

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0195
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Responsible Officer:	Brittany Harrison
Land to be developed (Address):	Lot 1 DP 1170245, 0 Wharves And Jetties MANLY NSW 2095
Proposed Development:	Use of premises (Shop 11) as a cafe including fit-out and signage
Zoning:	Land Zoned W2 Environmental Protection – State Environmental Planning Policy (Biodiversity and Conservation) 2021
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Transport for NSW TMG Developments Pty Ltd
Applicant:	Keeplan Pty Ltd

Application Lodged:	07/03/2023
Integrated Development:	Yes
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	29/03/2023 to 26/04/2023
Exhibited Clause 56 EP&A Regulations:	29/03/2023 to 26/04/2023
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 234,998.50
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EXECUTIVE SUMMARY

This development application seeks approval for the use of one tenancy (shop 11) within Manly Wharf as a café/restaurant, including a new internal fit-out, signage and minor external alterations.

Manly Wharf is a State Heritage Item, with the development being Nominated Integrated Development pursuant of the *Heritage Act 1977*. Accordingly, the proposal was referred to Heritage NSW, with

General Terms of Approval being issued, subject to recommended conditions.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to the proposal including partial demolition of a heritage item, in particular the existing shop fit-out, which involves removing (demolition) of some building fabric being flooring, shop front and fixtures such as counter/server. The demolition works do not significantly affect any original building fabric and is restricted to one small tenancy within the larger heritage structure. However, any form of demolition associated with a heritage item is defined as a form of Sensitive Development.

The development application was notified and exhibited for a period of twenty-eight (28) days, as stated within Council's Community Participation Plan and the *Environmental Planning and Assessment Act 1979* as it constituted nominated integrated development. No submissions were received.

As the subject site is within the Sydney Harbour Catchment, and is located on land within Zone 2 Environment Protection of the Foreshores and Waterways Area Map. Therefore, the provisions of Chapter 6 - Water Catchments of the State Environmental Planning Policy (Biodiversity and Conservation) 2021, apply to this development. The application has also been assessed against other relevant State Environmental Planning Policy's, the Manly Local Environmental Plan 2013, and the planning controls listed under both the Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005 and Manly Development Control Plan 2013.

Based on a detailed assessment of the application, it is considered that, on balance the proposal is a suitable and an acceptable development for the subject site for the reasons outlined in this report.

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

PROPOSED DEVELOPMENT IN DETAIL

This application seeks development consent for Shop 11, Manly Wharf as a café/restaurant premises, including an internal shop fit out, installation of signage and minor external shop front alterations.

Specially, the works comprise of the following:

- **Operational Hours:** 7.00am - 11:00pm Monday to Sunday;
- **Staff:** Up to 8 staff members;
- **Shop Fit-out:** Internal amendments including; new storeroom, joinery, equipment, tables and benches;
- **Demolition works:** Demolition of existing shop fit out;
- **Signage:** The installation of a new business identification sign to the existing tenancy wall/window facing the internal mall (illuminated), alterations to the lettering to an existing under awning sign; and various window decals and new external finishes.

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the

development upon the subject site and adjoining, surrounding and nearby properties;

- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 5.7 Development below mean high water mark

Manly Local Environmental Plan 2013 - 5.10 Heritage conservation

Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area

Manly Local Environmental Plan 2013 - 6.12 Essential services

Manly Development Control Plan - 4.4.3 Signage

SITE DESCRIPTION

Property Description:	Lot 1 DP 1170245 , 0 Wharves And Jetties MANLY NSW 2095
Detailed Site Description:	<p>The subject site is legally identified as Lot 1 in Deposited Plan 1170245 and is commonly known as Manly Wharf. The site is located within Manly Cove and is located at the junction of East Esplanade and West Esplanade, Manly. The site within Manly Wharf is known as Shop 11. The subject site is identified as an item of State Heritage significance.</p> <p>The area of the site where the proposed development is located is within the boundaries defined as the Manly Wharf Lease Line and the line of the Mean High Water Mark. This site has an estimated area of 13,405m².</p> <p>The site is within Zone 2- Environment Protection zone under the provisions of State Environmental Planning Policy (Biodiversity and Conservation) 2021. 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> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Opposite the subject site to the north is Manly Corso. The Corso is a wide open promenade and public open space between Manly Beach and Many Wharf and provides for street furniture, public art and a focal point for the Manly</p>

	<p>Town Centre.</p> <p>Commercial uses including shops, offices, restaurants, cafes, licensed premises and services and amenities dominate the frontages of The Corso. The scale of development along The Corso is varied between two (2) to four (4) storeys.</p> <p>The uses opposite the site along East Esplanade are dominated by mixed use developments mainly consisting of ground floor commercial uses such as shops, offices, restaurants and cafes with residential above. several developments along East Esplanade consist primarily of multi-storey commercial developments. The scale of development along East Esplanade is predominately between three (3) to six (6) storeys.</p> <p>The uses opposite the site along West Esplanade are dominated by mixed use developments mainly consisting of ground floor commercial uses such as shops, offices, restaurants and cafes with residential above. The scale of development along West Esplanade is predominately between three (3) to eight (8) storeys.</p>
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Map:



SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for Shop 11 within Manly Wharf.

