

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/0962
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Responsible Officer:	Rebecca Englund
Land to be developed (Address):	Lot 1 DP 1170245, 0 Wharves And Jetties MANLY NSW 2095
Proposed Development:	Alterations and additions to Manly Wharf in association with Hugos restaurant
Zoning:	SREP(Sydney Harbour Catchment)2005 - Land Zoned W2 Environmental Protection
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Roads & Maritime Services TMG Developments Pty Ltd
Applicant:	Giovanni Cirillo

Application Lodged:	21/08/2020
Integrated Development:	Yes
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	28/08/2020 to 27/09/2020
Advertised:	28/08/2020
Submissions Received:	126
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 320,000.00
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EXECUTIVE SUMMARY

Northern Beaches Council is in receipt of development application DA2020/0962 from Giovanni Cirillo for alterations and additions to Manly Wharf in association with Hugos Restaurant.

The subject site is zoned W2 Environmental Protection under the provisions of State Regional Environmental Plan (Sydney Harbour Catchment) 2005 ('the SREP'), and the proposed development is permissible with consent. The provisions of Manly Local Environmental Plan 2013 and Manly Development Control Plan 2013 do not apply in relation to the proposed development.

Submissions have been received both in objection and support of the proposal. The submissions in objection to the proposal raise concern regarding encroachment of public areas/land and impacts upon the surrounding environment, whilst those in support of the proposal encourage further vibrancy and activation of the commercial area.

As a result of the assessment of the proposal, the consent authority can be satisfied that the proposal is consistent with the SREP and all relevant plans/policies, and that any environmental impacts can be reasonably mitigated/managed with conditions of consent.

In accordance with the direction issued by the Minister for Planning and Public Spaces on 30 June 2020, development applications involving 10 or more unique submissions in objection to the proposal are considered 'contentious development', and are to be deferred to the relevant local planning panel for determination. The subject application received 12 submissions in objection to the proposal, and as such, the subject application is referred to the Northern Beaches Local Planning Panel for determination, with a recommendation of approval.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for alterations and additions to Manly Wharf to facilitate additional seating/patronage for Hugos restaurant. Specifically, the alterations and additions involve:

- Removal of existing planter boxes, balustrades and umbrellas,
- Extension of the existing deck to the north and west, including repairs to two existing piles,
- Additional seating on the extended deck area to increase patronage on deck from 50 to 80 people,
- New umbrellas and heaters installed on the extended deck area,
- Proposed new planter boxes and public seating,
- New operable glass sliding windows to existing external terrace area (immediately adjacent to internal space),
- New removal seating along the southern boardwalk to increase patronage by 36 people.

The application will result in a net increase in patronage from 200 to 266 people.

The application does not seek any change to operating hours for the outdoor areas, which are currently limited to:

- 11.00am to 11:30pm on all days, with all restaurant services to cease and all customers to vacate within 30mins.

Note: The application initially sought consent for the installation of three new piles to support the proposed deck extension. However, due to potential contamination of the seabed, the applicant has confirmed that the proposed deck extension can be cantilevered from the existing wharf structure, without any disturbance of the seabed. This amendment to the construction of the structure is confirmed in the attached conditions of consent.

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.

SITE DESCRIPTION

Property Description:	Lot 1 DP 1170245 , 0 Wharves And Jetties MANLY NSW 2095
Detailed Site Description:	<p>The application relates to Manly Wharf and the waterway adjacent to the western side of the existing structure. Manly Wharf is located on the southern side of East Esplanade and West Esplanade, Manly, and is located at the southern end of Manly Corso. Manly Wharf comprises two separate lots, which generally align with the primary functions of the structure; Lot 1 being primarily commercial tenancies and Lot 2 being the ferry terminals. Manly Wharf is identified as an item of State Heritage significance.</p> <p>The works proposed are limited to the south-western most corner of Manly Wharf and the adjacent waterway, and are associated with an existing tenancy, 'Hugos'. The works are proposed both within and beyond the existing lease boundary of Lot 1, and extend over the waterway. Hugos currently comprises both internal and external seating, with a portion of existing outdoor seating (existing deck area) separated from the main restaurant area by a pedestrian thoroughfare.</p> <p>The site is zoned W2 Environmental Protection under the provisions of the SREP. The surrounding waters and nearby harbour foreshore are known to provide habitat for Little Penguins, and seagrass has been identified within the vicinity of the site.</p>

Map:



SITE HISTORY

On 21 August 2014, Development Application 233/2013 for outdoor seating associated with Hugos Restaurant was approved by Council. The application provided for:

- The use of a portion of the existing wharf for the purpose of outdoor dining for 50 seats/people,
- the erection of four umbrellas, and
- alterations and additions to facilitate new access stairs, balustrades and the enclosure of the area from the public domain.

Of relevance, Development Consent 233/2013:

- restricted the hours of operation for the outdoor seating area to 11:00am to 11:30pm on all days, with patrons to leave within the following 30mins,
- limited the consent to 3 years, and
- prohibited the use of outdoor lighting to candlelight only.

On 23 May 2018, Development Consent 233/2013 was modified to remove the 3 year limitation initially imposed.

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 Matters for Consideration'	Comments
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for commercial purposes for an extended period of time. The proposed development retains the commercial use of the site, and subject to conditions of consent, is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Sydney Harbour Foreshores and Waterways Area Development Control Plan and Manly Development Control Policy for Manly Cove 1996 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 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the relevant sections in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact 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 Matters for Consideration'	Comments
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 28/08/2020 to 27/09/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 126 submission/s from:

Name:	Address:
Mr Paul Robert Jules Gilet	12 / 38 - 42 The Corso MANLY NSW 2095
Caroline Bussell	6 / 36 East Esplanade MANLY NSW 2095
Mrs Joyce Lurline Larracy	6 / 35 - 36 East Esplanade MANLY NSW 2095
David Cutts	Address Unknown
Mr George Max Gordon	510/54-68 West Esplanade MANLY NSW 2095
Mr Allan Richard Fisk	16 / 11 - 15 Spring Cove Avenue MANLY NSW 2095
Ms Margaret Anne Cullen	5 / 35 - 36 East Esplanade MANLY NSW 2095
Ann Elizabeth Sharp	77 Brighton Street CURL CURL NSW 2096
Withheld	MANLY NSW 2095
Mr Alexander John Reid	513 / 15 Wentworth Street MANLY NSW 2095
Mr Peter James Berbakov	35 Arthur Street FAIRLIGHT NSW 2094
Mr Scott Bell	232 Pittwater Road MANLY NSW 2095
Mr Jake Seymour Rowe	118 Bower Street MANLY NSW 2095
Holly Walters	36 / 30 Moore Road FRESHWATER NSW 2096
Abby Anderson	Address Unknown
Jonah Clarkson	Address Unknown
Mrs Philippa Joan Condon	607 / 54 West Esplanade MANLY NSW 2095
Andrew Scott	120 Pittwater Road MANLY NSW 2095
Mr Andrew Thomas	27 / 140 - 142 North Steyne MANLY NSW 2095
Mrs Belinda Wilde	29 Richmond Road SEAFORTH NSW 2092
Andrew Payton	Address Unknown
Gabby Payton	PO Box 231 FRESHWATER NSW 2096
Sorcha Horgan	606 / 54 West Esplanade MANLY NSW 2095

