zone objectives detailed within clause 17. As such the development is permissible with development consent.

**SEPP (Coastal Management) 2018**

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

**13 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:

This clause does not apply to land within the Foreshores and Waterways Area within the meaning of *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*.

- (2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
  - (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or
  - (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
  - (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

This clause does not apply to land within the Foreshores and Waterways Area within the meaning of *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*.

#### **14 Development on land within the coastal use area**

- (1)
  - (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,
    - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
    - (iv) Aboriginal cultural heritage, practices and places,
    - (v) cultural and built environment heritage, and
  - (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:

This clause does not apply to land within the Foreshores and Waterways Area within the meaning of *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*.

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

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

### Comment:

Council's Coast and Catchments Division has provided comments indicating that the proposed development satisfies the requirements under Clause 15 of the SEPP (Coastal Management) 2018. In this regard, the proposed development is not considered likely to cause increased risk of coastal hazards on the subject site or other land.

As such, it is considered that the application does/does not comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

## 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
Special height provisions	The height of a building on a lot identified as "Special height provisions" on the Height of Building Map must not exceed the height of the highest point of the road adjoining the centre point of the lot boundary that adjoins the road that is the frontage to that lot.	4.3m	-	Yes

### Compliance Assessment

Clause	Compliance with Requirements
4.3A Special height provisions	Yes
5.7 Development below mean high water mark	Yes
5.10 Heritage conservation	Yes
6.2 Earthworks	Yes
6.8 Landslide risk	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes
Schedule 5 Environmental heritage	Yes

### Detailed Assessment

## Zone RE1 Public Recreation

The proposal seeks to continue operations as a cafe/restaurant. Both restaurants and cafes are listed as being permitted with consent in a RE1 Public Recreation zone.

#### 4.3A Special height provisions

The requirements of this clause detail that the height of a building on a lot identified as "Special height provisions" on the Height of Building Map must not exceed the height of the highest point of the road adjoining the centre point of the lot boundary that adjoins the road that is the frontage to that lot.

The proposed works are substantially for internal reconfiguration to the existing cafe and as a result does not exceed the existing roof ridge RL 7.06. The adjoining road being Commonwealth Parade is between the RL of 12.00 and 14.00. As such, the proposal will continue to maintain public views to Sydney Harbour from street level of Commonwealth Parade.

#### 5.10 Heritage conservation

The site is located partly within the State Heritage Register curtilage of item I249 "Manly Cove Pavilion" and local heritage item I250 "Manly Cove Amenities Block" that are listed within Schedule 5 of the Manly Local Environment Plan 2013.

In accordance with clause 5.10(4) of the Manly LEP 2013, the consent authority must consider the effect of the proposed development on the heritage significance of the item or area concerned prior to granting consent to the proposal. In this regard, the proposal has been considered by Council's Heritage Officer who is satisfied that the proposal is acceptable without conditions. Detailed commentary from Council's Heritage Officer is provided in the 'Referrals' section of this report.

As the site is also identified as an item of State heritage significance on the State Heritage Register, the application has been referred to Heritage NSW. In this regard, general terms of approval were issued by Heritage NSW on 17 February 2020, and have been included in the draft determination attached.

#### 6.10 Limited development on foreshore area

The proposal is for alterations to an existing building that is wholly in the foreshore area and is considered to satisfy the relevant requirements of this clause.

### Manly Development Control Plan

#### Built Form Controls

As the site is located within the RE1 Public Recreation zone and the W2 Environmental Protection zone, the proposal is not subject to the development controls listed under Clause 4.1, Clause 4.2 and Clause 4.3. As detailed earlier in this report, the proposed works are substantially for internal reconfiguration to the existing cafe. Works to the external fabric of the building are limited to the replacement of existing bi-fold doors and the installation of a business identification sign. Further, Council's Property Commercial & Tourist Assets division have provided comments indicating the proposal is acceptable and that the proposed outdoor dining is located on Crown land within the existing leasehold area.

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3 General Principles of Development	Yes	Yes
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.3 Townscape (Local and Neighbourhood Centres)	No	Yes
3.2 Heritage Considerations	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes

3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.6 Energy efficiency/conservation requirements for non-residential developments	Yes	Yes
3.5.8 Water Sensitive Urban Design	Yes	Yes
3.6 Accessibility	No	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.4 Other Development (all LEP Zones)	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.3 Signage	No	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes
5.4.3 Flood Prone Land	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

## Detailed Assessment

### **3.1.3 Townscape (Local and Neighbourhood Centres)**

The existing premises is inconsistent with the intent for the ground floor level of a premises to be generally level to the footpath. In order to access internal areas of the cafe there are two (2) steps and currently no ramp access. Council's Building Assessment (Fire and Disability upgrades) division have reviewed the proposal and raised no objections subject to standard conditions being imposed for Building Code of Australia (BCA) requirements to be determined at Construction Certificate stage. Further discussion concerning accessibility can be seen further in this report.