The land has been used for commercial purposes for an extended period of time.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan 2013 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a recommended condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a recommended condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a recommended 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	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan
Section 4.15 Matters for Consideration	Comments
locality	2013 section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (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.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 29/03/2023 to 26/04/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan. This exhibition period included the required public consultation for nominated integrated development under Clause 56 of the Environmental Planning and Assessment Regulations 2021.

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

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<i>Supported, subject to conditions.</i> The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no concerns with the application subject to inclusion of the attached conditions of approval and consideration of the notes below.

Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.

Internal Referral Body	Comments
Environmental Health (Food Premises, Skin Pen.)	<p><i>Supported, subject to conditions.</i></p> <p><u>General Comments</u> The proposed works involve the internal refurbishment of an existing food and drink premise including new storeroom, joinery, equipment, shop front and signage. Minor external works of the façade facing the wharf are also proposed involving new glazing and entry door.</p>
NECC (Bushland and Biodiversity)	<p><i>Supported, without conditions.</i></p> <p>The proposal seeks approval for Use of premises (Shop 11) as a cafe including fit-out and signage.</p> <p>The comments on this referral relate to the following applicable controls and provisions:</p> <ul style="list-style-type: none">- SEPP (Resilience and Hazards) 2021 - Chapter 2 Development within the coastal environment- NSW Biodiversity Conservation Act 2016 <p>The proposed development has been assessed for potential impacts to the endangered population of Little Penguins at Manly. Individual penguins associated with this population have been recorded within the aquatic and terrestrial environment surrounding Manly Wharf. Whilst the proposed use of the existing shop as a café will not directly impact upon penguin habitat, night time operations could potentially impact penguins due to noise and light "pollution".</p> <p>It is recommended the applicants review the National Light Pollution Guidelines for Wildlife available on:</p> <p>https://www.dcceew.gov.au/environment/biodiversity/publications/national-light-pollution-guidelines-wildlife</p>

NECC (Coast and Catchments)	<p>Supported, without conditions.</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> • Supplied plans and reports; • Coastal Management Act 2016; • Relevant LEP and DCP clauses; and • State Environmental Planning Policy (Resilience and Hazards) 2021 (section 2.12) • State Environmental Planning Policy (Biodiversity and Conservation) 2021 (sections 6.6 & 6.7) <p>Note: Clauses 2.10 (coastal environment area) and 2.11 (coastal use area) do not apply as the site is also located within the Sydney Harbour catchment area. Hence, only Clause 2.12 of the SEPP apply for this DA.</p> <p>On internal assessment against the relevant Environmental Planning Instruments and Statement of Environmental Effects report prepared by</p>
Internal Referral Body	Comments
	<p>Metro Planning dated November 2022, the DA satisfies requirements under clauses 2.12 of the SEPP.</p> <p>Manly LEP 2013 and Manly DCP 2013</p> <p>Development on Foreshore Area</p> <p>The subject site is also shown to be as “Manly Foreshores Area” on Council’s Area “within the foreshore building line Map” in Manly LEP 2013. Hence, Part 6, Clause 6.10 –Limited development on foreshore area of the Manly LEP 2013 applies for any development within the foreshore area.</p> <p>The DA proposes works involving the internal refurbishment of an existing food and drink premise including new storeroom, joinery, equipment, shop front and signage. Minor external works of the façade facing the wharf are also proposed involving new glazing and entry door, all within the foreshore line. All these proposed works are consistent with Clause 6.10 (2).</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Metro Planning dated November 2022 , the DA satisfies the objectives and requirements of Part 6, Clause 6.10 of the Manly LEP 2013.</p>

NECC (Riparian Lands and Creeks)	<p>Supported, without conditions.</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> • Supplied plans and reports; • Relevant LEP and DCP clauses; and • Northern Beaches Water Management for Development Policy. <p>On assessment against the relevant Environmental Planning Instruments and policies, the proposal is acceptable.</p>
Parks, reserves, beaches, foreshore	<p>Supported, subject to conditions.</p> <p>The plans indicate that no works are proposed on Council reserves or foreshore.</p>
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	<p>The proposal has been referred to Heritage as the subject site is a heritage item</p>
	<p>SHR No 01434 - Manly Wharf</p>
	Details of heritage items affected
<p><u>Statement of Significance</u> Of environmental significance as a visually prominent man-made feature. Of historical significance for its associations with the maritime activities at Manly as a tourist destination and suburb of Sydney,</p>	

