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Statement of Modifications and Supplementary Environmental Effects – s4.55 Modifications to Consent No. DA2022/0193 . Alterations and Additions to shop top housing – 199-205 Pittwater Road Manly, corner of Golf Parade being Lot B DP382992. The modifications are relatively minor with little change to the exterior of the approved building with the modifications responding to a detailed review of the consent, potential tenant requirements, tenant concerns and the residential and commercial/retail marketplace. To be read in conjunction with our Statement of Environmental Effects lodged with the development application.

Modifications summary – Reduction in the number of apartments from 7 to 6, relocation of the residential and commercial waste storage area and conversion to parking; replacement of stacker parking with conventional parking spaces, provision of two additional motorcycle parking spaces, reduction in commercial Gross Floor Area.

Client – Chris Athas/Manly Central Pty Ltd. **Architect** – Chrofi Architecture, Manly NSW

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Above – Fig. 01 – Aerial photo of Site in Pittwater Road with vehicle access off Golf Parade

1.0. Introduction, Explanation, Conclusion and Documents

1.1. Development consent No. 2022/0193 was issued on 5 October 2022 for part demolition and undertake “Alterations and Additions to shop top housing”. Shop top housing is defined by the Manly Local Environment Plan 2013 (as amended) Dictionary - “means one or more dwellings located above the ground floor of a building, where at least the ground floor is used for commercial premises or health services facilities”. The approved work includes the following:

External

- Restoration of the original parapet.
- Reinstatement of original signage.
- Signage for six (6) retail premises.
- Alterations and additions to existing windows and door openings.
- New metal awnings.

Ground Floor

- Structural repairs and refurbishment of interior.
- Upgrade of existing Street facades fronting Golf Parade and Pittwater Road.
- Six (6) new retail shops.
- New common stair entrance and lobby to the first floor.
- Ten (10) car parking spaces.
- One (1) loading bay.
- Bicycle parking spaces.
- A central landscaped courtyard.
- Garbage storage areas for residential and for commercial premises.

First Floor.

- Existing three (3) loft apartments to remain unchanged:
- Shop top housing (four units) above retail shops stop (conversion of existing apartments).
- New common lobby entrance and internal stairs for new apartments.
- Refurbishment of interior.
- New outdoor communal space and clothes drying area; and
- Service/plant area.

1.2. This statement of modifications and assessment should be read in conjunction with original development application documents and the consent No. DA2022/0193 issued by Northern Beaches Council on 5 October 2022. The Statement assesses the modifications in relation to Council’s planning controls and provides Council with a reasoned basis upon which to assess the application. This s4.55 application relies on the reports submitted with DA 2022/0122 and the consent authority assessment of that application - together with supplementary consultant’s assessment reports submitted which address the modifications proposed for Parking and Waste Storage and Management.

1.3. Need for Modifications. A review of the development consent, tenant uses, and tenant issues revealed a need to modify the consent as outlined in this s4.55 application drawings and documents and as detailed in clause 4.0. of this report. The application is supported by modified architectural drawings with modifications highlighted in numbered “Clouds”, and professional reports including Traffic and parking and Waste Management Plan.

1.4. Summary of Modifications – the proposed modifications are minimal –

1. Respond to a detailed review assessment by the owner of the consent, potential tenant requirements and concerns, and the residential and commercial/retail marketplace.
2. Modifications summary –
 - Reduction in the number of apartments from 7 to 6.
 - Reduction in commercial/retail Gross Floor Area,
 - Relocation of the residential and commercial waste storage area and converted to parking space.
 - Replacement of stacker parking (not supported by tenants) with conventional parking spaces,
 - Provision of two additional motorcycle parking spaces.

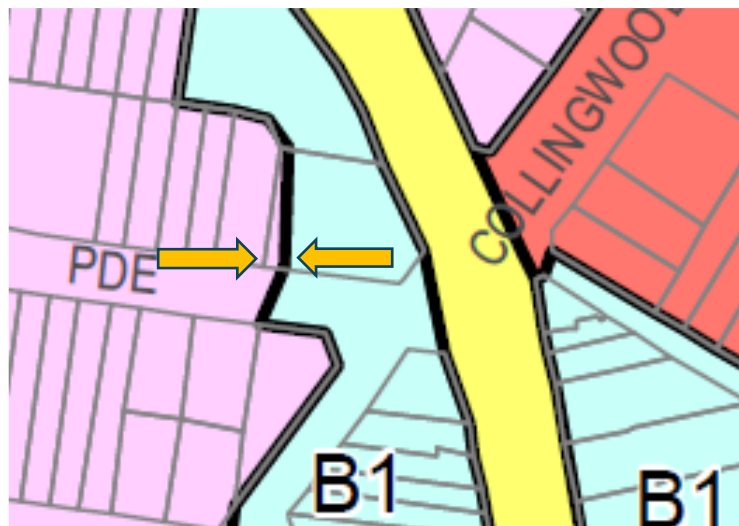
1.6. Documents. This statement and assessment is prepared in response to the client brief and the s4.55 modification drawings prepared by architects, Chrofi Architecture. Drawings and documents submitted with the application are in the table below and does not include reports submitted with the original application DA2022/0193 which continue to be relevant with additional consultant supplementary reports for Parking and Waste Management referred to in the table.

Documents	Doc ref.	Prepared by	Date
Cover Page, Aerial Plan and Drawing List with cloud highlights	DA-000 (05)	Chrofi Architecture	14.12.23
Ground Floor Plan	DA-101 (05)	Chrofi Architecture	14.12.23
First Floor Plan	DA-102 (05)	Chrofi Architecture	14.12.23
Elevations – Sheet 1	DA-201 (05)	Chrofi Architecture	14.12.23
Elevations – Sheet 2	DA-202 (05)	Chrofi Architecture	14.12.23
Elevations – Sheet 3	DA-203 (05)	Chrofi Architecture	14.12.23
Elevations – Sheet 4	DA-204 (05)	Chrofi Architecture	14.12.23
Sections – Sheet 1	DA-301 (05)	Chrofi Architecture	14.12.23
Sections – Sheet 2	DA-302 (05)	Chrofi Architecture	14.12.23
Area Schedules	DA-400	Chrofi Architecture	14.12.23
Traffic and Parking and New Supplement		TTPP Transport Planning Partnership	04.02.22 and 17.11.23
BASIX Certificate – Assessor DMN/12/1451	007016470	Gradwell Consulting	21.12.23
Waste Management Assessment Report and New Supplement.	-----	MRA Consulting Group	14.01.22 and 14.12.23

3.0. Site Description, Analysis and Locality Analysis – Surrounding

Development. As detailed and described in the original Statement of Environmental Effects.