### **3.4.2 Privacy and Security**

Consideration has been given that the proposed development complies with relevant acoustic privacy requirements identified under this clause. Council's Environmental Health division have also raised no objections to the hours of operation with regards to noise and amenity impacts for surrounding residential properties, subject to compliance with conditions. The cafe premises is not identified as currently holding a liquor licence and is not considered to be a 'late night venue'.

### **3.6 Accessibility**

In order to address the aim to provide equitable, dignified and non-discriminatory access for all member of the community, consideration has been given to examine the access arrangement for the proposed development. As detailed previously within this report, for people to enter the internal areas of the cafe there are two (2) steps and no

ramp access. Council's Building Assessment (Fire and Disability upgrades) division have reviewed the proposal and raised no objections to the proposed access arrangement subject to standard conditions being imposed for relevant BCA requirements to be determined at Construction Certificate stage. It should be noted that the BCA operates on a performance based basis which allows flexibility when dealing with heritage buildings, which may be applicable in this instance.

Subject to compliance with relevant conditions, the proposal is considered to comply with the relevant objectives of this clause and is supported on merit.

### **3.9 Mechanical Plant Equipment**

While the proposal seeks to retain the existing mechanical kitchen exhaust, it should be noted that Council's Environmental Health division have recommended a condition to ensure that any installed or altered mechanical exhaust is to be compliant with relevant Australian Standards. The existing mechanical kitchen exhaust is also located at a distance greater than 40m away from neighbouring properties to minimise potential amenity impacts for residents.

#### **4.4.3 Signage**

##### Description of non-compliance:

The application seeks for one (1) vertical projecting wall sign that is to have concealed LED lighting. The sign is to be 300mm in width and 1.425m in height. The sign projects 400mm from the northern elevation/wall of which it is attached, and is between 700mm-2.125m above the existing ground level. The proposed sign is therefore technically non-compliant with the requirement of this clause that specifies that the lowest part of the sign above ground level is to be 2.6m and not more than 3.7m. Based on the location of the proposed sign, consideration has been given, that it is not likely to interfere or impact on pedestrians or pathways. As discussed earlier within this report, the proposed signage has been considered to meet the relevant assessment criteria of the State Environmental Planning Policy No 64 - Advertising and Signage. The proposed signage arrangement has also been assessed and supported by Council's Heritage Advisor, against the requirements outlined under Clause 4.4.3.2 (Signage on Heritage listed items and in Conservation Areas) of the Manly DCP.

##### Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

Objective 1) To ensure that advertising does not detract from the scenic beauty and amenity of the Municipality; harmonises with its surroundings and the buildings to which they are attached.

Comment:

Through limiting the size and number of signs as well as limiting the extent of colours and finishes, consideration has been given that the proposed arrangement will not detract from the scenic beauty and amenity of the area. Further, the compliance with the General Terms of Approval provided by the Heritage Council of New South Wales will help to ensure that the signage is in harmony with the appearance and context of surrounding buildings such as the Manly Cove Pavilion.

Objective 2) To minimise the visual impact by encouraging fewer more effective signs that may otherwise degrade the existing and likely future quality of residential environments or result in excessive, unnecessary signage, visual clutter and confusion in local and neighbourhood centres.

Comment:

Through limiting signage for the café to one (1) vertical projecting wall sign, the proposal is seen minimise visual clutter caused by a proliferation of signs.

Objective 3) To permit building and business identification signs which communicate the facilities (including tourist facilities), amenities, goods and services in local and neighbourhood centres which do not interfere with the streetscape or amenity of residents.

Comment:

The proposed signage that is to be laser cut with the name of the café 'Sliderz' communicates the business as being a food and drink premises while also indicating the close association between 'Manly Surf n Slide' which is currently run by the same operators.

Objective 4) Signs should enhance the distinctive urban character and scenic amenity of the Municipality and contribute to the atmosphere of the streets in local and neighbourhood centres and should be designed in sympathy with both the building to which it is attached and any adjoining buildings, taking into account the architectural styles and finishes of buildings in local and neighbourhood centres.

Comment:

The proposal including the signage arrangement is seen to reactivate the atmosphere of the area, following the closure of neighbouring business associated in tourism such as Manly Sea Life Sanctuary in 2018. Through limiting the extent and finishes associated with the signage, the proposal is seen to help enhance the distinctive urban character and scenic amenity of the area.

Objective 5) To prevent signage from impacting on the presentation of the heritage item or area to the general public on heritage items and conservation areas.

Comment:

As discussed earlier within this report, the development is subject to compliance with the conditions outlined within the General Terms of Approval issued by the Heritage Council of New South Wales. Consideration is given subject to compliance with these conditions that the resultant signage arrangement will not negatively impact upon the heritage significance of heritage listed buildings such as the Manly Cove Pavilion.

