

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/2148
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Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 18 DP 819775, 202 Condamine Street BALGOWLAH NSW 2093 Lot 17 DP 819775, 204 Condamine Street BALGOWLAH NSW 2093 Lot 91 DP 607382, 200 Condamine Street BALGOWLAH NSW 2093
Proposed Development:	Demolition works and construction of a building for use as a specialised retail premises including signage
Zoning:	Manly LEP2013 - Land zoned E3 Productivity Support OLDManly LEP2013 - Land zoned B6 Enterprise Corridor
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Meridian Distributors Pty Ltd
Applicant:	The King Trust

Application Lodged:	20/12/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	20/04/2023 to 18/05/2023
Advertised:	20/04/2023
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 4.5%
Recommendation:	Approval

Estimated Cost of Works:	\$ 9,106,891.00
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PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for demolition work and construction of a ***specialised retail premises*** (furniture showroom) and associated signage.

Specifically the works are as follows:

- Demolition works

- New building, incorporating:
 - Furniture showroom
 - Undercroft flood storage
 - Ground floor 26 space carpark to the rear of the building
 - Two lane vehicular access driveway.
 - Landscaping
- Signage
 - 2 x Business identification signs
 - 1 x pylon sign

The proposed operational details are as follows:

- Hours of Operation
 - Monday to Friday: 09:00am - 5:30pm
 - Saturdays: 9:00am - 5:00pm
 - Sunday (public holidays): 10:00am - 5:00pm

AMENDED PLANS

Following a preliminary assessment of the application Council wrote to the applicant on 6 March 2023 outlining concerns that would not allow for Council to support the application in its current form. The concerns related to Height of Building non-compliance and the Design and Sustainability Advisory Panel comments. The applicant lodged amended plans to address concerns on 12 March 2023 and additional information (Clause 4.6).

The amended plans incorporate the following changes:

- Level 2 and the roof have both been lowered by an overall 400mm
- The roof pitch has been amended from 2 degrees to 2.8 degrees

The proposed amendments will have a reduced environmental impact on the adjoining properties and public open space than the original proposal. The amended plans result in a significant reduced size development. Therefore, re-notification was not required in accordance with Northern Beaches Community Participation Plan.

ASSESSMENT INTRODUCTION

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

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

- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Local Environmental Plan 2013 - 6.2 Earthworks

Manly Development Control Plan - 4.3.2 FSR and Height

Manly Development Control Plan - 4.4.3 Signage

Manly Development Control Plan - 5.4.3 Flood Prone Land

SITE DESCRIPTION

Property Description:	Lot 18 DP 819775 , 202 Condamine Street BALGOWLAH NSW 2093 Lot 17 DP 819775 , 204 Condamine Street BALGOWLAH NSW 2093 Lot 91 DP 607382 , 200 Condamine Street BALGOWLAH NSW 2093
Detailed Site Description:	The subject site consists of three (3) allotments located on the eastern side of Condamine Street, Balgowlah. The site is irregular in shape with a frontage of 46.275mm along Condamine Street and an average depth of 46m. The site has a surveyed area of 2,165.5m². The site is located within the B6 Enterprise Corridor/E3 Productivity Support zone and accommodates three separate buildings, each retail premises. The property is partially flood affected by the Medium Flood Risk Precinct and by Flood Life Hazard Category H5. Also, the site is affected by the flood storage and flood way area. The site adjoins Burnt Bridge Creek, which passes from the front north-west corner of the site through to the front north-east corner of the site. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by commercial development.

Map:



SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site.

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 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)	<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 condition of consent. <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.

Section 4.15 Matters for Consideration	Comments
	<u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to flood mitigation. <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 condition of consent. <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. <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. <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 condition of consent.
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	(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 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 20/04/2023 to 18/05/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	The application has been investigated with respects to aspects relevant the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below. 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.
Environmental Health (Acid Sulfate)	Supported - No conditions proposed Environmental Health has been requested to comment on this proposal for "Demolition and construction of a furniture showroom" in respect of the potential presence of acid sulfate soils. The statement of environmental effects supplied with the proposal documentation notes "The site is identified as Class 4 and 5 on the Acid Sulfate Soils Map. As the proposal does not propose any excavation, there will be no disturbance to acid sulfate soils." Environmental Health agrees with this statement and supports the proposal with no conditions recommended to be imposed.
Environmental Health (Contaminated Lands)	Supported - subject to conditions being imposed Environmental health has been requested to provide comment on contamination of the site. The proposal changes little in regards to the use of the site and does not propose excavation as part of the proposal. The SEE states "Council records indicate that the subject site has been used for commercial purposes for a significant period of time with no prior land uses. As there is no excavation proposed, the site poses no risk of contamination" While this statement is hard to quantify without a phase 1 preliminary site investigation into contamination the applicant is correct that there is limited risk with the proposal other than existing materials within the current building that may be hazardous and require controls in place for appropriate removal. Environmental health are in support of the proposal subject

Internal Referral Body	Comments
	to conditions being imposed requiring a hazardous building materials survey prior to the release of the construction certificate.
Landscape Officer	The proposal is supported with regard to landscape issues. Council's Landscape Referral section have considered the application against the Manly Local Environment Plan zone B6 Enterprise Corridor, and the following Manly DCP 2013 controls (but not limited to): • 4.3 Development in LEP Zone B6 Enterprise Corridor Within clause 4.3 of the DCP, the landscape objective is to minimise negative visual impact of development by limiting the size and scale of buildings and having regard to suitable landscaping. A Landscape Plan is included in the application and will be assessed as part of the Landscape Referral. The landscaping provided to the front setback is supported. A minimum of 600mm soil depth is required to support the proposed planting. The planting in the front setback will be exposed to the hot western sun, and as such the <i>Philodendron</i> species shall be replaced with a <i>Westringia</i>, <i>Callistemon</i> or <i>Lomandra</i> species, subject to the imposed conditions. One tree is proposed for removal to facilitate the works, and its removal can be supported.
NECC (Development Engineering)	The subject site is flood affect and as such OSD is not required. The site is burdened by a pipeline and easement benefiting Transport for NSW (TfNSW). The connection of stormwater to this pipe has been supported by TfNSW. The proposed crossing is acceptable. Reinstatement of the old crossings is also supported by TfNSW. Development Engineering support the proposal, subject to conditions as recommended.
NECC (Flooding)	The development proposal is to demolish the existing structure and construct a new two storey commercial building including a basement carpark and storage area. The property is partially flood affected by the Medium Flood Risk Precinct and by Flood Life Hazard Category H5. Also, the site is affected by the flood storage and flood way area. The impact mapping in the additional information letter by Northrop Consultants (dated 10/11/2022) shows overall improvement of flood impact in the vicinity, due to the increased flood storage under the proposed building. The development generally complies with Council's flood related development controls.
NECC (Riparian Lands and Creeks)	Supported. This application was assessed in consideration of: • Supplied plans and reports; • Relevant LEP and DCP clauses; and