Internal Referral Body	Comments	
	<p>dependent on the ferry link to the CBD. Together with Circular Quay, the wharf is the only substantial older style ferry wharf surviving in Port Jackson: association with Manly's history as a recreational centre.</p> <p><u>Physical Description</u> A broad wharf supported on timber piers and with a concrete platform. The superstructure is constructed of steel and timber. The facade and side walls form an important architectural design, similar to the Circular Quay ferry terminals</p>	
	Other relevant heritage listings	
	SEPP (Biodiversity and Conservation) 2021	Yes Manly Wharf is heritage item number 52 in the SEPP.
	Australian Heritage Register	No
	NSW State Heritage Register	Yes Manly Wharf is on the state register
	National Trust of Aust (NSW) Register	Yes Manly Wharf is on the National Trust Register
	RAIA Register of 20th Century Buildings of Significance	No
	Other	N/A
	Consideration of Application	
	<p>The proposal seeks consent for the fitout and use of a tenancy at Manly Wharf for a Max Brenner food and drink premise. The proposed works also include changes to the external facade of the tenancy facing the harbour and signage. As the wharf is a state heritage item, the proposal is integrated development and was referred to Heritage NSW who have provided their General Terms of Approval. Heritage has also reviewed the proposal and raises no objections. The proposal is also considered to be without impact to adjoining heritage items in the immediate vicinity.</p> <p>Therefore Heritage raises no objections and requires no conditions.</p> <p>Consider against the provisions of CL5.10 of MLEP.</p> <p>Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? Manly Wharf already has a CMP Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? Yes</p>	

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	Supported, subject to conditions. The proposal was referred to Ausgrid who provided a response
External Referral Body	Comments
	stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Nominated Integrated Development - Heritage NSW - Heritage Act 1977	Supported, subject to terms of approval. Heritage NSW have considered the nominated integrated development application, in accordance with Section 4.47 of the <i>Environmental Planning and Assessment Act 1979</i> . The general terms of approval have been included within this assessment and form part of the recommended conditions of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment

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

SEPP (Biodiversity and Conservation) 2021

The subject site is located within the Sydney Harbour Catchment therefore the provisions of Chapter 6 apply to this development.

Part 6.3 Foreshores and Waterways Area

Division 1 Preliminary

Section 6.25 Consent Authority

In accordance with Section 6.25(2)(c) of the Biodiversity and Conservation SEPP 2021 (SEPP BC), development carried out wholly or partly inside the zoned waterway, including development carried out below the mean high water mark, for the purposes of 'Restaurants or cafes', the Minister administering the *Environmental Planning and Assessment Act 1979* is the consent authority.

However, the Minister for Planning, under Section 2.4 of the *Environmental Planning and Assessment Act 1979*, delegated consent authority functions to Council of the local government area, in which the development is proposed to be carried out, or to Council of the local government area that is nearest to the land where the development is proposed to be carried out, for the uses specified under Section 6.25 (2)(c) of the SEPP BC. Therefore, Northern Beaches Council is the consent authority for the proposed development.

Division 2 Zoning of Foreshores and Waterways Area

Section 6.26 Zoning of Foreshores and Waterways Area

The subject site is located on land within Zone 2 Environment Protection of the Foreshores and Waterways Area Map, under the provisions of the SEPP BC.

The objectives of Zone 2 Environment Protection are considered with respect of the proposal, as follows:

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

Comment

The proposed works within this application, in consideration of Manly Wharf as a whole, is comparatively minor in nature. The works include an internal shop fit out, and external material changes to part of the front façade, which is consistent with the existing theme of the site. Therefore, will not cause impact to the cultural or natural values of the waterway. Heritage NSW has reviewed the proposal and is in support, subject to General Terms of Approval, which form part of the recommended conditions of consent.

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

Comment

The proposed works are confined to Shop 11 within Manly Wharf and are not likely to create a long term adverse impact on, the natural and cultural values of waters in the zone and adjoining foreshores.

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

Comment

The proposed works include the use of materials that will aid in enhancing Manly Wharf, as well as creating further activation to the wharf and surrounding foreshore areas, without attributing to any adverse impacts upon the natural or cultural values of waters in the zone and adjoining foreshores. As the proposal does not interfere with the natural quality or value of the waterway, rehabilitation is not considered to be required in this instance, given the scale of the proposal.

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

Comment

The subject site forms part of the greater wharf structure, which is subject to an ongoing lease from Transport for NSW that includes long-term management strategies and requirements, which satisfies this objective.

As demonstrated above, the proposal is consistent with the objectives of the Zone 2 Environment Protection.

It is noted that the Zone 2 permissible land use table does not refer to 'Restaurants or cafes' as being development permitted with consent. However Section 6.27(2) notes the following:

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

- (a) is not inconsistent with the objectives for development in the zone, and*
- (b) is not inconsistent with the provisions of another environmental planning instrument, and*
- (c) will not otherwise have adverse impacts.*

Comment

As demonstrated above, the proposal is consistent with the objectives of the Zone 2 Environment Protection. Moreover, the proposal is not inconsistent with other environmental planning instruments that apply to the land (i.e. SEPP (Industry and Employment) 2021), and will not be considered to have any adverse impacts to the natural, cultural or heritage values of the site or surrounding waterway. Therefore, it is considered that the proposal is a permissible and acceptable land use.

