

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/1249
Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 1 DP 1170245, 0 East Esplanade MANLY NSW 2095
Proposed Development:	Alterations and additions including internal fit-out for use of premises as a pub and artisan food and drink industry
Zoning:	SEPP (Biodiversity and Conservation) 2021 – Zone 2 Environment Protection
Development Permissible:	Yes, under Clause 6.27(2) Zone objectives and Land Use Table of the <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i>
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Applicant:	HSW Nominees Pty Ltd

Application Lodged:	26/09/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	04/10/2024 to 01/11/2024
Advertised:	04/10/2024
Submissions Received:	20
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 13,464,000.00
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### EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to an existing tenancy (the former location of the ALDI supermarket) within Manly Wharf, for the purpose of a *pub* and an *artisan food and drink industry* premises, with ancillary markets.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to:

- The number of submissions (19 in objection and 1 in support),

- The proposed new licensed premises, requiring a hotel (general bar) licence under the *Liquor Act 2007*, and
- Demolition works to the State heritage item (Manly Wharf).

The subject site is within the Sydney Harbour Catchment and Sydney Harbour Foreshores and Waterways Area, and is within Zone 2 Environment Protection, per Chapter 6 of *State Environmental Planning Policy (Biodiversity and Conservation) 2021* ('the SEPP'). The proposed pub and artisan food and drink industry land uses are permissible with consent under the SEPP.

Concerns raised in the submissions objecting to the proposed development predominantly relate to the potential for increased antisocial or unsafe behaviour and crime, noise impacts, traffic and parking impacts, provision of public toilets and use of the wharf.

Within this assessment report, detailed consideration is given to the proposed development in relation to the applicable planning controls, including with respect to the *State Environmental Planning Policy (Biodiversity and Conservation) 2021*. Specific consideration is given to the potential amenity impacts of the site, including in relation to noise and traffic/parking, safety concerns, and provision of toilet facilities.

The matters relating to antisocial or unsafe behaviour and crime were reviewed by NSW Police, who have advised the development is acceptable, subject to conditions of consent (which are included in the recommendation of this report).

This report also establishes that the relocation of existing public toilets from the basement car park to the ground floor results in no loss of facilities, and improves safety and access with respect to those facilities.

This report also establishes that the proposed *pub* and *artisan food and drink industry* land uses are not likely to result in unreasonable impacts with respect to noise and parking, given the proposed location of the premises (being centrally within the existing wharf building), the high quality of the proposed design, and the proximity of the site to public transport.

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

## **PROPOSED DEVELOPMENT IN DETAIL**

The proposal seeks consent for alterations and additions at Manly Wharf, as follows:

- Change of use of the vacant retail premises (supermarket) to a *pub* and *artisan food and drink industry* premises with ancillary dining, occasional live performances, and occasional markets (internal),
- Internal fit out works for the above new uses, including demolition works, new kitchen, bars, office, and amenities,
- Facade works,
- New public toilets,
- New entryway,
- A maximum of 700 patrons, and
- Hours of operation:
  - Mon-Wed and Sun: 7am to midnight
  - Thurs-Sat: 7am to 1am

On 26 November 2024, Council wrote to the Applicant, raising the following matters:

- Clarification of proposed land uses,
- Concern that the plans demonstrated a loss of one public toilet,
- Concern regarding pedestrian access around the wharf site, and
- Identifying that more information is required with respect to the coastal engineering report.

In December 2024, the Applicant provided amended plans and documents to satisfy the above concerns. In accordance with Council's Community Participation Plan, the application did not require re-notification, as the amendments did not amount to any greater environmental impact.

**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 - Concurrence - Roads and Maritime Service - SEPP (Transport and Infrastructure) 2021, s2.118  
Manly Local Environmental Plan 2013 - Zone E1 Local Centre  
Manly Local Environmental Plan 2013 - 6.12 Essential services  
Manly Local Environmental Plan 2013 - 6.21 Noise impacts—licensed premises  
Manly Development Control Plan - 3.2 Heritage Considerations  
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 - 4.2.5.6 Late Night Venues

**SITE DESCRIPTION**

Property Description:	Lot 1 DP 1170245 , 0 East Esplanade MANLY NSW 2095
Detailed Site Description:	The subject site is legally described as Lot 1 in DP 1170245 and is commonly known as Manly Wharf. The site is located

within Manly Cove and is located at the junction of East Esplanade and West Esplanade, Manly.

This site is irregular in shape and has an area of 9,614.5m<sup>2</sup>.

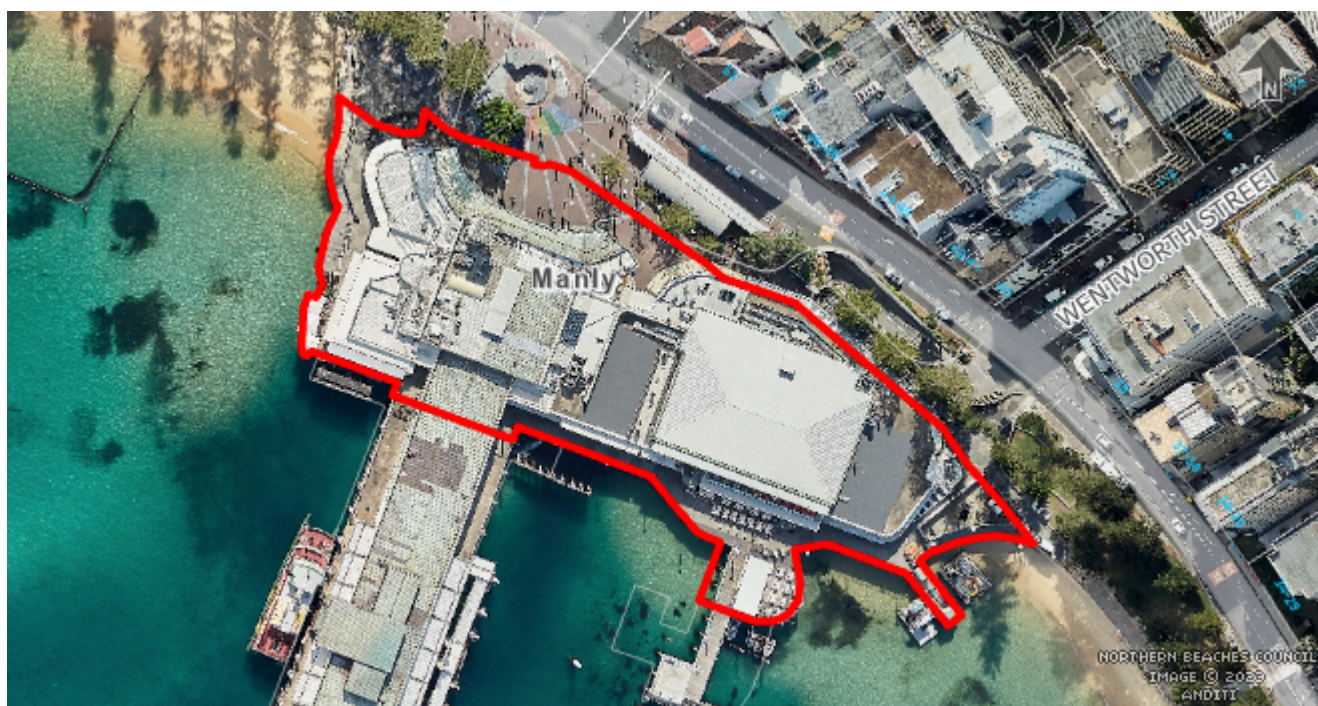
The subject site is located in Zone 2 Environment Protection under the *State Environmental Planning Policy (Biodiversity and Conservation) 2021*.

The site has multiple pedestrian access points from East and West Esplanades, and functions as a ferry terminal. The site is oriented east to west, with the northern and southern boundaries fronting East and West Esplanade and Manly Cove, respectively. The wharf is surrounded by sheltered marine environment. The surrounding waters and nearby harbour foreshore is known to provide habitat for Little Penguins.

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

Opposite the site to the north is The Corso, a pedestrian promenade and public open space between Manly Beach and Manly Wharf and provides street furniture, public art and a focal point for the Manly Town Centre. Commercial uses including shops, offices, restaurants, cafes, licensed premises and services and amenities dominate the frontages of The Corso. The scale of development along The Corso is varied between two to four storeys. East and West Esplanades are characterised by mixed-use developments consisting of ground floor commercial uses such as shops, offices, restaurants and cafes, with residential above. Some of the building along East Esplanade consist primarily of multi-storey commercial developments. The scale of development along East Esplanade is predominately between three to six storeys. The scale of development along West Esplanade is predominately between three to eight storeys.

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 an extensive history of development applications and complying development certificate applications for fit outs, signage, and alterations and additions to the various tenancies at Manly Wharf. Of particular note to the tenancy subject of this application are the following:

- DA396/2004 for alterations and additions for the purpose of a supermarket (ALDI) was approved by Council on 18 October 2004.
- DA150/2013 for internal alterations to the existing supermarket (ALDI) was approved by Council on 4 September 2013.
- DA265/2013 for extension of the existing supermarket (ALDI) and internal alterations was approved by Council on 2 April 2014.
- DA265/2013 Part 2 for modification of DA265/2013 (internal reconfiguration and illuminated signage) was approved by Council on 17 June 2015.
- DA59/2015 for replacement of the mechanical plant equipment in the existing mechanical plant room (ALDI) was approved by Council on 8 July 2015.
- CDC2018/1124 for alterations and additions to the existing supermarket (ALDI) was approved by a private certifier on 1 November 2018.
- DA2018/1985 for construction of business identification signage (ALDI) was approved by Council on 29 March 2019.
- DA2024/1375 for internal and external alterations and additions to Manly Wharf is currently under assessment.