3.1. The subject land is zoned under the Manly Local Environmental Plan 2013 as Zone Business B1 Neighbourhood centre, however a very small slither of land at the rear is zoned General Residential R1 – Which may be a drafting error. Refer to extract from MLEP Land Zone map below – Fig. 3.0-2 and arrows indicating the zone boundary.



Above - Fig. 3.0-2 and arrows indicating the zone boundaries – B1 and R1 which suggests a Drafting error.

3.2. The site is one of a group of shops with apartments above forming part of the Pittwater Road Neighbourhood Business area and within the Pittwater Road Conservation Area. The building/s are not listed as heritage items. Properties at the rear of the Pittwater Business area west of Collingwood Street and along Golf Parade are zoned residential R1 and comprise residential dwellings and some apartment buildings. The immediate adjoining site in Golf Parade is zoned residential, however, the site has a long history of business uses including mechanical workshop, storage and other uses and would qualify as existing use rights. MDCP – Neighbourhood Centre Schedule 2 - Map G – Manly Neighbourhood Centres - Pittwater Road near Collingwood Street. Subject property indicated with yellow arrow.



4.0. Statement of S4.55 Modifications to Consent No. DA2022/0193, Authority and Potential Impact Summary - Architects schedule of modifications numbered 1 to 7.

4.1. The proposed Modifications to consent No, DA2022/0193 are relatively minor with little change to the exterior of the approved building by removing the waste storage area, with the modifications being as follows.

- Amalgamation of three apartments Nos. 2, 3 and 4 into 2 apartments with a Reduction in the number of residential apartments from 7 to 6.
- Deletion of car stackers and conversion of this area into parking spaces – not favoured by tenants.
- Relocation of residential and commercial waste areas and conversion of this area into parking spaces – resulting in a reduction of carparking spaces from 10 to 8 (refer to consultants Revised Parking Assessment report).
- Reduction in GFA in Retail No. 1.
- Reduction in area of the commercial/retail services area.
- Provide 2 additional motorcycle parking spaces.
- Rearrangement of services plant area-terrace of apartment No. 1.
- External changes: Removal of the waste storage

The modifications are highlighted in Red Clouds and numbered 1 to 7 and summarised in the Table assessment below in clause 4.2.

4.2. Table of Modifications and summary Impact Assessment.

Numbered Modifications as stated in the architect's drawings.		Impact Assessment	Comply/Supportable
Ground Floor			
1	1. Deletion of waste storage area on Golf parade with conversion to car parking space. 2. Removal of vertical parking stackers and conversion to open parking spaces.	1. Positively addresses unsightly external waste storage room along the Golf Parade streetfront and converts the area to an open car parking space. 2. Removal of steel vertical parking stackers responds to negative feedback of potential tenants and unwillingness to use the stackers. Creates a more convenient and usable approach to parking. Parking spaces reduced from 10 to 8 but with 2 additional motorcycle space provided. There is a small reduction	YES – on Merit 1. Refer to supplementary report from Traffic and Parking consultants submitted.

		in commercial/retail GFA and the number of apartments is reduced from 7 to 6. 3. The provision of an additional two (2) motorcycle parking spaces responds to the needs of potential residential tenants and easy access to public transport. 4. Conclusion. - The proposed modifications result in an improved streetscape and a more usable on-site parking convenience outcome. - Recognises tenants desired facilities, usable parking spaces, use of motorcycles and bicycles and easy access to public transport in Pittwater Road. - There are no negative environmental impacts.	2. Refer to supplementary report from Waste Management consultants submitted.
2	1. Relocated waste storage areas for residential and commercial within the building footprint with direct access to Golf Parade. 2. Reduction in GFA of Retail 1.	1. Positive improvement to streetscape and improved on-site parking convenience usage. 2. No negative environmental impact.	YES – on Merit Refer to supplementary report from Waste Management consultants submitted.
3	Reduction in floor area of retail - commercial amenities area.	1. Minor positive improvement. 2. No negative environmental impact.	YES
4	Provision of additional two (2) motorcycle parking spaces.	1. Positive improvement responding to the potential needs of tenants and recognising easy access to public transport. 2. No negative environmental impact,	YES
First Floor			
5	Amalgamation of apartments Units 2, 3 and 4 into 2 apartment units. Resulting in a reduction of apartments from 7 to 6.	1. Positive improvement to address potential tenant needs and reduces parking requirements. 2. No negative environmental impact.	YES
6	Rearrangement to services plant area	1. Minor rearrangement. 2. No negative environmental impacts	YES
Elevations - External			
7	Relocation of waste storage structure to open carparking.	1. Positive improvement to streetscape in Golf Parade. 2. No negative environmental impacts	YES on Merit
SUMMARY/CONCLUSION 1. This s4.55 application responds to a review of the consent, operational issues and potential tenant needs and concerns and the residential and commercial/retain marketplace. There are no changes to the appearance of the approved development other than the relocation of the garbage/waste storage area into the fabric of the building and replaced with open parking spaces, and stacker units being replaced with open parking spaces. 2. The reduction in the number of apartments reflects and responds to the needs of potential tenants. 3. The modifications to Waste storage and management respond to parking needs and to improving the streetscape in Golf Parade – and are supported by the supplementary report issued by consultants MRA Consulting Group submitted. The recommendation in that report is restated in paragraph <u>4.2-1 below (*)</u>. 4. The proposed modifications result in an improved streetscape along Golf Parade and result in a more user friendly and convenient on-site parking outcome. The on-site parking continues to be non-compliant with the MDCP it is considered a sensible solution and is supported in the supplementary Traffic and Parking Consultants report by TTPP Transport and Planning – extracts shown in paragraph <u>4.2.2 below (**)</u>. 5. The modifications recognises tenants desired facilities, usable parking spaces, use of motorcycles and bicycles and easy access to public transport in Pittwater Road and residents walking distance to the beachfront and facilities. 6. The modifications proposed in this application - Are well considered and supported by additional professional reports on Waste Management and Parking.			

- Do not materially change the consent and the development remains essentially the same development (refer to paragraph 4.5 below).
- Do not result in any negative or unreasonable environmental impacts including the surrounding, adjoining, adjacent and nearby properties.
- Should be supported on Merit consideration of the development as the proposal is considered to be - consistent with the LEP Zone, aims and objectives including refurbishment and re-use of an existing building; consistent with the objectives of the DCP; and consistent with the objectives of the Environmental Planning and Assessment Act 1979.