Division 3 Development in Foreshores and Waterways Area

Section 6.28 General

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

- (a) whether the development is consistent with the following principles—*
 - (i) Sydney Harbour is a public resource, owned by the public, to be protected for the public good,*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) the Foreshores and Waterways Area, and

(ii) public places, landmarks and heritage items.

Comment

The above has been considered as part of the assessment of this application. Having regard to both current and future demand, the character and functions of a working harbour will be retained. The development site adjoins land used for commercial maritime purposes; the proposed works are compatible with the use of the adjoining land. The proposed works will not interfere with public access to and along the foreshore. As Manly Wharf includes multiple commercial uses, the proposal is not considered to adversely impact on traffic congestion in the zoned waterway and along the foreshore. The foreshores and waterways area will be enhanced, protected and maintained, in relation to its unique visual qualities.

The proposal is satisfactory when considered against the matters for consideration as prescribed within SEPP BC.

Part 6.4 Heritage conservation in Sydney Harbour

The subject site is located within Sydney Harbour catchment and is of State Heritage Significance.

Section 6.56 Demolition of nominated State heritage items

(1) Development consent must not be granted to the demolition of a nominated State heritage item unless the consent authority has—

- (a) notified the Heritage Council of the demolition, and*
- (b) considered any submissions made by the Heritage Council within 28 days after the notice*

Comment

Heritage NSW have considered the nominated integrated development application, in accordance with Section 4.47 of the Environmental Planning and Assessment Act 1979. The general terms of approval have been included within this assessment and form part of the recommended conditions of consent.

Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005

The Sydney Harbour Foreshores and Waterways Area Development Control Plan, continues to apply to the foreshores and waterways area as identified in Part 6.3 of the Biodiversity and Conservation SEPP 2021. The development control plan includes design guidelines for development and criteria for natural resource protection.

Chapter 2 Ecological Assessment

The overall aims of this chapter is to conserve biological diversity within and around Sydney Harbour and its tributaries.

- *Ecological communities, particularly those which form wildlife habitats, are protected and where feasible enhanced;*
- *Development is sited to retain native vegetation, wetlands and natural foreshores;*
- *Development is accompanied by revegetation and rehabilitation of degraded foreshores, where appropriate; and*
- *development does not impact adversely on water quality.*

Comment

The proposed works have been considered against the aims and criteria of Chapter 2. The works will not impact the ecological communities or the water quality of the area. The works are located within the existing structure Manly Wharf, and does not necessitate any vegetation removal, or impacts on the natural foreshore. The proposal complies with Chapter 2 of the Sydney Harbour Foreshores and

Waterways Area DCP 2005.

Chapter 3 Landscape Assessment

The overall aims of this chapter is to consider the visual impact of development from the waterway and foreshores. The chapter stipulates that 'Landscape Character Type 8' applies to the Manly Area. *These areas have a high level of built form with waterside commercial, industrial and residential uses.* These areas have a high level of built form with waterside commercial, industrial and residential uses, which should be maintained. The following criteria is to be satisfied:

- *Vegetation is integrated with land-based development to minimise the contrast between natural and built elements;*
- *Design and mitigation measures are provided to minimise noise and amenity impacts between incompatible land uses;*
- *The maritime uses on the Harbour are preserved. Pressure for these uses to relocate is minimised. New developments adjoining maritime uses are designed and sited to maintain compatibility with existing maritime uses; and*
- *Remaining natural features that are significant along the foreshore are preserved and views of these features are maintained.*

Comment

The proposed works are for the use and fit out of a café/restaurant, within an already existing structure. The works will involve internal alterations and minor façade changes to a shop front. The works will not impact the existing contrast between natural and built environments. Additionally, the proposal includes measures to mitigate any unacceptable amenity impacts such as noise and lighting.

Chapter 4 Design Guidelines for Water-Based and Land/Water Interface Developments

Chapter 4 contains guidelines for specific types of development that are water-based or located at the land/water interface.

Comment

The use of premises as a café/restaurant and the accompanying alterations proposed under this application have been considered against the relevant design guidelines of this chapter. This includes the overall built form of the development, lighting and signage. The proposed physical works will complement the existing character of Manly Wharf, and is considered consistent with surrounding shop fronts and existing uses. The colours and materials are considered acceptable for the area and the heritage value of the site as supported by Heritage NSW. The proposed signage is minimal and not obtrusive, and is acceptable. Signage will be assessed under the SEPP (Industry and Employment) 2021 and Manly Development Control Plan 2013.

Council is satisfied that the proposal is consistent with all relevant requirements and objectives of the SEPP (Biodiversity and Conservation) 2021.

SEPP (Industry and Employment) 2021

Section 3.6 and 3.11 of Chapter 3 require Council to determine consistency with the objectives stipulated under Subsection 3.1 (1)(a) of the aforementioned SEPP and to assess the proposal against the assessment criteria of Schedule 5.