## 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.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&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>Clause 29</u> of the EP&amp;A Regulation 2021 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 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to the proposed uses, internal works, and works relating to the external boardwalk. Satisfactory information was received on 6 December 2024.</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 clause is not relevant to this application.</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.</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, including environmental impacts on the natural and	<p>(i) <b>Environmental Impact</b></p> <p>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>

Section 4.15 Matters for Consideration	Comments
built environment and social and economic impacts in the locality	<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 application has been publicly exhibited from 04/10/2024 to 01/11/2024 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 20 submission/s from:

Name:	Address:
Ursula Finola Moloney	4 / 117 Crown Road QUEENSCLIFF NSW 2096
Mrs Judith Ann Mellows	61 Addison Road MANLY NSW 2095
Mr Patrick Christopher Loughnan	4 / 15 East Esplanade MANLY NSW 2095
Mrs Gillian Patricia Russell	1 / 20 Clifford Avenue FAIRLIGHT NSW 2094
Dr Raymond Franklin Soames Job Dr Chika Sakashita	16 Carrington Parade FRESHWATER NSW 2096
David Colman	Address Unknown
Mr Mark Edmond Ewington	8 / 29 East Esplanade MANLY NSW 2095

Name:	Address:
Ms Vivienne Ann Walker	6C/29-34 East Esplanade MANLY NSW 2095
Pauline Janice Cordwell	5 / 29 East Esplanade MANLY NSW 2095
Ms Anne Mary Mathieson	503 / 54 West Esplanade MANLY NSW 2095
Mrs Kerri Ann Readford	Glencoe GULARGAMBONE NSW 2828
Mr Brendon Lansdowne	86 Memorial Avenue ST IVES NSW 2075
Mrs Vivian Jennifer Quinn	Po Box: 766 MANLY NSW 1655
Ms Elizabeth Evelyn Mawhood	1 / 29 East Esplanade MANLY NSW 2095
Mr James Laurence Hudson	14 / 41 - 42 East Esplanade MANLY NSW 2095
Rosemary Elizabeth Carlin	24 Southey Street ELWOOD NSW 3184
Mr Robert James Kenney	18 / 43 - 45 East Esplanade MANLY NSW 2095
Mr Thomas Arden Cameron	2 / 43 - 45 East Esplanade MANLY NSW 2095
Ms Catherine Gai Griffin	67 Stuart Street MANLY NSW 2095
Ms Tracey Lee Wilson	5 / 2 - 4 Wood Street MANLY NSW 2095

The following issues were raised in the submissions:

- Concern about increased antisocial and unsafe behaviour around Manly Wharf and surrounding locations.
- Concern about unreasonable noise impacts from patrons, music, and air conditioning units.
- The proposed new venues are not supported by additional car parking.
- The location is better suited to a grocery store and there are already a number of licensed venues in the vicinity.
- Existing toilet facilities are inadequate, and there is no plan for toilets on East Esplanade to support the development.
- Additional seating and signage has been placed around Manly Wharf identifying the area as 'Felon's Manly'.
- The wharf is public land being privatised and should remain named Manly Wharf / Manly Wharf Bar.

The above issues are addressed as follows:

#### **Antisocial/Unsafe Behaviour**

Submissions raised concern about increased antisocial and unsafe behaviour around Manly Wharf and surrounding locations.

#### Comment:

Antisocial, unsafe and unlawful behaviour is managed by NSW Police. NSW Police have reviewed the application and provided a response stating that the proposed development is acceptable, subject to recommendations with respect to security, crime prevention, and operational management. These conditions are included in the recommendation of this report.

#### **Noise Impacts**

Submissions raised concern about unreasonable noise impacts from patrons, music, and air conditioning units.



Comment:

It should be noted that the proposed new venue is entirely internal to the former supermarket premises in the centre of the existing wharf building, so is not anticipated to result in unreasonable operational noise. No outdoor areas are proposed under this application. It is noted that there is allowance for outdoor seating under the *State Environmental Planning Policy (Exempt and Complying Development Code) 2008*, and any future provision of outdoor seating associated with these new premises will be addressed in accordance with those requirements.

The application is supported by an acoustic report, detailing that the proposed development is acceptable with respect to noise generation, subject to certain noise emission mitigation recommendations. These recommendations include limited hours of operation, a maximum of 700 patrons, closure of glazed openings while amplified music is playing, limitation of music volume, and placement of signage. Council's Environmental Health Officer has reviewed the application, including the acoustic report, and is supportive of the proposed development subject to recommended conditions of consent relating to operational and mechanical noise. These conditions are included in the recommendation of this report.

**Car Parking**

Submissions raised concern that the proposed new premises are not supported by additional car parking.

Comment:

The application is supported by a transport and parking assessment, which has been reviewed by Council's Traffic Engineer. The detailed comments from Council's Traffic Engineer are provided in the Referrals section of this report. In short, the proposed development is not expected to generate substantial additional car movements, given the type of use (where patrons typically don't drive due to alcohol consumption), and the venue's the location in close proximity to public transport, ride-share services, and other places of interest (that is, patrons typically visit various venues in the area). Further, the venue is sufficiently supported by the existing basement car park. The provision of additional parking (in the basement or otherwise) would unreasonably impact upon the State heritage significance of the site, which is a reasonable exemption from parking requirements per Clause 3.2.5.1 of the Manly Development Control Plan 2013. Council's Traffic Engineer is supportive of the proposed development, subject to conditions of consent, which have been included in the recommendation of this report.

**Proposed Use**

Submissions raised concern that the location is better suited to a supermarket, given there are already a number of licensed venues in the vicinity.

Comment:

The proposed development is for the purpose of a pub and an artisan food and drink industry premises. As such, assessment of this application is based on those proposed land uses, and not hypothetical alternatives. The proposed land uses are permissible in Zone 2 Environmental Protection, as detailed in the section of this report relating to the *State Environmental Planning Policy (Biodiversity and Conservation) 2021*. Existence of other licensed venues in the vicinity does not prevent application for (and granting of consent for) additional such venues.

**Toilets**

Submissions raised concern that existing toilet facilities are inadequate, and there is no plan for toilets on East Esplanade to support the development.

Comment:

The proposed development includes new toilets both inside and outside the licensed venue. The development provides new public toilets at the ground floor of the wharf building, and converts the existing public toilets in the basement to storage. As such that there is no loss of facilities outside of the premises, and a gain of facilities within the premises. The proposed changes to the public toilet facilities improve public safety and accessibility, as they will longer be located below ground in the basement car park (which has historically required access by stairs or lift). This is in addition to the proposed internal toilet facilities to support the needs of patrons using the new premises. There is no requirement for any additional public toilet facilities to support the proposed development.

### Wharf Seating and Signage

Submissions raised concern that additional seating and signage has been placed around Manly Wharf identifying the area as 'Felons Manly'.

#### Comment:

It is understood that the premises formerly known as 'Manly Wharf Hotel' (not subject of this application) is now known as 'Felons Manly', as that premises is now under new ownership and management. The recently added outdoor seating and signage around Manly Wharf supporting Felons Manly is noted, but does not form part of this application, so is not subject to consideration under this development application. Concerns about potential unauthorised works may be reported to Council's Building Control team for investigation.

Notwithstanding the above, the following is provided for completeness. Subdivision 20B Outdoor Dining - General (Clauses 2.40C and 2.40D) of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* provides the requirements for the use of public or private land for outdoor dining without consent. The outdoor seating is in accordance with the requirements, and therefore no consent is required for the seating. The signage referred to in submissions and observed on site is not structural and does not appear to require development consent.

### Wharf Name

Submissions raised concern that the wharf is public land being privatised, and should remain named Manly Wharf / Manly Wharf Hotel.

#### Comment:

The portion of the wharf subject of this application is privately owned, so is not public land. The wharf remains known as Manly Wharf. The premises formerly known as 'Manly Wharf Hotel' is now known as 'Felons Manly', being under new ownership and management. The name of the proposed pub and artisan food and drink industry premises is not specified under this application.

### REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p><b><i>Supported, subject to conditions</i></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><u>Note:</u> <i>The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such</i></p>

Internal Referral Body	Comments
	<i>as this however may be determined at Construction Certificate Stage.</i>
Environmental Health (Industrial)	<p><b>Supported, subject to conditions</b></p> <p>The proposed development seeks alterations to the existing vacant retail tenancy at Manly Wharf for use as a pub and micro-brewery with ancillary dining and occasional live performance.</p> <p>A separate liquor license application will seek an extension of the existing Manly Wharf Hotel license to provide for the service of alcohol within the new premises.</p> <p>The proposal documentation includes (in part) a Plan of Management for the proposed venue as well as an acoustic report which outlines requires acoustic treatments in relation to building elements and proposed mechanical services as well as operational procedures to assist with noise compliance.</p>
Environmental Health (Food Premises, Skin Pen.)	<p><b>Supported, subject to conditions</b></p> <p>The proposed development seeks alterations to the existing vacant retail tenancy at Manly Wharf for use as a pub and micro-brewery with ancillary dining and occasional live performance.</p> <p>A separate liquor license application will seek an extension of the existing Manly Wharf Hotel license to provide for the service of alcohol within the new premises.</p> <p>In relation to the establishing of food premises at the subject site, the proposal is acceptable subject to appropriate conditions of consent.</p>
NECC (Coast and Catchments)	<p><b>Supported, subject to conditions</b></p> <p>The Applicant seeks alterations to the existing vacant retail tenancy at Manly Wharf for use as a pub and micro-brewery with ancillary dining and occasional live performance.</p> <p>The application has been assessed in consideration of the</p> <ul style="list-style-type: none"> <li>• Coastal Management Act 2016</li> <li>• State Environmental Planning Policy (Resilience &amp; Hazards) 2021</li> <li>• Manly LEP and DCP</li> <li>• Submitted designs and reports</li> <li>• Sydney Regional Environmental Plan 2005 (SREP)</li> </ul> <p><b>Coastal Management Act 2016</b></p> <p>The subject site has been identified as being within the coastal zone and therefore Coastal Management Act 2016 is applicable to the proposed development.</p>

Internal Referral Body	Comments
	<p>The proposed development is in line with the objects, as set out under Clause 3 of the Coastal Management Act 2016.</p> <p><b>State Environmental Planning Policy (Resilience &amp; Hazards) 2021</b></p> <p>The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience &amp; Hazards) 2021 (SEPP R &amp; H), however Clauses 2.10 and 2.11 do not apply to land within the Foreshores and Waterways Area within the meaning of State Environmental Planning Policy (Biodiversity and Conservation) 2021, Chapter 6.</p> <p>Hence, only clause 2.12 of the CM (R &amp; H) apply for this DA.</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Architectus Australia Pty Ltd dated 9 August 2024 and the Estuarine Risk Management report by Horton Coastal Engineering dated 1 August 2024, the DA satisfies requirements under clause 2.12 of the SEPP R&amp;H.</p> <p><b>2.12 Development in coastal zone generally—development not to increase risk of coastal hazards</b></p> <p>According to the Estuarine Risk Management Report, the risks from inundation and coastal processes such as wave energy and overtopping will have an acceptably low risk over the duration of the design life (60 years) to both the structure and will not increase coastal hazards on the structure or the surrounding land.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience &amp; Hazards) 2021.</p> <p><b>Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005</b></p> <p>The subject land has been included on the Foreshore and Waterways Area and hence is subject to the objectives and clauses of the DCP 2005</p> <p>On internal assessment, the proposed development has been satisfied in the Statement of Environmental Effects (SEE) report prepared by Architectus Australia Pty Ltd dated 9 August 2024 and the Estuarine Risk Management Report by Horton Coastal Engineering dated 1 August 2024.</p> <p>In particular, clause 6.32 Rocky Foreshore and significant seagrasses (Division 3 Development in Foreshore and Waterways Area) has been considered. The proposed development is limited to</p>