Name:	Address:
Mark Parlevliet	Address Unknown
Mark Eymes Manly Markets Pty Ltd	13 / 301 - 303 Condamine Street MANLY VALE NSW 2093
Emily Takatori	9 Hill Street QUEENSCLIFF NSW 2096
Mr Mark Maclachlan Stanley	5 / 190 Sydney Road FAIRLIGHT NSW 2094
Raphael Drancka	3 / 77 Pittwater Road MANLY NSW 2095
Mr Steve Eden	1 / 40 East Esplanade MANLY NSW 2095
Adam Hart	Address Unknown
Kurt Stretton	125 Campbell Parade MANLY VALE NSW 2093
Michael Bushell	84 Bower Street MANLY NSW 2095
Mr Adam John Barringer	4 / 75 - 76 West Esplanade MANLY NSW 2095
Manly Business Chamber	Level 2 6 The Corso MANLY NSW 2095
Mrs Franca Arena	807 / 54 West Esplanade MANLY NSW 2095
Mr Douglas McGregor Lees	41 Crown Road QUEENSCLIFF NSW 2096
Ms Meegan Clancy	7 / 133 Sydney Road FAIRLIGHT NSW 2094
Keira Parryman	Address Unknown
Ms Belinda Jane Wight	3/38-40 Daintrey Street FAIRLIGHT NSW 2094
Mr John Anastasiou	20 Peronne Avenue CLONTARF NSW 2093
Mrs Pamela Denise Kelso	18 Edgecliffe Esplanade SEAFORTH NSW 2092
Matt Barrie	Address Unknown
Sonny Pirreca	Address Unknown
Ms Claire Carroll	3 / 77 Pittwater Road MANLY NSW 2095
Mrs Suellen Louise Whitfield	147 Warriewood Road WARRIEWOOD NSW 2102
Ms Alanna Claire Richards	305 McCarrs Creek Road CHURCH POINT NSW 2105
Mr Robert Nixon Smith	123 North Steyne MANLY NSW 2095
Mr Denver John Beven	204 / 25 - 27 South Steyne MANLY NSW 2095
Mr Gary Donald Lord	3 / 14 - 18 Ethel Avenue BROOKVALE NSW 2100
Stuart Waugh	Address Unknown
Nadia Irmgard Butler	7 A Hope Street SEAFORTH NSW 2092
Louise Darwin	Address Unknown
Kemba Jessup	8 / 77 Queenscliff Road QUEENSCLIFF NSW 2096
Dan Murphy	Address Unknown
Sienna Linden	Address Unknown
Pepper Harris	Address Unknown
Nicole Easley	Address Unknown
Lauren Rice	3 Short Street ENMORE NSW 2042
Mr David Aberdeen Hay Mrs Jean Hay	2 / 57 Lauderdale Avenue FAIRLIGHT NSW 2094
Jade Tustin	Address Unknown
Pia Wright	Address Unknown
Kristelle Yeomans	Address Unknown

Name:	Address:
Mrs Helen Margaret Leech	12 Larmer Place NARRAWEENA NSW 2099
Samantha Hurst	Address Unknown
Zoe Kelly	25 Crown Road QUEENSCLIFF NSW 2096
Facundo Elorrieta	2 / 12 Ocean Road MANLY NSW 2095
Matthew Barrelle	Address Unknown
Mr Simon Waters	Address Unknown
Paul Whitfield Plumbing Pty Ltd	9 / 26 Wattle Road BROOKVALE NSW 2100
Oliver Maiolo	Address Unknown
James Nelson	1 / 34 Addison Road MANLY NSW 2095
Angela Shallis	Address Unknown
Matthew Thomas	4 / 2 Ocean Place PALM BEACH NSW 2108
Mark Howard	12 Arthur Street FAIRLIGHT NSW 2094
Luke Ian Carrier	A Anana Road ELANORA HEIGHTS NSW 2101
Monique Walker	3 Ronald Avenue NARRAWEENA NSW 2099
Sydney Evans	Address Unknown
Mrs Briannon Amy Morris	7 Wallina Avenue BELROSE NSW 2085
Mr Adam John Crookwell	4 Moonbi Crescent FRENCHS FOREST NSW 2086
Hamish Jordan	Address Unknown
Ms Debra Lee Fitzgerald	314 / 11 Wentworth Street MANLY NSW 2095
Mr John Joseph Wilkinson	314 / 11 Wentworth Street MANLY NSW 2095
Lauren Vickers	Address Unknown
Rebecca Griffiths	Address Unknown
Adriaan Knaap	Address Unknown
William Mcguire	Address Unknown
Aidan Huntley	Address Unknown
Mr Gareth Lauchlan Moody	6 East Esplanade MANLY NSW 2095
Mr Damien Aaron Callaghan	75 Ryan Place BEACON HILL NSW 2100
Mr Seth Bishop	Address Unknown
Mrs Lindsey Anne Stewart	21 Kitchener Street BALGOWLAH NSW 2093
Shane Anthony Wildash	22 Ethel Avenue BROOKVALE NSW 2100
Mrs Anita Kathryn Wildash	14 / 27 Campbell Parade MANLY VALE NSW 2093
Miss Renee Kirby	9 / 80 Darley Road MANLY NSW 2095
Laura Mansfield	Address Unknown
Philip McCall	Address Unknown
Mr David Brian Milton	49 Malvern Avenue MANLY NSW 2095
Roberto Pitton	Address Unknown
Timothy Mercer	7 / 63 Crown Road QUEENSCLIFF NSW 2096
Ms Janice Collings	Address Unknown
Dominika Dryjski	Address Unknown
Richard Williams	Address Unknown

Name:	Address:
Mr Matthew Mouldsdale	36 Pacific Parade MANLY NSW 2095
Innes Farriss	Address Unknown
Daniel Hardwick	1 B Bolingbroke Parade FAIRLIGHT NSW 2094
Simon Gould	Address Unknown
Mrs Lynette Norma Pryor	408 / 54 West Esplanade MANLY NSW 2095
Ms Susan O'Brien	24 / 13 Stuart Street MANLY NSW 2095
Mrs Julie Ann Bundock	10 / 59 Crown Road QUEENSCLIFF NSW 2096
Mr Anthony Hugh Tighe	27 / 2 - 8 Darley Road MANLY NSW 2095
Georgia Prior	Address Unknown
David Rothwell	C/- Suite 1, No 9 Narabang Way BELROSE NSW 2085
Nick Wayland	Address Unknown
Pascale Lamy	Address Unknown
Samantha Callender	Address Unknown
Anya Davis-Raiss	7 Cannes Drive AVALON BEACH NSW 2107
James Griffin Mp	2 / 2 Wentworth Street MANLY NSW 2095
Mr Michael George Hearn	604 / 54 West Esplanade MANLY NSW 2095
Mr Russell James Kernaghan	613 / 54 West Esplanade MANLY NSW 2095
Juliette Amate	Address Unknown
Mrs Julia Margaret Dent	512 / 54 West Esplanade MANLY NSW 2095
Samuel Daoud	Address Unknown
Ms Kay Ellen Van Norton	10 Addison Road MANLY NSW 2095
James Bergman	Address Unknown
Isabella Barkway	Address Unknown
Ms Tracey Kathleen Mietzke	Po Box 843 MANLY NSW 1655

Of the submissions received, 12 submissions are in objection to the proposed development. The concerns raised within these submissions are considered, as follows:

- **Use of public land (general)**

Comment: Submissions have been received in objection to the use of public land for private purposes. The proposal development, being a 'land/water interface development' is permitted and anticipated within the W2 zone and is consistent with the objectives of the zone and the provisions of the SREP.

- **Use of public space (deck extension)**

Comment: A number of the submissions raise concern with regard to the loss of an existing public area of decking to the north of the current outdoor seating area associated with Hugos. The area in question is a small, dead-end space that comprises planter boxes that limit access/usability of the area. The application proposes to allocate/lease a portion of this area, which currently contains a planter box, to outdoor seating for Hugos. The remaining area is to be extended and reconfigured to provide new planter boxes and additional public seating. The area of the existing deck to be allocated/leased to Hugos is equivalent to the proposed

extension of the public deck, such that there will be not net loss of space for public use. Further, the reconfigured arrangement is more functional, with increased amenity for the public and patrons of Hugos.

The proposed additions and reallocation of space has been subject to separate assessment by Transport for NSW (formerly RMS), the land owner, who have provided owners consent for the proposed development.

- **Use of public space (seating on walkway)**

Comment: Submissions have also been received in objection to the use of a portion of the southern walkway, perceived as public land, for a private entity (Hugos). The walkway, being a component of the overall wharf structure, is owned by Transport for NSW, who have assessed the proposal with regard to the potential impact upon the walkway and have provided owners consent for the use of this area. Whilst the width of the walkway is to be reduced, the functionality of the space is not considered to be compromised as a result of the proposed development.

Submissions received also raise concern regarding servicing of the seating area and potential conflict with people moving through this area to/from the ferry terminal and any casual observers that linger along the boardwalk. The proposed seating maintains a 2.4m wide walkway which is consistent with that on the western side of Hugos, and has been deemed sufficient by Transport for NSW (the land owner and owner/manager of Sydney Ferries).

To ensure that any conflict along the walkway is minimised, a condition of consent is recommended to require a 1m wide service area to be marked on the ground adjacent to the proposed seating. A further condition is also recommended to require servicing of the tables to be generally maintained within the marked service area.

- **Impact upon Little Penguin habitat**

Comment: Concern has been raised with regard to any potential impacts upon penguins, noting that the area beneath the proposal is known to provide nesting and foraging habitat for Little Penguins. As such, the proposal was supported by a detailed Biodiversity Assessment Report, which has been considered and endorsed by Council's Bushland and Biodiversity Officers. Subject to conditions of consent, the proposed works will not result in any unreasonable impacts upon the Little Penguin population.

