

COUNCIL ASSESSMENT REPORT

Panel Reference	2016SYE113
DA Number	DA0176/2016
LGA	Northern Beaches Council
Proposed Development	Construction of a mixed-use development and alterations to the existing Auckland Garage building, comprising a registered club at ground level and residential accommodation above, basement car parking, associated landscaping and strata subdivision
Street Address	2 West Promenade, Manly
Applicant/Owner	Applicant: Robinson Urban Planning Owner: Manly Civic Club
Date of DA lodgement	1 July 2016
Number of Submissions	29
Recommendation	Approval
Regional Development Criteria (Schedule 4A of the EP&A Act)	Schedule 4A (3) – the development has a capital investment value of more than \$20 million
List of all relevant s79C(1)(a) matters	<ul style="list-style-type: none"> • Manly Local Environmental Plan 2013 • State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development (SEPP 65) (and Apartment Design Guide) • Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 • Manly Development Control Plan 2013 • Environmental Planning and Assessment Regulation 2000
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Plans • Statement of Environmental Effects prepared by Robinson Urban Planning dated 30 June 2016 and received by Council on 1 July 2016 • Addendum to Statement of Environmental Effects prepared by Robinson Urban Planning dated 16 March 2017 and received by Council on 17 March 2017 • BASIX Certificate No. 729217M_02 dated 26 April 2017 and received by Council 26 April 2017 • ABSA Certificate No. 1010963237 dated 26 April 2017 and received by Council on 26 April 2017 • BCA Assessment Report prepared by Private Certifiers Australia dated 17 February 2017 and received by Council on 17 March 2017 • Acoustic Report prepared by Wood & Grieve Engineers dated 15 March 2017 and received by Council on 17 March 2017 • Traffic Impact Assessment prepared by Traffix dated February 2017 (Version 3) and received by Council on 17 March 2017 • Disabled Access Report prepared by Private Certifiers Australia dated 15 March 2017 and received by Council on 17 March 2017 • SEPP 65 Certification prepared by Mijollo International dated 3 March 2017 and received by Council 17 March 2017 • Heritage Impact Statement prepared by NBRS Architecture dated March 2017 and received by Council on 17 March 2017 • Conservation Management Plan prepared by NBRS Architecture dated March 2017 and received by Council on 17 March 2017 • Preliminary Geotechnical Investigation Report Reference 21496SBprt dated 14 September 2007 and received by Council 1 July 2016 • Geotechnical Investigation Report Reference 21496LBrpt prepared by JK Geotechnics dated 24 May 2016 and received by Council on 1 July 2016 • Preliminary Acid Sulfate Soil Assessment prepared by EIS dated 14 September 2007 and received by Council 1 July 2016

	<ul style="list-style-type: none"> • Detailed Site Investigation (Contamination Report) prepared by SESL dated June 2016 and received by Council 1 July 2016 • Security Management Plan prepared by the applicant dated 14 June 2016 and received by Council 1 July 2016 • Letter from Ausgrid dated 24 May 2017 and received by Council on 24 May 2017 • Letter from NSW Police dated 20 July 2016 and received by Council on 28 July 2016 • Written request for contravention of Clause 4.3 Height of Building of Manly Local Environmental Plan 2013
Report prepared by	David Kerr
Report date	14 June 2017

Summary of s79C matters

Have all recommendations in relation to relevant s79C matters been summarised in the Executive Summary of the assessment report? **Yes**

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? **Yes**

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Yes**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S94EF)? **No**

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment? **Yes**

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

Development Assessment Report

DA #	176/2016
Site Address	2 West Promenade, Manly Lot 1 DP 859455
Proposal	Construction of a mixed-use development and alterations to the existing Auckland Garage building, comprising a registered club at ground level and residential accommodation above, basement carparking, associated landscaping and strata subdivision.
Officer	David Kerr

SUMMARY:

Application Lodged:

1 July 2016

Applicant:

Robinson Urban Planning Pty Ltd

Owner:

Manly Civic Club

Estimated Cost:

\$25,682,204

Zoning:

MLEP, 2013 – B2 Local Centre

Heritage:

Item 156 Garage Building (Auckland Garage) Former Service Station

NSW LEC:

Not applicable

Notification:

5-21 July 2016 and

29 March – 5 May 2017 (Renotified – amended plans)

Submissions received:

29

Site Inspected:

18 November 2016

LEP (4.6) Variations proposed:

Height of Building

DCP Variations proposed:

Visitor Car Parking, Awning Height

Recommendation:

Approval

Subject Property and surrounding area



The subject property is commonly known as 2 West Promenade, Manly and legally known as Lot 1 in DP 859455. The site is located on the western side of West Promenade. The property is irregular in shape and has a frontage of 33.35m to West Promenade, 43.98m to Gilbert Street and 24.59m to Eustace Street. The site has an average depth of 46m and an overall site area of 1,562m². The property currently contains the Auckland Garage. The property is level.

The adjacent properties to the north, at 3 West Promenade and 4 Eustace Street, each contain a three-storey residential flat building. Development in this area consists of residential flat buildings and a place of public worship.

Property Burdens and Constraints

There are no burdens or constraints that would preclude the proposed development.

Site History/Background

Recent relevant application on the site include:

- DA122/2002: Demolition of Petrol Station/Garage & Site Remediation
- DA117/2006: Change of Use to office and showroom for surfing clothes, footwear and accessories
- DA149/2008: Demolition of existing Civic Club Building, part demolition of existing garage and erection of a five (5) storey mixed use building comprising commercial, office and club uses with three (3) levels of basement car parking

The original DA176/2016 proposal sought:

- Construction of a new six (6) storey mixed use building with two levels of basement car parking, comprising of:
 - Ground Floor:
 - Registered club and building services,
 - Retention of the existing heritage listed Auckland Garage and incorporation into the new building
 - Waste storage room and building services;
 - Levels 1-5: Residential accommodation comprising 45 apartments;
 - Two levels of basement car parking, comprising 70 car parking spaces and 24 bicycle racks;
- Landscaping of the site (ground floor, internal courtyard and residential terraces; and
- Use of the ground floor as a registered club with the following operating hours:
 - Monday to Wednesday: 10.30am to 11.00pm
 - Thursday to Saturday: 10.30am to 12midnight
 - Sunday: 10.30 am to 10.00 pm

Council was not satisfied with a number of elements of the original proposal, including several non-compliances with the Manly LEP 2013, the Manly DCP 2013, the State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development and the Apartment Design Guide. As such, an amended design was submitted to Council on 17 March 2017 in order to address the issues raised.

Description of proposed development

The amended DA176/2016 proposal seeks the following:

- Construction of a new six-storey mixed use building, comprising:
 - Ground Floor: Registered club (837.5m²) and building services
 - Levels 1-5: Residential accommodation comprising 38 apartments;
- Two levels of basement car parking, comprising 71 car parking spaces and 25 bicycle racks;
- Landscaping of the site (ground floor, northern boundary setback and residential apartment terraces); and
- Use of the ground floor as a registered club with the following operating hours:
 - Indoors: Monday to Wednesday: 10.30 am to 11.00 pm, Thursday to Saturday: 10.30 am to 12 midnight and Sunday: 10.30 am to 10.00 pm
 - Outdoors: Monday to Wednesday: 10.30 am to 10.00 pm, Thursday to Saturday: 10.30 am to 10.30pm and Sunday: 10.30 am to 9.00 pm

Internal Referrals

Engineering Comments

Council's Engineer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

Building Comments

Council's Building Surveyor offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

Landscaping Comments

Council's Landscape Officer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

Heritage Comments

Council's Heritage Officer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

Waste Comments

Council's Waste Officer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

Environmental Health

Council's Environmental Health Officer has commented on the proposal as follows:

"The Statement of Environmental Effects identifies that deliveries will be accepted between the hours of 7:00am and 10:00pm, in addition to the Waste Management Plan which identifies collections between the hours of 7:00am and 12midday Monday to Saturday, and the Security Plan which notes the loading dock will be in use between the hours of 7:00am and 10:00pm. This conflicts with standard condition 6WM02 (applied to other developments within the Manly area) which has been recommended for this application as attached."

Assessing Officer's Comments:

A suitable condition has been applied requiring delivery during the following hours:

- Weekdays – 7:00am – 8:00pm
- Weekends and Public Holidays – 8:00am – 8:00pm

Access Comments

Council's Accessibility Officer has commented on the proposal as follows:

"Club

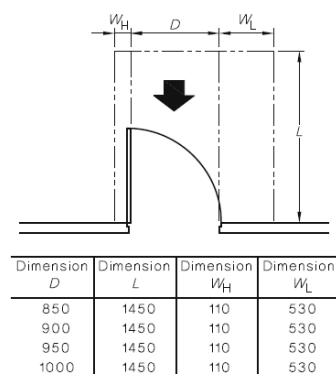
The toilets shown on the plans do not have accessible or ambulant sanitary compartments. A single accessible WC is indicated in the heritage bistro area on its own. An accessible unisex toilet is required at any bank of sanitary amenities containing male and female sanitary compartments in accordance with Premises Standards Table F2.4 (a) and the AS1428.1. An ambulant toilet is also required for a use by males or females. The layout have to be reconfigured according to the BCA and Premises Standards.

Adaptable units

The proposal is for 38 units, including 4 adaptable. To meet the requirement by Manly DCP 2013 for 25% adaptable units, 9 adaptable units are required. Respectively, 5 more adaptable units and 5 accessible parking spaces need to be identified.

The plans need to show pre-adaptation and post-adaptation layout of the adaptable units. Post-adaptation plans are not available. These need to be provided prior to determination.

The units identified as adaptable need to be designed so, that with minimal changes they can be turned into accessible according to the Premises Standards and the AS1428.1. Commonly, the circulation space at the entry doors of the adaptable units is limited due to furniture placed next to the front door. This will prevent an occupant in a wheelchair to open the door from the inside. The plans to be reconfigured according to Fig 31, AS1428.1:



(h) Front approach,
door opens towards user

The same is valid for the internal doors in the adaptable units. An occupant in a wheelchair should not be left trapped inside any room of their unit.

In the adaptable units 2.02 and 3.02 the master bedroom appears accessible, however, the en-suite bathroom is not, which make no sense. The second bathroom is big enough to be considered as adaptable but is a long way around.

Other units have a potential to be adaptable, for example unit 4.02.

Residential waste bin area

Access to this area on Ground level is not clear. Continuous accessible pathway for residents with disability must be provided."

Assessing Officer's Comments:

Suitable conditions have been applied, including conditions to ensure compliance with the Building Code of Australia. The applicant has provided amended plans demonstrating a compliant number of adaptable units. Parking provision is considered acceptable for the reasons detailed in the section of this report relating to the Apartment Design Guide – Universal Design.

