

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0769
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Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot 4 DP 39426, 110 - 112 The Corso MANLY NSW 2095
Proposed Development:	Change of Use of premises to Office Premises
Zoning:	Manly LEP2013 - Land zoned B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	OPG Alpha Pty Ltd
Applicant:	Baxter & Jacobson Architects Pty Ltd

Application Lodged:	19/07/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	06/08/2019 to 20/08/2019
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 350,000.00
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PROPOSED DEVELOPMENT IN DETAIL

The proposed development is for change of use of the Level 1 and Level 2 premises from restaurant bar to commercial (offices) and associated internal alterations/fitout of these premises.

Minor fitout works to the approved ground floor cafe is also proposed.

The proposed hours of operation for the Level 1 & 2 commercial premises are 5am to 10pm Monday to Saturday.

No external changes are proposed to the existing building.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning

and Assessment Act 1979 and the associated Regulations. In this regard:

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 5.10 Heritage conservation

Manly Local Environmental Plan 2013 - 6.1 Acid sulfate soils

Manly Local Environmental Plan 2013 - 6.13 Design excellence

Manly Development Control Plan - 3.2 Heritage Considerations

Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 4.2.5.4 Car Parking and Access

Manly Development Control Plan - 4.4.3 Signage

Manly Development Control Plan - Schedule 3 - Part A1 - Parking Rates and Requirements for Vehicles

SITE DESCRIPTION

Property Description:	Lot 4 DP 39426 , 110 - 112 The Corso MANLY NSW 2095
Detailed Site Description:	The subject site consists of one allotment located on the south-western corner of The Corso and South Steyne. The site is irregular in shape with a frontage of 11.81m along The Corso and a secondary frontage of 17.92m to South Steyne. The site has a surveyed area of 218.7m². The site is located within the B2 Local Centre zone and accommodates an existing three-storey commercial development. The site is generally flat. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by commercial development. South Steyne and the adjacent beach front area adjoins the site immediately to the north-

east.

Map:



SITE HISTORY

The land has been used for commercial purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

DA0255/2016 - Part 2 - Section 96 to modify approved Change of use to a food and drink premises, internal fit-out, new signage and hours of operation from 5:00am to 10.00pm – 7 days per week – Approved 05/04/2017

DA0085/2014 - Part 3 - Section 96 to modify approved Change of use with fitout from retail shop to cafe on ground floor, restaurant/bar on levels 1 and 2, alterations and additions to the existing building to include trafficable awning balcony at level 1, replace existing canopy at level 2 and outdoor seating along South Steyne – involving deletion of condition of consent ANS03 in relation to the number of patrons permitted on the second level balcony, condition of consent ANS04 in relation to the number of seats permitted on the second level balcony, modification of condition of consent ANS12 in relation to the noise associated with entertainment, condition of consent ANS19 in relation to the hours of operation and conditions of consent ANS30 in relation to the platform and the location air conditioning (AC) plant – Approved 15/12/2016 by

DA0255/2016 - Change of use to a food and drink premises, internal fitout, new signage and the hours of operations are from 5.00am to 10.00pm – 7 days per week - Starbucks - Approved 26/10/2016

DA0085/2014 - Part 2 - Section 96 to modify the approved Change of use with fitout from to cafe on ground floor, restaurant/bar on levels 1 and 2, alterations and additions to the existing building to include trafficable awning balcony at level 1, replace existing canopy at level 2 and outdoor seating along South Steyne – involving internal reconfiguration at ground floor, 1st floor and 2nd floor, relocation of plant room, lowering of approved second floor parapet, partial deletion of second floor canopy and new windows and doors – Approved 30/03/2016

DA0085/2014 - Change of use with fitout from Retail shop to Cafe on ground floor, Restaurant/ Bar on Levels 1 and 2, alterations and additions to the existing building to including trafficable awning balcony

at level 1, replace existing canopy at level 2 and outdoor seating along South Steyne - Approved 20/11/2014

DA0157/2013 - Separation of tenancy from the other levels by installation of a wall, change of use to a Retail Shop on the ground floor, outdoor seating on the road reserve, signage and fitout - Approved 11/09/2013

DA0526/2005 - AMENDED PLANS - Section 82A Review of refused Change of use from an ice cream/ beverage kiosk to a cafe on the ground floor level and associated modifications - Approved 19/12/2006

DA0241/2005 - Part 3 - Section 96 Modify approved Alterations and Additions to existing Building and fitout including Internal Alterations and Additions to Second Floor - Approved 22/12/2006