The objectives of this chapter aim to ensure that the proposed signage is compatible with the desired

amenity and visual character of the locality, provides effective communication and is of high quality having regards to both design and finishes.

In accordance with the provisions stipulated under Schedule 5 of Chapter 3, the following assessment is provided:

Matters for Consideration	Comment	Complies
<p>1. Character of the area Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?</p>	<p>The proposed signage is generally consistent with the existing signage surrounding the premises and is consistent with the desired future character of the Manly Wharf. The premise as viewed externally and internally from Manly Wharf, does not succumb to significant changes in overall appearance, to that of what currently exists but rather an enhancement, which is supported by both Council's Heritage Officer's and Heritage NSW.</p>	<p>Yes</p>
<p>Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?</p>	<p>The proposal is consistent with the current theme for outdoor advertising of retail premises within Manly Wharf.</p>	<p>Yes</p>
<p>2. Special areas Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?</p>	<p>The premises is situated within the State Heritage listed Manly Wharf. The proposed signage remains consistent with the surrounding premises, and is compatible with the area. The signage is considered to achieve visual interest, enhancing the visual quality of the vicinity, and will not disrupt the surrounding environment. No concerns have been raised by the relevant internal or external referral bodies, in this regard.</p>	<p>Yes</p>
<p>3. Views and vistas Does the proposal obscure or compromise important views?</p>	<p>The signage does not protrude further than the built form, and will therefore not disrupt or obscure any significant views.</p>	<p>Yes</p>
<p>Does the proposal dominate the skyline and reduce the quality of vistas?</p>	<p>The signage is modest in nature, and will be attached to the existing built structures. Therefore, no domination of the skyline or reduction in the quality of vistas shall occur.</p>	<p>Yes</p>
<p>Does the proposal respect the viewing rights of other advertisers?</p>	<p>The proposal does not disrupt the viewing rights of other advertisers.</p>	<p>Yes</p>

<p>4. Streetscape, setting or landscape Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?</p>	<p>The proposed scale, proportion and form of the signage is considered acceptable for Manly Wharf, given the several commercial/retail uses established within the vicinity.</p>	<p>Yes</p>
<p>Does the proposal contribute to the visual interest of the streetscape, setting or landscape?</p>	<p>The scale and design of the signage respects the heritage values of the site, and has incorporated materials and finishes that will achieve an acceptable level of visual interest to the setting and landscape. The works will not viewed from the street.</p>	<p>Yes</p>
<p>Does the proposal reduce clutter by rationalising and simplifying existing advertising?</p>	<p>The proposal does not result in visual clutter.</p>	<p>Yes</p>
<p>Does the proposal screen unsightliness?</p>	<p>The proposal includes refurbishment and visual improvement of the façade of the premises.</p>	<p>Yes</p>
<p>Does the proposal protrude above buildings, structures or tree canopies in the area or locality?</p>	<p>No.</p>	<p>Yes</p>
<p>5. Site and building Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?</p>	<p>The proposal is considered compatible with the scale, proportion and characteristics such as the State Heritage Significance, given the context of this part of Manly Wharf and the surrounding premises. As mentioned above, Council's Heritage Officer's and Heritage NSW support the proposal.</p>	<p>Yes</p>
<p>Does the proposal respect important features of the site or building, or both?</p>	<p>Yes, as discussed above.</p>	<p>Yes</p>
<p>Does the proposal show innovation and imagination in its relationship to the site or building, or both?</p>	<p>The signage expresses slight variation, yet is consistent with the overall motif of their design. Exhibiting innovation and imagination in relation to the site and building.</p>	<p>Yes</p>
<p>6. Associated devices and logos with advertisements and advertising structures Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?</p>	<p>The proposal consists of several signs to be illuminated and will be fitted to the shopfront.</p>	<p>Yes</p>
<p>7. Illumination Would illumination result in unacceptable glare, affect safety for pedestrians, vehicles or aircraft, detract from the amenity of any residence or other form of accommodation?</p>	<p>The illumination of several signs will not result in unacceptable glare, affect safety for pedestrians, vehicles or aircraft, detract from the amenity of any residence or other form of accommodation. The illumination is consistent to other premises, with the signage being acceptably placed.</p>	<p>Yes</p>

Can the intensity of the illumination be adjusted, if necessary?	The application indicates that the signage will be illuminated only during the hours of operation of the premises.	Yes
Is the illumination subject to a curfew?	Illumination of the signage will be switched off when the premises closes.	Yes
8. Safety Would the proposal reduce the safety for any public road, pedestrians or bicyclists?	No.	Yes
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	No.	Yes

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

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The site is located within the Coastal Environment and Coastal Use Areas pursuant to Chapter 2 of this SEPP.