Traffic Comments

Council's Traffic Engineer has commented on the proposal as follows:

"Comments:

1. "While access to/from the development from Gilbert Street would be preferable from an access perspective given the two way traffic flow in Gilbert Street, it is not considered that this is critical to approval of the development. It is noted that the applicant's Traffic Impact Assessment includes swept path plots demonstrating that ingress and egress from the driveway to and from Eustace Street is possible by a B99 vehicle without requiring any parking bans on Eustace Street and the arrangement is not therefore opposed.
2. It is noted that the loading dock area has been demonstrated to be accessible by a small rigid vehicle however deliveries by larger trucks would normally also be anticipated. While the loading dock may be of sufficient length to accommodate deliveries by larger vehicles there is concern that a) the dock may not be accessible by these trucks due to inadequate road width for turning. The turning path plots provided in the Traffic Impact Assessment demonstrate that reverse ingress and forwards egress is possible for a small rigid truck but access by larger trucks is unlikely to be possible.

A condition of consent limiting deliveries and servicing of the site ONLY by Small Rigid Vehicles is therefore required.

3. *The proposed ramps within the basement carpark are not of sufficient width to allow for the passing of inbound and outbound vehicles. Section 3.2.2 of AS 2890.1 advises that where 30 or more vehicle movements in a peak hour are expected provision should be made for two vehicles to pass. This is not possible and the traffic impact assessment has provided turning path plots demonstrating that passing of vehicles on the ramps between levels is not possible. Traffic signal control is therefore proposed to hold outbound vehicles while a circulating inbound vehicle passes. Peak traffic volumes within the carpark are anticipated to be 52 vehicles per hour in the pm peak with the majority of that traffic (42 vehicles) being inbound and largely confined to the upper level of parking B1. Opposing inbound and outbound vehicles even in peak periods will therefore be an infrequent occurrence and the traffic signal control is therefore not opposed.*
4. *There is concern about the proposed visitor parking arrangements in regard to the following:*
 - a) *the lack of a waiting bay for visitors to wait before accessing the carpark and*
 - b) *the lack of direct visitor parking access during the hours of 10:30am and 11:30pm when the club is operating.*

Parking demand in the vicinity of the site is high and visitors will have little opportunity to find parking on-street within close proximity. A carpark operational management plan must therefore be prepared and clearly spell out the visitor parking operations in order to prevent double parking and/or queuing within the driveway and the subsequent issue this may create in terms of blocking access to the carpark for other users and to make residents aware of the visitor parking arrangements."

Assessing Officer's Comments:

Suitable conditions have been applied.

Driveway Comments

Council's Driveway Officer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

External Referrals

NSW Roads and Maritime Services

The proposal was referred to NSW Roads and Maritime Services on 31 March 2017. NSW Roads and Maritime Services has commented on the proposal as follows:

"Roads and Maritime has reviewed the submitted documentation and raises no objection to the Application."

Water NSW

The proposal was referred to Water NSW on 31 March 2017. No comments from Water NSW had been received by Council at the time of writing this report.

NSW Police

The proposal was referred to NSW Police on 31 March 2017. NSW Police raised no objection to the proposal, subject to recommended conditions of consent.

Ausgrid

The proposal was referred to Ausgrid on 19 May 2017. Ausgrid raised no objection to the proposal, subject to recommended conditions of consent.

Environmental Planning & Assessment Act 1979 – Section 79(C)(1)

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) the provisions of:**
 - (i) any environmental planning instrument, and**

State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development (SEPP 65) and the Apartment Design Guide (ADG)

Clause 4 of State Environmental Planning Policy No. 65 – Design Quality for Residential Apartment Development (SEPP 65) stipulates that:

- (1) This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:
 - (a) the development consists of any of the following:
 - (i) the erection of a new building,
 - (ii) the substantial redevelopment or the substantial refurbishment of an existing building,
 - (iii) the conversion of an existing building, and
 - (b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and
 - (c) the building concerned contains at least 4 or more dwellings.

As previously outlined the proposed development is for the erection of a six-storey shop-top housing development plus basement car parking for the provisions of 38 self-contained dwellings.

As per the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are applicable to the assessment of this application.

As previously outlined within this report Clause 50(1A) of the Environmental Planning and Assessment Regulation 2000 requires the submission of a Design Verification Certificate from the building designer at lodgement of the development application. This documentation has been submitted.

Clause 28 of SEPP 65 requires:

- (2) In determining a development application for consent to carry out development to which this Policy applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):
 - (a) the advice (if any) obtained from the design review panel, and
 - (b) the design quality of the development when evaluated in accordance with the design quality principles, and
 - (c) the Apartment Design Guide.

DESIGN REVIEW PANEL

Northern Beaches Council does not have an appointed Design Review Panel.

DESIGN QUALITY PRINCIPLES

Principle 1: Context and Neighbourhood Character

Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.

Responding to context involves identifying the desirable elements of an area's existing or future character. Well-designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.

Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

Comment: The proposal is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

Principle 2: Built Form and Scale

Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.

Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

Comment: The proposal results in a variation to the height of buildings development standard. The variation is assessed as being acceptable, as detailed in the section of this report relating to Part 4 of the MLEP 2013 – Principal Development Standards. As such, the proposal is consistent with this principle.

Principle 3: Density

Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.

Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

Comment: The proposal is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

Principle 4: Sustainability

Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials, and deep soil zones for groundwater recharge and vegetation.

Comment: The proposal is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

Principle 5: Landscape

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well-designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, coordinating water and soil management, solar access, micro-climate, tree canopy, habitat values, and preserving green networks. Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, provides for practical establishment and long term management.

Comment: The proposal is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

Principle 6: Amenity

Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident wellbeing. Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, and ease of access for all age groups and degrees of mobility.

Comment: The proposal is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

Principle 7: Safety

Good design optimises safety and security, within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety. A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.

Comment: The proposal is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

Principle 8: Housing Diversity and Social Interaction

Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets. Well-designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people, providing opportunities for social interaction amongst residents.

Comment: The proposal is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

Principle 9: Aesthetics

Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures. The visual appearance of well-designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.

Comment: The proposal is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

APARTMENT DESIGN GUIDE

The following table is an assessment against the criteria of the 'Apartment Design Guide' as required by SEPP 65.

Development Control	Criteria / Guideline	Comments
Part 3 Siting the Development		
Site Analysis	Does the development relate well to its context and is it sited appropriately?	The proposed development is sited appropriately.

Orientation	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	The proposed development responds well to the streetscape to optimise solar access.												
Public Domain Interface	Does the development transition well between the private and public domain without compromising safety and security? Is the amenity of the public domain retained and enhanced?	The proposed development provides an appropriate transition between the public and private domain while maintaining adequate safety and security. The amenity of the public domain is retained.												
Communal and Public Open Space	Appropriate communal open space is to be provided as follows: 1. Communal open space has a minimum area equal to 25% of the site 2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid-winter)	The proposed development does not comply with these criteria. However, the proposed development is considered reasonable in this instance, given the subject site's close proximity to public open space areas.												
Deep Soil Zones	<p>Deep soil zones are to meet the following minimum requirements:</p> <table border="1"> <thead> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (%)</th></tr> </thead> <tbody> <tr> <td>Less than 650m²</td><td>-</td><td rowspan="4">7%</td></tr> <tr> <td>650m² – 1,500m²</td><td>3m</td></tr> <tr> <td>Greater than 1,500m²</td><td>6m</td></tr> <tr> <td>Greater than 1,500m² with significant existing tree cover</td><td>6m</td></tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (%)	Less than 650m ²	-	7%	650m ² – 1,500m ²	3m	Greater than 1,500m ²	6m	Greater than 1,500m ² with significant existing tree cover	6m	Small deep soil zones are available around the heritage building. No deep soil zones have been provided. However, the proposed development is considered reasonable in this instance, given the subject site's close proximity to public open space areas.
Site area	Minimum dimensions	Deep soil zone (%)												
Less than 650m ²	-	7%												
650m ² – 1,500m ²	3m													
Greater than 1,500m ²	6m													
Greater than 1,500m ² with significant existing tree cover	6m													

Visual Privacy	<p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1" data-bbox="419 277 1042 613"> <thead> <tr> <th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr> <tr> <td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr> <tr> <td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr> </tbody> </table> <p>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.</p> <p>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p>	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	<p>The proposed development does not comply with this criteria, in that it provides nil side setbacks. However, the setbacks proposed adequately provide visual privacy between the subject site and the adjacent properties to the north. The proposed northern setbacks are as follows:</p> <ul style="list-style-type: none"> • Ground Floor: 0m • First, Second and Third Floors: 400mm-6m • Fourth Floor: 1.1-9m • Fifth Floor: 6-9m
Building height	Habitable rooms and balconies	Non-habitable rooms												
Up to 12m (4 storeys)	6m	3m												
Up to 25m (5-8 storeys)	9m	4.5m												
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Pedestrian Access and entries	<p>Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify?</p> <p>Large sites are to provide pedestrian links for access to streets and connection to destinations.</p>	<p>The building entry and pedestrian access connects well to and addressed the public domain. The entry and access points are accessible and easy to identify.</p>												
Vehicle Access	<p>Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?</p>	<p>Pedestrian and vehicular access points are separated in order to avoid conflicts.</p>												
Bicycle and Car Parking	<p>For development in the following locations: On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre</p> <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The car parking needs for a development must be provided off street.</p> <p>Parking and facilities are provided for other modes of transport.</p> <p>Visual and environmental impacts are minimised.'</p>	<p>The proposed development is compliant with these criteria.</p>												

Part 4 Designing the Building														
Amenity														
Solar and Daylight Access	<p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space:</p> <p>Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter.</p> <p>A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter</p>	71% of apartments have compliant solar access. Less than 15% of apartments receive no direct sunlight between 9am and 3pm at mid-winter.												
Natural Ventilation	<p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:</p> <p>At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.</p> <p>Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.</p>	The proposed development is compliant with these criteria.												
Ceiling Heights	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table><tr><th colspan="2">Minimum ceiling height</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>If located in mixed used areas</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr></table>	Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	If located in mixed used areas	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	The proposed development is compliant with these criteria.
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Attic spaces	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area													
If located in mixed used areas	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area													