Internal Referral Body	Comments
	• Northern Beaches Water Management for Development Policy The site abuts a watercourse and as such the development must not significantly impact on the biophysical, hydrological or ecological integrity of the watercourse, or the quantity and quality of surface and ground water flows that it receives. Refer to the Water Management referral for comments on water quality. Stormwater treatment measures must be maintained at all times in accordance with manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development. Appropriate sediment and erosion controls must be installed prior to any disturbance of soil on site and maintained until all work is complete and groundcover re-established. On assessment the application on assessment meets the requirements of the relevant Environmental Planning Instruments and policies relating to waterways, riparian areas, and groundwater.
NECC (Water Management)	Supported This application was assessed in consideration of: • Supplied plans and reports; • Northern Beaches Water Management for Development Policy (WM Policy); and • Relevant LEP and DCP clauses. The proposal does not change the total impervious area of the site but does include treatment measures to improve the water quality before it leaves the site. The proposal includes information supporting that the water quality treatment would meet the Table 5 – General Stormwater Quality Requirements. A Controlled Activity Permit may be required as the proposed development is within 40 metres of a prescribed waterway. On assessment the proposal is considered acceptable.
Traffic Engineer	<u>Proposal description:</u> Demolition works and construction of a building for use as specialised retail premises, including signage. The development for which approval is sought is a 2-storey development comprising the Bulky goods premises with 2,100m² total gross floor area (GFA), and a carpark providing parking for 26 vehicles. The traffic team has reviewed the following documents: • Traffic Impact Assessment (TIA) for the Proposed Bulky Goods Development, Reference 21.516r01v03, dated October 2022, • The <i>Statement of Environment Effects Demolition and Construction of a Furniture Showroom</i> prepared by DM Planning dated November 2022, • Plans (Master Set) – designed by CENTRIC Architects, dated 08/03/2023, • Pre-Lodgement Advice (PLM2022/0123) dated 11 August 2022, and • TfNSW referral letters (ref: SYD22/01601/01 dated 31

Internal Referral Body	Comments
	January 2023 and SYD22/01601/02 dated 01 March 2023). There were a number of traffic concerns raised in the Pre-Lodgement meeting (PLM) traffic referral comments dated 11 August 2022, which have been addressed in the Traffic Impact Assessment Report. Some items are included as follows: <u>Parking requirement and design:</u> • The development is located within the Enterprise Corridor (B6) Land Use Zoning of Northern Beaches LGA based on <i>Manly Local Environmental Plan 2013 Maps</i>. <i>Manly DCP</i> applies to the subject site, which requires that parking be provided at a rate of 1 space per 50m² of GFA for bulky goods premises. This would equate to 42 parking spaces for the development. In response, 26 parking spaces (a deficiency of 16 car spaces) are proposed. • Parking in accordance with DCP requirements should be provided, however, the development is for the reuse of the existing three (3) buildings, so some relaxation of requirements could be considered. It is noted that a parking assessment of a similar site located within the same Council area (Freedom Furniture Store – Approved site by Council, DA2020/1703) was included in the Traffic report. It is concluded that peak parking demand was around 39 parked vehicles for a bulky goods store with 4300m² GFA (a minimum rate of 0.91 spaces per 100m² GFA). Considering the revised parking requirement of a similar site, based on the adopted rate is 19 parking spaces. The provision of 26 parking spaces, therefore, satisfies car parking requirements. • One (1) accessible parking space is also provided as per the Building Code of Australia requirements. • It is noted that the following items were outlined in the pre-Lodgement referral and have not been addressed in the Traffic report: - o <i>the plans do not make allowance for a Loading Dock and appear to rely on deliveries and servicing occurring from within the customer carpark after hours.</i> - o <i>For a bulky goods retail outlet, it is anticipated that deliveries will be undertaken by Heavy Rigid Vehicles (HRV) 12.5m in length on a regular basis. A Loading Dock (3.5m wide and 4.5m high), separated from customer parking and allowing for forwards entry and exit by HRVs should be provided.</i>

Internal Referral Body	Comments
	o provision should also be made for a proportion of the customer parking spaces adjacent to the loading dock to be accessed forwards in and forwards out by car and trailer combinations to cater for customers collecting their own goods. As reported in the SEE, “the only loading and unloading required on-site are for the showroom display furniture. Rotation of display furniture occurs seasonally, four (4) times a year. King has its own fleet of trucks, which are detailed in the Traffic Impact Assessment. King manages their own deliveries. The loading and unloading of display furniture will occur in the customer parking area, outside of customer business hours”. According to the traffic report, servicing and waste collection would be conducted within the car parking area by a vehicle up to an 8.8m medium rigid vehicle (MRV). A condition of consent will be imposed limiting the site of vehicles accessing the site to 8.8m in length as forwards entry and exit by larger vehicles appears unable to be accommodated. As no loading dock or separation from customer parking has been provided, it will also be conditioned that deliveries and servicing occur after customer trading hours. • Bicycle parking stands are also required, with a minimum provision of one stand for every 3 parking spaces required to meet DCP requirements i.e. nine(9) bicycle stands are required. As bicycle parking spaces are not presented in the architectural plans a condition will be imposed requiring this provision. • It is noted that pedestrian sightline triangles of 2.0 metres by 2.5 metres, in accordance with AS2890.1:2004, have been provided at the vehicular access for pedestrian visibility for exiting vehicles. <u>Access</u> • As outlined in the pre-lodgement referral, the development plans should make allowance for the removal of redundant driveways and reinstatement of the kerb, gutter and footpath to match adjacent footpath levels. The TfNSW referral letter is also conditioned this and reported that the detailed design plans of the proposed works (the driveway construction, removal of redundant driveways, stormwater connection and associated works) were to be submitted to TfNSW for approval prior to the issue of a construction certificate and commencement of any road works. • A revised swept path assessment on the access driveway has been provided addressing the TfNSW referral letter dated 31 January showing a B99 vehicle turning from the