Division 3 Coastal environment area

Comment

The site is located within the Foreshores and Waterways Area. Section 2.10 (3) stipulates that *"This section does not apply to land within the Foreshores and Waterways Area within the meaning of State Environmental Planning Policy (Biodiversity and Conservation) 2021, Chapter 6"*.

Division 4 Coastal use area

Comment

The site is located within the Foreshores and Waterways Area. Section 2.11 (2) stipulates that *"This section does not apply to land within the Foreshores and Waterways Area within the meaning of State Environmental Planning Policy (Biodiversity and Conservation) 2021, Chapter 6"*.

Division 5 General

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

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

Comment

The proposal is confined to the existing building footprint and is not likely to increase the risk of coastal hazards within the locality.

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

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

Comment

The proposal is not inconsistent with relevant coastal management programs

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

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Manly Wharf is located outside the land application map for the *Manly Local Environment Plan 2013*.

Refer to the discussion, under the section of this assessment report titled '*State Environmental Planning Policy (Biodiversity and Conservation) 2021*'.

Compliance Assessment

Clause	Compliance with Requirements
5.7 Development below mean high water mark	Yes
5.10 Heritage conservation	Yes
6.1 Acid sulfate soils	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

5.7 Development below mean high water mark

Clause 5.7 applies to this application as the works are located below the mean high water mark.

(1) The objective of this clause is to ensure appropriate environmental assessment for development carried out on land covered by tidal waters.

(2) Development consent is required to carry out development on any land below the mean high water mark of any body of water subject to tidal influence (including the bed of any such water).

Comment

Appropriate environmental assessment for the proposed development has been carried out, by assessing the works against and demonstrating compliance with the State Environmental Planning Policy (Biodiversity and Conservation) 2021, and the Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005. In addition, the works were assessed against the Manly Local Environmental Plan 2013 and Manly Development Control Plan 2013, and has been reviewed by Councils' Biodiversity, Coastal, and Riparian Lands Officers. As discussed elsewhere within this report, Northern Beaches Council is the consent authority for the proposed development.

5.10 Heritage conservation

Clause 5.10 applies to this application as the works are located on a site of State Heritage Significance (Item of I145 - Manly Wharf), that is listed within Schedule 5 of Manly Local Environmental Plan 2013. Development consent is required as the works include altering a heritage item that is a building by making structural changes, altering the exterior and interior of the item. Therefore, the proposed works will be assessed as follows:

(1) The objectives of this clause are as follows—

- (a) to conserve the environmental heritage of Manly,*
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, in*
- (c) to conserve archaeological sites,*
- (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.*

Comment

The proposed development works will conserve the environmental heritage of Manly and its heritage significance, as the proposal has been designed to utilise materials and finishes that will complement the existing character of Manly Wharf. The use of premises (food and drink premises) is consistent with the existing uses with Manly Wharf. The works will not disrupt archaeological sites, Aboriginal objects and Aboriginal places of heritage significance.

(4) Effect of proposed development on heritage significance

The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned.

Comment

The proposal was referred to Heritage NSW, who are in support of the application, subject to their general terms of approval, which have been included within this assessment and form part of the recommended conditions of consent. In addition, Council's Heritage Officer has reviewed the proposal, and considered any effects of the proposed development on the heritage significance of the item.

(5) Heritage assessment

The consent authority may, before granting consent to any development—
(a) on land on which a heritage item is located.

The consent authority may, before granting consent to any development require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.

Comment

The proposal is accompanied by a Heritage Impact Statement, which has been reviewed by both Heritage NSW and Council's Heritage Officer.

(9) Demolition of nominated State heritage items

The consent authority must, before granting consent under this clause for the demolition of a nominated State heritage item—

- (a) notify the Heritage Council about the application, and*
- (b) take into consideration any response received from the Heritage Council within 28 days after the notice is sent.*

Comment

The proposal was referred to the Heritage Council (Heritage NSW), and has incorporated their general terms of approval, which have been included within this assessment and form part of the recommended conditions of consent.

6.9 Foreshore scenic protection area

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the following matters:

- (a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,*
- (b) measures to protect and improve scenic qualities of the coastline,*
- (c) suitability of development given its type, location and design and its relationship with and impact on the foreshore,*
- (d) measures to reduce the potential for conflict between land-based and water-based coastal activities.*

Comment

The proposal will not result in overshadowing of the foreshore nor any loss of views from a public place to the foreshore, as the works are predominantly internal with minor external material changes. The proposed works have been designed to complement the existing character, use of premises and building materials of the subject site (Manly Wharf), and its surrounds. Shop 11 previously included a similar use of premises (food and drink premises), therefore it is considered that the proposal is acceptably located and designed to complement the relationship with the foreshore. The proposal will not result in conflict between land-based and water-based coastal activities.

6.12 Essential services

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

- (a) the supply of water,**

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

Comment

The proposed works are located within an existing building (Manly Wharf), with Shop 11 previously being used as a food and drinks premise. The works do not increase the building foot print of the site, and does not propose any changes to the existing stormwater, sewerage, vehicular access, water supply or electricity systems. The proposed works will be connected to these systems as they currently exist, which is deemed acceptable.