Internal Referral Body	Comments
	<p>interior alterations and will have no impact to the seagrass, marine environment or coastal processes assuming appropriate design and conditions are followed.</p> <p>As such, the DA complies with the objectives of the SEPP.</p> <p><b>Manly LEP 2013 and Manly DCP</b></p> <p>No coastal related issues identified.</p> <p>As such, it is considered that the application does comply with the requirements of the coastal relevant clauses of the Manly LEP 2013 and Manly DCP.</p>
Strategic and Place Planning (Heritage Officer)	<p><b><i>Supported without conditions</i></b></p> <p>The proposal has been referred to Heritage as the subject site is a heritage item with state significance, and in the vicinity of the Manly Town Centre Conservation Area and a number of heritage items with local significance:</p> <ul style="list-style-type: none"> <li>• SHR No 01434 - Manly Wharf</li> <li>• Item I143 - Park/Reserve - East Esplanade</li> <li>• Item I251 - Park - West Esplanade</li> <li>• Item I1 - Harbour foreshores - Manly municipal area boundary adjacent to the Harbour</li> </ul> <p>Details of the items as contained within the heritage inventory are:</p> <p><b>SHR No 01434 - Manly Wharf</b>  <u>Statement of Significance</u>  Of environmental significance as a visually prominent man-made feature. Of historical significance for its associations with the maritime activities at Manly as a tourist destination and suburb of Sydney, dependent on the ferry link to the CBD. (Anglin 1990:2033) Together with Circular Quay, the wharf is the only substantial older style ferry wharf surviving in Port Jackson: association with Manly's history as a recreational centre. (Blackmore, Ashton, Higginbotham, Rich, Burton, Maitland, Pike 1985)</p> <p><u>Physical Description</u>  A broad wharf supported on timber piers and with a concrete platform. The superstructure is constructed of steel and timber. The facade and side walls form an important architectural design, similar to the Circular Quay ferry terminals. (Blackmore, Ashton, Higginbotham, Rich, Burton, Maitland, Pike, 1985).  The original part of the wharf was built in a modernistic transport idiom, with typical stylistic features of era including play of circular and rectangular geometric terms, bayed facade to the water (marine connotations), wide arc plan at entrance, clock tower with "fins", flat roofing marked by wide fascia board. The current entrance was</p>

Internal Referral Body	Comments
	<p>originally designed as a tram terminus and turning area. Timber clad framed structure opening and large internal spaces, concrete deck to west enclosed by "ship" railing. Some original shop fittings, signage etc. Subjected to major alterations to the wharf wings involving a T-shaped clerestorey (Stapleton, 1981).  Additions to the wharf include the hydrofoil pontoon c1968, and the more recent elevated platforms for new ferries. (Blackmore, Ashton, Higginbotham, Rich, Burton, Maitland, Pike 1985)  Extensive refurbishment in 1990. (Anglin 1990:2033)</p> <p><b>Item I143 - Park/Reserve</b>  <u>Statement of Significance</u>  Belongs to similar treatment as West Esplanade as early cultural landscape to emphasise arrival by ferry.  <u>Physical Description</u>  Open space, part beach, sandstone retaining wall and park railing, pavings and split stone edging, raised planting beds, grassed surfaces and cultural planting of Norfolk Island pine and Port Jackson figs. All items substantially intact.</p> <p><b>Item I251 - Park</b>  <u>Statement of Significance</u>  Part of earliest cultural treatment of Manly landscape and provision of designed open space. High visual significance.  <u>Physical Description</u>  Open space, beach, sandstone retaining wall, pavings, grassed surfaces, monument, structures and cultural plantings of Norfolk Island pine, Moreton Bay Figs, Port Jackson figs and Canary Island Palms. Raised planting beds, with split stone edging of Edwardian period characterise the eastern part of the Park. Recent paving detracts from the Edwardian character.</p> <p>Other relevant heritage listings:</p> <ul style="list-style-type: none"> <li>• SEPP (Biodiversity and Conservation) 2021 - Yes</li> <li>• Australian Heritage Register - No</li> <li>• NSW State Heritage Register - Yes</li> <li>• National Trust of Aust (NSW) Register - Yes</li> <li>• RAI Register of 20th Century Buildings of Significance - No</li> <li>• Other - N/A</li> </ul> <p>The proposal seeks consent for change of use of an existing retail tenancy to a pub and micro-brewery with ancillary dining and occasional live performance, including internal alterations, new public amenities to the western portion of the site and the replacement of the existing external half-pipe staircase with new straight staircase and new glazed doors at the southern elevation. The application does not include any external or internal signage.</p> <p>As Manly wharf is a state heritage item, the application is integrated development and was referred to Heritage NSW. In response,</p>

Internal Referral Body	Comments
	<p>Heritage NSW provided general terms of approval for this application.</p> <p>The proposed works are mainly within the Manly Wharf building, and the external works are minor - involving the replacement of a later additions and the proposed external colours and materials are matching the existing. The proposed mechanical plant is located near the existing with similar size. Given the proposed changes are reversible, it is considered that the impact of the proposal on the State heritage building is tolerable and there will be no adverse impact upon the heritage items in the vicinity, nor upon the Manly Town Centre Conservation Area.</p> <p>Therefore, no objections are raised on heritage grounds, subject to all terms of approval (conditions) required by Heritage NSW.</p> <p><u>Consider against the provisions of CL5.10 of MLEP.</u>  Is a Conservation Management Plan (CMP) Required? No  Has a CMP been provided? Manly Wharf already has a CMP  Is a Heritage Impact Statement required? Yes  Has a Heritage Impact Statement been provided? Yes</p>
Strategic and Place Planning (Urban Design)	<p><b><i>Supported without conditions</i></b></p> <p><u>Updated Comments (11 December 2024):</u></p> <p>The applicant has resubmitted amended drawings and additional information to address the Urban Design issues identified in the previous comments:</p> <ol style="list-style-type: none"> <li>1. Footpath width outside Felons entry area - The drawings should be updated to show the existing timber bench to be deleted as per the parallel DA submitted. The minimum clearance will then be about 3800mm (3360+440 bench width) clear when the existing timber bench seating is taken away which is acceptable.</li> <li>2. The proposed treatment with the feature artwork to the north-west corner of the tenancy next to the new public toilets is acceptable.</li> </ol> <p>Urban Design raises no objection to the proposed development.</p> <p><u>Original Comments (3 October 2024):</u></p> <p>This advice is provided as an internal referral from the Urban Design Unit to the Development Assessment Officer for consideration and coordination with the overall assessment. The application seeks consent to refurbish a vacant retail tenancy at Manly Wharf for use as a pub and microbrewery with ancillary dining and occasional live performance.</p>

Internal Referral Body	Comments
	<p>Urban Design may be able to support the proposal if the following issues are addressed:</p> <ol style="list-style-type: none"> <li>1. The proposed new ramp and stairs including handrails outside the proposed entry will make the existing wharf boardwalk promenade width narrower creating pedestrian traffic congestion around that area. The boardwalk is currently heavily used by ferry commuters and pedestrian so it should not be reduced in width in any way.</li> <li>2. Provide more information on how the blank wall (previously Aldi supermarket shopfront) proposed on the north-west corner of the tenancy next to the new public toilets will be treated.</li> </ol> <p>Please note: Regarding any view impacts and any impacts on solar amenity and overshadowing these matters will be dealt with under the evaluation of Council Planning Officer. Any impacts of non-compliances regarding heritage will be dealt with under the evaluation of Council Heritage Officer, and any Landscape non-compliances will be dealt with under the evaluation of Council Landscape Officer.</p> <p><u>Assessing Officer's Comment:</u> It is noted that the Urban Design referral requests the plans to be updated to delete the existing timber bench seating along the edge of the wharf walkway, in accordance with the concurrent development application (DA2024/1375). Given DA2024/1375 has not been approved at the time of writing this report, the notations on the submitted plans depicting proposed deletion of the bench seating is sufficient for the purpose of this assessment.</p>
Traffic Engineer	<p><b><i>Supported, subject to conditions</i></b></p> <p>The traffic team has reviewed the following documents:</p> <ul style="list-style-type: none"> <li>• Plans (Master Set) – designed by ACME, dated 15/04/2024,</li> <li>• Transport Assessment report, Change of Use, Alterations and Additions to an Existing tenancy, Project Number 2435, prepared by JMT Consulting dated 15 May 2024, and</li> <li>• Statement of Environmental Effects (SEE) prepared by Artemus Group, dated 9 August 2024.</li> </ul> <p><u>Parking Requirement:</u></p> <ul style="list-style-type: none"> <li>• It is noted that the proposed alterations and additions will not result in any significant changes to the existing external built form on the site.</li> <li>• The proposed operating hours for the development align with those of the Manly Wharf Hotel. The hours are as follows: Monday to Wednesday and Sunday from 7 AM to midnight,</li> </ul>



Internal Referral Body	Comments
	<p>and Thursday to Saturday from 7 AM to 1 AM. The estimated capacity is up to 700 customers, and it is anticipated that a maximum of 20 staff members will be employed.</p> <ul style="list-style-type: none"> <li>• The Manly Development Control Plan (DCP) applies to the subject site. According to the DCP, pubs are required to provide one parking space for every 4 square meters of licensed floor area, which includes the bar, lounge, bistro, and beer garden areas. In addition, supermarkets must provide one parking space for every 25 square meters of gross floor area. Based on this regulation, the conversion of the Aldi tenancy to a pub and micro-brewery, which is approximately 700 square meters in size, would require an additional 147 parking spaces.</li> <li>• The proposal does not aim to change the existing basement car park, which has 69 parking spaces (including 2 accessible parking spaces) and operates as a paid public facility. The car park is currently overseen by Wilson Parking.</li> <li>• The parking shortfall spaces for the proposal are considered acceptable given that: <ul style="list-style-type: none"> <li>◦ The Manly DCP 2013 (section 3.2.5.1) states that a heritage item may be exempted from providing the required on-site car parking where conservation of the item depends on Council allowing the exemption. Additional car parking cannot be accommodated within Manly Wharf without significantly impacting its heritage fabric. Therefore, this clause of the DCP is pertinent to the development.</li> <li>◦ Section 4.2.5.4 of Manly DCP gives some exceptions to parking rates/ requirements 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. Due to space constraints in the basement, it is not feasible to add any additional parking spaces.</li> <li>◦ some relaxation of DCP requirements in this location could also be considered to reduce traffic levels in the area, given 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. Manly Wharf is located in a walkable town Centre with frequent bus services to other suburbs in the Northern Beaches. Because of this connectivity, the majority of Manly Wharf's customers, visitors and staff arrive via public transport and this pattern is expected to continue for the proposed development.</li> <li>◦ There is no possibility of retrofitting car parking for this center, as it is designed to support a pedestrian-dominant environment in the CBD. The Manly Centre features several pedestrian-friendly areas, providing high-quality public spaces and ensuring easy access</li> </ul> </li> </ul>