DA0501/2005 - Erection of Awnings was - Refused 22/03/2006

DA0253/2005 - Alts to existing commercial premises incl. installation of escalator - Approved 05/08/2005

DA0241/2005 - Part 2 - Section 96 Modification to modify second floor and roof - Approved 02/12/2005

DA0241/2005 - Alts & Adds to existing building incl int. alts & adds to 2nd floor - Approved 05/08/2005

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	None applicable.
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 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 50(1A)</u> of the EP&A Regulation 2000 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. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case. <u>Clause 92</u> of the EP&A Regulation 2000 requires the

Section 4.15 Matters for Consideration'	Comments
	consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application. <u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent. <u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
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.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition 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 to the Building Certification and Fire Safety Department. There are no objections to approval of development subject to inclusion of the attached conditions of approval and consideration of the notes below. <i>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.</i>
NECC (Stormwater and Floodplain Engineering – Flood risk)	The proposed change of use and fit-out generally complies with the flood requirements of DCP and LEP.
Property Management and Commercial	<u>Planning Comments:</u> A deferred commencement condition is included in order to satisfy the below comments from Council's Property Officer in relation to the required airspace lease. <u>Property Officer Comments:</u> The proposal is for the change of use of the upper levels of the building from a restaurant/caf� to offices. DA 85/2014, was an application for change of use with fitout from retail shop to caf� on ground floor, restaurant/bar on levels 1 & 2, alterations and additions to the existing building to include trafficable awning balcony at level 1, replace existing canopy at level 2 and outdoor seating along South Steyne, which was approved by the Manly Independent Assessment Panel (MIAP) on 20 November 2014. Condition ANS16 of this consent requires the following: An airspace lease must be obtained from Council for the use of airspace below the proposed second floor balcony as proposed prior to the issue of any Occupation Certificate. This lease may not allow for smoking to be undertaken on the balcony or

Internal Referral Body	Comments
	to restriction on such activity to the Corso and in accordance with local policy. <u>Reason: To protect and manage the public space in accordance with local policy and requirements.</u> No airspace lease has been entered into to date between Council and the owners of the building. The grant of any occupation certificate without this lease would be in contravention of the above condition of consent. Furthermore, while it is noted that the submitted plans indicate the balcony will not be used there are four (4) sets of French doors opening onto the balcony, and Property is concerned that without an airspace lease in place for the balcony, there would be significant liability issues for Council, as the owner of the structure, if people were to access the balcony and injure themselves. DAs usually require an airspace lease prior to construction to avoid instances where Council has no agreement over the structure. As this was not the case for the original DA it is imperative that no Occupation Certificate be granted without this Airspace Lease being entered into. As such, it is recommended that consent be withheld until such time as an airspace lease for the use of the balcony has been entered into between the property owner and Council, in accordance with Condition ANS16 of Development Consent 85/2014.
Strategic and Place Planning (Heritage Officer)	<u>Planning Comments:</u> A deferred commencement condition is included that requires an airspace lease be entered into by the building owner. The proposed top hamper/toplight sign is minimal and is appropriately conditioned to ensure consistency with the relevant Manly DCP signage controls. Use of the Level 1 balcony was permitted under the previous consent (84/2014) and associated modifications, subject to conditions. The proposed use as an office premises is considered to result in substantially less use of the balcony area than the previously approved bar/restaurant use. As such, contrary to the below comments from Council's Heritage Officer, no prohibition of use of the balcony is imposed as part of this consent, subject to conditions and a lease agreement being in place allowing for active use of this area. <u>Heritage Officer Comments:</u> Further to review of available documents, The proposal is for the change of use of the upper levels of the building from a restaurant/bar to offices and associated fitout. As noted in the <i>Property and Commercial Development Referral Response: DA 85/2014</i>, <i>with an application for change of use with fit-out from retail shop to café on ground floor, restaurant/bar on levels 1 & 2, alterations and additions to the existing building to include trafficable awning balcony at level 1, replace existing canopy at level 2 and outdoor seating along South Steyne</i>, which was approved by the Manly Independent Assessment Panel (MIAP) on 20 November 2014. Condition ANS16 of this consent requires the following: An airspace lease must be obtained from Council for the use of airspace below the proposed