(*)4.2-1. Waste Management – The MRA Consulting Group Supplementary report Conclusion is restated below (our Italics).

“6 Conclusion

The proposed changes to the existing development consent (DA 2022/0193) proposed through the Section 4.55 modification application will remain consistent with Council’s objectives for waste management, by achieving a compliant scheme throughout the construction, demolition and operational phases of the works. This WMP has been prepared to detail waste management strategies in the development design and assist in the delivery of better practice waste management, promoting sustainable outcomes and minimisation of waste through the demolition, construction, and operational phases of the development.

Sufficient spatial provision for waste storage will be provided throughout the development for ease of use by residents, staff and visitors. Waste management areas have been designed to facilitate source separation to achieve Council and State waste diversion targets. Modifications to the development continue to ensure safe and efficient collection by Council and private waste contractors.”

() 4.2-2. Parking and Traffic** - TTPP Transport and Planning Supplementary report extracts, and summary are restated below (our Italics).

“On-Site Vehicle Manoeuvring

The relocation of the waste storage area away from the Golf Parade frontage will improve the pedestrian sight lines compared to the approved development and facilitate compliance with the consent conditions requiring AS2890.1 compliant sight lines at the driveway access.

The proposed arrangements are supported by TTPP.

The removal of the mechanical car stackers will reduce the time and inconvenience to drivers associated with manoeuvring into and out of the stacker spaces.

Additionally, the need to maintain the mechanical stackers is removed by the provision of ‘traditional’ standard car parking.

It is noted that no changes are proposed to the vehicle access and spatial area to the approved internal vehicle manoeuvring area. As such the proposed arrangements are consistent with the approved development and are considered acceptable.

Summary

TTPP has reviewed and supports the proposed modifications to the on-site parking provisions in association with the modified apartment yield.

It is noted that one of the studio apartments will not be allocated a parking space. However, the provision of additional motorcycle and bicycle parking spaces are considered to compensate appropriately for the shortfall.

The removal of the mechanical stackers will provide improved access to on-site car parking compared to the approved development.”

4.3. Authority to Modify a Consent is provided under s4.55 Environmental Planning and Assessment Act (EP&A Act) Section 4.55 – Modifications. The modifications are to ensure development remains Substantially the Same Development and not a “Radical transformation”.

A development consent issued by a consent authority in NSW is permitted under the EP&A Act to modify that consent either before development construction commences or after work has commenced provided the proposed modification has not been commenced or constructed. Section 4.55 also allows a development consent to be modified even after the work approved in that consent has been completed. The application of s4.55 continues unlimited in time provided the consent remains activated and uses remain unaltered.

A s4.55 application is to pass a subjective test of “substantially the same development”. The test to be applied examines:

- If the modifications are sympathetic to the building previously granted consent.
- The impacts of the modifications do not result in a significant negative response to the critical planning controls, on neighbour amenity, the locality, or the environment.
- If approved uses remain the same.
- Whether the modifications would result in a “radical transformation.”

We also refer to general advice issued to the Planning Institute by Gadens Lawyers in 2012 which indicates the basis of reasonable test and refers to legal test cases. I quote part of Gadens advice (our italics) –

“The first thing to be aware of is that the Court consistently describes section 96 modification provision as “beneficial and facultative”. It is designed to assist the modification process rather than act as an impediment to it” – ‘It is to be and applied in a way that is favourable to those who seek to benefit from the provision’ (see North Sydney Council v Michael Standley & Associates Pty Limited (1998). Therefore, Councils need to exercise caution in demanding that a full DA be lodged – the modification power is there for a reason – namely to avoid the full DA process that is always otherwise available.” “..... The primary test being whether the modifications would result in a “radical transformation.”

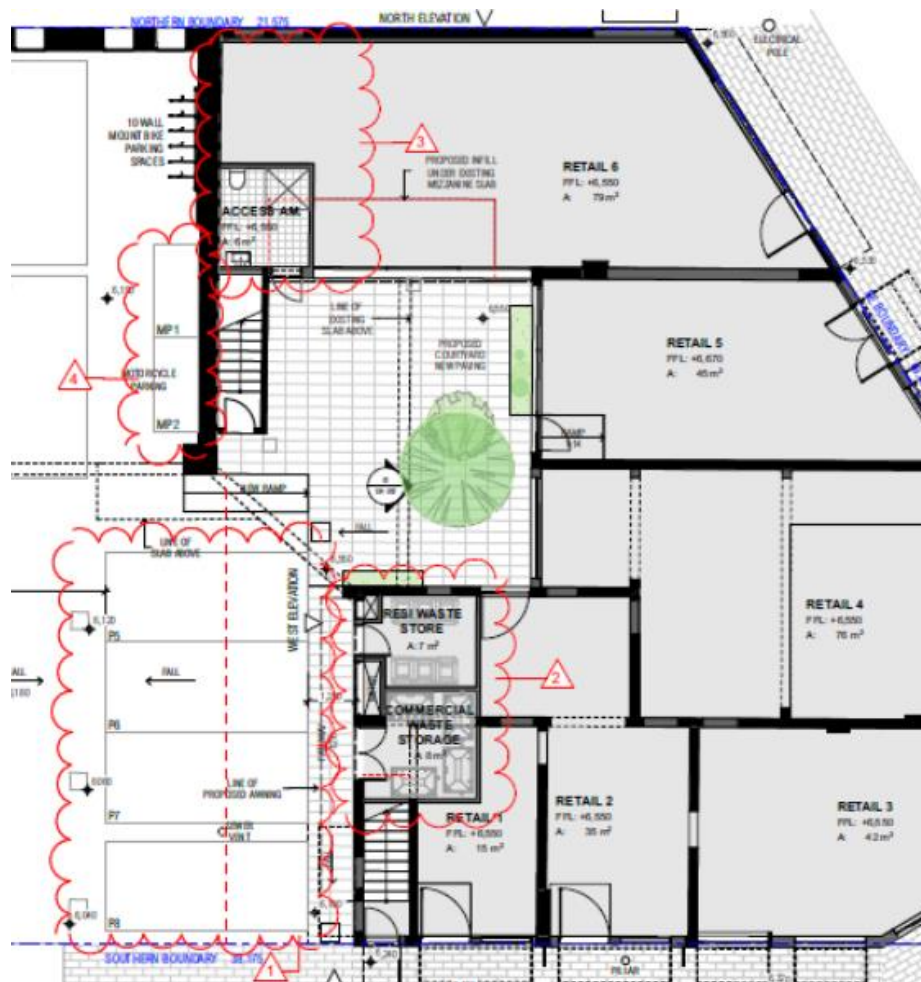
In assessing this Section 4.55 application we refer to various court decisions of which Council planners will be aware – that some refer to court determinations relating to Development Applications in the local area. *In particular I refer to the Court decisions and rulings including that a development consent can be modified at any time, pursuant to s.4.55 of the Act, and that the test of being “substantially the same” is required to be interpreted generously in order to facilitate development.* There exist many L&E Court related Judgements which some may apply, and others may not apply to this application. For example:

1. We have been advised that a development consent can be modified even if it differs significantly – based on the L&E Court determinations including “relying on the powers of s.96, (now s4.55) which is a power simply to ‘modify the consent’ with the basis of “to modify” meaning to alter without radical transformation and this will always involve ‘questions of fact and degree’. We have previously been advised – “originally the power was restricted to modifying the details of the consent, but the power was enlarged in 1985 (North Sydney Council v Michael Standley & Associates Pty Ltd(1998) 43 NSWLR 468 at 475 and Scrap Realty Pty Ltd v Botany Bay City Council [2008] NSWLEC 333; (2008) 166 LGERA 342 at [13]).” *And Parliament has “chosen to facilitate the modification of consents, conscious that such modifications may involve beneficial cost savings and/or improvements to amenity.” (Our italics and underscore).*
2. We also note that in the L&E Court judgement “Auscorp No. 459 Pty Ltd. v Baulkham Hills Shire Council the Court granted a s96 modification for a building completed some years before.
3. Further advice received was to the effect that an owner living in an approved home for many years may choose to lodge a section 96 (now s4.55) application to say, “add a swimming pool or deck for example, rather than submit a full DA.”
4. The (Windy Dropdown Pty Ltd v Warringah Council (2000) 111 LGERA 299), indicated that Section 4.55 (former s96) may be used to retrospectively modify an existing consent. Whilst unauthorised building work cannot generally be retrospectively approved, there may be exception when there exist past consents on the subject property. *There is also Auscorp No. 459 v Baulkham Hills Shire Council. However, we* are also advised that a more recent L&E Court judgement by Justice Preston in Ku-ring-gai Council v Buyozo 2021 changes elements of the Windy Dropdown case, primarily that retrospective consent cannot be given to work already commenced or undertaken – and must be prospective and not retrospective. This situation does not arise in this application.

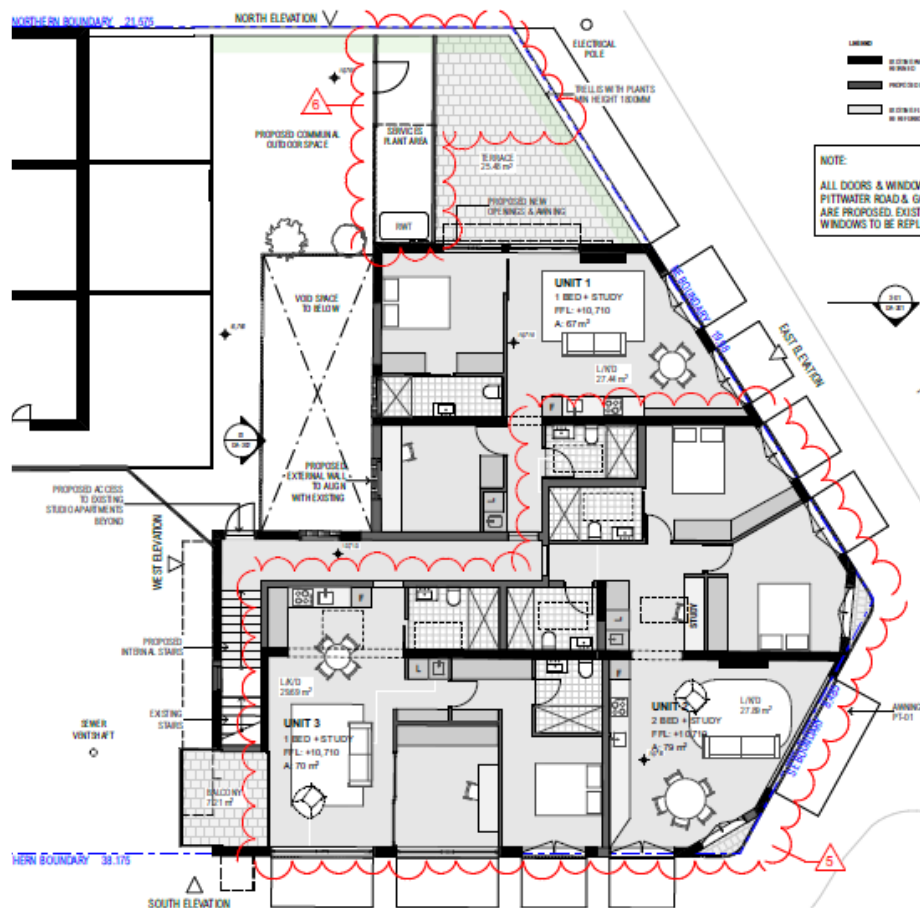
4.4. Modification proposal as related to s4.55 of the EP&A Act - summary.

1. The modifications are within the parameters of s 4.55 of the EPA Act - are ‘beneficial and facultative’ and “prospective”, and the consent will remain “substantially the same development” and come within the judicial interpretations of “substantially the same” to mean “essentially or materially having the same essence. The modifications will not alter the current consent in such a fundamental manner that it would lose the essential and material relationship to that consent.
2. The modifications would not be discernible to a casual observer, other than improved streetscape in Golf Parade, and will not result in a radical transformation.
3. The modifications are a sensible outcome to address concerns and issues relating to the review of the consent, potential tenant issues, changes in vehicle usage and convenient access to public transport and pedestrian friendly walking distances to the beach and service shops and facilities.
4. The modifications are minimal and supported in the supplementary consultant reports relating to on-site parking and waste management and storage, and are in the public interest.

The Modifications proposed to consent DA No. 2022/0193 are highlighted in red Clouds in the following extracts from the architects’ drawings – Figs. 4.0-1 to 3.