Internal Referral Body	Comments
	<p>to key locations such as the ferry wharf and the beach. The main pedestrian routes through the center are along The Corso and Sydney Road, both of which are pedestrianised for much of their length. In 2016, the pedestrianised area of Sydney Road was extended westward to encompass the entire stretch between The Corso and Sydney Road. The footpaths adjacent to the roadways are well-constructed and generally in good condition, with pedestrian crossings available at most key points. Additionally, there is an established network of cycling routes that facilitate access within the center.</p> <ul style="list-style-type: none"> <li>◦ The proposal to convert the supermarket tenancy into a pub and micro-brewery is expected to encourage a shift away from private vehicle travel compared to the previous use of the space. Since the premises will be licensed to serve alcohol and are located in the Manly town Centre, next to a major public transport hub, customers and visitors will likely opt for more sustainable forms of transportation, as well as taxis or Uber services.</li> <li>◦ A car parking assessment has been conducted by the consultant, focusing on the anticipated travel behaviors of staff and visitors to the venue. The majority of customers and visitors to Manly Wharf currently arrive via public transport, and this trend is expected to continue with the proposed upgrade works. The planned use of the venue will primarily attract a walk-in audience and individuals travelling by public transport, taxi, or ride-share services (such as Uber), resulting in a low reliance on private vehicles.</li> <li>◦ According to the traffic report, there have been significant behavioral changes in the use of pubs and clubs. Notably, there has been an increase in random breath testing, improvements in public transport, and the introduction of point-to-point transport services like Uber.</li> <li>◦ There are several public car parking areas located within a 400-meter radius (about a 5-minute walk) of the site, including Manly National, Pacific Waves, Peninsular Carpark, and Whistler Street Carpark. Together, these facilities offer approximately 1,000 parking spaces. These off-street parking areas tend to be busiest during the daytime, especially when retail and commercial activities in the Manly town center peak, as well as during times when visitors travel to Manly Beach.</li> <li>◦ According to the traffic report, the proposed pub and microbrewery will mainly operate as a nighttime venue on weekends, resulting in high parking demand during those evening hours. This demand will occur outside</li> </ul>

Internal Referral Body	Comments
	<p>the peak activity times in the broader town center, which usually allows for more available parking in nearby lots. In contrast, the previous Aldi tenancy generated traffic throughout the day, especially during busy daytime hours when visitor numbers in the Manly town Centre were at their highest.</p> <ul style="list-style-type: none"> <li>◦ It is noted that pick-up and drop-off services are available for private cars, taxis, and ride-share options from the East Esplanade Street frontage, and a dedicated taxi rank is located on Belgrave Street.</li> <li>◦ There are significant bicycle parking stations near Manly Wharf and throughout the Manly town center. The Wharf features bike parking facilities managed by the Council, located on East Esplanade. In total, there are over 100 public bicycle parking spaces nearby, available for use by both staff and visitors.</li> </ul> <p>For the abovementioned reasons, it is considered acceptable that no additional car parking be provided as part of this proposal.</p> <p>Any businesses and/or retail tenants of the subject site are also not eligible for business parking permits. This condition is to be provided on the property Title.</p> <p><u>Servicing:</u></p> <ul style="list-style-type: none"> <li>• According to the Traffic Report, the site servicing arrangements will remain consistent with current operations. It is not expected that the volume of loading and servicing activity will change significantly compared to what was generated by the former Aldi tenancy. The servicing needs for the proposed development are anticipated to be lower than those of the previous supermarket, which frequently received deliveries of fresh produce and other items throughout the day.</li> <li>• The loading dock at Manly Wharf is accessible to service vehicles via the main vehicle entry ramp located at the intersection of East Esplanade and Wentworth Street. This loading dock can accommodate various vehicle sizes, including heavy rigid vehicles (HRVs) up to 12.5 meters in length. All deliveries to the Manly Wharf Hotel and its other tenancies will take place within this loading dock.</li> <li>• The loading dock will continue to operate under a management plan following the introduction of the proposed pub and microbrewery.</li> </ul> <p><u>Traffic Impact:</u></p> <ul style="list-style-type: none"> <li>• The proposal is not expected to increase traffic movements to and from the site. Most visitors will use public transport or</li> </ul>

Internal Referral Body	Comments
	<p>walk, given the excellent access to public transport and the location of the site in the Manly town centre.</p> <ul style="list-style-type: none"> <li>• Since the premises will primarily operate as a nighttime venue, with the highest visitation during weekend evenings, any additional traffic movements are unlikely to coincide with peak hours on the road network, which occur from 8 AM to 9 AM and 5 PM to 6 PM on weekdays. Therefore, the impact on road network performance related to any increased traffic from the proposal would be minimal.</li> <li>• Furthermore, many customers who previously visited the former Aldi supermarket would have driven their cars for weekly shopping trips. In contrast, the proposed pub and microbrewery will primarily attract visitors arriving through sustainable transport options or via taxi or rideshare services like Uber.</li> </ul> <p>As a result, the proposal is not expected to have any adverse impacts on the surrounding road network.</p> <p>Subject to conditions, the application can be supported on traffic grounds.</p>
Waste Officer	<p><b><i>Supported, subject to conditions</i></b></p> <p>The Waste Officer is supportive of the proposed development subject to conditions of consent.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p><b><i>Supported, subject to conditions</i></b></p> <p>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.</p>

External Referral Body	Comments
NSW Police - Crime Prevention Office (Local Command matters)	<p><b><i>Supported, subject to conditions</i></b></p> <p>The proposal was referred to NSW Police who provided a response stating that the proposal is acceptable subject to recommendations with respect to security, crime prevention, and operational management. These recommendations will be included as a condition of consent, relating to:</p> <ul style="list-style-type: none"> <li>• Surveillance and CCTV,</li> <li>• Provision of lighting,</li> <li>• Patron capacity,</li> <li>• Vehicular and pedestrian access control measures,</li> <li>• Crime prevention measures, and</li> <li>• Application and enforcement of the plan of management.</li> </ul>
NSW Police - Licensing (Clubs, Hotels, Pubs)	<p><b><i>Supported, subject to conditions</i></b></p> <p>The proposal was referred to NSW Police who provided a response stating that the proposal is acceptable subject to recommendations with respect to security, crime prevention, and operational management. These recommendations will be included as a condition of consent.</p>
Nominated Integrated Development - Heritage NSW - Heritage Act 1977	<p><b><i>Supported, subject to conditions</i></b></p> <p>The proposed development was referred to Heritage NSW for approval under Section 57(1) of the Heritage Act 1977, given the subject site contains Manly Wharf, being an item listed on the State Heritage Register.</p> <p>Heritage NSW are supportive of the proposed development, subject to specified General Terms of Approval, which are as follows (paraphrased for brevity):</p> <ol style="list-style-type: none"> <li>1. Development must be in accordance with the submitted architectural plans and Statement of Heritage Impact.</li> <li>2. Significant built and landscape elements are to be protected during site preparation and the works from potential damage.</li> <li>3. The Applicant and any nominated heritage consultant may be required to participate in audits of Heritage Council of NSW approvals to conform compliance with conditions of consent, if requested.</li> <li>4. An application under Section 60 of the Heritage Act 1977 must be submitted to, and approved by, Heritage Council of NSW prior to works commencing.</li> </ol> <p>The above matters have been included in full as conditions of consent in the recommendation of this report.</p>

## **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)**

### **Housing and Productivity Contribution**

The Housing and Productivity Contribution does not apply to the proposed development, as the subject site is not mapped as 'Greater Sydney Region' on the Housing and Productivity Contribution Regions Map.

If the site was mapped as 'Greater Sydney Region', no Housing and Productivity Contribution would apply, as the works do not result in additional commercial gross floor area.

## **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 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.

## **SEPP (Biodiversity and Conservation) 2021**

### **Chapter 6 – Water catchments**

The subject property is located within the Sydney Harbour Catchment and Sydney Harbour

Foreshores and Waterways Area therefore the provisions of Chapter 6 Water catchments of *State Environmental Planning Policy (Biodiversity and Conservation) 2021* apply to this development. Accordingly, an assessment under Chapter 6 has been carried out as follows:

## **Part 6.2 Development in regulated catchments - Division 2 Controls on development generally**

### **6.6 Water quality and quantity**

*(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the following—*

- (a) whether the development will have a neutral or beneficial effect on the quality of water entering a waterway,*
- (b) whether the development will have an adverse impact on water flow in a natural waterbody,*
- (c) whether the development will increase the amount of stormwater run-off from a site,*
- (d) whether the development will incorporate on-site stormwater retention, infiltration or reuse,*
- (e) the impact of the development on the level and quality of the water table,*
- (f) the cumulative environmental impact of the development on the regulated catchment,*
- (g) whether the development makes adequate provision to protect the quality and quantity of ground water.*

*(2) Development consent must not be granted to development on land in a regulated catchment unless the consent authority is satisfied the development ensures—*

- (a) the effect on the quality of water entering a natural waterbody will be as close as possible to neutral or beneficial, and*
- (b) the impact on water flow in a natural waterbody will be minimised.*

#### Comment:

The proposal has been reviewed by Council's Coastal Officer, Environmental Health Officer, and Development Engineer who have raised no objection to the works and their impacts to the adjoining waterway (subject to conditions).

### **6.7 Aquatic ecology**

*(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the following—*

- (a) whether the development will have a direct, indirect or cumulative adverse impact on terrestrial, aquatic or migratory animals or vegetation,*
- (b) whether the development involves the clearing of riparian vegetation and, if so, whether the development will require—*
  - (i) a controlled activity approval under the Water Management Act 2000, or*
  - (ii) a permit under the Fisheries Management Act 1994,*
- (c) whether the development will minimise or avoid—*
  - (i) the erosion of land abutting a natural waterbody, or*
  - (ii) the sedimentation of a natural waterbody,*
- (d) whether the development will have an adverse impact on wetlands that are not in the coastal wetlands and littoral rainforests area,*
- (e) whether the development includes adequate safeguards and rehabilitation measures to protect aquatic ecology,*
- (f) if the development site adjoins a natural waterbody—whether additional measures are required to ensure a neutral or beneficial effect on the water quality of the waterbody.*

*(2) Development consent must not be granted to development on land in a regulated catchment unless the consent authority is satisfied of the following:*

- (a) the direct, indirect or cumulative adverse impact on terrestrial, aquatic or migratory animals or*

vegetation will be kept to the minimum necessary for the carrying out of the development,

- (b) the development will not have a direct, indirect or cumulative adverse impact on aquatic reserves,
- (c) if a controlled activity approval under the Water Management Act 2000 or a permit under the Fisheries Management Act 1994 is required in relation to the clearing of riparian vegetation—the approval or permit has been obtained,
- (d) the erosion of land abutting a natural waterbody or the sedimentation of a natural waterbody will be minimised,
- (e) the adverse impact on wetlands that are not in the coastal wetlands and littoral rainforests area will be minimised.

Comment:

The proposal has been reviewed by Council's Coastal Officer, Environmental Health Officer, and Development Engineer who have raised no objection to the works and their impacts to the adjoining waterway (subject to conditions).

## **6.8 Flooding**

(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the likely impact of the development on periodic flooding that benefits wetlands and other riverine ecosystems.

(2) Development consent must not be granted to development on flood liable land in a regulated catchment unless the consent authority is satisfied the development will not—

- (a) if there is a flood, result in a release of pollutants that may have an adverse impact on the water quality of a natural waterbody, or
- (b) have an adverse impact on the natural recession of floodwaters into wetlands and other riverine ecosystems

Comment:

The site is not located within a flood prone area.

## **6.9 Recreation and public access**

(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider—

- (a) the likely impact of the development on recreational land uses in the regulated catchment, and
- (b) whether the development will maintain or improve public access to and around foreshores without adverse impact on natural waterbodies, watercourses, wetlands or riparian vegetation.