Objective 6) To ensure all signage is of high standards of graphic and textural content.

Comment:

The submitted plans provided with the application demonstrates that the sign is of a high standard of graphic and textural content through incorporating such details as concealed LED lighting that is set behind laser cut out lettering with the name of the café 'Sliderz'.

Objective 7) To encourage co-ordinated advertising in the Industrial Zone by the use of appropriately sized street numbers and complex names, and the use of directory boards to identify multiple unit complexes, so as to reduce adverse impact on the streetscape and confusion to traffic.

Comment:

The subject site is not located within an Industrial Zone.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of this clause and is therefore supported in this particular circumstance.

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

The proposal will not significantly effect 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.

## **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 2000;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

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

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

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

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

## RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2019/1021 for Alterations and additions to an existing cafe and signage on land at Lot 2 DP 1019352, West Esplanade, MANLY, Lot 7340 DP 1144101, West Esplanade, MANLY, subject to the conditions printed below:

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Approved Plans

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
DA 1051, Issue A (Site Plan/Site Analysis)	02.08.19	Rich Carr Architects Pty Ltd
DA 1101, Issue A (Ground Floor Plan)	02.08.19	Rich Carr Architects Pty Ltd
DA 1102, Issue A (Proposed Roof Plan)	02.08.19	Rich Carr Architects Pty Ltd
DA 1201, Issue A (Sections)	02.08.19	Rich Carr Architects Pty Ltd
DA 1301, Issue B (Elevations)	11.12.19	Rich Carr Architects Pty Ltd
DA 1501, Issue B (Signage Details)	11.12.19	Rich Carr Architects Pty Ltd

<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>
Heritage Impact Statement	22 August 2019	Rich Carr Architects Pty Ltd

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>Waste Management Plan</b>		
<b>Drawing No/Title.</b>	<b>Dated</b>	<b>Prepared By</b>
DA 1801, Issue A (Waste Management Plan)	02.08.19	Rich Carr Architects Pty Ltd
Northern Beaches Council Waste Management Plan	08.08.19	Tracey O'Sullivan

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 Hertiage NSW Requirements**

The development must be carried out in compliance with the general terms of approval issued by Heritage NSW on 17 February 2020, as follows:

### **a. External Finishes**

Details of the proposed replacement of the existing glazing film signage are to be provided demonstrating that they will be sympathetic to the heritage values of the Manly Cove Pavilion with a section 60 application.

Reason: So that the finishes are sympathetic to the Interwar Mediterranean design.

Advisory note: It is recommended that due to the visual association with Manly Cove Pavilion, a more sympathetic signage detail should be considered in place of the contemporary illuminated blade sign so that it is similar to existing signage and sympathetic to the appearance and interpretation of the Bathers Pavilion.

### **b. Site Protection**

Significant built elements are to be protected during site preparation and the works from potential damage. Protection systems must ensure significant fabric is not damaged or removed.

Reason: To ensure significant fabric is protected during construction.

### **c. Specialist Tradespersons**

All work to, or affecting, significant fabric shall be carried out by suitably qualified tradespersons with practical experience in conservation and restoration of similar heritage structures, materials and construction methods.

Reason: So that the construction, conservation and repair of significant fabric follows best heritage practice.

### **d. Compliance**

If requested, the applicant may be required to participate in audits of Heritage Council of NSW approvals to confirm compliance with conditions of consent.

Reason: To ensure that the proposed works are completed as approved.

### **e. Section 60 Application**

An application under section 60 of the Heritage Act 1977 must be submitted to, and approved by, the Heritage Council of NSW (or delegate), prior to work commencing.

Reason: To meet legislative requirements.

## 3. **Approved Land Use**

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a food and drink premises

A food and drink premises is defined as a:

*“premises that are used for the preparation and retail sale of food or drink (or both) for immediate consumption on or off the premises, and includes any of the following—*

- (a) a restaurant or cafe,*
- (b) take away food and drink premises,*
- (c) a pub,*
- (d) a small bar.*

*Note.*

*Food and drink premises are a type of retail premises—see the definition of that term in this Dictionary.”*  
(development is defined by the Manly Local Environment Plan 2013 (as amended) Dictionary)

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

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

#### 4. **Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - (i) showing the name, address and telephone number of the Principal Certifying Authority 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 Certifying Authority 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 Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

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

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

Reason: Legislative requirement.

## 5. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) 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 a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) 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.
- (d) 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.
- (e) 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.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) 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.
- (j) 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.

- (k) 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 2008
  - (iv) Australian Standard AS1926 Swimming Pool Safety
  - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
  - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

## **FEES / CHARGES / CONTRIBUTIONS**

### **6. Security Bond**

A bond (determined from cost of works) of \$1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security 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, details demonstrating payment are to be submitted to the Certifying Authority 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.