Internal Referral Body	Comments
	second floor balcony as proposed prior to the issue of any Occupation Certificate.” It also clarifies that <i>airspace below the proposed balcony as proposed prior to the issue of any Occupation Certificate. This lease must not allow for smoking to be undertaken on the balcony. No airspace lease has been entered into to date between Council and the owner: the building. The grant of any occupation certificate without this lease would be in contravention of the above condition of consent. Furthermore, while it is noted that the submitted plans indicate the balcony will not be used, there are four (4) sets of French doors opening onto the balcony, and Property is concerned that without an airspace lease in place for the balcony, there would be significant liability issues for Council, as the owner of the structure, if people were to access the balcony and injure themselves.</i> To add to the above, from the heritage perspective it is assessed that any outdoor access, smoking, sitting, even introduction of safety barriers, would impact views of the item to a degree at which they would not be acceptable for one of the most beautiful buildings in Manly, and located on the visually very prominent corner of The Corso and Steyne. Last but not least, details of the new signage should be provided for approval of the council prior to the issue of the OC. Based on the above, I recommend the following conditions: • Any use of the balcony is prohibited • Condition 14 of the DA 85/2014 remains applicable; and • Details of the new signage should be provided for approval of the Council's heritage officer prior to the issue of the OC.
Traffic Engineer	The proposal is for change of use of the upper levels of the building from restaurant/bar to offices. The change of use will have minimal impact in terms of traffic generation when compared to the existing uses on the site and it is noted that neither the existing development on the site or the proposed development provides any offstreet parking. Given the location of the site within a high pedestrian activity area and adjacent to a heavily used signalised crossing, the provision of a vehicle access point would impact adversely on pedestrian safety and amenity and create traffic congestion issues. The site is also located close to good public transport. Given the above, the lack of any vehicle access or offstreet parking is not opposed. No traffic objections are raised to approval of the development

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for commercial purposes for a significant period of time 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 Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the commercial land use.

SEPP 64 - Advertising and Signage

Clauses 8 and 13 of SEPP 64 require Council to determine consistency with the objectives stipulated under Clause 3(1)(a) of the aforementioned SEPP and to assess the proposal against the assessment criteria of Schedule 1.

The objectives of the policy 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 1 of SEPP 64, 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 signage is minimal and is consistent with the character of the locality.	YES
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	There is no particular advertising theme in the area.	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?	The signage will not detract from the amenity or visual quality of the heritage item, conservation area or surrounds.	YES
3. Views and vistas Does the proposal obscure or compromise important views?	The sign is attached to an existing window and will not impact any views.	YES
Does the proposal dominate the skyline and reduce the quality of vistas?	The proposal does not dominate the skyline or impact any vistas.	YES
Does the proposal respect the viewing	The proposal does not impact visibility of	YES

rights of other advertisers?	surrounding advertising.	
4. Streetscape, setting or landscape Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	The signage is minimal in size and is proportionate to the setting.	YES
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	The sign is appropriate in the context of the heritage item.	YES
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	The existing signage is not cluttered and does not require rationalisation.	YES
Does the proposal screen unsightliness?	No unsightliness requires screening.	YES
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	The sign is located at ground floor level.	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 signage scale and proportion is compatible with the building and window in which it is located.	YES
Does the proposal respect important features of the site or building, or both?	The sign is located within a small window at ground floor level.	YES
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	The signage design is appropriate to the site context.	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?	No.	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?	The signage is not illuminated.	YES
Can the intensity of the illumination be adjusted, if necessary?	N/A	YES
Is the illumination subject to a curfew?	N/A	YES
8. Safety Would the proposal reduce the safety for any public road, pedestrians or bicyclists?	The sign is not immediately visible to road users.	YES
Would the proposal reduce the safety	The signage will not obscure any sight lines from	YES

for pedestrians, particularly children, by obscuring sightlines from public areas?	public areas.	
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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 the SEPP and its underlying objectives.

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

SEPP (Coastal Management) 2018

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

13 Development on land within the coastal environment area

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
 - (b) *coastal environmental values and natural coastal processes,*
 - (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
 - (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
 - (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*

- (f) *Aboriginal cultural heritage, practices and places,*
- (g) *the use of the surf zone.*

Comment:

The proposed works are generally internal within the existing building and will not adversely impact the coastal environment.

- (2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
 - (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or
 - (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

The proposed works being internal are appropriately designed and sited.

14 Development on land within the coastal use area

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

Comment:

The proposed works are generally internal within the existing building. As such, the proposal is not considered to result in any unreasonable impacts in relation to the above.

As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

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

The are no development standards to consider as part of this assessment.

Compliance Assessment

Clause	Compliance with Requirements
5.10 Heritage conservation	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.11 Active street frontages	Yes
6.12 Essential services	Yes
6.13 Design excellence	Yes

Detailed Assessment

5.10 Heritage conservation

No external physical works are proposed to the existing building, with the exception of one sign to the South Steyne frontage. As such, the proposal is not considered to result in excessive or unreasonable impact to the heritage values of the site, subject to conditions. As discussed under the Heritage referral, use of the Level 1 balcony is permitted, subject to a lease agreement being in place allowing for active use of this area.