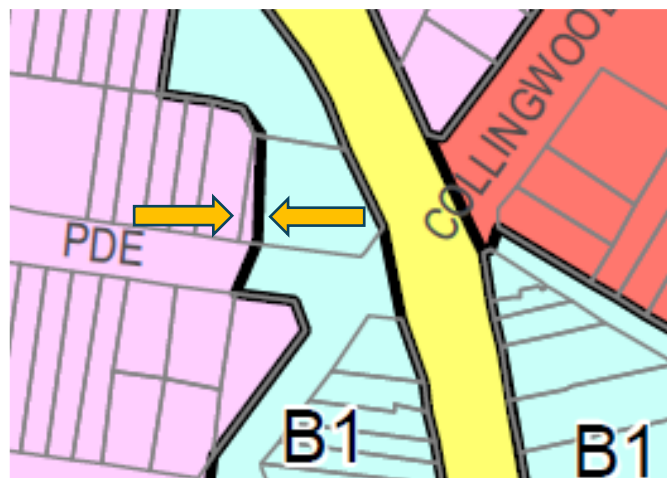
Above – Fig. 4.0-1 – Modification clouds 1 to 4



5.0. Planning Controls and Other Legislation Relevant to the Site - (Assessment tables follow in paragraph 6.0).

5.1. The following planning controls apply to the property:

- Environmental Planning and Assessment Act 1979 No 203
- Environmental Planning and Assessment Act- s4.15 Evaluation
- SEPP (Resilience & Hazards) 2021 including Chapter 2 – Coastal Management and Vulnerability.
- SEPP (Biodiversity and Conservation) 2021.
- SEPP (Coastal Management) 2018)
- SEPP Sustainability – BASIX (Building and Sustainability Index) and NatHERS/Thermal Comfort Rating.
- National Construction Code/Building Code of Australia.
- Manly Local Environmental Plan 2013 (MLEP).
- Manly Development Control Plan 2013 (MDCP) - Built Form Controls and Neighbour Centre.



Above - Fig. 3.0-2 and arrows indicating the zone boundaries – B1 and R1 which suggests a Drafting error.

The proposed modifications and uses are permissible in the two zones noting that the residential zone applies only to a very small slither of land that appears to be a drafting error:

- The Objectives of the B1 zone being: “To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.” Residential Shop-top housing is a permissible use.” Permissible uses include dwellings, shop-top housing and retail/commercial, shops and parking.
- The Objectives of the R1 General Residential zone are – “To provide for the housing needs of the community. To provide for a variety of housing types and densities. To enable other land uses that provide facilities or services to meet the day to day needs of residents.” Permissible uses include dwellings, multi-dwelling housing and neighbourhood shops and parking.

6.0. Environmental Assessment – Tables and Summary - modifications to consent DA2022/0193.

SUMMARY	RESPONSE
Environmental Planning and Assessment Act- s4.15	NO CHANGE PROPOSED
Applicable SEPPs • SEPP (Resilience & Hazards) 2021 • SEPP (Biodiversity and Conservation) 2021 • SEPP (Coastal Management) 2018 • National Construction Code/Building Code of Australia	NO CHANGE PROPOSED
SEPP Sustainability – BASIX (Building and Sustainability Index) and NatHERS/Thermal Comfort Rating	MINOR CHANGE- PASS - Project score

	Water 41 Target 40 Thermal Comfort Pass-Target- Pass Energy 45-Target 45- Pass
Manly Local Environmental Plan 2013 – FSR 4.6 Exceptions to development standards	NO CHANGE PROPOSED
Manly Development Control Plan - 3.6 Accessibility	NO CHANGE PROPOSED
Manly Development Control Plan - 4.2.4 Car parking, Vehicular Access and Loading Controls for LEP Business Zones including B6 Enterprise Corridor	MODIFICATION PROPOSED
Manly Development Control Plan - 4.2.8.3 Landscaping	NO CHANGE PROPOSED
Manly Development Control Plan - 4.2.8.5 Carparking, Vehicular Access and Loading Controls	MODIFICATION PROPOSED
Manly Development Control Plan - 4.2.8.9 Signage	NO CHANGE PROPOSED
Manly Development Control Plan - 4.4.3 Signage	NO CHANGE PROPOSED
Manly Development Control Plan - 4.4.4.1 Awnings in Business zones	NO CHANGE PROPOSED

Environmental Assessment:

- 6.1. Environmental Planning and Assessment Act- s4.15 Evaluation Assessment Table
- 6.2. SEPP (Resilience & Hazards) 2021
- 6.3. SEPP (Biodiversity and Conservation) 2021
- 6.4. SEPP (Coastal Management) 2018)
- 6.5. SEPP Sustainability – BASIX (Building and Sustainability Index) and NatHERS/Thermal Comfort Rating
- 6.6. National Construction Code/Building Code of Australia
- 6.7. Manly Local Environmental Plan 2013 (MLEP)
- 6.8. Manly Development Control Plan 2013 (MDCP) - Built Form Controls

6.1. Environmental Planning and Assessment Act 1979 No 203 - Section 4.15 Evaluation

Section 4.15 of the EP&A Act details the relevant matters that a consent authority is to consider in determining a development application in summary as follows:

- (a) The provisions of:
 1. Any environmental planning instrument, and
 2. Any proposed instrument that is or has been the subject of public consultation and notified to the consent authority.
 3. Any development control plan, and
 4. Any planning agreement entered into under Section 7.4, or any such draft planning agreement that a developer has offered to enter into under section 7.4, an
 5. The regulations (to the extent they prescribe matters etc) that apply to the land to which the development application relates.
- (b) The likely impacts of that development on the natural and built environments and social and economic impacts in the locality.
- (c) The suitability of the site for development.
- (d) Any submission made in accordance with the Act or regulations.
- (e) The public interest.

Environmental Planning and Assessment Act Section 4.15 – Assessment Table

EP&A ACT 1979 SECTION 4.15 EVALUATION		
Planning Control	Instrument/Control	Comment
Any environmental planning instrument – 4.15(1)(a)(i)	1. Zone B1 Neighbourhood Centre. Permits with consent - a variety of uses including retail, restaurants, cafes, shops, take away food and Shop top housing. Zone B1 Objectives – “To provide a range of small-scale retail, business and community uses that serve the needs of people	1. The proposed modifications to the development consent is permissible, complies with the zoning and is in accord with the applicable LEP objectives and numerical controls other than Floor Space Ratio for which a clause 4.6 application was submitted to vary the control from the 1:1 control to 1.05:1 and accepted by the consent authority. 2. Compliance with planning controls is assessed within accompanying tables. 3. The site is suitable for the development.