Apartment Size and Layout	<p>Apartments are required to have the following minimum internal areas:</p> <table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m²</td></tr><tr><td>1 bedroom</td><td>50m²</td></tr><tr><td>2 bedroom</td><td>70m²</td></tr><tr><td>3 bedroom</td><td>90m²</td></tr></table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.</p> <p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.</p> <p>Habitable room depths are limited to a maximum of 2.5 x the ceiling height.</p> <p>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.</p> <p>Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space).</p> <p>Bedrooms have a minimum dimension of 3m (excluding wardrobe space).</p> <p>Living rooms or combined living/dining rooms have a minimum width of:</p> <p>3.6m for studio and 1 bedroom apartments 4m for 2 and 3 bedroom apartments</p> <p>The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts</p>	Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	<p>The proposed development is compliant with these criteria.</p>					
Apartment type	Minimum internal area																
Studio	35m ²																
1 bedroom	50m ²																
2 bedroom	70m ²																
3 bedroom	90m ²																
Private Open Space and Balconies	<p>All apartments are required to have primary balconies as follows:</p> <table><tr><th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><tr><td>Studio apartments</td><td>4m²</td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>8m²</td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m²</td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m²</td><td>2.4m</td></tr></table> <p>For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m.</p>	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	<p>The proposed development is compliant with these criteria.</p>
Dwelling Type	Minimum Area	Minimum Depth															
Studio apartments	4m ²	-															
1 bedroom apartments	8m ²	2m															
2 bedroom apartments	10m ²	2m															
3+ bedroom apartments	12m ²	2.4m															

Common Circulation and Spaces	<p>The maximum number of apartments off a circulation core on a single level is eight.</p> <p>For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.</p>	The proposed development is compliant with these criteria.										
Storage	<p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m³</td></tr><tr><td>1 bedroom apartments</td><td>6m³</td></tr><tr><td>2 bedroom apartments</td><td>8m³</td></tr><tr><td>3+ bedroom apartments</td><td>10m³</td></tr></table> <p>At least 50% of the required storage is to be located within the apartment.</p>	Dwelling Type	Storage size volume	Studio apartments	4m ³	1 bedroom apartments	6m ³	2 bedroom apartments	8m ³	3+ bedroom apartments	10m ³	The proposed development is compliant with these criteria.
Dwelling Type	Storage size volume											
Studio apartments	4m ³											
1 bedroom apartments	6m ³											
2 bedroom apartments	8m ³											
3+ bedroom apartments	10m ³											
Acoustic Privacy	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	Noise sources are predominantly located away from bedrooms.										
Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	The proposed development is compliant with this criterion.										
Configuration												
Apartment Mix	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	The proposed development is compliant with this criterion.										
Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	The proposed development is compliant with this criterion.										
Roof Design	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Test whether the roof space can be maximised for residential accommodation and open space.	The proposed development provides an appropriate roof design.										
Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	The landscape plan provided responds will to the existing site conditions and context.										

Planting on Structures	<p>When planting on structures the following are recommended as minimum standards for a range of plant sizes:</p> <table><tr><th>Plant type</th><th>Definition</th><th>Soil Volume</th><th>Soil Depth</th><th>Soil Area</th></tr><tr><td>Large Trees</td><td>12-18m high, up to 16m crown spread at maturity</td><td>150m³</td><td>1,200mm</td><td>10m x 10m or equivalent</td></tr><tr><td>Medium Trees</td><td>8-12m high, up to 8m crown spread at maturity</td><td>35m³</td><td>1,000mm</td><td>6m x 6m or equivalent</td></tr><tr><td>Small trees</td><td>6-8m high, up to 4m crown spread at maturity</td><td>9m³</td><td>800mm</td><td>3.5m x 3.5m or equivalent</td></tr><tr><td>Shrubs</td><td></td><td></td><td>500-600mm</td><td></td></tr><tr><td>Ground Cover</td><td></td><td></td><td>300-450mm</td><td></td></tr><tr><td>Turf</td><td></td><td></td><td>200mm</td><td></td></tr></table>	Plant type	Definition	Soil Volume	Soil Depth	Soil Area	Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm	6m x 6m or equivalent	Small trees	6-8m high, up to 4m crown spread at maturity	9m ³	800mm	3.5m x 3.5m or equivalent	Shrubs			500-600mm		Ground Cover			300-450mm		Turf			200mm		<p>The proposed development is compliant with these criteria.</p>
Plant type	Definition	Soil Volume	Soil Depth	Soil Area																																	
Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent																																	
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Shrubs			500-600mm																																		
Ground Cover			300-450mm																																		
Turf			200mm																																		
Universal Design	<p>Developments are to achieve a benchmark of 20% of the total apartments incorporating the Livable Housing Guideline's silver level universal design features.</p>	<p>The proposed development provides 8 adaptable units, equating to 21% of the total apartments. Only 4 accessible car parking spaces have been provided. However, the proposed development is consistent with the parking rates required by the Manly DCP 2013, including in relation to the provision of accessible parking. Further, the proposed development is compliant with the relevant Building Code of Australia standards (as enforced by the Prescribed Conditions). As such, the proposed accessible parking is acceptable in this case.</p>																																			

Adaptive Reuse	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.	The proposed development is compliant with this criterion.
Mixed Use	Can the development be accessed through public transport and does it positively contribute to the public domain? Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.	The subject site is adequately serviced by public transport, including the bus and ferry. The Manly Civic Club is proposed to be located on the ground floor.
Awnings and Signage	Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development. Signage must respond to the existing streetscape character and context.	The proposed awning is located above the proposed club entry, which is the active street frontage. The awning complements the building design and is consistent with the streetscape. No signage is proposed as part of this application.
Performance		
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?	The proposed development is compliant with this criterion.
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, storm water and groundwater?	The proposed development is compliant with this criterion.
Waste Management	Supply waste management plans as part of the development application demonstrating safe and convenient collection and storage of waste and recycling.	The proposed development is compliant with this criterion.
Building Maintenance	Incorporates a design and material selection that ensures the longevity and sustainability of the building.	The proposed development is compliant with this criterion.

STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT

Clause 30 of SEPP 65 Standards that cannot be used as grounds to refuse development consent or modification of development consent states that:

- (1) If an application for the modification of a development consent or a development application for the carrying out of development to which this Policy applies satisfies the following design criteria, the consent authority must not refuse the application because of those matters:
 - (a) if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,
 - (b) if the internal area for each apartment will be equal to, or greater than, the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide,

- (c) if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.

Note. The Building Code of Australia specifies minimum ceiling heights for residential flat buildings.

Comment: The above parking rate does not apply in this case, as the site is not within 800 metres of a railway station or light rail stop and is not zoned or within 400 metres of land zoned B3 Commercial Core, B4 Mixed Use.

- (2) Development consent must not be granted if, in the opinion of the consent authority, the development or modification does not demonstrate that adequate regard has been given to:
 - (a) the design quality principles, and
 - (b) the objectives specified in the Apartment Design Guide for the relevant design criteria.
- (3) To remove doubt:
 - (a) subclause (1) does not prevent a consent authority from refusing an application in relation to a matter not specified in subclause (1), including on the basis of subclause (2), and
 - (b) the design criteria specified in subclause (1) are standards to which clause 79C (2) of the Act applies.

Note. The provisions of this clause do not impose any limitations on the grounds on which a consent authority may grant or modify development consent.

Comment: The application demonstrates that adequate regard has been given to design quality principles and the objectives of the Apartment Design Guide, as it provides a Design Verification Statement outlining the proposed works.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005:

The subject property is located within the Sydney Harbour Catchment therefore the provisions of this plan apply to this development.

An assessment of the proposal against Clause 2(1) (aims of the SREP), Clause 13 (nominated planning principles) and Clause 21 (relating to biodiversity, ecology and environmental protection) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

Manly Local Environmental Plan 2013

The subject site is located in Zone B2 Local Centre under the Manly LEP 2013. The proposed development is permissible within the zone with consent, subject to the application of Clause 5.10 (10) of the Manly LEP 2013.

The proposed development is comprised of a registered club (the Manly Civic Club) with a residential flat building above. Registered clubs are permissible with consent within the B2 Local Centre zone, while residential flat buildings are prohibited. The proposal cannot be considered 'shop top housing' as the registered club does not constitute retail or business premises as per the relevant definitions within the Manly LEP 2013. As such, the proposal relies on Clause 5.10 (10) of the Manly LEP 2013 for permissibility, which has been addressed as follows:

5.10 Heritage conservation

(10) Conservation incentives

The consent authority may grant consent to development for any purpose of a building that is a heritage item or of the land on which such a building is erected, or for any purpose on an Aboriginal place of heritage significance, even though development for that purpose would otherwise not be allowed by this Plan, if the consent authority is satisfied that:

- (a) *the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent, and*

Comment: The proposed development facilitates the conservation and restoration of the heritage listed Auckland Garage former service station (Item 156 under Schedule 5 of the Manly LEP 2013).

- (b) *the proposed development is in accordance with a heritage management document that has been approved by the consent authority, and*

Comment: The proposed development is in accordance with the Conservation Management Plan submitted with the application. Council's Heritage Advisor has reviewed the application and Conservation Management Plan and has raised no objections to the proposal.

- (c) *the consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out, and*

Comment: Conservation work specified within the Conservation Management Plan is enforced through the application of Condition No. ANS06.

- (d) *the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance, and*

Comment: The proposed development aims to conserve and enhance the heritage significance of the Auckland Garage and its setting. Further, as above, Council's Heritage Advisor has reviewed the application and Conservation Management Plan and has raised no objections to the proposal.

- (e) *the proposed development would not have any significant adverse effect on the amenity of the surrounding area.*

Comment: The proposed development is acceptable in relation to amenity. This is detailed in the section of this report relating to Part 3 of the Manly DCP 2013 – General Principles of Development.

An assessment of the proposal against the objectives of the Zone is included below:

Zone B2 Local Centre

Objectives of zone

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*

The proposed development provides a registered club, which will serve the needs of people who live in, work in, and visit the local area.

- To encourage employment opportunities in accessible locations.*

The proposed development will provide employment opportunities, as it incorporates a registered club.

- To maximise public transport patronage and encourage walking and cycling.*

The proposed development is located within walking distance of Manly Wharf, bus stops and cycling paths.

Part 4 Principal development standards

The provisions of the Manly LEP 2013 have been referred to as part of the assessment:

4.	Principal Development Standards	Requirement	Proposed	Complies Yes/No	Comments
4.3	Height of buildings	15m	22m	No	See comment below.
4.4	Floor Space Ratio	3:1 4,686m ²	2.85:1 4,463m ²	Yes	-

4.6 Exceptions to development standards

Height of Building

The following assessment of the variation to Clause 4.3 – Height of buildings development standard and is assessed taking into consideration the questions established in *Winten Property Group Limited v North Sydney Council* (2001) NSW LEC 46.

Requirement	15m
Proposed	22m
Is the planning control in question a development standard?	Yes
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical
If numerical enter a % variation to requirement	46.66%

The proposal must satisfy the objectives of Clause 4.3 – Height of buildings, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the MLEP 2013. The assessment is detailed as follows:

Is the planning control in question a development standard?

The prescribed Height of buildings limitation pursuant to Clause 4.3 of the MLEP 2013 is a development standard.

What are the underlying objectives of the development standard?

The underlying objectives of the standard, pursuant to Clause 4.3 – ‘Height of buildings’ of the MELP 2013 are:

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

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

Comment: The proposed development concept is consistent with other developments within the immediate vicinity. The proposed development provides an appropriate transition between the Grand Esplanade development to the south and the residential flat buildings to the north. The proposed development responds well to the existing context as it steps back, away from the street frontages, in order to reduce the bulk along the streetscape.