Internal Referral Body	Comments
	kerbside lane, passing a vehicle turning left out of the subject site with satisfactory clearance. It is noted that TfNSW have since given their consent subject to conditions to the access arrangements <u>Traffic Impact</u> - Neither the RMS Guidelines nor the Technical Direction nominates a traffic generation rate for specialised retail premises. The traffic generation rate for bulky goods retail stores (PM: 2.7 peak hour vehicle trips per 100m² GFA) was adopted in the traffic assessment and indicates a Nett peak period increase in traffic generation of 14vph (7 in and 7 out) which is negligible in terms of road network impacts. - It is unlikely that the development would generate significant traffic levels, and the development is not opposed on the basis of traffic generation. <u>Conclusion</u> Subject to conditions, the application is not opposed on traffic grounds.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Roads and Maritime Service - Roads Act 1993, s138 (Non-integrated)	The application was referred to Transport for NSW under clause 2.119 of the State Environmental Planning Policy (Transport and Infrastructure) 2021 and concurrence under section 138 of the Roads Act, 1993. No objection is made to the proposal, and concurrence has been provided subject to conditions.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many

provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

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

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

Roads and Maritime Service (RMS)

Section 2.118 - Development with frontage to classified road states:

The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—

- (a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*
- (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—*
- (i) the design of the vehicular access to the land, or*
- (ii) the emission of smoke or dust from the development, or*
- (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
- (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

Comment:

The consent authority cannot be satisfied of these matters, as follows:

- a. Access to the site via an alternate road is not an option for this site.
- b. TfNSW and Council's Engineers are satisfied that the proposed development will not unreasonably impact the operation, safety and efficiency of Condamine Street.
- c. The showrooms are not sensitive to traffic noise and vehicle emissions that may result from being located adjacent to Condamine Street.

Section 2.121 and Schedule 3 of this Policy requires that the following development(s) are referred to the RMS as Traffic Generating Development:

Purpose of Development	Size or Capacity (Site with access to any road)	Size of Capacity (Site with access to classified road or to a road that connects to classified road if access is within 90m of connection, measured along alignment of connecting road)
Apartment or residential flat building	300 or more dwellings	75 or more dwellings
Commercial premises	10,000m ² in area	2,500m ² in area
Commercial premises and industry	15,000m ² in area	4,000m ²
Drive-in take away food outlets	200 or more motor vehicles	Any size of capacity
Educational establishments	50 or more students	Not applicable
Hospital	200 or more beds	100 or more beds
Industry	20,000m ² in area	5,000m ² in area
Land fill, recycling facilities, waste transfer station	Any size or capacity	Not applicable
Motor showrooms	200 or more motor vehicles	50 or more motor vehicles
Parking	200 or more motor vehicles	50 or more motor vehicles
Places of assembly or places of public worship	200 or more motor vehicles	50 or more motor vehicles
Premises licensed under the Liquor Act 1982 or the Registered Clubs Act 1976	200 or more motor vehicles	50 or more motor vehicles
Refreshment rooms	200 or more motor vehicles	300m ²
Service stations (including service stations which have retail outlets)	200 or more motor vehicles	Any size or capacity
Shops	2,000m ²	500m ²
Shops and commercial premises	4,000m ²	1,000m ²
Subdivision of land	200 or more allotments where the subdivision includes the opening of a public road	50 or more allotments
Tourist facilities, recreation facilities, showgrounds or sportsgrounds	200 or more motor vehicles	50 or more motor vehicles
Transport terminals, bulk stores,	8,000m ²	Not applicable

container depots or liquid fuel depots		
Any other purpose	200 or more motor vehicles	

Note: Under Section 2.121(2) of Chapter 2, 'relevant size of capacity' is defined as meaning:

“(2) (a) in relation to development on a site that has direct vehicular or pedestrian access to any road - the size or capacity specified opposite that development in Column 2 of the Table to Schedule 3, or

(b) in relation to development on a site that has direct vehicular or pedestrian access to a classified road or to a road that connects to a classified road where the access (measured along the alignment of the connecting road) is within 90m of the connection - the size or capacity specified opposite that development in Column 3 of the Table to Schedule 3.”

Comment:

The application was referred to Transport for NSW who did not raise any objection to the proposal, subject to conditions.

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
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?	The proposed signage is consistent with the commercial zoning of the area.	YES
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	Similar intensity of signage is seen within Balgowlah.	YES
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?	No such areas exist within close or visual proximity to the site.	YES
3. Views and vistas Does the proposal obscure or compromise important views?	No views will be effected by the proposed signage.	YES
Does the proposal dominate the skyline and reduce the quality of vistas?	The proposed signage will not dominate the surrounding landscape.	YES

Does the proposal respect the viewing rights of other advertisers?	No adjoining existing signage will be compromised by the proposed signage.	YES
4. Streetscape, setting or landscape Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	The proposed scale, proportion and form of the signage is largely as existing, and considered appropriate and consistent with the established commercial nature of the surrounding area.	YES
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	The proposed signage is intended to replace the existing site signs. The signage is contemporary in design and will contribute to the visual interest of the streetscape and store setting	YES
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	The replacement signage will not create visual clutter and will improve the overall appearance of the store's signage as a result of the modern design features.	YES
Does the proposal screen unsightliness?	There is no unsightliness to be screened.	YES
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	The proposed signs are appropriate in height and scale, remaining comfortably below the maximum allowable height of 11m.	YES
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?	The proposed signs are to replace the existing site signs, and are considered compatible with the streetscape and surrounding development with regard to scale and proportion.	YES
Does the proposal respect important features of the site or building, or both?	The proposal is not considered likely to affect any important features within the site.	YES
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	The replacement signage is intended solely for the purpose of a re-brand. Certain signs are spotlit and one is illuminated through the form of a lightbox.	YES
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?	Not applicable.	YES
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?	No illumination proposed.	YES
Can the intensity of the illumination be adjusted, if necessary?	No illumination proposed.	YES