	who live or work in the surrounding neighbourhood.” 2. Part Zone General Residential R1 for a small slither of land at the rear. The Objectives of the R1 General Residential zone are – “To provide for the housing needs of the community. To provide for a variety of housing types and densities. To enable other land uses that provide facilities or services to meet the day to day needs of residents.” Permissible uses include dwellings, multi-dwelling housing and neighbourhood shops.	
Any proposed instrument that is or has been the subject of public consultation and notified to the consent authority. 4.15(1)(a)(ii)	None identified applicable to this proposal.	None identified.
Any development control plan 4.15(1)(a)(iii)	Manly Development Control Plan 2013 (DCP)	1. Assessed within accompanying table. Refer also to EP&A Act clause 4.15 section. 2) Compliance with non-discretionary development standards. (3) Instrument or regulation contains non-discretionary development standards, (3A) Development Control Plans not to require more onerous standards with respect to a development.
Any planning agreement that has been entered into. 4.15(1)(a) (iia)	None applicable	
The regulations (to the extent that they prescribe matters for the purposes of this paragraph). 4.15(1)(a)(iv)	EP&A Regulations 2000	1. Division 8A of the Regulation 2000 will be addressed by the consent authority via conditions of consent. 2. Clause 50(1A) of the Regulation – design verification certificate, does not apply to this application. 3. Clause 54 and 109 of the Regulation – requests for additional information, will be considered by the consent authority. 4. Clause 92 of the EPA Regulations 2000 requires consideration of the AS standards for Demolition of Structures. To be considered in conditions of consent. 5. Clause 93 and/or 94 of the Regulation will be addressed by the consent authority in conditions of consent. 6. Clause 98 of the EPA Regulations 2000 requires consideration of the Building Code of Australia. Addressed in the design/DA documents and will be included in consent conditions.
The likely impacts of the development including environmental impacts on both the natural and built environments and social and economic impacts in the locality. 4.15(1)(b)		The proposed modifications to consent DA2022/0193 are moderate and do not change the external fabric of the building other than deleting the waste and garbage storage structure.
Suitability of Site for the development .4.15(1)(c)		Ditto above and acknowledging existing use rights.
Any submission made in accordance with the Act or Regulations. 5.15(1)(d)		Council will consider any submissions received if notification is required.
The public interest- 4.15(1)(e)		1. The development will significantly upgrade and improve the streetscape, enhance the locality, and will not negatively impact on the environment, character of the locality or amenity or neighbours. It will provide quality ground floor retail and commercial spaces and first floor shop top apartments and retaining part of the existing loft apartments. 2. The modifications to consent DA2022/0193 are minimal and do not materially alter the consent. 3. It is in the public interest because it achieves the MLEP planning objectives.

CONCLUSION

1. The proposed modifications are permissible and there are no negative environmental impacts resulting therefrom – quite the opposite. Merit consideration is proposed with regard to MDCP on-site parking and MDCP Waste management storage.
2. The proposal complies with the requirements of the Environmental Planning and Assessment Act Section 4.15 Evaluation Matters for Consideration, and is considered appropriate redevelopment for the land and the locality

6.2. SEPP (Resilience & Hazards) 2021 including Chapter 2 – Coastal Management and Vulnerability.

Response: The modifications do not impact on the SEPP beyond that considered in the assessment of the current consent DA2022/0193.

6.3. SEPP (Biodiversity and Conservation) 2021.

Response: The modifications do not impact on the SEPP beyond that considered in the assessment of the current consent DA2022/0193.

6.4. SEPP (Coastal Management) 2018)

Response: The modifications do not impact on the SEPP beyond that considered in the assessment of the current consent DA2022/0193.

6.5. SEPP Sustainability – BASIX (Building and Sustainability Index) and NatHERS/Thermal Comfort Rating

Response: The modifications mildly impact on the SEPP assessment in the assessment of the current consent DA2022/0193. A new BASIX Certificate has been submitted providing for a Project score as follows.

- Water 41- Target 40
- Thermal Comfort Pass - Target Pass
- Energy 45 - Target 45

6.6. National Construction Code/Building Code of Australia

Response: The modifications do not impact on the SEPP beyond that considered in the assessment of the current consent DA2022/0193. Any issues that may arise will be rightly addressed at the Construction Certificate stage.

Note: The SEPP 65 Apartment Design Guideline does not apply and is acknowledged as such in the assessment of consent 2022/0193 - The SEPP 65 applies only to residential buildings of three (3) or more storey buildings with a minimum of four (4) apartments, and the existing studio loft apartments are not two (2) storey apartments as confirmed in the council approval for these Studio Loft Apartments.

6.7. Manly LEP 2013 –Assessment Table on Applicable LEP Controls and Comment for proposal

Planning Control	Zoning/Control	Com ply	Comment
Manly Local Environmental Plan 2013	1. Zone B1 Neighbourhood Centre. Permits with consent - a variety of uses including retail, restaurants, cafes, shops, take away food and Shop top housing. Zone Objectives summary: To provide a range of small-scale retail business and community uses that serves the needs of people who live or work in the surrounding neighbourhood. Permits shop top housing. 2. Zone General Residential R1 for a small slither of land at the rear. The Objectives of the R1 General Residential zone are – “To provide for the housing needs of the community. To provide for a variety of housing types and densities. To enable other land uses that provide facilities or services	YES	No change to current consent. Complies and achieves the planning objectives.

	to meet the day to day needs of residents.” Permissible uses include dwellings, multi-dwelling housing and neighbourhood shops and shop-top housing. The residential zone permits the proposed use of that section of land.		
Part 4 Principal Development Standards			
4.3 Height of Buildings	(1) The objectives of this clause are — (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, (b) to control the bulk and scale of buildings, (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)..... etc, (2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. The applicable height control is 8.5 metres.	YES	No change to existing approved height and the proposed modifications are minimal.
4.4 Floor Space Ratio	(1) The objectives of this clause are as follows— (a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character, (b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features, (c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area, (d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain, (e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres. (2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map. <u>The applicable FSR = 1:1</u> <u>The area of the site is 684.6m². Therefore, the permissible FSR is 684.6m².</u>	NO/ YES	A clause 4.6 application was submitted with the development application and accepted by the consent authority to allow the approved variation.
4.6 Exceptions to Development Standards	Provides for variations to be made to development standards. All such variations require a written application to be submitted by the applicant that justifies the contravention of the development standard by demonstrating that compliance is unreasonable or unnecessary; there are sufficient environmental planning grounds to justify contravening the standard.	YES/ NO	Ditto above
Part 5 – Miscellaneous Provisions			
5.10-Miscellaneous – Heritage and conservation.	The subject site is located within the Pittwater Road Conservation Area. The MLEP Objectives include:	YES	1. In accordance with consent DA2022/0193 2. Not a listed heritage building 3. Is located in a conservation area.