- b) *to control the bulk and scale of buildings,*

Comment: The bulk and scale of the proposed development is consistent with other developments in the immediate vicinity and is controlled by articulation of the building by terraces, balcony spaces and increased setbacks. The proposed building is set away from the heritage item on site, in order to provide adequate curtilage. The proposed floor space ratio is maintained, resulting in additional non-compliant height. However, the proposed development is stepped back above the 15m height limit in order to reduce visual bulk. Further, the proposed development is compliant with the floor space ratio development standard, which controls bulk and scale.

- c) *to minimise disruption to the following:*
 - (i) *views to nearby residential development from public spaces (including the harbour and foreshores),*
 - (ii) *views from nearby residential development to public spaces (including the harbour and foreshores),*
 - (iii) *views between public spaces (including the harbour and foreshores),*

Comment: The proposed development does not result in any unreasonable disruption to views to, from or across the site, adjacent sites or public spaces. The proposed development sits below the existing Grand Esplanade development to the south, so no views to the nearby harbour are currently observed from the north across the site.

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

Comment: The proposed development is acceptable in relation to solar access, for the reasons detailed in the section of this report relating to Part 3 of the Manly DCP 2013 – General Principles of Development, Sunlight Access and Overshadowing.

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

Comment: Not applicable. The subject site is zoned B2 Local Centre.

What are the underlying objectives of the zone?

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the B2 Local Centre zone.

The underlying objectives of Zone B2 Local Centre:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*

The proposed development provides a registered club, which will serve the entertainment needs of people who live in, work in, and visit the local area.

- *To encourage employment opportunities in accessible locations.*

The proposed development will provide employment opportunities, as it incorporates a registered club.

- *To maximise public transport patronage and encourage walking and cycling.*

The proposed development is located within walking distance of Manly Wharf, bus stops and cycling paths.

Is the variation to the development standard consistent with the objectives of Clause 4.6 of the MLEP 2013?

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

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development.*

Comment: The proposed development provides for an appropriate level of flexibility in applying the height of buildings ratio development standard.

- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Comment: The proposed development results in a better outcome, as it provides additional well-serviced housing and an entertainment facility in the local area.

- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

Comment: The applicant has provided the following written request justifying the contravention of the height of building development standard:

“2.0 Justification for the exception and matters for consideration

Table 4 assesses the proposed variation from the 15m height standard against the cl. 4.6 considerations in Manly LEP 2013.

More details follow in Sections 3.0 to 5.0 assessing the proposed variation against the accepted tests for the assessment of development standard variations established by the NSW Land and Environment Court in:

- *Wehbe v Pittwater Council [2007] NSW LEC 82*
- *Winten Developments Pty Ltd v North Sydney Council [2001] NSWLEC 46)*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 and Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 (‘Four2Five No 3’).*

Table 4 – Exception to standard - Clause 4.6 Manly LEP 2013 – Height of buildings

Manly LEP 2013, cl. 4.6	Compliance
<p>(1) <i>The objectives of this clause are as follows:</i></p> <ul style="list-style-type: none"> (a) <i>to provide an appropriate degree of flexibility in applying certain development standards to particular development</i> (b) <i>to achieve better outcomes for and from development by allowing flexibility in particular circumstances.</i> 	<p><i>Flexibility is appropriate in this instance given that:</i></p> <ul style="list-style-type: none"> • <i>The departure from the height standard is driven by the need to preserve the heritage listed building on site. By providing a clear setback/curtilage around the Auckland Garage, the developable ground plane is reduced. This necessitates a redistribution of the permissible GFA to the upper levels. Whilst exceeding the height standard, this solution ensures that significant views of the heritage item (from across Gilbert Park, along West Promenade and to a lesser degree, Gilbert Street) are preserved. The recessive design of the building ensures the garage retains its significant features to allow for its historical interpretation as a service station.</i>

	<ul style="list-style-type: none"> • The site occupies an end corner, which has been identified as an “Important Corner” on the Manly Townscape Map. Given the location of the single storey heritage listed building on the sites main corner, the proposed height of the new building which frames the Auckland Garage, is acceptable as it establishes, and defines the prominent end corner site within the streetscape. • The proposed building height anchors the site and assists in visually defining the boundary of the Manly Town Centre, around Gilbert Park to the east. • The proposal and its height form a strong visual connection with development to the south (the Grand Esplanade building which is nine storeys high). This improved visual connection in built form, will increase pedestrian activity at the street level, by visually linking the currently disconnected and isolated West Promenade with the town centre, consistent with the objectives of Zone B2. • The proposal complies with the FSR standard of 3:1, and therefore supports an appropriate density on site. The exception to the height standard is not proposal to realise additional GFA. • The proposed street frontage height is 15m, with the upper levels setback from the boundary. The building therefore presents to the street as a 15m building, consistent with the desired future charter of the area. • The building facades are layered and broken up to read as a juxtaposition of various scaled horizontal elements. This gives the building the appearance of a smaller scale, forming a much better relationship with the adjoining RFBs and the heritage-listed item on site in comparison to the existing approval. • The proposal displays an appropriate design response to the site’s important corner setting, and its role within the Manly Townscape, whilst also ensuring the setting of the heritage listed building on site is preserved. • As detailed in Section 5.0 of the Addendum SEE, the proposal will not give rise to any unreasonable or unexpected adverse amenity impacts for surrounding properties (in terms of overshadowing, views/outlook and privacy impacts). • The SoHI and CMP by NBRS and Partners concludes that the heritage impact of the proposal will be minimal and positive.
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	<ul style="list-style-type: none"> • The revised Traffic Impact Assessment by Trafix concludes that the traffic impacts of the proposal will be acceptable. • The site has an existing (commenced) development consent, which permits the construction of a five (5) storey building (plus plant room level) reaching a maximum height of 22.4m. The approved building does not comply with the applicable 15m height standard on the site. • As demonstrated by the existing consent and addressed later at Section 3.0, the 15m height standard in Manly LEP 2013 has been abandoned on the site. • The objectives of Zone B2 Local Centre and the height standard are achieved (see later).
(2) Development may contravene a standard	The height standard is not excluded from the clause.
<p>(3) Written request required that seeks to justify the contravention of the standard by demonstrating:</p> <p>(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and</p> <p>(b) that there are sufficient environmental planning grounds to justify contravening the development standard.</p>	Compliance with the 15m height standard in Manly LEP 2013 is unreasonable and unnecessary and there are sufficient environmental planning grounds to justify contravening the standard for the reasons noted above at subclause (1).
<p>(4) Development consent must not be granted unless:</p> <p>(c) the consent authority is satisfied that:</p> <p>(i) the written request has addressed subclause (3)</p> <p>(ii) the proposed development is in the public interest (consistent with the objectives of the standard and the zone)</p> <p>(d) the concurrence of the Director-General has been obtained.</p>	<p>Subclause 3 has been adequately addressed (see subclause (1) above).</p> <p>The proposal is in the public interest as it:</p> <ul style="list-style-type: none"> • Satisfies the objectives of Zone B2 Local Centre as follows: <ul style="list-style-type: none"> ○ To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area <p><u>Response</u> –Manly Civic Club is a NSW registered club, a not-for-profit organisation owned by and run for the community. The proposed ground floor use of the site as Manly Civic Club will therefore deliver a wide range services to its members and local community through the provision of a new clubhouse, as well supporting local sporting and charity groups through donations.</p>

	<ul style="list-style-type: none"> ○ To encourage employment opportunities in accessible locations <u>Response</u> – Undertaking the construction works will have some short-term positive economic impacts through employment generation, both direct employment and multiplier effects. Further, given the site's proximity to the Manly Bus Interchange and Wharf, the day-to-day operation of Manly Civic Club, will create employment opportunities in a highly accessible location. ○ To maximise public transport patronage and encourage walking and cycling <u>Response</u> – The Manly Civic Club will adopt a house policy of encouraging patrons to utilise public transport given the site's proximity to such services. In addition, residents will be able to take advantage of local bicycle paths as a result of the 25 secure bicycle racks provided onsite and public transport options in the immediate area. ○ To minimise conflict between land uses in the zone and adjoining zones and ensure amenity for the people who live in the local centre in relation to noise, odour, delivery of materials and use of machinery. <u>Response</u> – The Manly Civic Club opened on 23 October 1959 and has occupied the site up until 2013, when it was demolished as part of the current approval. As detailed within the Addendum SEE and the Original SEE, the new Manly Civic Club will not have a detrimental impact on the RFB located above and residential development within the surrounding area by way of noise, odour and deliveries. All loading is to take place on site, during the hours of 7.00 am and 10.00 pm ensuring the day-to-day operation of the premises does not impact the surrounding area. An Acoustic Report has been prepared (attached) which concluded that the proposed operations of the club (visitor vehicles, site servicing, plant and club use) will not cause a nuisance to the nearest sensitive receivers (onsite and adjoining), ensuring the amenity of the surrounding area is preserved as a result of the development.
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	<p><i>A Plan of Management will also be adopted by the club, ensuring the premises is managed responsibly.</i></p> <ul style="list-style-type: none"> • <i>It satisfies the relevant objectives of the height standard (cl. 4.3(1)) as follows:</i> <ul style="list-style-type: none"> ○ <i>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</i> <p><u><i>Response</i></u> –<i>As detailed within the accompanying Design Report by Mojillo International, the proposed development has been specifically designed to respond to the lower scale of adjacent development (in particular to the north and west), as follows:</i></p> <ul style="list-style-type: none"> ▪ <i>The design has been carefully considered in relation to the grain and fabric of its context. A human scale is provided by an articulated street-wall podium form that relates to the West Promenade and Eustace Street residential buildings. The design responds to this by incorporating a four storey podium. The podium is then broken down into smaller portions to provide a finer grain which provides a scaled relationship and dialog with the adjacent development.</i> ▪ <i>The building's podium height corresponds with the 15m height standard, with the upper levels setback and tiered from the site's boundaries. The upper levels are also lightly coloured to appear recessive. As a result, the proposed development at the street levels reads as a 15metre high building (consistent with the controls).</i> ▪ <i>The upper level setbacks (Level 4 – 5) provide an appropriate transition in height between the Grand Esplanade (to the south) when read from afar.</i> ▪ <i>The proposed increase to the northern side boundary setback again improves the transition in building bulk between the proposed development and slightly lower development to the north.</i>
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	<ul style="list-style-type: none"> ▪ <i>The site occupies an end corner, which has been identified as an “Important Corner” on the Manly Townscape Map. The proposed height, in this prominent location is therefore acceptable as it establishes, and defines the end corner site within the streetscape.</i> ▪ <i>Has a proposed height that defines the end corner site along West Promenade, consistent in bulk and scale with 61 Sydney Road at its northern end forming a clear “bookend” to the streetscape (Figure 9).</i> <p>○ <i>To control the bulk and scale of buildings</i></p> <p><u><i>Response</i></u> – <i>The proposed bulk and scale is reasonable in this instant for the following reasons:</i></p> <ul style="list-style-type: none"> ▪ <i>The proposal complies with the FSR standard of 3:1, and therefore supports an appropriate density on site.</i> ▪ <i>The departure from the height standard is driven by the need to preserve the heritage listed building on site. By providing a clear setback around the Auckland Garage, and redistributing the buildings permissible GFA to the upper levels. Therefore supporting an appropriate density on site.</i> ▪ <i>To minimise disruption to the following:</i> <i>Views to nearby residential development from public spaces (including the harbour and foreshores),</i> <i>Views from nearby residential development to public spaces (including the harbour and foreshores),</i> <i>Views between public spaces (including the harbour and foreshores)</i> <p><u><i>Response</i></u> – <i>No water, iconic or significant views will be affected by the proposal (as viewed from private properties or the public domain). As shown on the revised Architectural Plans and Photomontage that accompany the DA, the proposal will not adversely affect any views</i></p>
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	<ul style="list-style-type: none"> ○ To provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings <u>Response</u> – As detailed at Section 5.1.1 of the Addendum SEE, the proposal maintains a reasonable level of solar access for existing adjoining dwellings, public reserves and streets, and promotes solar access to the future dwellings on site. ○ To ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses. <u>Response</u> – The site is not located within a recreation zone or environmental protection area. The site however adjoins a public recreation area to the east (Gilbert Park). The proposal does not have a detrimental impact on the adjacent park, as solar access is maintained.
(5) The Director-General must consider: (e) whether contravention raises any matter of significance for State or regional environmental planning (f) the public benefit of maintaining standard (g) other matters.	See Section 5.0.
(6) N/A	N/A
(7) Consent authority must keep a record of matters in subclause (3).	Noted
(8) N/A	N/A