Is the illumination subject to a curfew?	No illumination proposed.	YES
8. Safety Would the proposal reduce the safety for any public road, pedestrians or bicyclists?	The proposal is not likely to affect the safety of any public road, pedestrians or cyclists.	YES
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	The proposal would not obscure sight lines from public areas.	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 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	11m	11.497m measured from extrapolated ground level	4.5%	No
Floor Space Ratio	FSR: 1:1 2,165.5m ²	FSR: 0.891:1 1,931.4m ²	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
3.1 Exempt development	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.6 Exceptions to development standards	Yes

Clause	Compliance with Requirements
5.21 Flood planning	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	11m
Proposed:	11.497m
Percentage variation to requirement:	4.5%

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

- (a) that compliance with the development standard is unreasonable or unnecessary in the

circumstances of the case, and

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

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

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

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

(b) the concurrence of the Secretary has been obtained.

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

"Planning grounds – Mitigate adverse flooding impacts.

The site is subject to flooding from Burnt Bridge Creek which is located adjacent to the north-western boundary of the site.

The floor level of Level 1 has been set at the minimum level required to achieve compliance with Council's flooding requirements.

The building is proposed to be suspended above the 1% AEP flood level with the undercroft area designed to provide flood storage during flood events. Flood water is proposed to enter the under-croft area through openings located along the building frontage and at the creek side in the northwestern corner.

The design of the building above the flood level results in a building that will mitigate against adverse impacts on flood behaviour on the site or adjoining properties.

Planning grounds - Consistency with height, bulk and scale of surrounding development

The site is in the commercial area of Balgowlah. Surrounding development consists of various commercial and retail uses including furniture showrooms, supermarkets (Woolworths and Aldi), vehicle servicing businesses and supplier distribution outlets.

The site adjoins the following properties:

- *To the north of the site, 206 Condamine Street, is a two-storey commercial building suspended over a concrete-lined open drainage channel along Burnt Bridge Creek. The drainage channel is approximately 2m to 3m deep and is supported by concrete and gabion retaining walls. The drainage channel abuts the boundary at the north-western corner (see Figure 6).*
- *To the south of the site, 2-4 Hayes Street (Coco Republic), contains a part two-storey/part 3 storey bulky goods premises with café (see Figure 7).*
- *To the east, 17 Roseberry Street, contains a multi-level concrete commercial building (Woolworths) with a basement car parking level and rooftop parking (see Figure 8).*
- *To the southwest, 253 Condamine Street (Freedom Furniture) contains a two-storey commercial building (see Figure 9).*
- *The west and north-west, are a series of mixed-use, four-storey developments, on the opposite side of Condamine Street (see Figure 10).*

In addition, the proposed redevelopment will provide employment opportunities and contribute to

economic growth and is therefore consistent with the desired future character for the Balgowlah Locality.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposal promotes the orderly and economic use and development of land (1.3(c)).*
- The development represents good design (1.3(g)).*
- The building as designed facilitates its proper construction and will ensure the protection of the health and safety of its future occupants (1.3(h))."*

Council's Assessment of the Clause 4.6 Request

The applicant has satisfactorily demonstrated that the works are consistent with the objects of the EP&A Act, specifically the following objects of the EP&A Act:

- The development promotes the orderly and economic use and development of the land, in so far as the proposed replacement of ageing elements and access of a ageing building sis an orderly response to the development of the site;
- The development represents good design; in so far as the proposed development that will mitigate potential flood impacts.

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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the E3 Productivity Support zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,

Comment:

The proposed development is located within a commercial centre where buildings are of varying heights and roof forms. Development located within the centre are predominantly characterised by a mix commercial and shop top housing developments varying between 2 to 4 storeys in height. The building height, while non compliant is generally consistent with the height of the existing building.

b) to control the bulk and scale of buildings,

Comment:

The overall building bulk and scale has been effectively controlled by way of effective building setbacks, building separation, building articulation and manipulation of building elements and through the use of appropriate materials and finishes. The proposed building height will not result in unreasonable building bulk or scale and does not result in any unreasonable physical or visual impacts on surrounding lands. The proposal is also compliant with the floor space ratio control.

c) to minimise disruption to the following:

- (i) views to nearby residential development from public spaces (including the harbour and foreshores),
- (ii) views from nearby residential development to public spaces (including the harbour and foreshores),
- (iii) views between public spaces (including the harbour and foreshores),

Comment:

The proposed development does not cause unreasonable view loss to and from public and private open spaces.

d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,

Comment:

The proposed development is considered to be designed and sited in a manner that adequately mitigates solar access impacts to adjacent properties. The proposed design complies with the relevant controls for sunlight under the MDCP 2013.

e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

Comment:

The proposed building height variation will not have a impact upon the adjoining creek to the north of the subject site.

Zone objectives

The underlying objectives of the E3 Productivity Support zone are:

- *To provide a range of facilities and services, light industries, warehouses and offices.*

Comment:

The proposed use of the site as a specialised retail premise contributes to the range of commercial premises within the area.

- *To provide for land uses that are compatible with, but do not compete with, land uses in surrounding local and commercial centres.*

Comment:

The site is in the vicinity of other home retail premises.

- *To maintain the economic viability of local and commercial centres by limiting certain retail and commercial activity.*

Comment:

The proposed development is a commercial use permissible in the zone.

- *To provide for land uses that meet the needs of the community, businesses and industries but that are not suited to locations in other employment zones.*

Comment:

The proposal will enhance the strength of the locality which has an emerging agglomeration of furniture showrooms.

- *To provide opportunities for new and emerging light industries.*

Comment:

The proposed use for a specialised retail premise is an appropriate use for this site.