- **Impact upon seagrass**

Comment: Submissions received have raised concern with regard to any potential impacts upon seagrass. Whilst the proposed development is not located within the vicinity of any known areas of seagrass, conditions of consent are recommended to ensure that appropriate measures are undertaken should areas of seagrass be discovered, and to ensure that any seagrass within the areas adjacent to the development are not affected during construction.

- **Noise**

Comment: A submission has been received in objection to increased noise levels associated with the increased patronage proposed. Council's Health Officer has reviewed the proposal and is satisfied that that noise levels associated with the proposal can be reasonably managed, subject to consistency with the conditions of consent recommended.

- **Pollution**

Comment: Two submissions have been received raising concern with regard to potential pollution associated with outdoor dining. The impacts associated with outdoor dining and potential littering have been considered by Council staff, and subject to consistency with the recommended conditions, pollution can be reasonably mitigated/managed.

- **Visual Impact**

Comment: A submission has been received raising concern with regard to the visual impact of the proposed development. The proposed works are relatively minor, and it is unlikely that the proposed changes will be readily perceived by a general observer from the adjacent foreshore or on an approaching/departing ferry.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>Supported, with conditions.</p> <p><i>No objections to proposal subject to conditions.</i></p>
Environmental Health (Contaminated Lands)	<p>Supported, with conditions.</p> <p><i>Environmental Health have been requested to provide comment on the potential for contamination in the seabed where piers are to be installed and how construction of piers will be managed in an environmentally satisfactory manner.</i></p> <p><i>The covering letter and concept sketch provided by Consult Marine indicate that as part of construction existing piles will be repaired/replaced and new piles are to be installed. In no document provided by the applicant is there any mention of a construction environmental management plan detailing how potential for pollution will be managed. Reference is made to the referral response from DPI Fisheries which recommends environmental safeguards such as silt booms</i></p> <p><i>Based on the existing use of the site as a commuter wharf and entry point into Manly it is probable that there would be some level of contamination within the strata of the sediment below the subject site. Should pile driving be controlled and detailed methods for environmental protection listed within a construction environmental management plan there is little need for preliminary investigation into contamination.</i></p> <p><i>Environmental Health recommend approval subject to the proposed conditions being imposed and a deferred commencement requiring the applicant to submit a construction environmental management plan to Council for their assessment and satisfaction.</i></p> <p>Note: Due to unresolved issued relating to potential contamination of</p>

Internal Referral Body	Comments
	<p>the seabed, the applicant has nominated that the works can be cantilevered off the existing structure without the need to install new piles. Whilst a construction methodology/management plan is still required with regard to consideration of potential impacts upon aquatic ecology and Little Penguin habitat (as recommended in the Biodiversity Assessment Report), it is no longer required prior to activation of the consent.</p>
<p>Environmental Health (Food Premises, Skin Pen.)</p>	<p>Supported, with conditions.</p> <p><i>In regard to increased food service, there are no additional health implications.</i></p> <p><i>The issue on this site is noise, potentially from a slight increase in hours and increased patronage in the external area.</i></p> <p><i>This application is to provide additional outside capacity for patrons from 11:30 am to 12 midnight(business ceasing 11.30 -vacating by 12) seven days a week; external area will increase from current patrons number 50 to 80; internal capacity of 150 patrons is not to change.</i></p> <p><i>The most likely affected residential receivers are some 120 metres to the north of the site.</i></p> <p><i>The immediate area is a medium-density transport and entertainment hub and residents residing in this location would expect some background noise.</i></p> <p><i>However the increase in the external capacity and hours until midnight for a restaurant and bar may result in offensive noise.</i></p> <p><i>A nearby restaurant was previously the subject of protracted and ongoing legal action for noise involving Council, Police and the Liquor Licencing Authority; the significant issue being entertainment and amplified music in an external area.</i></p> <p><i>For this application the acoustic engineer has carried out a "compliant" noise assessment but this does not allow for noisy groups or noisy members of a group trying to out talk each other under the influence of alcohol. Nor does it specifically deal with the changes to the windows. From information available it appears to be a design change rather than a change of use.</i></p> <p><i>Likewise the ability of the restaurant to actually control Customers leaving or having left the premises sounds useful but is unlikely due to operational procedures, i.e.staff leaving the premises and safety issues late at night.</i></p> <p><i>Unlike the internal part of the restaurant where doors windows etc can be closed and acoustic reducing materials can be included in design of effectively applied later, there are no such safeguards with regard to offensive noise from this external area. Seating of smaller groups ie. 4 people, may assist.</i></p>

Internal Referral Body	Comments
	<p><i>A precedent exists nearby which appears to be successfully managed now.</i></p> <p><i>Where no external entertainment or music beyond background occurs and groups are managed, the proposal has merit and may be considered for approval as recommended in the acoustic assessment supplied.</i></p> <p><i>Conditions will be imposed incorporating the acoustic recommendations for example including :</i></p> <ol style="list-style-type: none"> <i>1. A maximum of 80 patrons at any given time are allowed to the Western outdoor area</i> <i>2. A maximum of 36 patrons at any time are allowed at the southern outdoor area</i> <i>3. No amplified music or live entertainment is permitted at either the western or southern outdoor patron areas</i> <i>4. The outdoor areas are not to be used between the hours of 12 am midnight to 7 am</i> <i>5. These conditions are to be consistent with current conditions applying to the operation under the existing consent</i> <i>6. Management is to ensure that patrons departing the premises do so in an orderly manner to minimise noise impacts (especially after 10 pm)</i> <i>7. Garbage and bottle disposal should be undertaken prior to 10 pm and not before 7 am</i> <p><i>Cleaning/washing activities, litter and wind blown material adjacent to the Penguin habitat are to be commented by other teams.</i></p>
NECC (Bushland and Biodiversity)	<p>Supported, with conditions.</p> <p><i>The following biodiversity-related provisions apply to the development:</i></p> <ul style="list-style-type: none"> <i>- NSW Biodiversity Conservation Act 2016 (BC Act)</i> <i>- SEPP (Coastal Management) Coastal Environment Area</i> <p><i>The development site is proximal to known nesting habitat for individuals associated with a broader local occurrence of Little Penguins which nest around Manly Point and North Head. Penguins have also been regularly recorded at the location of the proposed new piles transiting between nesting habitat under the wharf and foraging habitat within Manly Cove and the wider harbour. As such, the application is required to be accompanied by a 'test of significance' for impacts to the threatened penguin population, prepared in accordance with Section 7.3 of the BC Act. The submitted biodiversity assessment (ERM Sydney, 26 June 2020) includes the required test of significance which assesses potential impacts including: i) loss of habitat, ii) disturbance to individuals from light, vibration and noise during construction, iii) increased pollution; and iv) ongoing disturbance due to increased human presence/activity, light and noise following construction. These impacts and potential mitigation measures are</i></p>

Internal Referral Body	Comments
	<p><i>addressed below.</i></p> <p><u><i>Loss of Habitat</i></u> <i>The proposed works are 60-70m from known nest sites and are located below the mean high water mark; as such, they will not result in a loss of penguin nesting habitat. Installation of new piles and overshadowing of seagrass (both by the barge during construction and permanently due to the increased building envelope) has the potential to result in a minor reduction in penguin foraging habitat (i.e. seagrass beds). Potential impact to seagrass and required mitigation measures will be addressed by Council's Riparian referral body. It is concluded that the proposal will not result in a loss of penguin nesting habitat and, subject to support of Council's Riparian referral body and application of their recommended conditions, is unlikely to have a notable impact on potential foraging habitat.</i></p> <p><u><i>Construction-related Disturbance</i></u> <i>Noise, vibration, human activity and disruption of access routes have the potential to disturb penguins and interfere with natural nesting behaviour including feeding of chicks. This impact can be effectively mitigated through timing restrictions to ensure that works are undertaken outside of the penguin breeding season.</i></p> <p><u><i>Increased Pollution</i></u> <i>The proposal has the potential to increase pollution into the harbour through increased waste and rubbish (e.g. napkins, bottles, food) being deposited into the water from dining areas. The application should therefore be referred to Council's Waste referral body for assessment.</i></p> <p><u><i>Ongoing Disturbance</i></u> <i>The proposed development may result in an increase in human activity within the existing pedestrian walkway and deck areas; however, it is considered that conversion of the existing public area to a formalised dining area is unlikely to substantially increase the overall number of people occupying the area at any given time as the area is currently heavily used by the public. Furthermore, ongoing monitoring of penguin nesting behaviour at Manly Wharf over several years has provided strong evidence that penguins which utilise this site as nesting habitat are resilient to disturbance associated with human activity, noise and lighting.</i></p> <p><u><i>Conclusion</i></u> <i>Council's Biodiversity referral body consider that the proposal can be undertaken without impact to the endangered population of Little Penguins at Manly.</i></p> <p><i>Nb. Given that the subject site is within an environmentally sensitive area, further detailed consideration of the public benefit implications of the proposal may be warranted.</i></p>
NECC (Coast and	Supported, no conditions.