3.0 *Wehbe v Pittwater Council*

In his decision in *Wehbe v Pittwater Council* [2007] NSW LEC 827, Chief Justice Preston expressed the view that there are five different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy. The five tests are considered below.

- (i) The objectives of the standard are achieved notwithstanding non-compliance with the standard Consistency with the objectives of the standard, and the absence of any environmental impacts, would demonstrate that strict compliance with the height standard is both unreasonable and unnecessary in this instance.

As noted in Table 4, the proposal is consistent with the height standard objectives at cl. 4.3, of Manly LEP 2013 satisfying *Wehbe* test (i). As such, it is unreasonable and unnecessary in this circumstance to comply with the height development standard.

- (ii) *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary*

Not applicable. The underlying objective or purpose of the height standard is relevant to the development and is achieved as outlined in (i) above.

- (iii) *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable*

Not applicable. The underlying object or purpose of the height standard would not be defeated or thwarted if compliance was required.

- (iv) *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable*

The 15m height standard in Manly LEP 2013 has been effectively abandoned on the site as the approved development exceeds the applicable height standard (approved height of 22.4m). The proposal the subject of this DA has been designed to generally fall within or below the existing approved building envelope.

Given the above, compliance with the height standard in this instance is unnecessary and unreasonable.

- (v) *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

Not applicable. Zone B2 Local Centre is an appropriate zone given the site's location within Manly Town Centre. The proposed community and residential use is also consistent with the zoning. As such this exception to development standards request does not rely on this reason.

4.0 Winten Developments Pty Ltd v North Sydney Council

The exception to development standards request is assessed below against the accepted test for the assessment of development standard variation established by Winten Developments Pty Ltd v North Sydney Council [2001] NSWLEC 46.

A Is the planning control in question a development standard?

Yes, the height standard at cl. 4.3(2) of Manly LEP 2013 is a development standard.

B What is the underlying object or purpose of the standard?

The underlying objectives of the height standard are assessed in Table 4.

C Is compliance with the development standard unnecessary or unreasonable in the circumstances of the case?

Table 4 (read in conjunction with other sections of this exception to development standards request) demonstrates that compliance with the 15m height standard is unnecessary and unreasonable in the circumstance of the case.

D Is compliance with the development standard consistent with the aims of the Policy (to provide flexibility in the application of development standards); and, in particular, does compliance with the development standard tend to hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979?

The arguments contained in this cl. 4.6 variation support the case to allow flexibility in the application of the height standard.

The non-compliance with the development standard allows for an orderly use of the land and the proposal has been designed with consideration to the desired future character of the area.

Additionally, the Objects of the Act are satisfied as:

- The departure from the 15m height standard in Manly LEP 2013 will have no negative consequences in terms of the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment; and
- The departure from the 15m height standard in Manly LEP 2013 allows for the orderly and economic use of the site in a manner which otherwise achieves the outcomes and objectives of the relevant planning controls.

E Is the objection well founded?

As the cl. 4.6 exception to development standards request appropriately addresses *Wehbe v Pittwater Council* [2007] NSW LEC 827, the proposed variation is well founded.

5.0 Four2Five Pty Ltd v Ashfield Council

Commissioner Pearson's decision in *Four2Five Pty Ltd* (and Pain J's endorsement of the reasoning) indicates that merely showing that the development achieves the objectives of the development standard will be insufficient to justify that a compliance with a standard is unreasonable or unnecessary in the circumstances of the case for the purposes of an objection under clause 4.6, (and 4.6(3)(a) in particular).

Further, the requirement in cl. 4.6(3)(b) to justify that there are sufficient environmental planning grounds for the variation, may well require identification of grounds particular to the circumstances of the proposed development – as opposed merely to grounds that would apply to any similar development on the site or in the vicinity.

The justification for flexibility explained above in Table 4 and later in the summary justification at Section 7.0 lists numerous planning grounds noting the following circumstances that are particular to the site and proposal:

As a result of conserving the single storey garage onsite, and appropriate curtilage around the item to ensure its setting is also preserved a significant portion of the site is precluded from any future development (both above and below ground).

As such, to retain and activate the single storey heritage item on site for the benefit of the wider community, Manly Civic Club is required to put forward a financially viable option to not only support the retention and activation of the heritage item, but also the construction of a new club house for its 1000 members.

To achieve these two aims, the GFA which would normally be distributed across the entire site, has been transferred from the portion of the site that is precluded from any future development to the remaining portion of the site.

As a result of this transfer of permissible GFA, the resulting design breaches the height standard. The proposed breach to the height standard is therefore a direct response to preserving the heritage item onsite as the development supports an appropriate density.

6.0 Public interest and matters of State or regional significance

6.1 Is the proposal in the public interest?

This clause 4.6 exception to development standards request and the accompanying plans and technical reports demonstrate the public advantages of providing additional and improved community facilities and residential accommodation on the site.

No unreasonable public disadvantages have been identified as it has been demonstrated that any environmental or other impacts associated with the proposal are minimal and/or can be adequately managed.

6.2 Matters of State or Regional Significance

By providing quality residential accommodation on the site, the proposal will go some way to meeting housing demand. Further, the residential accommodation is located in a highly accessible location in a variety of forms (1, 2 and 3 bedroom), fulfilling a range of community needs.

The proposal does not raise any other matters of significance for State or regional planning.

6.3 The public benefit of maintaining the standard

No matters of public interest arise as the impacts of the non-complying elements are reasonable.

7.0 Summary justification

A summary of the matters set out in this revised Clause 4.6 Report request to vary the Manly LEP 2013 15m height standard follows:

Extent of variation

- *The proposed mixed-use building has a maximum height of 22m, which exceeds the 15m height standard by up to 7m.*

Flexibility is appropriate in this instance and compliance is unreasonable or unnecessary

- *The departure from the height standard is driven by the need to preserve the heritage listed building on site. By providing a clear setback/curtilage around the Auckland Garage, the developable ground plane is reduced. This necessitates a redistribution of the permissible GFA to the upper levels. Whilst exceeding the height standard, this solution ensures that significant views of the heritage item (from across Gilbert Park, along West Promenade and to a lesser degree, Gilbert Street) are preserved. The recessive design of the building ensures the garage retains its significant features to allow for its historical interpretation as a service station.*
- *The site occupies an end corner, which has been identified as an “Important Corner” on the Manly Townscape Map. Given the location of the single storey heritage listed building on the sites main corner, the proposed height of the new building which frames the Auckland Garage, is acceptable as it establishes, and defines the prominent end corner site within the streetscape.*
- *The proposed building height anchors the site, and assists in visually defining the boundary of the Manly Town Centre, around Gilbert Park to the east.*
- *The proposal and its height form a strong visual connection with development to the south (the Grand Esplanade building which is nine storeys high). This improved visual connection in built form, will increase pedestrian activity at the street level, by visually linking the currently disconnected and isolated West Promenade with the town centre, consistent with the objectives of Zone B2.*
- *The proposal complies with the FSR standard of 3:1, and therefore supports an appropriate density on site. The exception to the height standard is not a proposal to realise additional GFA.*
- *The buildings street frontage height is 15m, with the upper levels setback from the boundary. The building therefore presents to the street as a 15m height building, consistent with the desired future charter of the area.*
- *The building facades are layered and broken up to read as a juxtaposition of various scaled horizontal elements. This gives the building the appearance of a smaller scale, forming a much better relationship with the adjoining RFBs and the heritage-listed item on site in comparison to the existing approval.*
- *The proposal displays an appropriate design response to the sites important corner setting, and its role within the Manly Townscape, whilst also ensuring the setting of the heritage listed building on site is preserved.*
- *As detailed in Section 5.0 of the Addendum SEE, the proposal will not give rise to any unreasonable or unexpected adverse amenity impacts for surrounding properties (in terms of overshadowing, views/outlook and privacy impacts).*
- *The SoHI and CMP by NBR and Partners concludes that the heritage impact of the proposal will be minimal and positive.*

- *The revised Traffic Impact Assessment by Trafix concludes that the traffic impacts of the proposal will be acceptable.*
- *The site has an existing (commenced) development consent, which permits the construction of a five (5) storey building (plus plant room level) reaching a maximum height of 22.4m. The approved building does not comply with the applicable 15m height standard on the site, demonstrating that the 15m height standard in Manly LEP 2013 has been effectively abandoned on the site.*
- *As demonstrated by the existing consent and addressed later at Section 3.0, the 15m height standard in Manly LEP 2013 has been abandoned on the site.*
- *The objectives of Zone B2 Local Centre and the height standard are achieved.*

Objects of the Act and public interest

The Objects of the Act are satisfied and the provision of a new club house and additional residential accommodation on the site is consistent with the public interest as it will provide high quality residential accommodation to meet some of the shortfall in the area, whilst also facilitating the preservation of the heritage listed building on site for the benefit of the local community townscape. The proposed residential accommodation will also fund the construction of a new registered club (Manly Civic Club), one of the sites other well-known historic community uses.