(2) Development consent must not be granted to development on land in a regulated catchment unless the consent authority is satisfied of the following—

- (a) the development will maintain or improve public access to and from natural waterbodies for recreational purposes, including fishing, swimming and boating, without adverse impact on natural waterbodies, watercourses, wetlands or riparian vegetation,
- (b) new or existing points of public access between natural waterbodies and the site of the development will be stable and safe,
- (c) if land forming part of the foreshore of a natural waterbody will be made available for public access as a result of the development but is not in public ownership—public access to and use of the land will be safeguarded.

Comment:

The proposed development is wholly located on private land and does not impact upon recreation or public access along the foreshore. The proposed works retain suitable pedestrian access around the



entirety of Manly Wharf.

## **6.10 Total catchment management**

*In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consult with the council of each adjacent or downstream local government area on which the development is likely to have an adverse environmental impact.*

### Comment:

The proposal has been reviewed by Council's Coastal Officer, Environmental Health Officer, and Development Engineer who have raised no objection to the works and their impacts to the surrounding natural environment. Based on the expert advice provided and conditions imposed, the proposed works are not considered to have an adverse environmental impact. As such consultation with adjoining local government areas was not undertaken in this instance.

## **Division 3 Controls on development in specific areas**

### **6.11 Land within 100m of natural waterbody**

*In deciding whether to grant development consent to development on land within 100m of a natural waterbody in a regulated catchment, the consent authority must consider whether—*

- (a) the land uses proposed for land abutting the natural waterbody are water-dependent uses, and*
- (b) conflicts between land uses are minimised.*

### Comment:

The proposed works will meet these requirements.

## **Part 6.3 Foreshores and Waterways Area**

### **Division 1 Preliminary**

#### **6.25 Consent authority**

*(1) The Minister administering the Ports and Maritime Administration Act 1995 is the consent authority for the following development—*

- (a) development comprising the subdivision of land owned by TfNSW in or abutting the Foreshores and Waterways Area,*
- (b) development carried out in the Foreshores and Waterways Area wholly below the mean high water mark,*
- (c) development carried out in the Foreshores and Waterways Area for one or more of the following purposes, including development carried out wholly or partly inside a local government area—*  
*Above-water boat lifts; Advertisements; Advertising structures; Aids to navigation; Aviation facilities; Boat lifts; Charter and tourism boating facilities; Commercial port facilities; Dredging; Floating boat platforms; Flora and fauna enclosures; Houseboats; Maintenance dredging; Mooring pens; Private landing facilities; Private landing steps; Private marinas; Private swimming enclosures; Public boardwalks; Public water transport facilities; Single moorings; Skids; Slipways*

*(2) Despite subsection (1), the Minister administering the Environmental Planning and Assessment Act 1979 is the consent authority for the following development carried out in the Foreshores and Waterways Area—*

- (a) development carried out partly above and partly below the mean high water mark,*
- (b) development carried out below the mean high water mark for the purposes of one or more of the following—*

*Boat building and repair facilities; Boat launching ramps; Boat sheds; Marinas; Reclamation works;*

*Swimming pools; Water-based restaurants and entertainment facilities; Waterfront access stairs; Water recreation structures; Wharf or boating facilities that are sea walls*

*(c) development carried out wholly or partly inside the zoned waterway, including development carried out below the mean high water mark, for the purposes of one or more of the following—*

*Car parks; Commercial premises; Recreational or club facilities; Residential accommodation; Restaurants or cafes; Retail premises; Tourist facilities*

*(3) Subsections (1) and (2) do not apply if another environmental planning instrument specifies a different public authority, other than the council, as the consent authority for the development.*

Comment:

Clause 6.25(2) provides that the Minister for Planning is the consent authority for development in the Foreshores and Waterways Area, per subclauses (a)-(c) inclusive.

Clause 6.25(2)(a) refers to development carried out partly above and partly below the mean high water mark. This subclause is relevant to this application, as the works are partly above and partly below MWHM.

Clause 6.25(2)(b) refers to certain development types carried out below the MWHM. This subclause does not apply to this application, as the proposals do not involve the development types specified.

Clause 6.25(2)(c) of the SEPP refers to certain development types carried out wholly or partly inside the zoned waterway, including development carried out below the mean high water mark. This subclause applies to this application, as it include one of the specified development types, being commercial premises (pub).

On 21 November 2024, the Department of Planning, Housing and Infrastructure delegated the Minister's consent authority functions back to Council for certain development types and Transport for NSW for other development types. The instrument of delegation specifies that:

- The Minister delegates his consent authority functions to Council for everything under Clause 6.25(2)(a) of the SEPP, except some specified land uses, which are instead to go to Transport for NSW for determination, and
- The Minister delegates his consent authority functions to Council for everything under Clauses 6.25(2)(b) and (c) of the SEPP.

Per the first dot-point above, which refers to Clause 6.25(a), being relevant to this application, Council is the consent authority, as the application does not involve any of the development types listed for determination by Transport for NSW.

Per the second dot-point above, which refers to Clause 6.25(c), being relevant to this application, Council is the consent authority.

In this instance, Council as the consent authority refers the application to the Northern Beaches Local Planning Panel for determination, as it is triggered by the following criteria:

- More than 10 objecting submissions,
- Development for the purposes of new licensed premises, involving a hotel (general bar) licence under the Liquor Act 2007, and
- Development involving the demolition of a heritage item.

## Division 2 Zoning of Foreshores and Waterways Area

### 6.26 Zoning of Foreshores and Waterways Area

Comment:

The subject site is within the Zone 2 Environment Protection under the SEPP.

### 6.27 Zone objectives and Land Use Table

*(2) Development not specified in the Table in relation to a zone may be carried out with development consent in the zone if the consent authority is satisfied that the development—*

- (a) is not inconsistent with the objectives for development in the zone, and*
  - (b) is not inconsistent with the provisions of another environmental planning instrument, and*
  - (c) will not otherwise have adverse impacts.*
- (3) The consent authority must consider the objectives for development in a zone when determining a development application in relation to land in the zone.*

Comment:

The proposed development is for a pub and an artisan food and drink industry premises. These land uses are not specified in the Land Use Table for Zone 2 Environment Protection. As such, subclause (2) is addressed as follows:

*(2) Development not specified in the Table in relation to a zone may be carried out with development consent in the zone if the consent authority is satisfied that the development—*

- (a) is not inconsistent with the objectives for development in the zone, and*

Comment:

The objectives of the Zone 2 Environment Protection zone are addressed as follows:

*To protect the natural and cultural values of waters in the zone.*

*To prevent damage to, or the possibility of long term adverse impact on, the natural and cultural values of waters in the zone and adjoining foreshores.*

*To enhance and rehabilitate the natural and cultural values of waters in the zone and adjoining foreshores.*

*To provide for the long term management of the natural and cultural values of waters in the zone and adjoining foreshores.*

Comment:

The proposed works, being wholly upon and within existing built form, will protect the existing natural and cultural value of the water surrounding the subject site. The proposed development is also acceptable from a heritage perspective, given its retention and protection of the State heritage listed Manly Wharf structure. The proposed development is supported by a Plan of Management (which is to be adhered to per the recommended conditions of consent). The Plan of Management ensures appropriate operation of the site in consideration of the special values of the site. The proposed development is demonstrably low impact.

- (b) is not inconsistent with the provisions of another environmental planning instrument, and*

Comment:

The proposed development is consistent with all provisions of applicable environmental planning instruments.

- (c) will not otherwise have adverse impacts.*

Comment:

The proposed development is designed and sited so as not to result in adverse impacts. The

proposed development (related to licensed premises) has been considered with respect to traffic impacts, noise, and community safety, and is acceptable as demonstrated throughout this report.

*(3) The consent authority must consider the objectives for development in a zone when determining a development application in relation to land in the zone.*

Comment:

The objectives of the Zone 2 Environment Protection zone are addressed above at (2).

### **Division 3 Development in Foreshores and Waterways Area**

#### **6.28 General**

*(1) In deciding whether to grant development consent to development in the Foreshores and Waterways Area, the consent authority must consider the following—*

*(a) whether the development is consistent with the following principles—*

*(i) Sydney Harbour is a public resource, owned by the public, to be protected for the public good,*

*(ii) the public good has precedence over the private good,*

*(iii) the protection of the natural assets of Sydney Harbour has precedence over all other interests,*

*(b) whether the development will promote the equitable use of the Foreshores and Waterways Area, including use by passive recreation craft,*

*(c) whether the development will have an adverse impact on the Foreshores and Waterways Area, including on commercial and recreational uses of the Foreshores and Waterways Area,*

*(d) whether the development promotes water-dependent land uses over other land uses,*

*(e) whether the development will minimise risk to the development from rising sea levels or changing flood patterns as a result of climate change,*

*(f) whether the development will protect or reinstate natural intertidal foreshore areas, natural landforms and native vegetation,*

*(g) whether the development protects or enhances terrestrial and aquatic species, populations and ecological communities, including by avoiding physical damage to or shading of aquatic vegetation,*

*(h) whether the development will protect, maintain or rehabilitate watercourses, wetlands, riparian lands, remnant vegetation and ecological connectivity.*

*(2) Development consent must not be granted to development in the Foreshores and Waterways Area unless the consent authority is satisfied of the following—*

*(a) having regard to both current and future demand, the character and functions of a working harbour will be retained on foreshore sites,*

*(b) if the development site adjoins land used for industrial or commercial maritime purposes—the development will be compatible with the use of the adjoining land,*

*(c) if the development is for or in relation to industrial or commercial maritime purposes—public access that does not interfere with the purposes will be provided and maintained to and along the foreshore,*

*(d) if the development site is on the foreshore—excessive traffic congestion will be minimised in the zoned waterway and along the foreshore,*

*(e) the unique visual qualities of the Foreshores and Waterways Area and its islands, foreshores and tributaries will be enhanced, protected or maintained, including views and vistas to and from—*

*(i) the Foreshores and Waterways Area, and*

*(ii) public places, landmarks and heritage items.*

Comment:

With respect to clause (1), the proposed development is wholly on private land, so is acceptable with respect to the matters above at (a) to (h) inclusive.

With respect to clause (2), the proposed development is wholly on private land, does not impact the

working harbour, does not unreasonably impact upon traffic congestion, and is acceptable with respect to the visual quality of the foreshore. With respect to (b) and (c), the subject site includes Manly Wharf, which is used for commercial maritime purposes. The proposed development retains suitable pedestrian access around the entirety of Manly Wharf. As such, the development is satisfactory with respect to the matters above at (a) to (e) inclusive.

### **6.32 Rocky foreshores and significant seagrasses**

*(3) Development consent must not be granted to development on land to which this section applies unless the consent authority is satisfied the development—*

- (a) will preserve and enhance the health and integrity of seagrasses, areas containing seagrasses and ecological communities in rocky foreshore areas, and*
- (b) will maintain or increase the connectivity of seagrass vegetation and natural landforms, and*
- (c) will prevent, or will not contribute to, the fragmentation of aquatic ecology, and*
- (d) will not cause physical damage to aquatic ecology.*

#### Comment:

The proposal has been reviewed by Council's Coastal Officer who raised no objection to the works. The works are satisfactory with respect to the matters above at (a)-(d).