Internal Referral Body	Comments
Catchments)	<p><i>The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018, Sydney Harbour Catchment Regional Environment Plan, 2005 and Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005. It has also been assessed against requirements of the Manly DCP. for Manly Cove 1996</i></p> <p><i>The application has also been assessed using Northern Beaches SREP assessment template.</i></p> <p><u><i>Coastal Management Act 2016</i></u> <i>The subject site has been identified as being within the coastal zone and therefore Coastal Management Act 2016 is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the Coastal Management Act 2016.</i></p> <p><u><i>State Environmental Planning Policy (Coastal Management) 2018</i></u> <i>As the subject site has been identified as being within the coastal zone and therefore SEPP (Coastal Management) 2018 is also applicable to the proposed development.</i></p> <p><i>The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps but not been included on the Coastal Vulnerability Area Map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Clauses 13 (coastal environment area) and 14 (coastal use area) do not apply as the site is also located within the SREP area. Hence, only Clause 15 of the CM SEPP apply for this DA.</i></p> <p><i>On internal assessment , the DA satisfies requirements under Clause 15 of the CM SEPP. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</i></p> <p><u><i>Sydney Regional Environment Plan (Sydney Harbour Catchment), 2005</i></u> <u><i>Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005</i></u> <u><i>Harbour Foreshores & Waterways Area</i></u> <i>The subject site is located within the Sydney Harbour Catchment and is identified as being within the Foreshores and Waterways Area. Hence Part 2, Clause 14 and Part 3, Division 2 apply in assessing this DA. On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Planning Lab dated 4 August 2020, it is determined that the Planning Principles and Matters for Consideration of the Area have been met.</i></p> <p><i>The subject site is located within/adjacent to the W2 (Environmental Protection) Zone.</i></p>

Internal Referral Body	Comments
	<p><i>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Planning Lab dated 4 August 2020, it is determined that the objectives and assessment criteria of the zone have been met.</i></p> <p><u>Manly DCP for Manly Cove 1996</u> <i>The Manly Wharf is excluded from the Manly LEP 2013 and Manly DCP 2013. The applicable control is through the Manly DCP for Manly Cove 1996.</i></p> <p><i>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Planning Lab dated 4 August 2020, no other coastal issues are involved.</i></p>
NECC (Development Engineering)	<p>Supported, no conditions.</p> <p><i>Development Engineering has no objection to the application.</i></p>
NECC (Riparian Lands and Creeks)	<p>Supported, with conditions.</p> <p><i>This application has been assessed against relevant legislation for the protection of waterways.</i></p> <p><i>No seagrass beds have been identified by DPI in the immediate vicinity of the proposed deck extension, however the applicant must engage a suitably qualified ecologist to confirm the absence of seagrass at the site through a detailed seagrass survey. The use of crane barges for deck construction has the potential to adversely impact water quality in this area through siltation, as such the applicant must ensure all safeguards e.g. silt curtains are in place to prevent changes to water quality. A Construction Environmental Management Plan (CEMP) shall be developed to ensure all environmental risks from construction works are mitigated</i></p> <p><i>The applicant is required to comply with the general terms of conditions applied by DPI Fisheries.</i></p> <p><i>With the application of these conditions it is considered unlikely that the application will have an adverse impact on the integrity and resilience of the biophysical, ecological and hydrological environment. It is therefore supported subject to conditions.</i></p>
Strategic and Place Planning (Heritage Officer)	<p>Supported, no conditions.</p> <p><u>Discussion of reason for referral</u> <i>The proposal has been referred to Heritage as the subject property is located on the western edge of a State Heritage Item, being Item 1145 - Manly Wharf at East and West Esplanades (opposite The Corso, Harbour side), which is listed in Schedule 5 of Manly LEP 2013 and also on the State Heritage Register.</i></p> <p><i>It is also in the vicinity of a number of heritage items:</i></p>

Internal Referral Body	Comments
	<ul style="list-style-type: none"> • <i>Item I248 - Governor Phillip Monument - West Esplanade Reserve</i> • <i>Item I251 - Park - West Esplanade</i> • <i>Item I251 - Harbour foreshores - Manly municipal area boundary adjacent to the Harbour</i> • <i>Manly Town Centre Conservation Area</i> <p><u><i>Details of heritage items affected</i></u></p> <ul style="list-style-type: none"> • <i>Item I145 - Manly Wharf</i> <i>Statement of Significance: Manly wharf is a dominant feature of Manly Cove, viewed from the harbour approaches, from the harbour beach and from the main cross streets of Manly which conjoin at the terminus. Its form is sympathetic to its position, the curved entrance reflecting the arc of the beach and its stylistic idiom having strong maritime connotations - ship shape and ship-like. It is an excellent example of mid-forties stylisation and the preoccupation with geometric forms while it also retains original shopfitting elements and signs.</i> <i>Physical Description: 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. Additions to the wharf include the hydrofoil pontoon (c.1968) and the more recent elevated platforms for new ferries.</i> • <i>Item I248 - Governor Phillip Monument</i> <i>Statement of significance: Historic monument.</i> <i>Physical description: Sandstone construction on the walkway of the West Esplanade, erected in 1928 by the Manly, Warringah and Pittwater Historical Society to commemorate the landing of Captain Arthur Phillip at Manly. Rock face stonework coursed, with brass plaque attached.</i> • <i>Item I251 - Park</i> <i>Statement of significance: Part of earliest cultural treatment of Manly landscape and provision of designed open space. High visual significance.</i> <i>Physical description: 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 spilt stone edging of Edwardian period characterise the eastern part of the Park. Recent paving detracts from the Edwardian character.</i>

Internal Referral Body	Comments
	<ul style="list-style-type: none"> • <i>Item I251 - Harbour foreshores</i> <i>Statement of significance: Natural landscape type - Aesthetic.</i> <i>Physical description: Length of foreshore including natural and built elements of the landscape. Rocky sandstone ledgers, beaches, mud flats and sandstone retaining walls and timber structures.</i> <p><u><i>Other relevant heritage listings:</i></u></p> <ul style="list-style-type: none"> • <i>NSW State Heritage Register</i> • <i>National Trust of Aust (NSW) Register</i> <p><u><i>Consideration of Application:</i></u> <i>A Development Application was approved by Manly Council for an additional seating area to the south of the restaurant in 2008.</i></p> <p><i>DA233/2013 application was for further alterations and additions for outdoor seating to the existing public wharf along the south-western side of Hugos Restaurant including 3 umbrellas, 36 seats and enclosure of the area, which was approved by Manly Independent Assessment Panel in 2014.</i></p> <p><i>This application seeks consent for extension of the upper deck over the existing deck and out over the water; extension of the lower deck over the water in the public area; additional seating to extended areas; bench seating to lower deck; new operable frameless glass windows to perimeter of Hugos restaurant; relocation of existing outdoor heaters, balustrades, stairs and handrails; and new planter boxes to lower deck.</i></p> <p><i>The application affects a State heritage listed item, the application is Integrated Development and requires consultation with the Heritage NSW and approval under Section 60 of the Heritage Act, 1977.</i></p> <p><i>Proposed works are all external and do not involve any alterations or additions to the State heritage listed item. From a heritage point of view, the impact of the proposal upon the established heritage values of the Manly Wharf site and the heritage listed items within vicinity will be minimal.</i></p> <p><i>Therefore, no objections are raised on heritage grounds, subject to all terms of approval (conditions) required by Heritage NSW being included in any consent.</i></p> <p><u><i>Consider against the provisions of CL5.10 of MLEP 2013.</i></u> <i>Is a Conservation Management Plan (CMP) Required? No</i> <i>Has a CMP been provided? No</i> <i>Is a Heritage Impact Statement required? Yes</i> <i>Has a Heritage Impact Statement been provided? Yes</i></p>
Waste Officer	