The proposal does not raise any other matters of significance for State or regional planning.

Other tests

The proposed variation satisfies the tests and considerations established in

- *Wehbe v Pittwater Council [2007] NSW LEC 82*
- *Winten Developments Pty Ltd v North Sydney Council [2001] NSWLEC 46)*
Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 and Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 ('Four2Five No 3')."

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

- (a) *the consent authority is satisfied that:*
- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

Comment: The applicant's written request has adequately addressed the relevant matters.

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

Comment: For reasons detailed above, the proposal is considered to be consistent with the objectives of the B2 Local Centre zone in the MLEP 2013.

- (b) *the concurrence of the Director-General has been obtained*

Comment: Planning Circular PS 08-003 dated 9 May 2008, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Director-General for the variation to the Height of Buildings Development Standard is assumed.

Part 5 Miscellaneous Provisions

The relevant provisions of the Manly LEP 2013 are referred to below as part of this assessment:

5.	Miscellaneous Provisions	Applies	Complies	Comment
5.10	Heritage Conservation	Yes	Yes	The proposed development is consistent with the objectives and provisions of Clause 5.10 of the Manly LEP 2013.

Part 6 Local Provisions

The provisions of the Manly LEP 2013 have been referred to as part of the assessment:

6.	Local Provisions	Applies	Complies	Comments
6.1	Acid Sulfate Soils	Yes	Yes	The subject site is classified as Class 4 Acid Sulfate Soils. The proposed development is consistent with the objectives and provisions of Clause 6.1 of the MLEP 2013.
6.2	Earthworks	Yes	Yes	The proposed development is consistent with the objectives and provisions of Clause 6.2 of the MLEP 2013.
6.4	Stormwater Management	Yes	Yes	The proposed development is consistent with the objectives and provisions of Clause 6.4 of the MLEP 2013.
6.9	Foreshore Scenic Protection Area	Yes	Yes	The proposed development is consistent with the objectives and provisions of Clause 6.9 of the MLEP 2013.
6.11	Active street frontages	Yes	Yes	The proposed development is consistent with the objectives and provisions of Clause 6.11 of the MLEP 2013.
6.12	Essential services	Yes	Yes	The proposed development is consistent with the objectives and provisions of Clause 6.12 of the MLEP 2013.
6.13	Design excellence	Yes	Yes	The proposed development is consistent with the objectives and provisions of Clause 6.13 of the MLEP 2013.
6.16	Gross floor area in Zone B2	Yes	Yes	The proposed development includes 837.5m ² floor space for the purpose of the registered club, equivalent to 18.7% of the gross floor area. Clause 6.16 requires that at least 25% of the gross floor area be used as commercial premises. However, the proposed development meets the objective of Clause 6.16, so is acceptable. Further, as per Clause 5.10(10) of the Manly LEP 2013, the proposal is supported as it conserves the heritage item.

6.21	Noise impacts—licensed premises	Yes	Yes	As amended by Condition No. ANS17 requiring reduced hours of operation for the outdoor area from 10:30pm to 10:00pm, the proposed development is consistent with the objectives and provisions of Clause 6.21 of the MLEP 2013.
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79C(1)(a)(ii) - any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and

There is no applicable Draft Planning Instrument.

79C(1)(a)(iii) - any development control plan, and

Manly Development Control Plan 2013:

The following is an assessment of the proposal's compliance with the standards of the Development Control Plan. Where a variation is proposed to the standards, an assessment is included in the Planning Comments.

Part 3 General Principles of Development

Issues	Consistent with principle	Inconsistent with principle
Townscape	✓	
Heritage – In Vicinity	✓	
Landscaping Design	✓	
Landscape/Tree Preservation	✓	
Sunlight Access and Overshadowing	✓	
Privacy and Security	✓	
Maintenance of Views	✓	
Sustainability	✓	
Accessibility	✓	
Stormwater management	✓	
Waste Management	✓	
Mechanical Plant Equipment	✓	

Comment:

3.1 Streetscapes and Townscapes

Townscape

- Objective 4) To ensure that all parking provision is designed and sited to respond to and respect the prevailing townscape.*
- Objective 5) To assist in maintaining the character of the locality.*
- Objective 6) To recognise the importance of pedestrian movements and townscape design in the strengthening and promotion of retail centres.*
- Objective 7) To minimise negative visual impact, in particular at the arterial road entry points into the Council area and the former Manly Council area, so as to promote townscape qualities.*

The proposed entrance to the basement carpark is designed and sited to be consistent with the existing townscape, especially considering existing development in the immediate vicinity. The proposed development is consistent with the existing character of the locality, in that it incorporates both commercial and residential development. The proposed development retains the existing wide footpath, in order to recognise the importance of pedestrian movements. The commercial centre of Manly is promoted with the inclusion of the registered club.

The visual impact of the proposed development is minimised with the use of building articulation and stepping back higher storeys. As such, the proposed development is consistent with the relevant townscape objectives above.

Heritage – In Vicinity

- Objective 1) To retain and conserve environmental heritage and cultural significance of Manly including:*
- significant fabric, setting, relics and view associated with heritage items and conservation areas;*
 - the foreshore, including its setting and associated views; and*
 - potential archaeological sites, places of Aboriginal significance and places of natural significance.*
- Objective 2) To ensure any modification to heritage items, potential heritage items or buildings within conservation areas is of an appropriate design that does not adversely impact on the significance of the item or the locality.*
- Objective 3) To ensure that development in the vicinity of heritage items, potential heritage item and/ or conservation areas, is of an appropriate form and design so as not to detract from the significance of those items.*
- Objective 4) To provide infrastructure that is visually compatible with surrounding character and locality/visual context with particular regard to heritage buildings/areas and cultural icons.*
- Objective 5) To integrate heritage management and conservation into the planning development process including incentives for good heritage management, adaptive reuse, sustainability and innovative approaches to heritage conservation.*

The proposed development retains, conserves and enhances the heritage-listed Auckland Garage building (Item 156 under Schedule 5 of the Manly LEP 2013). The proposed works do not unreasonably impact upon the significance of the Auckland Garage building or the locality. The proposed development is of an appropriate form and design so as not to detract from the significance of the Auckland Garage building. The proposed registered club and residential apartments above are visually compatible with the Auckland Garage building and surrounding land uses. The proposed development is in accordance with a Conservation Management Plan. Council's Heritage Advisor has reviewed the application and Conservation Management Plan and has raised no objections to the proposal.

3.3.1 Landscaping Design

- Objective 1) To encourage appropriate tree planting and maintenance of existing vegetation.*
- Objective 2) To retain and augment important landscape features and vegetation remnant populations of native flora and fauna.*

The proposed development allows for adequate landscaping, including tree planting. The proposed development does not unreasonably alter important landscape features. As such, the proposed development is consistent with the relevant landscaping design objectives above.

3.3.2 Landscape/Tree Preservation

- Objective 1) To ensure that development protects and conserves the natural environment.*
- Objective 2) To protect and preserve urban bushland areas in recognition of their:*
- value as part of the natural heritage;*
 - aesthetic value; and*
 - value as a recreational, educational and scientific resource.*
- Objective 3) To protect and prevent clearing of remnant and or rehabilitated riparian land value as a recreational, educational and scientific resource.*

The proposed development does not make any unreasonable change to the natural environment, bushland areas, or riparian land. As such, the above objectives are not relevant in this case.

3.4.1 Sunlight Access and Overshadowing

Objective 1) To provide equitable access to light and sunshine.

Objective 2) To allow adequate sunlight to penetrate:

- private open spaces within the development site; and*
- private open spaces and windows to the living spaces/ habitable rooms of both the development and the adjoining properties.*

Objective 3) To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by:

- encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and*
- maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.*

As the existing site is vacant with the exception of the Auckland Garage building, the proposed development inevitably results in greater overshadowing impacts than the existing use of the site. The proposed development results in equitable access and sunshine to the subject site and nearby sites. The proposed development allows adequate sunlight to penetrate the private open space within the subject site (as demonstrated in the section of this report relating to the Apartment Design Guide) and adjacent sites. The proposed development does not overshadow the private open spaces or habitable rooms of adjacent sites for more than three hours between 9am and 3pm during the midwinter solstice. The proposed development is modulated and articulated and incorporates greater setbacks for the upper storeys. The proposed development includes a minimal southern setback. However, this is considered a reasonable response to the characteristics of the site, as this allows for greater setbacks to the existing residential flat buildings on the properties to the north of the site and the land to the south of the site is a road, rather than another developable property. In these ways, the proposed development maximises the penetration of sunlight in midwinter to windows, living rooms and principal outdoor areas. As such, the proposed development is consistent with the relevant sunlight access and overshadowing objectives above.

3.4.2 Privacy and Security

Objective 1) To minimise loss of privacy to adjacent and nearby development by:

- appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; and*
- mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

Objective 2) To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.

Objective 3) To encourage awareness of neighbourhood security.

The proposed development is designed to retain the privacy of adjacent properties, while maintaining adequate access to sunlight and air. The proposed development does not include windows on the northern side elevation at lower levels directly adjacent to existing nearby residential flat buildings to prevent direct viewing between properties. Where windows are included, their setbacks from the side boundary minimise viewing between properties. The proposed balconies are reasonably setback from adjacent properties and are restricted by side walls. In this way, overlooking from balconies is minimised. Further, the proposed development includes balconies on each street frontage, thereby encouraging awareness of neighbourhood security. As such, the proposed development is consistent with the relevant privacy and security objectives above.

3.4.3 Maintenance of Views

Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.

Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).

Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.

The proposed development does not unreasonably disrupt any views to or from adjacent properties, nearby public spaces, or significant icons or landmarks. The proposed development sits well below the existing Grand Esplanade development to the south, so no views to the nearby harbour are currently observed from the north across the site. As such, the proposed development is consistent with the relevant maintenance of views objectives above.