## **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 proposed development is supported by architectural plans that demonstrate the proposed development is of acceptably low risk in relation to the above matters. As such, the proposed

development is not anticipated to result in adverse impact.

- 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 subsection (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:

The development is designed, sited and will be managed to avoid an adverse impact, in accordance with the above at (1).

## **Division 4 Coastal use area**

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

- 1) *Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:*
- a) *has considered whether the proposed development is likely to cause an adverse impact on the following:*
    - i) *existing, safe access to and along the foreshore, beach, headland or rock*
    - ii) *platform for members of the public, including persons with a disability,*
    - iii) *overshadowing, wind funnelling and the loss of views from public places to*
    - iv) *foreshores,*
    - v) *the visual amenity and scenic qualities of the coast, including coastal headlands,*  
*Aboriginal cultural heritage, practices and places,*  
*cultural and built environment heritage, and*
  - b) *is satisfied that:*
    - i) *the development is designed, sited and will be managed to avoid an*
    - ii) *adverse impact referred to in paragraph (a), or*
    - iii) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*  
*if that impact cannot be minimised—the development will be managed to mitigate that impact, and*
  - c) *has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*

Comment:

The proposed development is supported by architectural plans that demonstrate the proposed development is of acceptably low risk in relation to the matters above at (a). As such, the proposed development is designed, sited and will be managed so as not to result in adverse impact with respect to those matters. The proposed development has been reviewed by Council's Coast & Catchments team, who are supportive of the application, subject to conditions of consent. The proposal has been considered in relation to the coastal and built environment, bulk and scale throughout the assessment, as demonstrated within this report.

## **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:

Given the above, the proposed development is designed such that it will not result in increased risk of coastal hazards on the subject site or surrounding land.

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

**Chapter 4 – Remediation of Land**

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

**Manly Local Environmental Plan 2013**

Is the development permissible?	No
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

The subject site is located outside of the area to which the Manly Local Environmental Plan 2013 (MLEP 2013) applies. As such, there are no principal development standards applying to the site under Part 4 of the MLEP 2013.

Compliance Assessment

Clause	Compliance with Requirements
5.7 Development below mean high water mark	Yes
5.10 Heritage conservation	Yes
6.12 Essential services	Yes
6.21 Noise impacts—licensed premises	Yes

Detailed Assessment

**Zone E1 Local Centre**

The subject site is within Zone 2 Environment Protection under the *State Environmental Planning Policy (Biodiversity and Conservation) 2021*. The site adjoins land zoned RE1 Public Recreation under the *Manly Local Environmental Plan 2013*, though more accurately serves as an extension of the land

zoned E1 Local Centre further to the north of the subject site. The proposed *artisan food and drink industry* premises would not be permissible if the site were zoned E1. Notwithstanding this, with respect to the proposed development, the objectives of the E1 zone are addressed as follows:

*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 application proposes a pub and artisan food and drink industry premises, which serve the needs of people who live in, work in and visit the area.

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

Comment:

The application proposes a pub and artisan food and drink industry premises, which generate employment opportunities and economic growth.

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

Comment:

The application proposes a pub and artisan food and drink industry premises, which are not residential land uses, but contribute to the vibrancy and activity of the locality.

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

Comment:

The application proposes a pub and artisan food and drink industry premises at the ground floor, being commercial and non-residential land uses.

*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 subject site adjoins land in the RE1 Public Recreation zone. The proposed pub and artisan food and drink industry premises are consistent with land uses anticipated surrounding the land zoned RE1, thereby maintaining the existing amenity of those who live in the area.

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

Comment:

The proposed development is designed in order to provide a suitable balance between provision of diverse and active street frontages and retention of the existing heritage value of the building. The resultant development serves as a contribution to the existing vibrant, diverse and functional streets and public spaces.

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

Comment:

The proposed development retains the existing form of the building, with the proposed works being wholly within the existing wharf building. The resultant development is complementary to and consistent with the scale architectural treatment of the existing building and its surrounds, including its relationship to East and West Esplanades, The Corso, and the foreshore.

## **6.12 Essential services**



Under this clause, development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:

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

Comment:

The subject site is supplied with the above essential services. The proposed development retains and relies upon these services.

### **6.21 Noise impacts—licensed premises**

This clause requires that, before granting development consent for development involving the use of land as licensed premises under the Liquor Act 2007, the consent authority must consider the impact of any noise nuisance likely to be generated by the proposed development on residential accommodation in the vicinity of the proposed development.

Comment:

The proposed development involves change of use from a retail premises to a pub and an artisan food and drink industry premises. As such, there is a change in anticipated operation and noise generation per this development. Given this, the proposed development has been reviewed by Council's Environmental Health Officer with respect to noise generation. This expert is supportive of the proposed development, subject to conditions of consent, which have been included in the recommendation of this report. The conditions include adherence to the recommendations made within the supporting acoustic assessment and plan of management, which include acoustic attenuation measures to the developed areas.

### **Manly Development Control Plan**

Built Form Controls

The subject site is located outside of the area to which the Manly Development Control Plan 2013 (MDCP 2013) applies. As such, there are no built form controls applying to the site under the MDCP 2013.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.2 Heritage Considerations	Yes	Yes
4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor	No	Yes
4.2.5.6 Late Night Venues	Yes	Yes

Detailed Assessment

### **3.2 Heritage Considerations**

The proposed development has been reviewed with respect to heritage value and significance by Council's Heritage Advisor, as well as Heritage NSW. These experts are satisfied with the proposed development, subject to conditions of consent, which have been included in the recommendation of this report.

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

The proposed development does not result in any change in calculable gross floor area, though proposes new land uses. Given the proposed development is located outside of the area subject of the Manly Local Environmental Plan 2013, and the Manly Development Control Plan 2013, the parking rates required for the site do not strictly apply. Notwithstanding this, an assessment of what would apply if the MLEP 2013 and MDCP 2013 did apply is provided to detail the acceptability of the proposed development.

Until recently, the subject tenancy has operated as a supermarket, which would require 1 parking space per 25m<sup>2</sup> (totalling 61 spaces) per Schedule 3 Parking Rates and Requirements of the MDCP 2013. The proposed development, being for a *pub* and an *artisan food and drink industry* premises, would require 1 space per 4m<sup>2</sup> of gross licensed area for the pub, and 1 space per 50m<sup>2</sup> of gross floor area for the artisan food and drink industry premises per Schedule 3 (totalling 175 spaces). As such, the proposed development results in additional parking requirements, but does not provide any. The objectives of the control are addressed as follows:

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

Comment:

The proposed development results in an increase to parking requirements when compared to the most recent development on the site, being a supermarket. The subject tenancy is located above a basement car park, though the car park does not contain any spaces specifically allocated to the supermarket.

The application is supported by a transport and parking assessment, which has been reviewed by Council's Traffic Engineer. The detailed comments from Council's Traffic Engineer are provided in the Referrals section of this report. In short, the proposed development is not expected to generate substantial additional car movements, given the type of use (where patrons typically don't drive due to alcohol consumption), and the venue's the location in close proximity to public transport, ride-share services, and other places of interest (that is, patrons typically visit various venues in the area).

Further, the venue is sufficiently supported by the existing basement car park. The provision of additional parking (in the basement or otherwise) would unreasonably impact upon the State heritage significance of the site, which is a reasonable exemption from parking requirements per Clause 3.2.5.1 of the Manly Development Control Plan 2013.

Council's Traffic Engineer is supportive of the proposed development without additional parking, subject to conditions of consent, which have been included in the recommendation of this report.

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

Comment:

As no vehicular parking is proposed in this instance (as acceptable on merit), the proposed development will not result in any conflict between pedestrian and vehicular movement in the locality.

#### 4.2.5.6 Late Night Venues

Given the proposed development is located outside of the area subject of the Manly Local Environmental Plan 2013, and the Manly Development Control Plan 2013, the requirements of this control do not strictly apply. Notwithstanding this, an assessment of what would apply if the MLEP 2013 and MDCP 2013 did apply is provided to detail the acceptability of the proposed development.

The objectives of the control are addressed as follows:

*Objective 1) To achieve for Manly's entertainment precinct as a place of excellence in which all people can use and enjoy Manly's highly valued natural amenity qualities as a place:*

- *for leisure and entertainment;*
- *in which late night venues can safely entertain and provide for the enjoyment of social and recreational pursuits;*
- *without disturbing the peace of the community in terms of safety and security.*

Comment:

The proposed development seeks consent for use of the premises as a pub and an artisan food and drink industry premises. The proposed development provides for the use of the site for safe purposes, without disturbing the peace, as demonstrated through the submitted plan of management. The operation of the premises in accordance with the plan of management is ensured by way of recommended condition of consent.

*Objective 2) To regulate the activities and design of late night venues to minimize late night disturbances to the public and promote Manly as a safe place for all the community late at night such that:*

- *frontages to public spaces must be designed to minimize conflict between customers within the establishments and public using the public spaces;*
- *the applicant demonstrate (see lodgement requirements at Council's Administrative Guidelines) that the premises will not detract from the safety and security of the Entertainment Precinct and as a place which is acceptable for families; and*
- *obligations of any current Accord are addressed in minimizing anti-social behaviour and adverse effects of excessive alcohol consumption.*
- Comment:

The proposed development is supported by a plan of management, detailing the management of the site, including in relation to disturbances, conflicts, safety and security, and customer behaviour. The operation of the premises in accordance with the plan of management is ensured by way of recommended condition of consent. The proposed development has been reviewed by the NSW Police, who are supportive of the development, subject to conditions of consent.

The requirements of the control are addressed as follows:

*Intensity of Development*

*a) In order to provide diversity, it is proposed to limit the number of patrons which attend late-night licensed venues within the Entertainment Precinct. Within the Entertainment Precinct the total number of patrons capable of being accommodated within Late Night Venues must not exceed 8000 persons. Exceptions to this will only be granted where Council is satisfied that the existing levels of adverse impact will not be added to nor detract from opportunities to provide a diverse range of alternative*

*entertainment activities.*

Comment:

The proposed development involves a new licensed venue. The proposed new premises are limited to 700 patrons at any one time, per a recommended condition of consent, in accordance with the requirement above.

*Hours of Operating (maximum)*

*b) The maximum hours for hotels, nightclubs, restaurants & food outlets are as follows:*

*i) Hotels & Nightclubs: from 5am up to 2am (next day) and with a restricted entry policy for Nightclubs after 12.30am; and*

*ii) Restaurants & Food Outlets: from 5am up to 1am (next day).*

Comment:

The proposed development includes hours of operation consistent with the above, as follows:

- Mon-Wed and Sun: 7am to midnight
- Thurs-Sat: 7am to 1am

*Noise Control*

*c) Requirement of this plan in relation to licenced premises at paragraph 3.4.2.4 d - g apply to licensed Late Night Venues under this paragraph.*

Comment:

The proposed development introduces a new hotel (general bar) liquor licence - see responses per (d) to (g) below.