Internal Referral Body	Comments
	<p>Supported, with conditions.</p> <p>Waste Services have no objection to the proposal, subject to the following requirements:</p> <p><i>The person responsible must ensure that:</i></p> <ul style="list-style-type: none"> • <i>Tables are cleared in a timely manner after patrons leave so items are not blown into the harbour, creating litter.</i> • <i>Disposable items such as plastic or polystyrene cups, containers and straws are not used in outdoor dining areas.</i>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>Supported, with conditions.</p> <p><i>Ausgrid does not have any objections for the proposed development. The applicant/developer should note the following comments below regarding any proposal within the proximity of existing electrical network assets.</i></p> <p><u><i>Underground Cables</i></u> <i>Special care should also be taken to ensure that driveways and any other construction activities within the footpath area do not interfere with the existing cables in the footpath. Ausgrid cannot guarantee the depth of cables due to possible changes in ground levels from previous activities after the cables were installed. Hence it is recommended that the developer locate and record the depth of all known underground services prior to any excavation in the area.</i></p> <p><i>Safework Australia – Excavation Code of Practice, and Ausgrid’s Network Standard NS156 outlines the minimum requirements for working around Ausgrid’s underground cables. Should ground anchors be required in the vicinity of the underground cables, the anchors must not be installed within 300mm of any cable, and the anchors must not pass over the top of any cable.</i></p>
Foreshore and Waterways Planning and Development Advisory Committee	<p>No response.</p> <p>The application was referred to the Foreshore and Waterways Planning and Development Advisory Committee in accordance with clause 29 of the SREP. The SREP requires the consent authority to consider any submission received from the Advisory Committee within 30 days after the date on which the application was referred. This timeframe has now passed and no submission has been received.</p>
NSW Police – Licensing (Clubs, Hotels, Pubs)	<p>Supported, with conditions.</p> <p><i>Northern Beaches Licensing Police have received notification by way of application for Hugo’s Restaurant to extend the existing public wharf along the south western side and minor modifications to the</i></p>

External Referral Body	Comments
	<p><i>façade of the restaurant to modify existing windows. New deck furniture and planter boxes and an additional 66 outdoor seats.</i></p> <p><i>The premises is located on the Manly Wharf facing south west down Sydney Harbour and lays west of the entry/exit point to the Ferry Terminals. The Manly Wharf area consists of a number of retail outlets, these include various food outlets (non-licensed), newsagents, supermarket (Aldi) along with a number of licensed restaurants. Located next door to the premises is the Bavarian Bier Café which is another Restaurant with a Primary Service Authorisation and an Extended Trading Authorisation. On the other side of the Wharf is a Hotel/Pub as defined by the Liquor Act known as the Manly Wharf Hotel.</i></p> <p><i>The wharf as stated also services the ferries and other watercraft taking passengers to and from Manly to various other wharfs located throughout Sydney Harbour. The Manly Wharf is the only location in the Manly area that services the ferries that run from Circular Quay and as such can have periods where the wharf area is congested with passengers embarking and departing the ferries.</i></p> <p><i>The Manly area is considered to be a major tourist destination and consideration needs to be given in relation to any negative impact this application could have on the tourism industry to Manly if the venue was to begin to have alcohol related violence attributed to the premises.</i></p> <p><i>Located just outside the Wharf area (north easterly direction) is the Manly Corso which is the main pedestrian thoroughfare towards Manly Beach. The Corso has a mixture of retails outlets and liquor licensed and non-licensed premises, schools, kindergartens and Churches. The Manly Wharf, Corso and surrounding streets are all designated AFZ (Alcohol Free Zones).</i></p> <p><i>The premises is also located in the vicinity of residential premises (units) these are mostly located along west Esplanade, Eustace St and further west around to Rowe St and Fairlight St.</i></p> <p><i>The location of the premises needs to be considered in relation to a number of transport issues. The Manly area has limited private vehicle parking stations, the majority of which are operated by Manly Council. The parking stations have a combined parking space allowance of 953. There are a limited number of “pay and display” on street parking locations but these spaces can be used by local residents with a permit. Manly is also serviced by bus, ferry and taxi facilities. The drop off points and terminals for these services are a short walking distance from the beach. These services are frequently faced with under-service problems during the summer and festive months.</i></p> <p><i>The Manly area has a number of ingrained issues that need to be taken into consideration in regard to this application. These issues include juvenile crime/intoxication, public transportation, licensed</i></p>

External Referral Body	Comments
	<p><i>venues, alcohol related crime and the impact upon local residents and stealing from patrons of licensed premises. The premises need to ensure that it will not impact or further enhance the identified issues facing Manly.</i></p> <p><i>Police would like to raise concerns with a number of issues with how potentially the venue may trade along with areas on concern regarding the Plans submitted with the DA. These are as follows:</i></p> <ol style="list-style-type: none"> <i>1. Police would raise concern that it has the potential to utilise the area for patrons to sit at a mobile bar and consume alcohol, this conflicts with the premises being that of a restaurant and not a bar.</i> <i>2. The potential for loud and or amplified music played at the venue impacting on neighbouring venues and the community surrounding the venue. Premises located in the Manly Wharf area have had a history in respect to noise issues and its negative effects on neighbours. Police hold concerns regarding any loud or amplified music being played at the venue.</i> <i>3. Crowd density and numbers, consideration must be given to that the venue will increase in numbers further impacting on neighbouring premises and residents. This could also be exasperated when these patron leave on mass at closing time. The venue will need to ensure the quiet and good order of the community is not disturbed by patrons leaving the venue.</i> <i>4. Given the large layout of the venue and potential number of patrons (at capacity) in the vicinity of seated dinners there is a risk of alcohol related offences occurring by patrons at the venue or after leaving the venue. Police have concerns that the premises could potentially trade primarily for alcohol sales as opposed to meals with alcohol being ancillary to that service. The venue needs to ensure its primary purpose is that of meals with alcohol sales being ancillary to that service.</i> <p><i>Northern Beaches Licensing Police have no objection to the applicant seeking approval for application. In order for the above concerns to be addressed police would like the council to take into consideration the following being placed on any Development Consent for the premises. Police feel these to be necessary in order to reduce incidents of alcohol related crime and to ensure no undue disturbance to the quiet and good order of the community.</i></p> <p><i>Police have assessed the DA and taken careful considerations with its findings. Whilst police have no objections to the application in principal, police would request the following conditions be imposed. The basis for this being in order for the venue to continue without incident and so the premises will not impact negatively on the community. Police do not feel the conditions to be arduous or likely to impact on the financial viability of the premises.</i></p>

External Referral Body	Comments
	Note: The conditions recommended by NSW Police have been included in the draft conditions attached and are individually identified.
Nominated Integrated Development –Heritage NSW - Heritage Act 1977	<p>No response.</p> <p>Manly Wharf is nominated as an item of State Heritage Significance, and the application was referred to Heritage NSW in accordance with the provisions of clause 4.47 of the EP&A Act and s.58 of the Heritage Act. In accordance with clause 70 of the EP&A Regulation, an approval body must give written notice to the consent authority of its decision concerning the general terms of approval in relation to the development application within 21 days after it receives the last of the submissions made during the relevant notification period.</p> <p>On 15 October 2020, Heritage NSW were provided with copies of all submissions received during the notification period.</p> <p>On 5 November 2020, the 21 day timeframe stipulated by the EP&A Regulation expired.</p> <p>On 10 November 2020, Council enquired whether any response was to be forthcoming.</p> <p>On 12 November 2020, Heritage NSW advised that they intended to provide commentary, but were yet to commence their assessment. Heritage NSW could not confirm when any feedback was likely to be provided, and could not indicate whether they were likely to be supportive of the proposal.</p> <p>As the prescribed timeframe for Heritage NSW to respond has now lapsed, the consent authority may determine the application, despite the lack of response from Heritage NSW.</p> <p>Given the relatively minor nature of the proposed works, and as the additions are associated with a more modern element of the wharf structure, it is considered reasonable to proceed without a response from Heritage NSW. A condition of consent is recommended to require an application under section 60 of the Heritage Act 1977 to be submitted to, and approved by, the Heritage Council of NSW prior to the issuance of a construction certificate.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

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

application hereunder.

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

SEPP 55 - Remediation of Land

Clause 7(1)(a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for commercial purposes for a significant period of time. Whilst the seabed beneath the wharf may be contaminated, the application has been amended to ensure that the works will not result in any disturbance of the seabed, and as such, the risk of contamination is avoided. Therefore, no further consideration is required under Clause 7(1)(b) and (c) of SEPP 55 and the land is considered to be suitable for the continued commercial use proposed.