3.5 Sustainability

- Objective 1) To ensure the principles of ecologically sustainable development are taken into consideration within a consistent and integrated planning framework that achieves environmental, economic and social sustainability in the short, medium and long term.*
- Objective 2) To encourage the retention and adaptation of existing dwellings including a preference for adaptive reuse of buildings rather than total demolition. Where retention and adaption is not possible, Council encourages the use of building materials and techniques that are energy efficient, non-harmful and environmentally sustainable.*
- Objective 3) To minimise waste generated by development and embodied in the building materials and processes through demolition.*
- Objective 4) To encourage the use of recycled materials in landscape construction works.*
- Objective 5) To encourage the establishment of vegetable gardens and the planting of fruit trees.*
- Objective 6) To encourage energy efficient building design, construction and practices, that reduce energy consumption (primarily for heating and cooling), reduce the use of non-renewable fossil fuels, minimise air pollution, greenhouse gas emissions and reduce energy bills.*
- Objective 7) To require that residential site planning and building design optimise solar access to land and buildings.*
- Objective 8) To site and design development to optimise energy conservation and sustainability in accordance with BASIX legislation and encourage development to exceed requirement particularly to ensure energy efficient use of energy for internal heating and cooling.*
- Objective 9) To site and design development to optimise energy conservation (in accordance with the energy hierarchy) and sustainability to which BASIX does not apply.*
- Objective 10) To ensure non-residential development involving a gross total floor area of greater than 500 sqm set and meet criteria for energy efficiency/conservation through an Energy Performance Report.*
- Objective 11) To ensure non-residential development complies with the Building Code of Australia energy efficiency provisions.*

The proposed development ensures the principles of ecologically sustainable development. Responsible waste procedures are demonstrated by the waste management plan, which incorporates reuse and recycling where possible. The proposed development demonstrates compliance with the relevant BASIX requirements and incorporates passive solar design principles and cross ventilation. As required by the Prescribed Conditions of consent, the proposed development must comply with all relevant Building Code of Australia provisions. As such, the proposed development is consistent with the relevant sustainability objectives above.

3.6 Accessibility

- Objective 1) To ensure equitable access within all new developments and ensure that any refurbishments to existing buildings provide improved levels of access and facilities for people with disabilities.*
- Objective 2) To provide a reasonable proportion of residential units that should be designed to be adaptable and easily modified to promote 'ageing in place' and for people with disabilities.*
- Objective 3) To highlight consideration of access issues early in the development design process.*
- Objective 4) To continue improving understanding and awareness of access issues for people with disabilities through a commitment to implementation of best practice.*
- Objective 5) To ensure that the public domain, including public domain in new developments provides connectivity, legibility, flexibility and consistency to allow for equitable and safe access for all people.*

As modified by conditions of consent, the proposed development ensures equitable access and provides improved levels of access and facilities for people with disabilities. The proposed development provides an adequate proportion of adaptable units designed to be easily modified for people with disabilities. The proposed development ensures that the public domain provides connectivity, legibility and consistency, to allow for equitable and safe access for all people. As such, the proposed development meets the relevant accessibility objectives above.

3.7 Stormwater Management

- Objective 1) To manage urban stormwater within its natural catchments and within the development site without degrading water quality of the catchments or cause erosion and sedimentation.*
- Objective 2) To manage construction sites to prevent environmental impacts from stormwater and protect downstream properties from flooding and stormwater inundation.*
- Objective 3) To promote ground infiltration of stormwater where there will be no negative (environmental) impacts and to encourage on-site stormwater detention, collection and recycling.*
- Objective 4) To make adequate arrangements for the ongoing maintenance of stormwater facilities.*

The proposed development demonstrates that all storm water will be collected and disposed of to the existing Council drainage infrastructure via the required onsite detention tank. The proposed development is adequately landscaped, thereby promoting ground infiltration. The Stormwater Management Plans demonstrate adequate arrangements for the ongoing maintenance of storm water facilities. The Sediment and Erosion Management Plan demonstrates satisfactory measures to prevent environmental impacts from stormwater and protect downstream properties from flooding and stormwater inundation. As such, the proposed development is consistent with the relevant storm water management objectives above.

3.8 Waste Management

- Objective 1) Minimise overall environmental impacts of waste in accordance with regional waste plans and Federal and State Government waste minimisation targets.*
- Objective 2) Encourage environmentally protective waste management practices on construction and demolition sites which include:*
- sorting of waste into appropriate receptors (source separation, reuse and recycling) and ensure appropriate storage and collection of waste and to promote quality design of waste facilities;*
 - provision of design standards that complement waste collection and management services offered by Council and private service providers;*
 - building designs and demolition and construction management techniques which maximises avoidance, reuse and recycling of building materials and which will minimise disposal of waste to landfill; and*
 - appropriately designed waste and recycling receptors are located so as to avoid impact upon surrounding and adjoining neighbours and enclosed in a screened off area.*
- Objective 3) Encourage the ongoing minimisation and management of waste handling in the future use of premises.*
- Objective 4) Provide advice to intending applicants on:*
- matters to be considered when assessing the waste implications of DAs;*
 - sound waste management practices and requirements for the preparation of waste management plans; and*
 - the reduction and handling of waste during the demolition and construction phase.*

The proposed development encourages environmentally protective waste management practices, with the inclusion of waste sorting, reuse and recycling where possible, thereby minimising disposal of waste to landfill. The proposed waste management plan demonstrates design standards that are complementary to the relevant waste collection and management services. The proposal demonstrates appropriately designed waste storage, disposal and recycling receptors. As such, the proposed development is consistent with the relevant waste management objectives above.

3.9 Mechanical Plant Equipment

No objectives to consider as part of this assessment. However, the proposed development meets the relevant controls under Clause 3.9 of the MDCP 2013.

Part 4 - Development Controls

Site Area: 1,562m ²	<u>Permitted/Required</u>	<u>Proposed</u>	<u>Complies Yes/No</u>
Setbacks	0m	<p>Varied and increasing with height of building.</p> <p>The proposed northern setbacks (the only adjacent properties are to the north) are as follows:</p> <ul style="list-style-type: none"> • Ground Floor: 0m • First, Second and Third Floors: 400mm-6m • Fourth Floor: 1.1-9m • Fifth Floor: 6-9m 	Yes
Car Parking	Residential: 0.6 spaces per 1-bedroom unit, 1 space per 2-bedroom unit, 2 spaces per 3-bedroom unit (44 spaces)	Residential: 46 spaces	Yes
	Visitor: 0.16 visitor space per dwelling (7 spaces)	Visitor: 5 spaces	No. See comment below.
	Registered Club: Provided to satisfy peak cumulative parking requirements of the development, based on comparison	Registered Club: 20 spaces	See comment below.
Loading bay	As needed	Provided	Yes
Signage - Number of signs -Size of signs	Max. 2 signs	No signage is proposed.	NA
Awnings	3.5-4.5m above ground Setback min. 600mm from kerb	2.7m above ground Setback 2.9m from kerb	No. See comment below.
Excavation	Generally 1m, except for basement car	7.74m excavation for the purpose of basement parking.	Yes

Site Area:	1,562m ²	<u>Permitted/ Required</u>	<u>Proposed</u>	<u>Complies Yes/No</u>
		parking or swimming pools. Dilapidation or Geotechnical report	Geotechnical assessment has been provided.	
Subdivision		Assess and services acceptable	Access and services are acceptable.	Yes
-Access and services				
-Prevailing subdivision pattern and natural features		Complements existing pattern	Subdivision is strata only. No change is proposed to subdivision pattern.	NA
-Energy efficiency		Maximise solar access	Solar access is maximised.	Yes

Comment:

Car Parking

Objective 1) To ensure there is adequate provisions for car parking access and loading in future development and redevelopment in all business zones.

Objective 2) To minimise conflicts between pedestrian and vehicular movement systems within the business areas.

Registered Club Parking / Visitor Parking

Schedule 3 of the MDCP 2013 requires that the subject site provide 44 residential car parking spaces and 7 visitor car parking spaces. The MDCP 2013 does not provide a parking rate for registered clubs, and instead notes that the Roads and Maritime Services (RMS) Design Reference Documents must be relied upon for development types not stipulated within Schedule 3 of the MDCP 2013. The RMS Guide to Traffic Generating Development requires that registered clubs provide car parking to satisfy peak cumulative parking requirements of the development based on comparison to comparable uses in the locality. The Traffic Impact Assessment submitted in relation to the proposed development uses a parking rate based on the PM peak period traffic generation rate in the RMS Guide to Traffic Generating Development (10 vehicles per hour per 100m² of licenced floor area), which is comparable to similar uses in the area, and is demonstrated to be adequate based on a maximum club capacity of 300 patrons. As such, the proposed development provides compliant parking for the residential dwellings and the registered club.

The proposed development proposes five residential visitor parking spaces, despite the requirement for seven spaces. However, the proposed development provides for adequate car parking access and loading, and minimises conflict between pedestrian and vehicular movement by separating pedestrian and vehicular entries and with the provision of traffic light signals (as required by conditions of consent). Further, the subject site is located in close proximity to a main bus stop and within walking distance of Manly Wharf. As such, the proposed development is well-served by public transport. This is sufficient to allow for an exception to the required visitor parking for the proposed development.

Awnings

Clause 4.4.4.1 of the MDCP 2013 provides that awnings in the B2 Local Centre zone must generally be a minimum of 3.5m above ground, and that continuous footpath awnings must be provided on all street frontages generally consistent with the streetscape. However, the intention of the awning is to provide a clearly identifiable and sheltered entry way to the Manly Civic Club. An awning height of 2.8m above ground level offers such an entry, without creating a safety risk for users of the site. Further, the awning is located wholly over private land and does not protrude over the public footway.

Finally, no signage is proposed underneath the proposed awning, thereby retaining a clearance of 2.8m under the awning. Any future signage must be subject to a separate development application, which would assess the impacts of signage under the low awning. As such, the proposed awning height is acceptable in this case.

Hours of Operation

Clause 4.2.5.6(b) of the MDCP 2013 does not provide maximum operating hours for registered clubs. The proposed development includes hours of operation as follows:

- Indoors: Monday to Wednesday: 10.30 am to 11.00 pm, Thursday to Saturday: 10.30 am to 12 midnight and Sunday: 10.30 am to 10.00 pm
- Outdoors: Monday to Wednesday: 10.30 am to 10.00 pm, Thursday to Saturday: 10.30 am to 10.30pm and Sunday: 10.30 am to 9.00 pm

In relation to potential unreasonable noise impacts relating to the outdoor area, Council has imposed a condition of consent for restricting the hours of operation as follows:

- Indoors: Monday to Wednesday: 10.30 am to 11.00 pm, Thursday to Saturday: 10.30 am to 12 midnight and Sunday: 10.30 am to 10.00 pm
- Outdoors: Monday to Saturday: 10.30 am to 10.00 pm and Sunday: 10.30 am to 9.00 pm

As amended, the hours of operation are not deemed to have any unreasonable amenity impacts. Further, the proposed development was referred to the NSW Police, who raised no objection to the proposal, subject to conditions of consent. As such, the amended hours of operation are acceptable.

Number of Patrons

Within the Entertainment Precinct the total number of patrons capable of being accommodated within Late Night Venues must not exceed 8000 persons. The proposed development anticipates a maximum of 300 patrons within the registered club at any one time. In conjunction with conditions of consent relating to hours of operation and noise levels, the proposed number of patrons is not deemed to have any unreasonable amenity impacts and is therefore acceptable. The registered club will be managed to ensure members and guests minimize impact on surrounding residential premises.