6.1 Acid sulfate soils

Clause 6.1 - 'Acid sulfate soils' requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.

The site is located in an area identified as Acid Sulfate Soil Class 4, as indicated on Council's Acid Sulfate Soils Planning Map.

Works at depths beyond 2.0m below the natural ground surface and/or works by which the watertable is likely to be lowered more than 2.0 metre below the natural ground surface within a Class 4 acid sulfate soil area are required to be assessed to determine if any impact will occur.

No excavation works are proposed.

6.13 Design excellence

No external changes are proposed to the existing building.

Manly Development Control Plan

Built Form Controls

The are no built form Development Controls under Part 4 to consider as part of this assessment.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.3 Townscape (Local and Neighbourhood Centres)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	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
3.7 Stormwater Management	Yes	Yes
4.2.5 Manly Town Centre and Surrounds	Yes	Yes
4.2.5.1 Design for Townscape	Yes	Yes
4.2.5.4 Car Parking and Access	No	Yes
4.4.3 Signage	Yes	Yes
5.1.1 General Character	Yes	Yes
5.1.2 The Corso	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedule 3 - Part A1 - Parking Rates and Requirements for Vehicles	No	Yes

Detailed Assessment

3.2 Heritage Considerations

No external physical works are proposed to the existing building, with the exception of one sign to the South Steyne frontage. As such, the proposal is not considered to result in excessive or unreasonable impact to the heritage values of the site, subject to conditions. As discussed under the Heritage referral, use of the Level 1 balcony is permitted, subject to a lease agreement being in place allowing for active use of this area.

3.4.2 Privacy and Security

Hours of operation:

The proposed hours of operation (6am to 10pm Monday -Saturday) are consistent with the approved ground floor cafe premises and ensure the amenity of the surrounding area. The consent is conditioned accordingly.

4.2.5.4 Car Parking and Access

While there is no increase to gross floor area on the site, there is a minor increase to car parking requirements as a result of the parking rates associated with the change of use from *Restaurants or Cafes and Take Away Food and Drink Premises* to *Commercial Premises (including business, offices and retail premises)*. However, there is no existing vehicular access to the site and provision of such access is impractical due to the location and development of site. Despite the increased parking requirement/rate, the proposed change of use is not considered to result in any significant traffic or parking generation, as discussed by Council's Traffic Engineer. Further, the site is centrally located and is well-served by public parking facilities and public transport. Based on this assessment, no objection is raised in relation to car parking and access.

4.4.3 Signage

The proposal includes one top hamper/window sign to the South Steyne frontage. The signage consists of simple business identification lettering and complies with the relevant controls of Manly DCP Clause 4.4.3.3.

Schedule 3 - Part A1 - Parking Rates and Requirements for Vehicles

See planning comments under Clause 4.2.5.4 with regard to car parking provision.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect 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 2019

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2019.

A monetary contribution of \$3,500 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$350,000.

CONCLUSION

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

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

THAT Council as the consent authority grant Development Consent to DA2019/0769 for Change of Use of premises to Office Premises on land at Lot 4 DP 39426, 110 - 112 The Corso, MANLY, subject to the conditions printed below:

DEFERRED COMMENCEMENT CONDITIONS

1. **Airspace Lease Agreement**

An airspace lease must be obtained from Council due to the encroachment of the Level 1 Balcony.

Reason: To ensure legal access to public airspace.

Evidence required to satisfy the deferred commencement condition/s must be submitted to Council within five (5) years of the date of this consent, or the consent will lapse in accordance with Section 95 of the Environmental Planning and Assessment Regulation 2000. This evidence is to be submitted along with a completed 'Deferred Commencement Document Review Form' (available on Council's website) and the application fee, as per Council's Schedule of Fees and Charges.

Upon satisfaction of the deferred commencement condition/s, the following conditions apply:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

2. **Approved Plans and Supporting Documentation**

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

a) **Approved Plans**

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
200 Ground Floor Plan	19 July 2019	Baxter Jacobson Architects
201 Level 1 Plan	19 July 2019	Baxter Jacobson Architects
202 Level 2 Plan	19 July 2019	Baxter Jacobson Architects
300 North Elevation	19 July 2019	Baxter Jacobson Architects

b) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

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

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

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.

3. **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 Certifying Authority 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 Certifying Authority 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 Certifying Authority 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.