## **CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE**

### **7. Working on Reserves Permit**

Works (undertaken by principal contractors working without Council supervision) on land under Council's care control and management require a "Working on Reserves" permit prior to commencement. Applications can be obtained from Council's website or the Parks, Reserves and Foreshores business unit.

Reason: Public Safety and the protection of Council infrastructure.

8. **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 Certifying Authority prior to the issue of the Construction Certificate.

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

9. **Protection of Penguin Habitat (Foreshore and Intertidal Area)**

The foreshore and intertidal area below and to the rear of the subject site are to be fully protected for the duration of the works. There shall be no machinery use, storage of construction materials/waste, dumping, or clearing of vegetation, soil, rock or rubble within these areas. A statement confirming compliance with this conditions is to be prepared by the Site Manager and provided to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To prevent impacts to known penguin habitat and any penguins which may be breeding, moulting, or loafing in this area.

10. **Protection of Penguin Habitat (Construction Access)**

No works or construction access are permitted within the foreshore or intertidal zone below and to the rear of the subject site. All construction access is to be via existing formed access to the east and north of the subject site. A written statement of compliance with this condition is to be prepared by the Site Manager and provided to the Principal Certifying Authority prior to issue of the Construction Certificate.

Reason: To prevent disturbance and impact to known penguin habitat and any penguins which may be breeding, moulting or loafing along the foreshore or intertidal zone.

**CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**

11. **Removing, Handling and Disposing of Asbestos**

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

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

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

12. **Demolition Works - Asbestos**

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifying Authority, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

13. **Waste Management During Development**

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

Details demonstrating compliance must be submitted to the Principal Certifying Authority.

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

14. **Construction Hours – Manly LEP Clause 6.5**

Construction hours are to be adhered to, with no construction vehicles or heavy machinery used outside the hours of 7:00am and 5:00pm.

Reason: Noise and vibration can disturb local native fauna (including threatened species) and prevent access to their natural habitats.

15. **Slurry and Concrete to be Removed – Penguin Habitat**

All slurry or spilt concrete associated with works (including drilling) is to be contained at the source and within the construction area. Spilt concrete is to be removed before it dries. Slurry and spilt concrete are to be removed offsite.

Reason: To prevent construction-related impacts to known penguin habitat.

**CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE**

16. **Registration of Food Business**

The food business must be registered with the Appropriate Regulatory Authority, prior to Occupation Certificate being issued.

Reason: Food premises are required to be registered with the Appropriate Regulatory Authority.

17. **Kitchen Design, construction and fit out of food premises certification**

Prior to the issuing of any interim / final occupation certificate, if required or occupation and commencement of trading certification is to be provided from a suitably qualified person that the design, construction and fit out of food premises kitchen is compliant with the requirements of AS 4674 Design, construction and fit out of food premises in all respects.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority and/or Council as appropriate.

Reason: To ensure that the kitchen complies with the design requirements.

18. **Mechanical Ventilation certification if altered/replaced**

Where a mechanic exhaust is installed/altered then prior to the issuing of any interim / final occupation certificate, certification is to be provided from the installer of the mechanical ventilation system that the design, construction and installation of the mechanical ventilation system is compliant with the requirements of AS1668 The use of mechanical ventilation.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To ensure that the mechanical ventilation system complies with the design requirements.

19. **No new artificial lighting**

No new artificial lighting is to be directed toward or illuminate the rocky foreshore behind the cafe at any time during or post-construction. Details demonstrating compliance are to be submitted to the Certifying Authority prior to issue of a Occupation Certificate.

Reason: To prevent additional light pollution impacts on known Little Penguin habitat.

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

20. **Dead or Injured Wildlife – Manly LEP Clause 6.5**

If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To mitigate potential impacts to native wildlife resulting from construction activity.

21. **Hours of Operation**

The hours of operation are to be restricted to:

- Monday to Friday – 7am to 10pm
- Saturday – 7am to 10pm
- Sunday and Public Holidays – 7am to 10pm

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

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

22. **Smoke and Odour**

The business operation shall not cause any visible smoke or odour nuisance at any time. Where necessary this may involve a review of any cooking processes or menu items as appropriate to comply.

Reason: To avoid any smoke or odour issue to any neighbouring premises.

23. **Patron Numbers**

The total patron capacity is not to exceed 48 patrons, being 24 patrons indoors and 24 patrons outside.

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

24. **Commercial Waste Collection**

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

Reason: To protect the acoustic amenity of surrounding properties.

25. **Delivery of Products**

Products must not be delivered to this premises between the hours of 10pm and 6am on any day.

Reason: To protect the acoustic amenity of surrounding properties.