SEPP (Infrastructure) 2007

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

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

The proposal was referred to Ausgrid, who confirmed that they have no objection to the development, subject to conditions included within the draft consent attached.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The site is located within the Foreshores and Waterways Area, and the SREP is applicable to the proposal.

In accordance with clause 5(1) of the SREP, council is the consent authority for the proposed development.

The site is zoned W2 Environment Protection under the provisions of the SREP. The objectives of the W2 zone are considered with respect of the proposal, as follows:

- *to protect the natural and cultural values of waters in this zone,*

Comment: The proposed works, in consideration of the wharf as a whole, are comparatively minor and will not impact upon the natural and cultural values of the waterway.

- *to prevent damage or the possibility of longer term detrimental impacts to the natural and cultural values of waters in this zone and adjoining foreshores,*

Comment: Subject to consistency with the proposed conditions of consent, the development will

not damage, or contribute to longer term detrimental impacts upon, the natural and cultural values of the waterway and adjoining foreshores.

- *to give preference to enhancing and rehabilitating the natural and cultural values of waters in this zone and adjoining foreshores,*

Comment: The proposed development will result in further activation of the wharf, and enhance the use of the waterway area, without attributing to any adverse impacts upon the natural or cultural values of the waterway and adjoining foreshore. Whilst the proposal does not propose to rehabilitate the waterway, this is not considered to be required in this instance, given the scale of the proposal and noting that the works are not impacting upon the seabed.

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

Comment: The subject site forms part of the the greater wharf structure, which is subject to an ongoing lease from Transport for NSW that includes long-term management strategies and requirements. On a smaller scale, Hugos is subject to existing conditions of consent to control the management of this site, and should the application be approved, further conditions will be in place for the life of the development.

In accordance with the definitions of the SREP, the proposed development is considered to be appropriately categorised as 'land/water interface development', which specifically includes restaurants wholly or partly in the water. Land/water interface development is not referred to in the Table within clause 18 of the SREP. In accordance with clause 18(2) of the SREP, development not listed in the Table may be carried out with development consent, but only if the consent authority is satisfied of the following matters:

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

As above, the consent authority can be satisfied that the proposal is consistent with objectives of the W2 zone and that the proposal is not inconsistent with any other applicable environmental planning instrument. Furthermore, following a detailed assessment of the proposal, the consent authority can be satisfied that the proposal will not result in any adverse impacts.

An assessment of the proposal with regard to the relevant provisions of the SREP has been undertaken, including specific consideration of clause 2(2) (aims of the SREP), clause 14 (nominated planning principles), clause 22 (relating to public access to and use of foreshores and waterways), clause 23 (relating to maintenance of a working harbour), clause 24 (relating to interrelationship of waterway and foreshore uses), clause 25 (relating to foreshore and waterways scenic quality), and clause 26 (relating to maintenance, protection and enhancement of views).

The proposal was referred to the Foreshores and Waterways Planning and Development Advisory Committee in accordance with clause 29 of the SREP. The timeframe for the Advisory Committee to provide a response has since lapsed, and despite a further request for comment, no referral response has been received.

Manly Wharf is nominated as a heritage item under the provisions of the SREP. Whilst a referral

response has not been received from Heritage NSW, the consent authority can be satisfied that an assessment any potential impact of the heritage item has been undertaken by Council staff and that such assessment has included consideration of a heritage impact statement provided to support the application. See further discussion from Council's Heritage Officer in this regard.

Overall, the proposal is consistent with the relevant provisions of the SREP.

SEPP (Coastal Management) 2018

The site is identified as being within both the Coastal Use Area and Coastal Environment Area under the provisions of SEPP (Coastal Management) ('CM SEPP'). Noting that the site is also within the Foreshores and Waterways Area under the provisions of the SREP, a number of the provisions of the CM SEPP do not apply.

Clause 15 remains the only provision relevant to the proposal. Clause 15 of the CM SEPP prescribes that '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'. The application has been reviewed by Council's Coast and Catchments team who are satisfied that the proposal will not cause increased risk of coastal hazards at the site or surrounding land.

As such, the proposal is consistent with the relevant provisions of the CM SEPP.

Development Control Plans & Other Policies/Plans

Sydney Harbour Development Control Plan

The proposed development, being a 'land/water interface development' as defined by the SREP, is subject to the provisions of the Sydney Harbour Development Control Plan ('the DCP'). The following assessment is made with respect to the relevant provisions of the DCP:

- As evident in the assessment by Council's Biodiversity Officers, the proposed development is consistent with the Ecological Assessment performance criteria prescribed by Part 2 of the DCP.
- The proposed development is consistent with the the performance criteria for Landscape Character Type 8, which promotes commercial uses as an important role in terms of tourism.
- The proposed development has been designed in a manner that is in keeping with the general requirements prescribed by clause 4.2 of the DCP. The proposed size/scale of the development has been minimised, and will not impact upon navigation in the waterway. Furthermore, whilst the application proposes seating along the existing boardwalk, public access will not be restricted or unreasonably reduced.
- The proposed development does not impact upon foreshore access, and is consistent with clause 4.3 of the DCP.
- The proposal will address the waterway and will not obstruct views from public places to the waterway or views of listed landmarks, consistent with clause 4.4 of the DCP.
- The proposed built form is consistent with that of the existing structure, and is not of a scale that will dominate the waterway. The application does not propose any lighting, and as such, will not result in any adverse impacts upon navigation at night. The proposal is consistent with the provisions of clause 4.5 of the DCP.

Overall, the consent authority can be satisfied that the proposal is consistent with the relevant

provisions of the DCP.

Manly Development Control Policy for Manly Cove

The proposed development has been assessed with respect to the provisions of the Manly Development Control Policy for Manly Cove, and follows:

Clause	Control	Compliance	Comment
2.1	Building Location	On merit	Clause 2.1 states that no new building work is anticipated beyond the location of existing buildings. The application proposes a minor addition to the existing wharf structure, that will not unreasonably impact upon public waterfront access or the provision of open space.
2.2	Building Height	Yes	
2.3	Building Scale	Yes	
3.1	Design for Townscape	Yes	
3.2	Design Principles	Yes	
3.3	Design Considerations	Yes	
4.1	General	N/A	Clause 4.1 requires monetary contribution for any parking shortfall, which is no longer adopted in the Northern Beaches Council Contributions Plan.
4.2	Access	N/A	
4.3	Loading Facilities	N/A	
4.4	Vehicular Parking	On merit	Supported by Council's Traffic Team noting the site's location at a public transport hub.
5	Drainage/Water Quality	N/A	
6	Waste Management	Yes	

Manly West Esplanade Heritage Activation Plan

The subject site is located within the area subject to the Manly West Esplanade Heritage Activation Plan. The proposed works do not conflict with any of the recommendations of this plan, and will not impact upon the implementation of this plan.

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.

SYDNEY HARBOUR DEVELOPMENT CONTROL PLAN

The proposed development, being a 'land/water interface development' as defined by the SREP, is

subject to the provisions of the Sydney Harbour Development Control Plan ('the DCP'). The following assessment is made with respect to the relevant provisions of the DCP:

- As evident in the assessment by Council's Biodiversity Officers, the proposed development is consistent with the Ecological Assessment performance criteria prescribed by Part 2 of the DCP.
- The proposed development is consistent with the the performance criteria for Landscape Character Type 8, which promotes commercial uses as an important role in terms of tourism.
- The proposed development has been designed in a manner that is in keeping with the general requirements prescribed by clause 4.2 of the DCP. The proposed size/scale of the development has been minimised, and will not impact upon navigation in the waterway. Furthermore, whilst the application proposes seating along the existing boardwalk, public access will not be restricted or unreasonably reduced.
- The proposed development does not impact upon foreshore access, and is consistent with clause 4.3 of the DCP.
- The proposal will address the waterway and will not obstruct views from public places to the waterway or views of listed landmarks, consistent with clause 4.4 of the DCP.
- The proposed built form is consistent with that of the existing structure, and is not of a scale that will dominate the waterway. The application does not propose any lighting, and as such, will not result in any adverse impacts upon navigation at night. The proposal is consistent with the provisions of clause 4.5 of the DCP.

Overall, the consent authority can be satisfied that the proposal is consistent with the relevant provisions of the DCP.