The proposal does not seek an increase to the overall floor area of the premises. Further, given the lack of opportunity to provide new on-site parking and the extent of the existing underground car parking, the current parking situation is appropriate of the proposed use. Additionally, the proposed premises is in close vicinity to public transport including a bus station and ferry terminal.

Manly Development Control Plan

Built Form Controls

Manly Wharf is located outside the land application map for the *Manly Local Environment Plan 2013*.

Refer to the discussion, under the section of this assessment report titled ‘*State Environmental Planning Policy (Biodiversity and Conservation) 2021*’.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3 General Principles of Development	Yes	Yes
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.3 Townscape (Local and Neighbourhood Centres)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.3 Signage	Yes	Yes

Detailed Assessment

4.4.3 Signage

Merit Consideration

The proposal includes two (2) business identification signs to the western elevation (internal shop frontage). One (1) sign will be attached below the awning, with the other attached to the window display. Window signage for business identification are also proposed, however these are considered exempt under *Subdivision 7 Window signs*, of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*. These window signs that are considered exempt development, will therefore not require further assessment.

The maximum signage to any shop frontage is two (2) business identification signs. Only two (2) signs in total are proposed to be illuminated.

Having regard to the above, it is concluded that the proposal complies with the requirements of this clause. Furthermore, an assessment against State Environmental Planning Policy (Industry and Employment) 2021, has concluded that the proposed signage aligns with the requirements of the SEPP.

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.

Section 7.12 conditions subject to contributions plan (*Environmental Planning and Assessment Act 1979*)

Development contributions do not apply to this development application as the subject site is located outside of the Manly Land Application Map, and that the works proposed, will not increase the existing gross floor area. Therefore, the proposal is exempt from development contributions.

CONCLUSION

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

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

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

In consideration of the proposal and the merit consideration of the development, the proposal is

considered to be:

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

PLANNING CONCLUSION

This proposal, for the use of premises as a café/restaurant, including a new internal fit-out, signage and minor external alterations at Shop 11 Manly Wharf, has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to demolition of part of a State Heritage Item. Therefore, meets the requirements for the determination by the NBLPP for Sensitive Development.

The development application was notified and exhibited for a period of twenty-eight (28) days, as stated within Council's Community Participation Plan and the Environmental Planning and Assessment Act 1979 as it constituted nominated integrated development. No submissions were received.

The critical assessment included a detailed consideration of the relevant provisions under the State Environmental Planning Policy (Biodiversity and Conservation) 2021, as well as several other relevant State Environmental Planning Policy's, the Manly Local Environmental Plan 2013, and the planning controls listed under both the Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005 and Manly Development Control Plan 2013.

In addition, the proposal was referred to Heritage NSW, who responded with General Terms of Approval, subject to relevant conditions.

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed. Accordingly, the application is referred to the NBLPP with a recommendation for **approval**.

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

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2023/0195 for Use of premises (Shop 11) as a cafe including fit-out and signage 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 with the endorsed stamped plans and documentation listed below, except as amended by any other condition of consent:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A002, Lease and Location Plan, Revision A	1 September 2021	Anouk & Co
A100, Demolition Plan, Revision B	12 September 2022	Anouk & Co
A101, Proposed Floor Plan, Revision E	16 November 2022	Anouk & Co
A103, Equipment Plan, Revision E	16 November 2022	Anouk & Co
A104, Shopfront 01, Revision D	10 November 2022	Anouk & Co
A105, Shopfront 02, Revision D	10 November 2022	Anouk & Co
A106, Internal Elevations 01 & 02, Revision E	16 November 2022	Anouk & Co
A107, Internal Elevation 03, Revision A	1 September 2022	Anouk & Co
Signage Schedule (Page 3 of 6)	10 November 2022	Anouk & Co
Signage Schedule (Page 4 of 6)	10 November 2022	Anouk & Co
Signage Schedule (Page 5 of 6)	10 November 2022	Anouk & Co
Signage Schedule (Page 6 of 6)	10 November 2022	Anouk & Co
Finishes Schedule (Page 3 of 10)	20 February 2023	Anouk & Co
Finishes Schedule (Page 4 of 10)	20 February 2023	Anouk & Co
Finishes Schedule (Page 5 of 10)	20 February 2023	Anouk & Co
Finishes Schedule (Page 6 of 10)	20 February 2023	Anouk & Co
Finishes Schedule (Page 7 of 10)	20 February 2023	Anouk & Co
Finishes Schedule (Page 8 of 10)	20 February 2023	Anouk & Co
Finishes Schedule (Page 9 of 10)	20 February 2023	Anouk & Co
Finishes Schedule (Page 10 of 10)	20 February 2023	Anouk & Co

Reports / Documentation – All recommendations and requirements contained within:

Report No. / Page No. / Section No.	Dated	Prepared By
Statement of Heritage Impact (No. 9740)	November 2022	Heritage 21
National Construction Code Review (No. 8146)	15 February 2023	Certis (NSW) Pty Ltd

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

c) The development is to be undertaken generally in accordance with the following:

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	-	-

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

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

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	29 March 2023
Heritage NSW	Heritage NSW General Terms of Approval	28 April 2023

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

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

3. Approved Land Use

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a 'Food and Drink Premises', in accordance with the Dictionary of the Manly Local Environmental Plan 2013, as follows:

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

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

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

above definition will require the submission to Council of a new development application.