- *To enable other land uses that provide facilities and services to meet the day to day needs of workers, to sell goods of a large size, weight or quantity or to sell goods manufactured on-site.*

Comment:

The proposed use is for furniture showroom, which is consistent with the intent of the zone.

- *To create a pedestrian environment that is safe, active, and interesting.*

Comment:

The proposed building allows for adequate on-site parking and safe walking access to the premise.

- *To create employment environments of high visual quality that relate favourably in architectural and landscape treatment to neighbouring land uses and to the natural environment.*

Comment:

The proposed uses will continue to provide local employment within the area.

- *To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of adjoining and nearby residential land uses.*

Comment:

The proposed showroom is unlikely to have any unreasonable impact on nearby residential development.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the E3 Productivity Support zone.

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the delegate of Council as the development contravenes a numerical standard by less than or equal to 10%.

6.2 Earthworks

The objectives of Clause 6.2 - 'Earthworks' require development:

- (a) to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, and*
- (b) to allow earthworks of a minor nature without requiring separate development consent.*

In this regard, before granting development consent for earthworks, Council must consider the following matters:

- (a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development*

Comment: The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality.

- (b) the effect of the proposed development on the likely future use or redevelopment of the land*

Comment: The proposal will not unreasonably limit the likely future use or redevelopment of the land.

(c) the quality of the fill or the soil to be excavated, or both

Comment: The excavated material will be processed according to the Waste Management Plan for the development.

(d) the effect of the proposed development on the existing and likely amenity of adjoining properties

Comment: The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Conditions have been included in the recommendation of this report to limit impacts during excavation/construction.

(e) the source of any fill material and the destination of any excavated material

Comment: The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

(f) the likelihood of disturbing relics

Comment: The site is not mapped as being a potential location of Aboriginal or other relics.

(g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area

Comment: The site is located in the vicinity of any watercourse, the application was reviewed by council relevant internal water management and flood officers, with the proposal deemed satisfactory, subject to conditions.

(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Comment: Conditions are included in the recommendation of this report that will minimise the impacts of the development.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 2,165.5m ²		Requirement	Proposed	% Variation*	Complies
4.3.5 Setbacks		4.5m (street frontage)	5.1m	-	Yes
4.4.3 Signage	Number of signs	Max. 2 signs per frontage	3 2 x Business identification 1 x pylon sign	50%	No
	Size of signs	Flush wall signs: - 2.6m above the ground	Wall signs greater than	-	Yes

		- must not extend beyond wall building - must not project above top of wall - must not have an area greater than 3 times the distance between the lowest part of the sign and the ground. Pylon signs: i) must not project more than 1.2m over any road alignment; and ii) if projecting over any road alignment, the sign must be at least 2.6m above the ground where it so projects. iii) In the LEP Zone B6 Enterprise Corridor, buildings setback from the street alignment, may be accompanied by a freestanding pole sign, setback at an equivalent setback to that of any other existing pole signs. The number of pole signs should be limited to one sign per 10m of frontage, and increased where influenced by frontage, existing signs and traffic speed etc. Signage size and shape will be considered on merit; but should not dominate the area of the building or the landscaped buffer area within the building line setback area.	2.7m above ground level Compliant, does not project over a road allignment	-	Yes
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Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.2 Streetscape Improvement in LEP Zone B6 Enterprise Corridor	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.3.3 Footpath Tree Planting	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
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
Performance, and Water Sensitive Urban Design)		
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.3 Development in LEP Zone B6 Enterprise Corridor	Yes	Yes
4.3.2 FSR and Height	No	Yes
4.3.4 Access, Loading and Parking	Yes	Yes
4.3.5 Setbacks	Yes	Yes
4.3.6 Drainage	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.3 Signage	No	Yes
4.4.4 Awnings	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.3 Flood Prone Land	Yes	Yes

Detailed Assessment

4.3.2 FSR and Height

The proposed development compromises the 11m height control for the site. This Clause relies upon the objectives of Clause 4.3 under MLEP 2013. An assessment of the proposal against the objectives of Clause 4.3 has been provided within this report. This assessment has found the proposal to be consistent with the objectives of Clause 4.3

4.4.3 Signage

Description of non-compliance

Clause 4.4.3.1(a) states that a maximum of 2 identification signs will be permitted per frontage

Merit consideration:

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

- *Objective 1) To ensure that advertising does not detract from the scenic beauty and amenity of the Municipality; harmonises with its surroundings and the buildings to which they are attached.*
- *Objective 2) To minimise the visual impact by encouraging fewer more effective signs that may otherwise degrade the existing and likely future quality of residential environments or result in excessive, unnecessary signage, visual clutter and confusion caused by a proliferation of signs in local and neighbourhood centres.*
- *Objective 3) To permit building and business identification signs which communicate the*

facilities (including tourist facilities), amenities, goods and services in local and neighbourhood centres which do not interfere with the streetscape or amenity of residents.

- *Objective 4) Signs should enhance the distinctive urban character and scenic amenity of the Municipality and contribute to the atmosphere of the streets in local and neighbourhood centres and should be designed in sympathy with both the building to which it is attached and any adjoining buildings, taking into account the architectural styles and finishes of buildings in local and neighbourhood centres.*
- *Objective 5) To prevent signage from impacting on the presentation of the heritage item or area to the general public on heritage items and conservation areas.*
- *Objective 6) To ensure all signage is of high standards of graphic and textural content.*
- *Objective 7) To encourage co-ordinated advertising in the Industrial Zone by the use of appropriately sized street numbers and complex names, and the use of directory boards to identify multiple unit complexes, so as to reduce adverse impact on the streetscape and confusion to traffic.*

Flush Wall Signs

The proposed signs do not detract from the amenity, character or atmosphere of the area. The signs are logically and effectively located on a prominent corner of the proposed development. The signs are not excessive, as they are compliant with the size requirements of the control and act to identify the business within the building. The proposed signs take into account and are complementary to the localised streetscape. Further, the proposed signage is consistent with the relevant criteria within the *State Environmental Planning Policy No. 64 – Advertising and Signage*. As such, the proposed development is consistent with the relevant objectives and plans, and is acceptable.