4. **General Requirements**

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) 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 a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.



- (c) 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.
- (d) 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.
- (e) 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.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (j) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (k) 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 2008
 - (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.

5. **Outdoor Seating**

This consent does not approve any outdoor eating/seating area. A separate application for Outdoor Eating Area Approval shall be submitted to Council in accordance with the requirements of Section 125 of the Roads Act 1994.

Reason: To ensure consistency between any development consent and outdoor eating licence.

FEES / CHARGES / CONTRIBUTIONS

6. **Policy Controls**

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$3,500.00 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 2019. The monetary contribution is based on a development cost of \$350,000.00.

The monetary contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate whichever occurs first, or prior to the issue of the Subdivision Certificate where no Construction Certificate is required. If the monetary contribution (total or in part) remains unpaid after the financial quarter that the development consent is issued, the amount unpaid (whether it be the full cash contribution or part thereof) will be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index. If this situation applies, the cash contribution payable for this development will be the total unpaid monetary contribution as adjusted.

The proponent shall provide to the Certifying Authority written evidence (receipt/s) from Council that the total monetary contribution has been paid.

The Northern Beaches Section 7.12 Contributions Plan 2019 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

This fee must be paid prior to the issue of the Construction Certificate. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

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 \$1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security 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, details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

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

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

8. BCA Report (Class 2-9)

A 'Building Code of Australia (BCA) Assessment Report' / 'Fire Audit Report' from an appropriately qualified Accredited Certifier* will need to be submitted with the Construction Certificate application addressing the following:

The report is to detail the extent to which the existing building (relevant affected parts) does or does not comply with the deemed-to satisfy provisions of Sections C, D, E and F of the Building Code of Australia. The report is to also provide recommendations with respect to the existing building / works required to ensure that the specified measures and facilities contained in the existing building, including any modifications to be made by the proposed development are appropriate for its intended use to:

- i) restrict the spread of fire from the building to other buildings nearby, and
- ii) protect persons using the building, and to facilitate their egress from the building in the event of fire, and
- iii) where appropriate, provide access for persons with a disability, and
- iv) provide facilities and services appropriate for the development

**To be regarded as an "appropriately qualified accredited certifier" the certifier must hold the relevant level of accreditation that would enable the certifier to issue a construction certificate for the subject building.*

The 'Building Code of Australia (BCA) Assessment Report' / 'Fire Audit Report' is to be submitted to the Certifying Authority with the Construction Certificate application.

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

9. **Flooding**

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

Building Components and Structural Soundness – C3

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 5.3m AHD. All existing electrical equipment and power points located below the Flood Planning Level must have residual current devices installed cut electricity supply during flood events.

Details demonstrating compliance are to be submitted to the Certifying Authority 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. **Sink facilities**

Separate facilities in the servery of the ground floor entry foyer retail food outlet are to be provided for hand washing and for washing of coffee jugs, utensils, etc.

Reason: To ensure compliance with the relevant Australian standards.

11. **Top Hamper Sign**

The proposed top hamper signage to the South Steyne frontage must have a transparent background to the lettering.

Full details of this sign are to be submitted to the Certifying Authority prior to the issue of a Construction Certificate.

Reason: To ensure the signage does not result in unreasonable visual impact.

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

12. **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 Certifying Authority prior to the issue of the Interim / Final 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 under Part 9 Division 4 & 5 of the Environmental Planning and Assessment Regulation 2000.

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

13. **Hours of Operation**

The hours of operation of the Level 1 & 2 office premises are to be restricted to:

- Monday to Friday – 6am to 10pm
- Saturday – 6am to 10pm
- Sunday and Public Holidays – Closed

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: To maintain consistency with nearby approvals and ensure that amenity of the surrounding locality is maintained.

14. **Use of Level 1 Balcony**

The Level 1 Balcony is to be used only for cleaning and maintenance purposes unless an active use option is in place in relation to the required airspace lease.

Reason: To ensure that use of the balcony is consistent with the lease agreement between the building owner and Council.

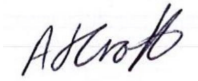
15. **Level 1 Balcony Furniture**

All furniture (apart from umbrella stands/bases) to the Level 1 balcony is to be removed and stored within the walls of the building outside of the hours of operation of the premises and when the balcony is not in use. Any umbrellas shall be white in colour and contain no advertising signs or materials.

Reason: To reduce visual impact and protect the public from potential risk of injury.

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

Signed



Adam Croft, Planner

The application is determined on 09/10/2019, under the delegated authority of:



Anna Williams, Manager Development Assessments