	Conserve the environmental heritage of Manly. Conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings, and views. Conserve archaeological sites; and conserve Aboriginal objects and Aboriginal places of heritage significance. MLEP clause 5.10 (4) requires that the consent authority must consider the effect of proposed development on heritage significance of a listed item and within a conservation area.		
Part 6 Local Provisions			
6.4 Stormwater management	(1) Objective - to minimise the impacts of urban stormwater on land to which this clause applies and on adjoining properties, native bushland and receiving waters.	YES	No change to the current consent DA2022/0193
6.12 Essential Services	(1) Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required— (a) the supply of water, (b) the supply of electricity, (c) the disposal and management of sewage, (d) stormwater drainage or on-site conservation, (e) suitable vehicular access.	YES	No change. All existing services will continue.
6.13. – Local Provisions- Design Excellence. Solar access/shadowing	Applies to development involving alterations to the exterior of existing buildings in the subject property Zone. Objective to deliver the highest standard of architectural and urban design and public spaces. To consider whether the development: a) Contains buildings that consist of a form, bulk, massing and modulation that are likely to overshadow public open spaces. b) Is likely to protect and enhance streetscape and quality of the public realm. c) Clearly defines the edge of public places, streets, lanes and plazas through separation, setbacks, and amenity and boundary treatments. d) Minimises street clutter and provides ease of movement and circulation of pedestrians, cycle, vehicular and service access. e) Encourages casual surveillance and social activity in public places, streets, laneways and plazas. f) Sympathetic to its setting.....etc	YES	As per consent DA2022/0193
CONCLUSION: 1. The proposed modifications to consent DA2022/0193 are permissible and there are no negative environmental impacts. The proposed uses and building upgrade will have a positive impact on the building, the multiple street corner, the Conservation area, and the streetscape and will provide an appropriate mix of retail and commercial uses at the streetfront and appropriate mix of residential shop-top apartments above. 2. The proposal complies with the Statutory planning controls other than FSR for which a cl.4.6 Application to Vary the control was submitted with the current DA and accepted by the consent authority.			

6.8. Manly Development Control Plan 2013 – Supporting the Local Environmental Plan)

1. The purpose and authority of development control plans was re-determined from 1 March 2018 – Environmental Planning and Assessment Act 1979 (2018) - Division 3.6. In summary - a development control plan is a second-tier non-statutory planning document that supports the implementation of the applicable Local Environmental Plan.

A DCP provides guidelines to support the applicable LEP reflecting the local council expectations for development permissible in the applicable Local Environmental Plan (Statutory). A development is required to comply with the relevant LEP; however, the DCP is to provide guidance and to facilitate development that is permissible under the LEP; and is to be flexibly applied.

A proposal must be compliant with the LEP and permissible variations to standards; and be generally consistent with a relevant DCP. A failure to strictly comply with the standards in a DCP is not, of itself, a reason for refusing an otherwise LEP compliant development. Instead, the consent authority should consider alternative solutions which generally achieve the objects of the DCP.

2. Manly DCP 2013 Assessment Table – Relevant assessment controls and objectives only.

Planning Control	MDCP	Comply	Comment
PART 3 - GENERAL PRINCIPLES OF DEVELOPMENT			
3.1.3 Streetscape - Townscape		YES	No change to consent DA2022/0193.
3.2.1 Heritage Considerations	Not a heritage building. Within the Pittwater Road Conservation area	YES	No change to consent DA2022/0193.
3.8.1 Waste Management and Storage Area	a) Garbage storage areas must be of sufficient size to store the number of bins required by Council - i) For single dwellings and duplexes and multi-unit dwelling with individual waste and recycling storage areas: 1 x 80 litre bin for residual waste, 2 x 120 litre bins for paper and comingled (container) recycling, 1 x 240 litre bin for vegetation recycling. ii) For multi-unit dwellings where there is a common waste and recycling storage area, Council allocates a 240L general waste bin, a 240 litre paper recycling bin and a 240 litre co-mingled (container) recycling bin to be shared by every 4 residential dwellings. Provision for space for a 240 litre vegetation bin should be included where such bins are allocated. iii) For mixed use developments: The building must include no less than two independently designated areas or garbage rooms for commercial and residential occupants; to keep commercial waste and recycling separate to residential waste and recycling. iv) For commercial developments: Council does not provide a waste collection service for commercial developments. It is recommended that private waste contractors are consulted	YES	1. The residential and commercial bin rooms are now located within the building footprint within a convenient distance to Golf Parade for servicing. All bins are to be serviced via a "wheel out/wheel in" service from the bin rooms. 2. A detailed assessment report and Management plan is submitted from waste management consultants MRA Consulting Group date 14.12.23

	early in the development process to ensure that garbage storage areas are adequately designed. b) Any waste storage facility must be architecturally designed to reflect the design style of the proposed /existing building and not detract from the visual amenity and streetscape character in the immediate vicinity. And should also be wholly contained within the property. The storage facility must be screened.		
PART 4 – DEVELOPMENT IN BUSINESS CENTRES (LEP ZONES B1- NEIGHBOURHOOD CENTRES AND B2 – LOCAL CENTRES INCLUDING RESIDENTIAL SHOP TOP HOUSING			
4.2. General applicable issues	Townscape, design, diversity, interest, and heritage values	YES	No change to consent DA2022/0193.
4.2.1 FSR	Maximum FSR = 1:1 The area of the site is 684.6m2. The permissible FSR is 684.6m2.	NO/ YES	No change to consent DA2022/0193 and in accordance with the accepted clause 4.6 application.
4.2.2 Height of buildings	Not negatively affect the surrounding residential area and support the bulk and scale of buildings in the locality.	YES	No change to consent DA2022/0193.
4.2.4 Car parking and loading.	1. Compliance with Schedule 3 of MDCP 2013 = Commercial, Retail, and shop top housing – <u>subject to the provision for merit based assessment of older buildings and established uses.</u> 2. The on-site car parking requirements for development within LEP Business Zones outside of the Manly Town Centre, the DCP specifies the following on-site car parking rates: ☐ 1 car space for each residential dwelling ☐ 0.16 car spaces for visitors per residential dwelling ☐ 1 car space per 40m2 GFA for retail and commercial land uses. 3. The calculation on this basis for the proposal is 16 spaces. A merit concession is required.	NO - YES on merit	Notwithstanding the numerical shortfall of parking under the MDCP and as provided in the current consent, it is considered the proposed modifications are satisfactory and acceptable when considering the following factors - •The reduction in the number of apartments. •The provision of additional motorcycle parking. •The tenant parking use convenience factor. •The sites excellent access to public transport and also easy convenient walking access to the beach, shops and facilities, and •The assessment, substantiation and endorsement provided in the supplementary assessment report prepared by TTPP Transport and Planning dated 17.11.23 and the summary and conclusions therein. TTPP Transport and Planning Supplementary report extracts, and summary are restated below (our Italics). On-Site Vehicle Manoeuvring The relocation of the waste storage area away from the Golf Parade frontage will improve the pedestrian sight lines compared to the approved development and facilitate compliance with the consent conditions requiring AS2890.1 compliant sight lines at the driveway access. The proposed arrangements are supported by TTPP. The removal of the mechanical car stackers will reduce the time and inconvenience to drivers associated with manoeuvring into and out of the stacker spaces. Additionally, the need to maintain the mechanical stackers is removed by the provision of ‘traditional’ standard car parking. It is noted that no changes are proposed to the vehicle access and spatial area to the approved internal vehicle manoeuvring area. As such the proposed arrangements are consistent with the approved development and are considered acceptable. Summary . TTPP has reviewed and supports the proposed modifications to the on-site parking provisions in association with the modified apartment yield. It is noted that one of the studio apartments will not be allocated a parking space. However, the provision of additional motorcycle and bicycle parking spaces are considered to compensate appropriately for the shortfall. The removal of the mechanical stackers will provide improved access to on-site car parking compared to the approved development.