Pylon Sign

The proposed location and type of sign proposed suitable for the proposed site, however the height of the sign (6m) is excessive and will dominate the streetscape. A condition has been imposed to reduce the size of the pylon sign to 3m.

5.4.3 Flood Prone Land

Council's Flood Officer raised no objection to the proposal, subject to conditions.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$91,069 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$9,106,891.

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

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

RECOMMENDATION

Accordingly Council as the consent authority grant Development Consent to DA2022/2148 for Demolition works and construction of a building for use as a specialised retail premises including signage on land at Lot 18 DP 819775, 202 Condamine Street, BALGOWLAH, Lot 17 DP 819775, 204 Condamine Street, BALGOWLAH, Lot 91 DP 607382, 200 Condamine Street, BALGOWLAH, 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
2000/ Issue D	8 March 2023	Centric Architects
3000/ Issue C	8 March 2023	Centric Architects
3100/ Issue C	8 March 2023	Centric Architects
4000/ Issue L	8 March 2023	Centric Architects
4001/ Issue M	8 March 2023	Centric Architects
4002/ Issue G	8 March 2023	Centric Architects
5000/ Issue K	8 March 2023	Centric Architects
5001/ Issue K	8 March 2023	Centric Architects
6000/ Issue K	8 March 2023	Centric Architects
6001/ Issue F	8 March 2023	Centric Architects
7000/ Issue A	8 March 2023	Centric Architects
9100/ Issue B	8 March 2023	Centric Architects

Engineering Plans
Drawing No.
LPDA 23 - 103
DAC1001
DAC3001
DAC3002
DAC4101
DAC6101

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Waterway Impact Assessment	9 December 2022	N Sutherland
Traffic Impact Assessment	October 2022	Traffix
Section J Report	15 November 2022	Credwell Consulting
Geotechnical Investigation	17 November 2022	JK Geotechnics
Flood Management Report	23 November 2022	Northrop
BCA Assessment Report	25 October 2022	BCA Logic
Access Assessment Report	25 October 2022	BCA Logic

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:

Landscape Plans		
Drawing No.	Dated	Prepared By

LPDA 23 - 103	November 2022	Concept
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Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	N/A	N/A

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	N/A
Transport for NSW	SYD22/01601/02	1 March 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 **specialised retail premises** in accordance with the Dictionary of the Manly Local Environmental Plan 2013, as follows:

specialised retail premises means a building or place the principal purpose of which is the sale, hire or display of goods that are of a size, weight or quantity, that requires—

- (a) a large area for handling, display or storage, or
- (b) direct vehicular access to the site of the building or place by members of the public for the purpose of loading or unloading such goods into or from their vehicles after purchase or hire, but does not include a building or place used for the sale of foodstuffs or clothing unless their sale is ancillary to the sale, hire or display of other goods referred to in this definition.

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 \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
- i) Building/s that are to be erected

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

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

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

6. **Policy Controls**

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$91,068.91 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$9,106,891.00.

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

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

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

Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.

7. **Security Bond**

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

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

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

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

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

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

8. **On Slab Landscape Works**

Details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided.

Landscape treatment details shall be submitted to the Certifier prior to the issue of the

Construction Certificate indicating the proposed soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.

The following minimum soil depths are required to support landscaping as proposed:

ii) 600mm for shrubs, grasses and groundcovers,

Design certification shall be submitted to the Certifier by a qualified Structural Engineer, that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

Reason: To ensure appropriate soil depth for planting and secure waterproofing and drainage is installed.

9. **Flooding**

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

Flood Effects Caused by Development – A2

There shall be no filling of the land below the 1% AEP flood level, or obstruction of flow paths through the property, other than what is approved as part of this consent. This includes the blocking of areas required by DA consent to be left open. The undercroft area to be not used for carparking or storage. The flood is to be able to exit under the building area to the channel as per sheet DAC3002 in stormwater design plans prepared by Northrop consultant.

Building Components and Structural Soundness – B1

All new development below the Flood Planning Level of 11.74m AHD shall be designed and constructed as flood compatible buildings in accordance with Reducing Vulnerability of Buildings to Flood Damage: Guidance on Building in Flood Prone Areas, Hawkesbury-Nepean Floodplain Management Steering Committee (2006).

Building Components and Structural Soundness – B2

All new development must be designed to ensure structural integrity up to the Probable Maximum Flood of 12.30m AHD, taking into account the forces of floodwater, wave action, flowing water with debris, buoyancy and immersion.

Building Components and Structural Soundness – B3

All new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed and/or located above the Flood Planning Level of 11.74m AHD. All existing electrical equipment and power points located below the Flood Planning Level must have residual current devices installed to cut electricity supply during flood events.

Floor Levels – C1

New floor levels within the development shall be set at or above the Flood Planning Level of 11.74m AHD.

Floor Levels – C3

The underfloor area of the building below the 1% AEP flood level is to be designed to allow clear passage of floodwaters. At least 50% of the perimeter of the underfloor area must be of an open design from the natural ground level up to the 1% AEP flood level. The undercroft area to be not used for carparking or storage.

Car parking – D5

The floor level of the proposed garage shall be set at or above the 1% AEP flood level of

11.74m AHD.

Car parking – D6

All access, ventilation and any other potential water entry points, including entry ramp crests to the basement car park shall be at or above the Flood Planning Level of 11.74m AHD.

Fencing – F1

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

Storage of Goods – G1

Storage areas for hazardous or potentially polluting materials shall not be located below the Flood Planning Level of 11.74m AHD unless adequately protected from floodwaters in accordance with industry standards.

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

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

10. **Traffic Management and Control**

The Applicant is to submit an application for Traffic Management Plan to Council for approval prior to issue of the Construction Certificate. The Traffic Management Plan shall be prepared to TfNSW standards by an appropriately certified person.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process.

11. **Stormwater Disposal**

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent, prepared by an appropriately qualified and practicing Civil Engineer, indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be connected to the existing stormwater pipe in the north western corner of the site. The connection is to be approved by Transport for NSW (TfNSW) in accordance with their letter dated 1 March 2023, Ref: SYD22/01601/02.

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

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

12. **Erosion and Sediment Control Plan**

An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a

minimum:

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

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

Reason: Protection of the receiving environment.