MANLY DEVELOPMENT CONTROL POLICY FOR MANLY COVE

The proposed development has been assessed with respect to the provisions of the Manly Development Control Policy for Manly Cove, and follows:

Clause	Control	Compliance	Comment
2.1	Building Location	On merit	Clause 2.1 states that no new building work is anticipated beyond the location of existing buildings. The application proposes a minor addition to the existing wharf structure, that will not unreasonably impact upon public waterfront access or the provision of open space.
2.2	Building Height	Yes	
2.3	Building Scale	Yes	
3.1	Design for Townscape	Yes	
3.2	Design Principles	Yes	
3.3	Design Considerations	Yes	
4.1	General	N/A	*Clause requires contribution for parking, which is no longer adopted in the Northern Beaches Council Contributions Plan.
4.2	Access	N/A	
4.3	Loading Facilities	N/A	
4.4	Vehicular Parking	On merit	Supported by Council's Traffic Team noting the site's location at a public transport hub.

5	Drainage/Water Quality	N/A	
6	Waste Management	Yes	

MANLY WEST ESPLANADE HERITAGE ACTIVATION PLAN

The subject site is located within the area considered by the Manly West Esplanade Heritage Activation Plan. The proposed works do not conflict with any of the recommendations of this plan, and will not impact upon the implementation of this plan.

NORTHERN BEACHES S7.12 CONTRIBUTIONS PLAN 2019

The subject site is located outside of the boundaries of the LGA, as shown on Figure 2 (Page 8) of the Northern Beaches s7.12 Contributions Plan 2019. As such, no contributions can be levied with respect to the proposal.

GENERAL COMMENTS

The proposed development seeks to increase patronage from 200 to 266. The additional 66 patrons are to be seated outside, with no increase to the existing patronage indoors. The increase in outdoor seated patronage will not result in any unreasonable impacts on the surrounding environment, or the functionality of the ferry terminal and wharf. The scale of the outdoor area is not at odds with the existing use and character of the wharf, or the wider commercial area.

The provision of additional outdoor seating is also responsive to the current pandemic, which encourages outdoor dining to minimise the risk of transmission.

Conditions of consent have been recommended to require the preparation of a Plan of Management, and for the Plan of Management to be enforced for the life of the development, to ensure that the outdoor space is managed appropriately.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- 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

The proposed development has been considered with respect to all relevant plans and policies, and after detailed review, it has been concluded that the proposal will not result in any unreasonable impacts upon the amenity of the location or the surrounding environment. The expansion of the existing restaurant use is reasonable within the context of Manly Wharf, which forms part of the wider Manly Corso commercial area. Subject to conditions of consent, the concerns raised in submissions can be reasonably mitigated, and no issue has been raised which would warrant the refusal of the subject application.

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 DA2020/0962 for Alterations and additions to Manly Wharf in association with Hugos restaurant on land at Lot 1 DP 1170245, 0 Wharves And Jetties, MANLY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Existing GF and Demo Plan DA002, issue A	9 July 2020	Squillace
Floor Plan Proposed DA100, issue P9	12 June 2020	Squillace
Proposed West Elevation DA201, issue A	9 July 2020	Squillace
Proposed South Elevation / Section AA DA301, issue A	9 July 2020	Squillace
Perspectives and Finished Schedule DA906, issue A	9 July 2020	Squillace

Approved Reports – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Access Report, reference 200081	26 June 2020	City Plan Services P/L
Biodiversity Assessment Report, reference 0148219	26 June 2020	ERM Sydney

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

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

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

2. **Compliance with requirements of Ausgrid**

The proposal is to be consistent with the requirements of Ausgrid, as follows:

1. Special care should also be taken to ensure that driveways and any other construction activities within the footpath area do not interfere with the existing cables in the footpath. Ausgrid cannot guarantee the depth of cables due to possible changes in ground levels from previous activities after the cables

were installed. Hence it is recommended that the developer locate and record the depth of all known underground services prior to any excavation in the area.

Safework Australia – Excavation Code of Practice, and Ausgrid’s Network Standard NS156 outlines the minimum requirements for working around Ausgrid’s underground cables. Should ground anchors be required in the vicinity of the underground cables, the anchors must not be installed within 300mm of any cable, and the anchors must not pass over the top of any cable.

Reason: Legislative Requirement.

3. **Prescribed Conditions**

All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).

Reason: Legislative Requirement.

4. **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) 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.

(c) 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.

(d) Where works are to be carried out to a Class 1a building, smoke alarms are to be installed throughout all new and existing portions of that Class 1a building in accordance with the Building Code of Australia prior to the occupation of the new works.

(e) The applicant shall bear the cost of all works associated with the development that occurs on Council’s property.

(f) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council’s footpaths, roadways, parks or grass verges without Council Approval.

(g) Demolition materials and builders’ wastes are to be removed to approved waste/recycling centres.

(h) All sound producing plant, equipment, machinery or fittings and the use will not exceed more than 5dB (A) above the background level when measured from any property boundary and/or habitable room(s) consistent with the Environment Protection Authority’s NSW Industrial Noise Policy and/or Protection of the Environment Operations Act 1997.

(i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings

or other temporary works.

(j) Prior to the commencement of any development onsite for:

- i) Building/s that are to be erected
- ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
- iii) Building/s that are to be demolished
- iv) For any work/s that is to be carried out
- v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

(k) Any Regulated System (e.g. air-handling system, hot water system, a humidifying system, warm-water system, water-cooling system, cooling towers) as defined under the provisions of the Public Health Act 2010 installed onsite is required to be registered with Council prior to operating.

Note: Systems can be registered at www.northernbeaches.nsw.gov.au

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

5. **Compliance with requirements of DPI Fisheries**

The proposal is to be consistent with the requirements of DPI Fisheries, outlined in their correspondence to Council dated 21 September 2020, specifically:

1. The proponent must apply for and obtain a Part 7 permit for dredging and reclamation under the FM Act from DPI Fisheries prior to any works on site. Permit application forms are available from the DPI Fisheries website at: <https://www.dpi.nsw.gov.au/fishing/habitat/help/permit>; and
2. Environmental safeguards (silt curtains, booms etc.) are to be used during construction to ensure that there is no escape of turbid plumes into the aquatic environment. Turbid plumes have the potential to smother aquatic vegetation and have a deleterious effect on benthic organisms.

Reason: Legislative requirement.

6. **Compliance with requirements of NSW Police**

The proposal is to be consistent with the requirements of NSW Police, outlined in their correspondence to Council, dated 9 November 2020.

Reason: To ensure compliance with NSW Police requirements.

FEES / CHARGES / CONTRIBUTIONS

7. **Security Bond**

A bond (determined from cost of works) of \$1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security 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 Certifying Authority prior to the issue of the Construction Certificate.

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

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

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

8. Amendments to the Approved Plans

The following amendments are to be made to the Approved Plans:

- The proposed deck extension is to be a cantilevered structure, supported by existing piles. No new piles are permitted by this development consent.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure development minimises environmental impacts.

9. Construction Environment Management Plan

A Construction Environmental Management Plan (CEMP) must be prepared with respect to the approved development. The CEMP is to be prepared by a suitably qualified person and must address:

- a. all measures for the protection of native flora and fauna during construction,
- b. the requirements and general terms of approval of DPI Fisheries,
- c. a risk assessment of all environmental aspects and impacts to the site and surrounding properties or waterbodies associated with:
 - i. hazardous substances
 - ii. water
 - iii. air
 - iv. noise
 - v. vibration
 - vi. waste and litter
 - vii. environmental protection objectives and control strategies
 - viii. environmental conditions using measurable indicators and standards
 - ix. emergency response plan
 - ix. environmental monitoring and reporting plan
- d. Any other matters specifically highlighted in conditions of this consent.

An induction plan for site personnel must be prepared that addresses the CEMP.

The CEMP and site induction plan must be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To ensure the appropriate operation and management of the site and to protect native vegetation, wildlife, habitats and receiving waterways.

10. Engagement of Project Ecologist

A Project Ecologist is to be employed for the duration of the approved works to ensure all biodiversity protection measures are carried out in accordance with these conditions of consent, the Construction Environmental Management Plan and the approved biodiversity report.

The Project Ecologist must have one of the following memberships / accreditation:

- Practising member of the NSW Ecological Consultants Association (<https://www.ecansw.org.au/find-a-consultant/>) OR
- Biodiversity Assessment Method Accredited Assessor under the NSW Biodiversity Conservation Act 2016 (<https://customer.lmbc.nsw.gov.au/assessment/AccreditedAssessor>)

Evidence of engagement of the Project Ecologist is to be provided to the Principal Certifying Authority Prior to issue of construction certificate.