4.2.8 Neighbourhood centres (LEP Zone B1)-Characteristic scale and style of development.	Characteristic scale and style of development-small scale within established residential neighbourhoods; compatible with the amenity of the surrounding areas; and will significantly improve streetscape and amenity for residents.	YES	No change to consent DA2022/0193.
PART 5.2 – PITTWATER ROAD CONSERVATION AREA			
5.2.2. Development fronting Pittwater Road	Refer to the architect's Heritage/Conservation statement and also, the heritage impact assessment submitted with the original development application.	YES	1. Pittwater Road Conservation Area. No change to existing consent. 2. The subject premises are not listed in the MLEP as of heritage significance, but the property is located in a Conservation Area General locality. Consideration must therefore be given to the effect of the proposed development application on heritage significance. There is no change to the heritage conservation issues as approved in the current consent DA2022/0193.
CONCLUSION: 1. The modifications proposed for consent DA2022/0193 are well founded, achieve the DCP objectives with merit considerations required for on-site parking which is considered appropriate to the circumstances and justified in the TTPP supplementary report. 2. The relocation of the garbage waste storage structure sensibly addresses planning objectives, streetscape and the storage and operational issues and is appropriate as assessed in the waste management consultants MRA Consulting Group assessment report of 14.12.23. 3. There are no negative environmental impacts resulting from the proposed modifications and the proposal is considered to comply with applicable manly Development Control Plan planning controls and objectives, including heritage/conservation (other than parking). A merit concession as supported in the TTPP Transport Planning report of 17.11.23 is appropriate and should be accepted.			

7.0. Conclusion

1. The application responds to a review of consent DA2022/0193, operational issues, potential tenant needs and concerns and the residential and commercial/retail marketplace. There are no changes to the appearance of the approved development other than the relocation of the garbage/waste storage area into the fabric of the building (which is replaced with open parking spaces) and elevated stacker units being replaced with open parking spaces.

2. The modifications have been assessed having regard to submitted documentation including consultant's supplementary reports for parking and waste management, and the provisions of:

- Environmental Planning and Assessment Act 1979.
- Environmental Planning and Assessment Regulation 2021.
- Applicable State Environmental Policies (SEPPs).
- Manly Local Environment Plan 2013.
- Manly Development Control Plan 2013, including the objectives of the Pittwater Road Conservation Area.

The assessment concludes that the modifications -

- Comply with the legal requirements for modifications to a development consent and achieve the objectives of all applicable planning legislation,
- Are each reasonable under the circumstances, including creating an improved outcome, and do not result in any negative or unreasonable environmental impacts including the locality, adjoining, adjacent and nearby properties.

3. The proposed s4.55 modifications to consent DA2022/0193 are summarised as follows –

- Reduction in the number of apartments from 7 to 6.
- Reduction in commercial/retail Gross Floor Area,
- Relocation of the residential and commercial waste storage area and area converted to parking space.
- Replacement of stacker parking (not supported by tenants) with conventional parking spaces, and
- Provision of two additional motorcycle parking spaces.

4. The reduction in the number of apartments reflects the needs of potential tenants, increases residential choice, and reduces parking needs.

1. The modifications to Waste storage and management respond to parking needs and to a desire to improve the streetscape in Golf Parade, and to parking preferences – and is supported by the supplementary report issued by consultants MRA Consulting Group submitted.
2. The on-site parking arrangement is more user friendly and convenient outcome recognising tenant preference for convenient usable parking spaces, use of motorcycles and bicycles and easy access to public transport and walking distances to the beachfront and facilities. However, parking continues to be non-compliant with the MDCP but considered a sensible solution and supported in the supplementary Traffic and Parking Consultants report by TTPP Transport and Planning. This modification should be supported on merit.

5. The modifications –

- Are well considered and supported by additional professional reports for Waste Management and Parking.
- Do not materially change the consent and the development remains essentially the same development.
- Do not result in any negative or unreasonable environmental impacts including the surrounding, adjoining, adjacent and nearby properties.
- Should be supported on Merit as the proposal is considered to be - consistent with the LEP Zone, aims and objectives including refurbishment and re-use of an existing building; consistent with the objectives of the DCP; and consistent with the objectives of the Environmental Planning and Assessment Act 1979, the Manly Local Environmental Plan 2013 objectives and Manly Development Control Plan 2013 controls and objectives and other applicable legislation.

7. The modifications should be approved, and a modified consent issued .

Colco Consulting Pty Ltd



Wayne Collins
Director

22 December 2023

Qualification/Disclaimer

This report, Statement of Environmental Effects (SEE), is based on information provided by the instructing party and relates only to the information provided at the date of issue of this report and planning legislation applicable at that date. Colco has made what it considers reasonable enquiries in preparing this report; however, it cannot confirm the accuracy of architectural drawings or supporting consultant's specialist reports. Colco accepts these documents in good faith. The Statement of Environmental Effects is for the benefit of the client in regard to a development application for development on the subject site and not for any other purpose. Colco cannot forecast an outcome of a consent authority.

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