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

4. **Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifier for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars

- of the excavation to the owner of the building being erected or demolished.
- (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

5. **General Requirements**

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
- 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 8.00 am to 1.00 pm inclusive on Saturday,
 - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no

hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:
 - (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2018
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
 - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
 - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage

system in sewerred areas or managed on-site in unsewerred areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

6. Heritage NSW General Terms of Approval

The proposal shall strictly comply with the General Terms of Approval prepared by the Heritage Council of NSW as dated 28 April 2023. The General Terms of Approval, are referenced under Condition 2 of this consent.

Reason: Statutory Requirement.

7. No Approval to Window Signage

No approval is granted for the proposed window signage (decals) that constitute exempt development under the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

Reason: Works considered as exempt development to comply with State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

FEES / CHARGES / CONTRIBUTIONS

8. Security Bond

A bond (determined from cost of works) of \$2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

9. **Waste Management Plan**

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan.

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

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

10. **Compliance with Standards**

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

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

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

11. **Sydney Water "Tap In"**

The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifier demonstrating the works are in compliance with Sydney Water requirements.

Please refer to the website www.sydneywater.com.au for:

- ; "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- ; Guidelines for Building Over/Adjacent to Sydney Water Assets.

Or telephone 13 000 TAP IN (1300 082 746).

Reason: To ensure compliance with the statutory requirements of Sydney Water.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

12. **Storage of Materials on Land Owned or Managed by Council Prohibited**

The dumping or storage of building materials, spoil, vegetation, green waste or any other material in land owned or managed by Council is prohibited.

Reason: Public safety and environmental protection.

13. **Protection of Council's Public Assets**

Any damage to Council's public assets shall be made good by the applicant, and/or the contractor, to the satisfaction of Council.

Council's public assets include, but is not limited to, the following: road, kerb and gutters, crossovers, crossings, paths, grass verge, open space and associated elements such as furniture, recreational facilities and the like, within the meaning of the Local Government Act 1993.

Reason: To protect and/or restore any damaged public asset.

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

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

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

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

15. **Demolition Works - Asbestos**

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

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

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

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

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

16. **Waste Management During Development**

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

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

17. **Registration of food Business**

The food business must be registered with the Appropriate Regulatory Authority, prior to

Occupation Certificate being issued.

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

18. **Removal of All Temporary Structures/Material and Construction Rubbish**

Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

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

Reason: To ensure bushland management.

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

Prior to the issuing of any occupation certificate, certification is to be provided to the Principal Certifier by a suitably qualified person demonstrating that the design, construction and fit out of food premises kitchen is compliant with the requirements of AS 4674 Design, construction and fit out of food premises.

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

20. **Mechanical Ventilation certification**

Where Mechanical ventilation is required to be installed in the food premises it must comply with the following:

- i Australian Standard (AS) 1668.2 “The use of ventilation and air-conditioning in buildings - Mechanical ventilation in buildings”; and
- i Any external exhaust discharge must be above the roofline and discharged in a manner that is not likely to cause an amenity impact.

Certification is to be provided to the Principal Certifier prepared by a suitably qualified person to demonstrate that the mechanical ventilation complies with the above requirements.

Reason: To ensure that the installed mechanical ventilation complies with the requirements of the Australian Standard 1668.2 and to prevent amenity impacts.

21. **Sydney Water**

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au <<http://www.sydneywater.com.au>> then refer to “Water Servicing Coordinator” under “Developing Your Land” or telephone 13 20 92 for assistance.

Following application a “Notice of Requirements” will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

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

Reason: To ensure compliance with the statutory requirements of Sydney Water.

22. **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 the NSW Fire Brigade.

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

Each year the Owners must send to the Council and the NSW Fire Brigade 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 of the Environmental Planning and Assessment Regulation 2021.

23. **Waste Management Confirmation**

Prior to the issue of an Occupation Certificate, evidence / documentation must be submitted to the Principal Certifier that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

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

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

24. **Proposed Outdoor Dining Condition**

No outdoor dining is approved in this consent. Any proposed outdoor dining must be consistent with State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

Any outdoor dining that is consistent with the SEPP shall be the subject of a separate Outdoor Dining Application to Council's Property team.

Reason: To ensure that outdoor dining is assessed and approved under the appropriate regulatory framework and legislation.

25. **Hours of Operation**

The hours of operation are to be restricted to:

- i Monday to Sunday – 7:00am - 11:00pm.

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

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