13. **Water Quality Management**

The applicant must install a filtration device (such as a sediment control pit or absorption trench) that captures organic matter and coarse sediments prior to discharge of stormwater from the land. All stormwater treatment measures must make provision for convenient and safe regular inspection, periodic cleaning, and maintenance.

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

Reason: Protection of the receiving environment.

14. **Erosion and Sediment Control Plan**

An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:

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

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

Reason: Protection of the receiving environment.

15. **Stormwater Treatment Measures – Minor**

The applicant must install a filtration device (such as a sediment control pit or absorption trench) that captures organic matter and coarse sediments prior to discharge of stormwater from the land. All stormwater treatment measures must make provision for convenient and safe regular inspection, periodic cleaning, and maintenance.

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

Reason: Protection of the receiving environment.

16. **Construction Traffic Management Plan**

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

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

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- Make provision for all construction materials to be stored on site, at all times
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck rates through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of

the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site

- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent
- Proposed protection for Council and adjoining properties
- The location and operation of any on site crane

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

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

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

17. **Vehicle Access & Parking**

All internal driveways, vehicle turning areas, garages and vehicle parking space/ loading bay dimensions must be designed and constructed to comply with the relevant section of AS 2890 (Off-street Parking standards).

With respect to this, the following revision(s) must be undertaken;

- the location of nine (9) bicycle stands must be shown on the plans.

These amendment(s) must be clearly marked on the plans submitted to the Certifier prior to the issue of a Construction Certificate.

Reason: To ensure compliance with Council’s DCP and adequate provision for active travel to/from the site.

18. **Amendments to the approved plans**

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

- The height of the proposed pylon sign is to be reduced from 6m to 3m.

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

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

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

The Building Code of Australia fire safety requirements for the building as detailed and recommended in the BCA Assessment Report prepared by BCA Logic, dated 25/10/2022, Ref 115853-BCA-r1, including any required Performance Solutions, is to be considered as part of the assessment for any Construction Certificate. Details demonstrating compliance are to be provided to the Certifying Authority, prior to the issue of a Construction Certificate..

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

20. Access and Facilities for Persons with Disabilities

Access and facilities to and within the building are to be provided for Persons with a Disability in accordance with the Building Code of Australia and AS1428, In this regard the Access Assessment Report prepared by BCA Logic, Ref 115853- Access-r1 dated 25/10/2022 is to be included as part of the Construction Certificate assessment. Details are to be provided to the Certifying Authority prior to the issue of the Construction Certificate and be implemented prior to occupation of the building.

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

21. Submission Roads Act Application for Civil Works in the Public Road

The Applicant is to submit an application for approval for infrastructure works on the Public roadway with Transport for NSW in accordance with their letter dated 1 March 2023, Ref: SYD22/01601/02. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to TfNSW for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

An approval is to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure engineering works are constructed in accordance with TfNSW specifications.

22. Structural Adequacy and Excavation Work

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer.

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

Reason: To provide public and private safety.

23. Shoring of Road Reserve (Temporary road anchors)

Should the proposal require shoring to support an adjoining property or Transport for NSW land, the Applicant shall provide the adjoining properties with engineering drawings, detailing the proposed shoring works for their consideration and approval.

Written approval from Transport for NSW under Section 138 of the Roads Act 1993 is required if temporary ground anchors are to be used within the road reserve in accordance with their letter dated 1 March 2023, Ref: SYD22/01601/02. The Owner's approval is to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure that owners consent is obtained for ancillary works, and to ensure the protection of adjoining properties and Council land.

24. **Hazardous Building Materials Survey**

A hazardous building materials survey is to be conducted by a suitably qualified and experienced person. The survey is to include a survey of hazardous building materials including but not limited to asbestos, lead, SMF and PCBs. Following the survey a Hazardous Building Materials Register is to be prepared for the premises providing recommendations for the safe management/removal of hazardous building material.

Reason: To protect human health.

25. **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.

26. **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 THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

27. **Tree Removal Within the Property**

This consent approves the removal of the following tree within the property, identified on the Survey Plan:

- i) tree located adjacent to the eastern boundary, in the south-eastern corner of Lot 18 DP 819775,
- ii) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Reason: To enable authorised development works.

28. Work Zones and Permits

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

A separate application is required with a Traffic Management Plan for standing of construction vehicles in a trafficable lane and a Roads and Maritime Services Work Zone Permit shall be obtained for State Roads.

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

29. Road Occupancy Licence

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

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

30. Demolition Traffic Management Plan

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

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

The DTMP must:-

- Make provision for all construction materials to be stored on site, at all times.
- The DTMP is to be adhered to at all times during the project.
- Specify construction truck routes and truck rates. Nominated truck routes are to be distributed over the surrounding road network where possible.
- Provide for the movement of trucks to and from the site, and deliveries to the site. Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site is not permitted unless prior approval is granted by Council's Traffic Engineers.
- Include a Traffic Control Plan prepared by an TfNSW accredited traffic controller for any activities involving the management of vehicle and pedestrian traffic.
- Specify that a minimum fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measures.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes, structures proposed on the footpath areas (hoardings, scaffolding or temporary shoring) and extent of tree protection zones around Council street trees.
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the DTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities. These communications must be documented and submitted to Council prior to work commencing on site.
- Specify spoil management process and facilities to be used on site.
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of demolition. At the direction of Council, the applicant is to undertake remedial treatments such as patching at no cost to Council.

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

31. Road Reserve

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

Reason: Public safety.

32. Installation and Maintenance of Sediment and Erosion Controls

Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom’s ‘Managing Urban Stormwater: Soils and Construction’ (2004) prior to commencement of any other works on site.

Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: Protection of the receiving environment.

33. Installation and Maintenance of Sediment and Erosion Controls

Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom’s ‘Managing Urban Stormwater: Soils and Construction’ (2004) prior to commencement of any other works on site.

Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: Protection of the receiving environment.

34. Implementation of Demolition Traffic Management Plan

All works and demolition activities are to be undertaken in accordance with the approved

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

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

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

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

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

36. **Ongoing Management**

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

Reason: To ensure public safety.