*Security*

*d) Proprietors of Late Night Venues must enter into arrangements with Council for the provision of late night security of the premises and the adjacent public areas.*

Comment:

The proposed development is supported by a plan of management, detailing suitable security measures for the use. The operation of the premises in accordance with the plan of management is ensured by way of recommended condition of consent.

*Access to Public spaces*

*e) Frontages to public spaces must be designed to minimise conflict between customers within the establishments and public using the public spaces.*

Comment:

Public access to the site is via a relocated internal entrance within the existing wharf building, and via a new entrance from the wharf boardwalk to the south. The entrances are clear and will not result in conflict between use of the building, and use of the public domain.

*Decks, Balconies & Roof Top Area*

*f) Balconies, verandahs, any roof top areas and any external access thereto must be closed to patrons between the hours of 10pm to 8am daily.*

Comment:

Not applicable. The proposed development does not include balconies, decks, verandahs, or roof top areas.

*Liquor Accord*

*g) Proprietors of the licensed premises must be a financial member of any applicable Liquor Accord and conform to the obligations of that Accord in minimizing anti-social behaviour and adverse effects of excessive alcohol consumption.*

Comment:

The proposed development introduces a new hotel (general bar) liquor licence, and will be subject to a Liquor Accord. Management of antisocial behaviour and adverse effects of alcohol consumption is detailed in the supporting plan of management. The operation of the premises in accordance with the plan of management is ensured by way of recommended condition of consent.

#### *Design*

*h) Applications must demonstrate how the design and operation of licensed venues take into account best practice outlined in the document titled "Alcohol & Licensed Premises: Best Practice in Policing" S Doherty and A Roche 2003.*

#### Comment:

The proposed development is designed and will be managed in accordance with best practice for licensed venues, as detailed in the supporting plan of management.

### **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.

### **ANCILLARY LAND USE - MARKETS**

The proposed development includes occasional markets, internal to the premises. The markets are ancillary to the principal uses of pub and artisan food and drink industry premises.

Per the Department of Planning's Practice Note relating to definition of land uses (PN 11-003) and Planning Circular on characterisation of development (PS 21-008), a use is ancillary to another use if it is incidental or subservient. If a use is ancillary, then it is to be characterised as being for the dominant purpose. Ancillary uses do not need to be separately included in the Land Use Table.

In this instance, the markets are proposed to be run on four occasions per year (each on Saturday) during daytime hours. As such, the markets are *incidental* and *subservient* to the principal land uses. The markets support the dominant land uses by being located within the same space, bringing additional patrons to the venue, which is in part for for entertainment purposes.

Conditions of consent have been included in the recommendation of this report to ensure the markets operate in accordance with the consent, and remain ancillary. The markets are also subject to the supporting plan of management, so as to ensure their orderly operation.

### **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

## **PLANNING CONCLUSION**

This development application seeks consent for alterations and additions to an existing tenancy (the former location of the ALDI supermarket) within Manly Wharf, for the purpose of a pub and an artisan food and drink industry premises, with ancillary markets.

The application was referred to the Northern Beaches Local Planning Panel (NBLPP) due to the number of submissions, the proposed new licensed premises (hotel/pub), and the proposed demolition works to the State heritage item (Manly Wharf).

Concerns raised in the submissions objecting to the proposed development predominantly related to the potential for increased antisocial or unsafe behaviour and crime, noise impacts, traffic and parking impacts, provision of public toilets, and use of the wharf.

This assessment report gave due consideration to the proposed development in relation to the applicable planning controls, and to the potential amenity impacts of the site, including in relation to noise and traffic/parking. The proposed *pub* and *artisan food and drink industry* land uses are not likely to result in unreasonable impacts, given that:

- NSW Police reviewed the proposed development and are satisfied with respect to licensing and safety, subject to conditions of consent (which are included in the recommendation of this report).
- The proposed development retains public toilet facilities, and improves safety and access to those facilities.
- The proposed development will not result in unreasonable noise generation, subject to conditions of consent (which are included in the recommendation of this report).
- The proposed development is acceptable with respect to parking, given the proximity of the site to public transport.

Overall, the development performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment.

The proposal has therefore been recommended for approval.

## **REASON FOR DETERMINATION**

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 DA2024/1249 for Alterations and additions including internal fit-out for use of premises as a pub and artisan food and drink industry on land at Lot 1 DP 1170245, 0 East Esplanade, 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. Acoustic Review

Within 30 days from the operations commencing under the terms of this consent, an acoustic review of the findings and recommendations of Pulse White Noise Acoustic contained within the acoustic report titled "Manly Wharf – Change of Use, Alterations and Additions to Existing Tenancy DA Acoustic Assessment" Revision:R2, Project Number 240180, dated 4 August 2024 and any additional requirements at OC acoustic review stage; shall be carried out on site (during a busy period of trading) and any necessary action to obtain acoustic compliance, shall be completed within a further 30 days of the assessment. The report associated with the compliance testing is to be furnished to Council for its records.

Reason: To ensure acoustic compliance in an operational situation.

2. Approved Plans and Supporting Documentation

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
A.01.02	D	Location Plan: Ground Floor	ACME	29 July 2024
A.01.02A	B	Location Plan: Basement	ACME	29 July 2024
A.01.02B	B	Location Plan: First Plan	ACME	29 July 2024
A.01.04	J	Demolition Plan: Ground Floor	ACME	29 July 2024
A.01.04A	C	Demolition Plan: Basement	ACME	29 July 2024
A.01.04B	B	Demolition: First Floor	ACME	29 July 2024
A.01.05	3	Demolition + Proposed Plan - Ground	Little Boat Projects	3 December 2024



A.01.06	2	Demolition + Proposed External Elevation	Little Boat Projects	5 July 2024
A.02.00A	D	Proposed Plan: Ground Floor Fire Compartment Plan	ACME	29 July 2024
A.02.01	J	Proposed Plan: Ground Floor	ACME	29 July 2024
A.02.01A	C	Proposed Plan: Basement	ACME	29 July 2024
A.02.01B	C	Proposed Plan: First Floor	ACME	29 July 2024
A.05.01	C	Proposed Elevations	ACME	29 July 2024
A.05.02	C	Proposed Elevations	ACME	29 July 2024
A.18.01	B	Proposed External Finishes	ACME	29 July 2024
A.18.02	B	Proposed Internal Finishes	ACME	29 July 2024
SK.002	2	Felons Entry	Little Boat Projects	13 December 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Access Review - Final	-	MGAC	2 August 2024
Acoustic Assessment	2	PWNA	4 August 2024
BCA Assessment Report	1	BM+G	5 August 2024
Estuarine Risk Management Report	-	Horton Coastal Engineering	1 August 2024
Fire Safety Strategy	-	Core Engineering Group	5 August 2024
Plan of Management	D	9 August 2024	Architectus
Section J Assessment Report	1	Integrated Group Services	16 May 2024
Social Impact Assessment	C	Civic Assessments	5 August 2024
Statement of Heritage Impact	02	City Plan	7 August 2024
Transport Assessment	-	JMT Consulting	31 July 2024
Waste Management Plan	0.1	MRA Consulting Group	19 July 2024

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

approved plans prevail.

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

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

3. **Compliance with Other Department, Authority or Service Requirements**

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Referral - Ausgrid	22 October 2024
Heritage NSW	Referral - Heritage NSW General Terms of Approval	15 January 2025
NSW Police	Referral - NSW Police	30 October 2024
Transport for NSW	Referral - Transport for NSW	16 October 2024

(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.

4. **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 definitions of *pub* and *artisan food and drink industry*, in accordance with the Dictionary of the Manly Local Environmental Plan 2013, as follows:

***Pub*** means licensed premises under the Liquor Act 2007 the principal purpose of which is the retail sale of liquor for consumption on the premises, whether or not the premises include hotel or motel accommodation and whether or not food is sold or entertainment is provided on the premises.

***Artisan food and drink industry*** means a building or place the principal purpose of which is the making or manufacture of boutique, artisan or craft food or drink products only. It must also include at least one of the following—

- (a) a retail area for the sale of the products,
- (b) the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, take away meals and drinks or entertainment are also provided,
- (c) facilities for holding tastings, tours or workshops.

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

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

5. **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.

## 6. 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) Construction certificate plans are to be in accordance with all finished levels identified on approved plans. Notes attached to plans indicating tolerances to levels are not approved.
- (c) 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.
- (d) At all times after the submission of 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.
- (e) 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.
- (f) 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.
- (g) Prior to the release of the Construction Certificate, payment of the following is required:
  - i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
  - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that

applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.

- iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.
- (h) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (i) 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.
- (j) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (k) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (l) 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.
- (m) 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.
- (n) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (o) Should any construction cranes be utilised on site, they are to be fitted with bird deterrents along the counterweight to discourage raptor (bird) nesting activity. Deterrents are to remain in place until cranes are dismantled. Selection of deterrent methods is to be undertaken in accordance with the recommendations of a suitably qualified ecologist.
- (p) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

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

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

## **FEES / CHARGES / CONTRIBUTIONS**

### **7. 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.

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

### **8. National Construction Code (BCA) upgrade requirements and Fire Safety upgrade**

The National Construction Code works and fire upgrading measures to upgrade the building as detailed and recommended in the National Construction Code (NCC) Report prepared by Michael Potts, dated 05/08/2024, Report Ref No. S240072 are to be considered as part of the assessment of the Construction Certificate.

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

Reason: To ensure adequate provision is made for Health, Amenity, Access & Fire Safety for building occupant health & safety.

### **9. National Construction Code (BCA) Access**

Access and facilities to and within the building are to be provided for Persons with a Disability and are to comply with the National Construction Code - BCA and AS 1428.1.

Details are to be provided to the Certifier 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.

### **10. Construction Traffic Management Plan**

A Construction Traffic Management Plan (CTMP) and report shall be prepared by a Transport for NSW accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to issue of any Construction Certificate.

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.
- Where access is required across private property not in the direct ownership of the proponent, such as a private road/driveway, community title road or right of way, the CTMP is to include:
  - Evidence of the legal right and terms to use the access route or provide owners consent from the owners/strata/community association.
  - Demonstrate that direct access from a public space/road is not viable for each stage of works.
  - An assessment to be carried out of the physical constraints of the Right of Carriageway to determine the maximum size of vehicle that may access the site via the Right of Carriageway during construction.