Reason: To ensure biodiversity protection measures are complied with.

11. Survey of Seagrass

The applicant must engage a suitably qualified ecologist to undertake a detailed survey of seagrass in the vicinity of the site. The results from this detailed survey are to be submitted to the Certifying Authority for approval prior to the issue of the construction certificate. Results from this survey are to be referred to in the CEMP required by this consent.

Reason: Protection of seagrass.

12. Section 60 Approval

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

A copy of the approval is to be submitted to the Principal Certifying Authority prior to the issuance of the construction certificate.

Reason: To meet legislative requirements.

13. Accessibility

The proposal is to be amended to ensure compliance with the recommendations of the Approved Access Report referenced in Condition 1 of this consent.

A suitably qualified access consultant is to provide written certification of compliance to the Principal Certifying Authority prior to the issuance of the construction certificate.

Reason: To ensure equitable access.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

14. **Management of *Caulerpa taxifolia***

The invasive marine alga *Caulerpa taxifolia* is present on this site. Site personnel must be able to identify *Caulerpa*. All tools, machinery and environmental control devices must be inspected and cleaned thoroughly prior to leaving the site to prevent the spread of *Caulerpa* to other sites.

Any *Caulerpa* removed from the waterway should be tightly sealed in a plastic bag and lawfully disposed in general waste.

Reason: *Caulerpa taxifolia* is listed under the Biosecurity Act 2015 for all NSW waters.

15. **Worksite inductions**

The site Environmental Officer (or appropriate equivalent) must induct all staff prior to their starting work, with an induction record maintained and available onsite at all times.

Personnel conducting the site induction must:

- a. Be familiar with any environmental protection conditions under the development approval and/or the Construction Environment Management Plan
- b. Be familiar with the names and contact details of relevant people and authorities in the event of any environmental or site management emergency.
- c. Be familiar with the presence of environmentally significant areas within and surrounding the site.
- d. Be able to identify threatened species of fauna if they enter the site
- e. Be familiar with animal welfare issues and procedures should human-wildlife interactions take place during the construction phase.

Reason: To ensure all personnel understand what must be done to protect native vegetation, wildlife, habitats and receiving waterways on the site.

All workers, including site inspectors and sub-contractors, are to be made aware of the potential presence of relevant threatened species and endangered ecological communities through a site induction prior to commencement of works. The site induction is to include information about their conservation significance, potential activities on-site, means of identification and the measures to be implemented for their protection. Confirmation of induction is to be signed by every worker and the site manager.

Evidence of the site induction is to be documented and provided to the Principal Certifying Authority.

Reason: To prevent impacts to threatened species, endangered ecological communities and their habitats in accordance with the Biodiversity Conservation Act 2016.

16. **Use of equipment and vessels in the vicinity of seagrass**

No equipment is to be placed on any seagrass beds which may be in the vicinity of the construction site.

Inshore infrastructure for mooring vessels and plant must be used where suitable. Where mooring lines or cables are required, they shall be suitably buoyed prior to laying and kept buoyed once laid to prevent cable drag or swing damage (scalping). Where this is impractical, contractors should use a floating rope.

Vessels must have adequate clearance over seagrass beds, including allowance for tidal movement, swell/wind wave heights and vessel propulsion.

Reason: Protection of seagrass

17. **Timing Restrictions - Little Penguin Habitat**

No works are to be undertaken during the declared penguin breeding season (1 July - 28 February) unless written confirmation that penguins are not nesting or moulting under Manly Wharf is obtained from the Department of Planning, Industry and Environment (DPIE) Little Penguin Recovery Program Coordinator. Written evidence of compliance is to be provided to the Certifying Authority prior to any Occupation Certificate.

Reason: To avoid construction-related impacts to Little Penguins.

18. **Aquatic sediment management**

Environmental safeguards (e.g. silt curtains) are to be used during construction to prevent the escape of turbid plumes into the aquatic environment. The silt curtains must be carefully placed and secured properly to ensure they do not drag over any nearby seagrass beds.

The safeguards must be regularly maintained and removed once the works are completed.

Reason: Protection of seagrass.

19. **Ecologist to Induct Site Manager – Penguin and Bandicoot Habitat**

Prior to commencement of construction works, the project ecologist is to meet with the site manager to:

- a. advise of conditions to be implemented for protection of relevant threatened species and endangered ecological communities;
- b. ensure that all workers are appropriately briefed on required protective measures; and
- c. inspect protective measures to confirm their adequacy and advise the proponent and site manager of the inspection results and their implications.

Reason: To prevent impacts to threatened species, endangered ecological communities and their habitats in accordance with the Biodiversity Conservation Act 2016.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

20. **Requirement to Notify about New Contamination Evidence**

Any new information revealed during demolition works that has the potential to alter previous conclusions about site contamination or hazardous materials shall be immediately notified to the Council and the Principal Certifying Authority.

Reason: To protect human health and the environment.

21. **Compliance with the Construction Environmental Management Plan**

The requirements of the Construction Environmental Management Plan required by this consent are to be fully implemented from commencement of any works until the issue of the occupation certificate.

Reason: Protection of the environment.

22. **Report Dead or Injured Penguins**

Any injured or dead Little Penguins within the worksite must be reported to the National Parks & Wildlife Service (9457 9577) or Northern Beaches Council (1300 434 434).

Reason: To prevent impacts to Little Penguins and record any mortality events.

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

23. **Accessibility**

Prior to the issuance of the occupation certificate, a suitably qualified access consultant is to provide the Principal Certifying Authority with written certification confirming that the as-built development is consistent with the recommendations of the Approved Access Report referenced in Condition 1 of this consent.

Reason: To ensure equitable access.

24. **Construction Environmental Management Plan Certification**

Written certification from a suitably qualified person(s) shall be submitted to the Principal Certifying Authority and Council, stating that Construction Environmental Management Plan required by this consent has been complied with.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the occupation certificate.

Reason: To ensure compliance with standards.

25. **Project Ecologist Certification**

Works are to be carried out in accordance with these conditions of consent, the Construction Environmental Management Plan and the Approved Biodiversity Assessment Report referenced in Condition 1 of this consent.

Written confirmation of compliance with the recommendations of the Approved Biodiversity Assessment Report and the Construction Environmental Management Plan it to be provided to the Principal Certifying Authority by the Project Ecologist prior to the issuance of the occupation certificate.

Reason: To ensure biodiversity protection measures are complied with.

26. **Fire Safety Matters**

At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and NSW Fire & Rescue.

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

Each year the Owners must send to the Council and NSW Fire & Rescue an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement under Part 9 Division 4 & 5 of the Environmental Planning and Assessment Regulation 2000.

27. **Plan of Management**

A Plan of Management is to be prepared for the use of the outdoor areas associated with Hugos in accordance with the following:

- a. A maximum of 80 patrons are allowed within the western outdoor dining area at any given time.
- b. A maximum of 36 patrons are allowed within the southern outdoor dining area at any given time.
- c. All patrons within the western outdoor dining area and the southern outdoor dining area are to be seated.
- d. No amplified music or live entertainment is permitted at either the western or southern outdoor dining area.
- e. The outdoor areas are not to be used between the hours of 12am midnight to 11am.
- f. Management is to ensure that patrons departing the premises do so in an orderly manner to minimise noise impacts (especially after 10pm)
- g. Garbage and bottle disposal should be undertaken prior to 10pm and not before 7am.
- h. A register of any complaints and any actions made in response to such complaints is to be maintained on site and produced upon request from Council.
- i. Tables must be cleared in a timely manner so items are not blown into the waterway.
- j. Disposable items such as plastic or polystyrene cups, containers and straws are not to be used in outdoor dining areas.
- k. With the exception of candles, no external lighting is permitted.
- l. Hours of operation for the outdoor dining areas are limited to:

11:00am to 11:30pm on all days, with all restaurant services to cease and all customers to vacate within 30 minutes.

- m. A 1m wide service area is to be outlined on the ground immediately adjacent to the southern outdoor dining area, with staff servicing the southern outdoor dining area to be generally limited to this area.

The Plan of Management is to be submitted to the Principal Certifying Authority prior to the issuance of the occupation certificate.

Reason: To ensure appropriate management of outdoor areas to minimise impacts upon the surrounding environment.

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

28. **Dead or Injured Wildlife**

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

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

29. **Adherence with the Plan of Management**

The premises are to be managed in accordance with the Plan of Management required by this consent.

Reason: To ensure appropriate management of outdoor areas to minimise impacts upon the surrounding environment.