37. **Geotechnical Requirements**

All recommendations (if any) included in the Geotechnical Report referenced in Condition 1 of this consent are required to be complied with during works.

Reason: To ensure geotechnical risk is mitigated appropriately.

38. **Survey Certificate**

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

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

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

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

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

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

39. **Traffic Control During Road Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual (<http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/technical-manuals/tcws-version-4/tcwsv4i2.pdf>) and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety.

40. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 6 metres wide in accordance with Transport for NSW requirements listed in their letter dated 1 March 2023, Ref: SYD22/01601/02 and their approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to kerb and footpath. Prior to the pouring of concrete, the vehicle crossing is to be inspected by TfNSW.

A copy of the vehicle crossing inspection form is to be submitted to the Certifier.

Reason: To facilitate suitable vehicular access to private property.

41. **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.

42. **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 Certifier.

Reason: To protect human health and the environment.

43. **Compliance with Recommendations within Hazardous Building Materials Survey**

Any recommendations within the Hazardous Building Materials Survey are to be followed during works.

Reason: To protect human health.

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

44. **Landscape Completion**

Landscaping is to be implemented in accordance with the approved Landscape Plan (drawing LPDA 23 -103 by Concept Landscape Architects dated November 2022), and inclusive of the following conditions:

- i) substitute *Philodendron* 'Little Phil' with either a *Callistemon*, *Lomandra* or *Westringia* species.

Prior to the issue of an Occupation Certificate, details from a landscape architect or landscape designer shall be submitted to the Principal Certifier, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

45. **Certification of Civil Works TfNSW Land**

The Applicant shall submit a certification by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) that the completed works have been constructed in accordance with this consent and the approved Section 138 and/or Construction Certificate plans. The certification and acceptance by TfNSW shall be submitted to the Principal Certifier to the issue of the Occupation Certificate.

Reason: To ensure compliance of works with TfNSW specifications.

46. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified Civil Engineer.

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

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

47. **Deliveries and Servicing Management Plan**

A Deliveries and Servicing Management Plan shall be prepared by the applicant and submitted to and approved by the Principal Certifier prior to the issue of any Occupation Certificate.

The Plan will need to demonstrate how deliveries and servicing will be managed to ensure that a) all truck deliveries and servicing take place outside of approved trading hours b) there will be no deliveries/pick ups or servicing by trucks larger than 8.8m in length c) there will be only one vehicle entering and exiting the site in any period and how safe servicing arrangements including waste collection will be undertaken without interrupting general traffic. Vehicle queuing on public road(s) is not permitted.

Reason: to ensure that delivery and servicing activity does not impact upon customer parking or safety and that deliveries are managed appropriately with staff aware of the conditions of use.

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

A Geotechnical Engineer or Engineering Geologist is to provide written confirmation that they have inspected the site during construction or reviewed information relating to the construction and that they are satisfied that development referred to in the development consent has been constructed in accordance with the intent of the Geotechnical Report referenced in Condition 1 of this consent.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

49. **Environmental Reports Certification**

Written certification from a suitably qualified person(s) shall submit to the Principal Certifier and

Northern Beaches Council, stating that all the works/methods/procedures/control measures/recommendations approved by Council in the following reports have been completed:

Report No. / Page No. / Section No.	Dated	Prepared By
Waterway Impact Assessment	9 December 2022	N Sutherland
Traffic Impact Assessment	October 2022	Traffix
Section J Report	15 November 2022	Credwell Consulting
Geotechnical Investigation	17 November 2022	JK Geotechnics
Flood Management Report	23 November 2022	Northrop
BCA Assessment Report	25 October 2022	BCA Logic
Access Assessment Report	25 October 2022	BCA Logic

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

Reason: To ensure compliance with standards.

50. **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.

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

51. **Landscape Maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

If any shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan and any conditions of consent.

A maintenance activity schedule for on-going maintenance of planters on slab shall be incorporated to monitor and replenish soil levels as a result of soil shrinkage over time.

All weeds are to be managed in accordance with the NSW Biosecurity Act 2015.

Reason: To maintain local environmental amenity.

52. **Flood Management**

Storage of Goods (G1)

Hazardous or potentially polluting materials shall not be stored below the Flood Planning Level unless adequately protected from floodwaters in accordance with industry standards.

Flood Effects Caused by Development (A2)

There shall be no filling of the land below the 1% AEP flood level, or obstruction of flow paths through the property, other than what is approved as part of this consent. This includes the blocking of areas required by DA consent to be left open. The undercroft area to be not used for carparking or storage.

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

53. **Maintenance of Stormwater Treatment Measures**

Stormwater treatment measures must be maintained at all times in accordance with manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.

Northern Beaches Council reserves the right to enter the property and carry out appropriate maintenance of the device at the cost of the property owner.

Reason: Protection of the receiving environment.

54. **Maintenance of Stormwater Treatment Measures - Minor**

Stormwater treatment measures must be maintained at all times in accordance with manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.

Northern Beaches Council reserves the right to enter the property and carry out appropriate maintenance of the device at the cost of the property owner.

Reason: Protection of the receiving environment.

55. **Delivery & Service Vehicles**

Delivery and Service vehicles in excess of 6m in length are not permitted to access the site during the approved trading hours with no trucks in excess of 8.8m in length to access the site at any time.

Reason: to ensure safety and avoid conflict between trucks and customer vehicles.

56. **Geotechnical Recommendations**

Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

57. **Onsite encapsulation of contaminated material**

No onsite encapsulation of contaminated material is to occur without approval under a separate

DA or modification submitted to Council.

Reason: To allow for a proper evaluation of any proposed encapsulation works and to ensure that any contaminated material is effectively capped and managed long term.

58. Hours of Operation

The hours of operation are to be restricted to:

- Monday to Friday – 9:00am - 5:30pm
- Saturday – 9:00am - 5:00pm
- Sunday and Public Holidays – 10:00am - 5:00pm

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.

In signing this report, I declare that I do not have a Conflict of Interest.

Signed



Maxwell Duncan, Principal Planner

The application is determined on 15/06/2023, under the delegated authority of:



Rodney Piggott, Manager Development Assessments