- Unless owner/strata/community associations consent is obtained, vehicles are not to exceed 24 tonnes or 7.5 metres in length (an assessment must be undertaken that the surface is capable of supporting up to 24 tonnes, otherwise the weight limit should be reduced in the CTMP). If consent is obtained, a copy must be included in the CTMP.
- No construction vehicles, materials or plant are to be located or parked in the private road/driveway, community title road or right of way.
- How any disruption to other users of the private road/driveway, community title road or right of way will be minimised and all users kept informed of likely disruption where the access will be closed or blocked for any given time.
- If trees are located within or overhang the access route, a tree protection plan prepared by an Arborist with minimum AQF Level 5 in arboriculture demonstrating how any trees within the Right of Carriageway will be protected from damage by construction vehicles. Should any tree protection measures be required on private land in accordance with AS4970-2009 Protection of trees on development sites, owner's consent must be obtained.
- A Dilapidation report, including photographic surveys, of the private road/driveway/right of way must be included prior to any works commencing on the site. The report must detail the physical condition of the private road/driveway/right of way, and any other adjacent private property assets (including trees) or adjacent public property that may be adversely affected by vehicles servicing the development site to undertake works or activity during site works.
- A requirement for Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, to be submitted after the completion of works and prior to the Occupation certificate. The report must:
  - Compare the post-construction report with the pre-construction report,
  - Clearly identify any recent damage or change to the private road/driveway/right of way and whether or not it is likely to be the result of the development works,
  - Should any damage have occurred, identify remediation actions taken.
  - Be submitted to Council with the Occupation Certificate.
- 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 any 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 public 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.

A copy of the approved CTMP must be kept on-site at all times while work is being carried out.

The development is to be undertaken in accordance with the Construction Traffic Management Plan approved by Northern Beaches Council Traffic Team.

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

#### 11. **Amendments to the Approved Plans**

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

- Plan A.02.01 Proposed Plan: Ground Floor, Revision J, dated 29 July 2024, prepared by ACME is to be amended to depict the public toilet configuration of Plan A.01.05 Proposed Ground Level Plan, Issue 3, dated 3 December 2024, prepared by Little Boat Projects.

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

Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development.

#### 12. **Mechanical Plant and Equipment**

Details of mechanical plant and equipment have not yet been finalised.

When this equipment has been selected, prior to the issuing of a construction certificate, an acoustic assessment by a suitably qualified acoustic consultant is required to be undertaken to determine what acoustic treatment required to comply with noise emission criteria as required by the acoustic report titled "Manly Wharf – Change of Use, Alterations and Additions to

Existing Tenancy DA Acoustic Assessment" Revision:R2, Project Number 240180, dated 4 August 2024.

Reason: To mitigate noise impact on surrounding receivers

13. **Plans of Kitchen Design, Construction and Fit Out**

Prior to any Construction Certificate (CC) being issued, detailed plans that demonstrate compliance with Standard 3.2.3 of the Australian and New Zealand Food Standards Code, the Food Act 2003 and Australian Standard AS 4674 'Design, construction and fit out of food premises', must be submitted to and approved by the Certifier. These plans are to be prepared by a suitably qualified person.

The plans must detail adequate provision for storage including separate storage of food, equipment, chemicals and personal belongings.

Reason: To ensure that the food premises complies with the design construction and fit-out requirements.

14. **Construction Noise and Vibration Management Plan**

Prior to the issue of a Construction Certificate, a detailed Construction Noise and Vibration Management Plan (CNVMP) is to be prepared in accordance with the recommendations of section 7 of the acoustic report titled "Manly Wharf – Change of Use, Alterations and Additions to Existing Tenancy DA Acoustic Assessment" Revision:R2, Project Number 240180, dated 4 August 2024.

The Construction Noise and Vibration Management Plan is to be implemented and complied with during the course of demolition and construction.

Reason: To ensure noise and vibration is managed through the demolition and construction phases to reduce amenity impacts..

15. **Acoustic Design Recommendations**

Prior to the issuing of any Construction Certificate, documentation is to be submitted to the satisfaction of the Certifier that design recommendations within the acoustic report titled "Manly Wharf – Change of Use, Alterations and Additions to Existing Tenancy DA Acoustic Assessment" Revision:R2, Project Number 240180, dated 4 August 2024 have been implemented / incorporated into the design of the premises.

Reason: To prevent noise nuisance by using mitigation measures in design.

16. **Estuarine Hazard Design Requirements**

All development or activities must be designed and constructed such that they will not increase the level of risk from estuarine processes for any people, assets or infrastructure in surrounding properties; they will not adversely affect estuarine processes; they will not be adversely affected by estuarine processes.

To ensure Council's recommended flood evacuation strategy of 'shelter-in-place', it will need to be demonstrated that there is safe pedestrian access to a 'safe haven' above the Estuarine Planning Level.

Reason: To minimise risks associated with coastal hazards for development in an estuarine environment.

**17. Estuarine Planning Level Requirements**

An Estuarine Planning Level (EPL) of 3.26 m AHD has been adopted by Council for the subject site and shall be applied to all development proposed below this level as follows:

1. All structural elements below 3.26 m AHD shall be of flood compatible materials;
2. All electrical equipment, wiring, fuel lines or any other service pipes and connections must be located either above 3.26m m AHD or waterproofed to this level; and
3. The storage of toxic or potentially polluting goods, chemicals or materials, which may be hazardous or pollute the waterway, is not permitted below 3.26 m AHD.
4. All interior power supplies (including electrical fittings, outlets and switches) must be located at or above 3.26 m AHD. All exterior power supplies (including electrical fittings, outlets and switches) shall be located at or above 3.26 m AHD to avoid the likelihood of contact with splashing waves and spray.

Reason: To ensure vulnerable components of the development are built at the appropriate level.

**18. Compliance with Estuarine Risk Management Report**

The development is to comply with all recommendations of the approved Estuarine Risk Management Report prepared by Horton Coastal Engineering dated 1 August 2024 and these recommendations are to be incorporated into construction plans and specifications and maintained over the life of the development.

Reason: To minimise potential hazards associated with development in an estuarine habitat.

**19. 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.

**20. Waste and Recycling Requirements**

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

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**

**21. 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 and a Roads and Maritime Services Work Zone Permit shall be obtained for State Roads.

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

**22. Road Occupancy Licence (ROL) from Roads and Maritime Services**

The developer shall apply for a Road Occupancy Licence (ROL) from the TfNSW Transport Management Centre (TMC) prior to commencing work within the classified road reserve or within 100m of traffic signals. The application will require a Traffic Management Plan (TMP) to be prepared by a person who is certified with 'Prepare a Work Zone Traffic Management' accreditation or equivalent. Should the TMP require a reduction of the speed limit, a Direction to Restrict will also be required from the TMC.

Reason: To inform the relevant Roads Authority of proposed disruption to traffic flows.

**23. Road Occupancy Licence**

Prior to commencement of the associated works, the applicant shall obtain a Road Occupancy License from Transport Management Centre for any works that may impact on traffic flows.

Reason: Requirement of TMC for any works that impact on traffic flow.

**24. 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.
- Specify that, due to the proximity of the site adjacent to ##### School, no heavy vehicle movements or construction activities effecting vehicle and pedestrian traffic are permitted in school zone hours (8:00am-9:30am and 2:30pm-4:00pm weekdays).
- Include a Traffic Control Plan prepared by an TfNSW 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.

**25. 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 works commencing.

Reason: To meet legislative requirements.

## **DURING BUILDING WORK**

**26. 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 TfNSW 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.

**27. Traffic Management**

Traffic management procedures and systems must be in place and practised during the course of the project to ensure safety and minimise the effect on adjoining pedestrian and vehicular traffic systems. These procedures and systems must be in accordance with AS 1742.3 2009 Manual of Uniform Traffic Control Devices and Council’s Development Control Plans.

Note: A plan of traffic management is to be submitted to and approved by the Principal Certifier.

Reason: To ensure pedestrian safety and continued efficient network operation.

28. **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 TfNSW 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.

29. **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.

30. **Site Protection**

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

Reason: To ensure significant fabric including vegetation is protected during construction.

31. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all perimeter walls columns and or other structural elements, floor levels and the finished roof/ridge height are in accordance with the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier when the external structure of the building is complete.

Reason: To demonstrate the proposal complies with the approved plans.

32. **Stockpiling Materials**

During construction, all material associated with works is to be contained at source, covered and must be within the construction area. All material is to be removed off site and disposed of according to local regulations. The property is to be kept clean and any building debris removed as frequently as required to ensure no debris enters receiving waters.

Reason: To ensure pollution control measures are effective to protect the aquatic habitats within receiving waters throughout the construction period.

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

During demolition and/or construction the proposal/works shall be generally consistent with the submitted Waste Management Plan prepared by MRA Consulting Group dated 19/7/2024.

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

34. **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

35. **Registration of Food Business**

The food business must be registered with the appropriate regulatory authority, prior to the Occupation Certificate being issued.

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

36. **Mechanical Ventilation Certification**

Prior to the issuing of an 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 Certifier.

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

37. **Kitchen Design, Construction and Fit Out of Food Premises Certification**

Prior to the issuing of any occupation certificate, certification is to be provided to the Principal Certifier by a suitably qualified person demonstrating 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.

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

38. **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 Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure waste and recycling facilities are provided.

39. **Waste/Recycling Compliance Documentation**

Evidence of disposal for recycling from the construction/demolition works shall be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure waste is minimised and recycled.

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

40. **Acoustic Requirements - On-going**

Compliance with the recommendations within the acoustic report titled "Manly Wharf – Change of Use, Alterations and Additions to Existing Tenancy DA Acoustic Assessment" Revision:R2, Project Number 240180, dated 4 August 2024 and any additional requirements at OC review stage.

Reason: To prevent a noise nuisance to any neighbouring residential receiver.

41. **Deliveries and Waste/Recycling Collection Hours**

Deliveries to the site, and waste collection and recycling collection from the site is to be carried out between 7am and 10pm only, to minimise noise.

Reason: To minimise noise to residential receivers.

42. **Parking Enclosure**

No parking spaces, or access thereto, shall be constrained or enclosed by any form of structure such as fencing, cages, walls, storage space, or the like, without prior consent from Council.

Reason: To ensure accessibility is maintained.

43. **Implementation of Loading Dock Management Plan**

All vehicle ingress and/or egress activities are to be undertaken in accordance with the approved Loading Dock Management Plan. Vehicle queuing on public road(s) is not permitted.

Reason: To allow for vehicular access.

44. **Markets Operation**

The ancillary markets are to operate as follows:

- A maximum of four market events per calendar year. A log book detailing each market event is to be kept up to date for inspection by Council at any time.
- Market stalls are to be located wholly within the *pub* and *artisan food and drink industry* premises.
- The markets must only run on Saturdays during daytime hours (within 7am to 6pm) per the Noise Policy for Industry prepared by the NSW Environment Protection Authority dated October 2017.

Reason: To ensure consistency with this consent.

45. **Compliance**

If requested, the applicant and any nominated heritage consultant 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.

46. **Patron Numbers**

The capacity of the *pub* and *artisan food and drink industry* premises must not exceed a combined maximum of 700 patrons at any one time.

When operating the ancillary markets, the capacity of the premises must not exceed 700 patrons at any one time.



Reason: To ensure consistency with this consent.

47. **Plan of Management - Ongoing Compliance**

Ongoing compliance with the Plan of Management, Revision D, dated 9 August 2024 by Architectus Australia Pty Ltd is required for the life of the development

Reason: To maintain the amenity of surrounding areas and the safety of patrons and staff

48. **Hours of Operation**

The hours of operation for the *pub* and *artisan food and drink industry* are to be restricted to:

- Monday to Wednesday and Sunday: 7am to midnight
- Thursday to Saturday: 7am to 1am

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.

49. **Retail Premises 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.