Part 5 - Special Character Areas and Sites

Special Character Areas and Sites	<u>Applicable</u>	<u>Not Applicable</u>
Conservation Area		✓
Foreshore Scenic Protection Area	✓	
Threatened Species and Critical Habitat		✓
Flood Control Lots		✓
Riparian Land and Watercourses		✓
Road Widening		✓

Comment:

The proposed development is consistent with the Special Character Areas and Sites objectives and provisions in relation to Foreshore Scenic Protection Area. The proposed development shall have minimal impact on the visual aesthetic amenity of the area.

79C(1)(a)(iia)- any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and
No planning agreement has been entered into in relation to the proposed development.

79C(1)(a) (iv) - the regulations

The relevant prescribed regulations contained within the *Environmental Planning and Assessment Regulations 2000* are addressed through the imposition of suitable conditions.

79C(1)(a)(v) - any coastal zone management plan (within the meaning of the Coastal Protection Act 1979)

There is no Coastal Zone Management Plan applicable for the Manly area.

79C(1) (b) - the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

The proposed development will not result in any unreasonable impact on the natural and built environments or any unreasonable social and economic impacts in the locality.

79C(1) (c) - the suitability of the site for the development,

The proposed development is suitable for the site.

79C(1) (d) - any submissions made in accordance with this Act or the regulations

The application was notified to nearby and adjoining property owners in accordance with Section 2.2 of Council's Development Control Plan 2013 with 29 submissions received from the following objectors raising the following concerns:

Submission and Address	Main Issues raised in the submission
1. E. Kelman-Jones 4/3 West Promenade, Manly	<ul style="list-style-type: none">• Loss of sunlight access• Traffic congestion• Noise impacts• Smoker's area – impact on health• Pests – rats and cockroaches
2. G. Board, 710/54 West Esplanade, Manly	<ul style="list-style-type: none">• Traffic congestion
3. J. Stigter, 804/1 Raglan Street, Manly	<ul style="list-style-type: none">• Car stacker clearances are not accurate and will require additional excavation, which will affect the water table• Only one lift is proposed – what will be used for disabled residents in the event of an emergency or maintenance?• The split and ramped basement levels pose a safety risk for disabled users
4. G. Twemlow & P. Burns, 2/13 Eustace Street, Manly	<ul style="list-style-type: none">• Traffic congestion – traffic should be directed towards Belgrave Street, not Eustace Street• Disputes that the proposal is not a traffic generating development
5. J. Morgan 7/13 Eustace Street, Manly	<ul style="list-style-type: none">• Traffic congestion – traffic should be directed towards Gilbert Street, West Promenade and Belgrave Street, not Eustace Street
6. G. Woo, 5/9 Eustace Street, Manly	<ul style="list-style-type: none">• Traffic congestion – traffic should be directed towards West Promenade, not Eustace Street• Stormwater drainage• The proposed development creates more competition for existing businesses
7. S. Nolan 3/23 Eustace Street, Manly	<ul style="list-style-type: none">• Traffic congestion – traffic should be directed towards Belgrave Street, not Eustace Street
8. P. Kenney, 2/6 Eustace Street, Manly	<ul style="list-style-type: none">• Traffic congestion – traffic should be directed towards Belgrave Street, not Eustace Street
9. N. Milliez, 7/9 Eustace Street, Manly	<ul style="list-style-type: none">• Traffic congestion – traffic should be directed towards West Promenade, not Eustace Street• Stormwater drainage• The proposed development creates more competition for existing businesses
10. H. & J. Black 3/13 Eustace Street, Manly	<ul style="list-style-type: none">• Eustace Street requires a traffic survey• Parking in Eustace Street is already difficult• Traffic congestion
11. J. & S. Steggall 14 Eustace Street, Manly	<ul style="list-style-type: none">• Traffic congestion – traffic (including loading dock) should be directed towards Gilbert Street and Belgrave Street, not Eustace Street• The proposal removes two on-street parking spaces

	<ul style="list-style-type: none"> Disputes that the proposal is not a traffic generating development
12. T. & C. Walker 6/13 Eustace Street, Manly	<ul style="list-style-type: none"> Traffic congestion – traffic should be directed towards Belgrave Street, not Eustace Street
13. G. & K. Gordon, 510/54 West Esplanade, Manly	<ul style="list-style-type: none"> The proposal is an overdevelopment of the site The proposal results in a non-compliant building height Traffic congestion Loss of privacy Noise impacts Loading dock is a safety concern for vehicles, cyclists and pedestrians and will be noisy
14. R.J. Kernaghan 613/54 West Esplanade, Manly	<ul style="list-style-type: none"> The proposal results in a non-compliant building height Loss of sunlight access Traffic congestion/pollution Noise impacts Club entry conflicts with passengers alighting from buses Loss of privacy
15. D. Williams 2/65 Sydney Road, Manly	<ul style="list-style-type: none"> Traffic congestion – traffic should be directed towards West Promenade, not Eustace Street
16. L. Brown 6/9 Eustace Street, Manly	<ul style="list-style-type: none"> Noise impacts Traffic congestion – traffic should be directed towards West Promenade, not Eustace Street Stormwater drainage The proposed development creates more competition for existing businesses
17. CONFIDENTIAL	<ul style="list-style-type: none"> Acoustic report is inadequate and does not address the loading dock Hours of operation should be limited/subject to a trial period Loading dock is a safety concern for vehicles, cyclists and pedestrians and should be relocated for trucks to enter and leave in a forward direction
18. B. & J. Bray 8/9 Eustace Street, Manly	<ul style="list-style-type: none"> The proposal results in a non-compliant building height Traffic congestion Noise impacts Stormwater drainage The proposed development creates more competition for existing businesses
19. L. Pryor 408/54 West Esplanade, Esplanade, Manly	<ul style="list-style-type: none"> Traffic congestion
20. L Harrington 402/54 West Esplanade, Manly	<ul style="list-style-type: none"> Noise impacts The wall openings of the Auckland Garage should be glazed. Landscaping pockets adjacent to the Auckland Garage should be inaccessible
21. J. Dent 512/54 West Esplanade, Manly	<ul style="list-style-type: none"> The proposal is an overdevelopment of the site Traffic congestion Noise impacts The proposal results in a non-compliant building height Loss of privacy
22. A. Dyda 2/6 Eustace Street, Manly	<ul style="list-style-type: none"> Traffic congestion – traffic should be directed towards Belgrave Street, not Eustace Street
23. D. Blake Address Unknown	<ul style="list-style-type: none"> Traffic congestion Loss of privacy The proposal results in a non-compliant building height

24. A. Hogben 3/9 Eustace Street, Manly	<ul style="list-style-type: none"> Traffic congestion – traffic should be directed towards Belgrave Street, not Eustace Street
25. M. & H. Gonlag 8 Eustace Street, Manly	<ul style="list-style-type: none"> Traffic congestion
26. G. Rawlings 2/23 Eustace Street, Manly	<ul style="list-style-type: none"> Traffic congestion Traffic Impact Assessment contains inconsistencies The proposal is an overdevelopment of the site
27. R. Blackmore	<ul style="list-style-type: none"> Traffic congestion – traffic should be directed towards Gilbert Street, not Eustace Street Loss of sunlight access Non-compliant setbacks Mediocre design
28. P. Fenn	<ul style="list-style-type: none"> The proposal is an overdevelopment of the site Traffic congestion Manly Civic Club may not be financially viable Proposal mentions dining area with outdoor terrace on the corner of West Promenade and Gilbert Street – not shown on plans
29. Sydney Water	<ul style="list-style-type: none"> No objection – provided details of drinking water and wastewater mains

Comments on Submissions

Amenity – Sunlight Access / Privacy / Pollution / Noise

The amenity impacts of the proposal, particularly in relation to sunlight access and privacy have been addressed in the section of this report relating to Part 3 of the Manly DCP 2013 – General Principles of Development. Further, as per recommended Condition No. 6NL03, the ongoing use of the premises/property (including the use of the loading dock) must not give rise to ‘offensive noise’ as defined under the provisions of the Protection of the Environment Operations Act 1997, to protect public health and amenity. The application and submitted documentation (including the Acoustic Report) was referred to Council’s Environmental Health Officer, who raised no objections to the proposal in relation to noise or pollution, subject to the application of recommended conditions of consent. As such, the proposal is acceptable in relation to amenity.

Traffic Congestion

The proposed development is subject to a Traffic Impact Assessment, which demonstrates that the proposed development is acceptable in relation to traffic movements. The proposed development and associated Traffic Impact Assessment was referred to the NSW Roads and Maritime Services and Council’s Traffic Engineer, who raised no objections to the proposal, subject recommended conditions of consent. The proposed development provides adequate parking in relation to the residential apartments and the registered club. It is not anticipated that the proposed club will lead to further unreasonable parking demand in the street surrounding the development.

The proposed development does not constitute ‘traffic-generating development’ according to Schedule 3 of the *State Environmental Planning Policy (Infrastructure) 2007*.

Building Separation / Setbacks

The building separation distances and setback are considered acceptable, for the reasons detailed in the sections of this report relating to *State Environmental Planning Policy No. 65*, the Apartment Design Guide, and Part 3 of the Manly DCP – General Principles of Development – Privacy and Security.

Public Health – Smoking Areas / Pests

Smoking is not permitted in any commercial outdoor dining area. Further, appropriate mechanical ventilation is proposed within the “outdoor gaming room” to ensure smoke does not unreasonably impact upon the public domain. The management of pests associated with the registered club is a compliance matter.

Car Stacker Clearances

The proposed basement car park has been designed in accordance with the relevant Building Code of Australia requirements and Australian Standards. This is enforced by the Prescribed Conditions. Further, the proposed basement car park has been reviewed by Council's Engineer, Traffic Engineer and Building Surveyor, who raised no objections in relation to the car stackers. Detailed construction drawings in relation to the proposed development will be provided at the Construction Certificate stage.

Accessibility – One Lift / Ramped Car Park

The proposed development was referred to Council's Accessibility Officer, who raised no objections to the lift and basement car park configuration, subject to recommended conditions of consent.

Local Business Competition

The proposed use is permissible within the zoning for the reasons detailed in the section of this report relating to the Manly LEP 2013. As such, the use is suitable in the area. Further, the presence of other registered clubs in the locality does not prevent the approval of an additional registered club.

Storm Water Drainage

The proposal was referred to Council's Engineer, who raised no objections to the storm water and drainage arrangements proposed, subject to recommended conditions of consent. Further, Sydney Water provided a submission to the application, raising no objections to the proposal.

Overdevelopment – Building Bulk and Height

The proposal is compliant with the floor space ratio development standard of Clause 4.4 of the Manly LEP 2013, which controls bulk and scale. The proposal results in a non-compliant building height. This has been assessed as acceptable, for the reasons detailed in the section of this report relating to Part 4 of the Manly LEP 2013 – Principal Development Standards – Height of Buildings.

Pedestrian / Vehicular Safety

The location of the Auckland Garage building restricts potential locations of vehicular entry/exit points. The vehicle entry/exit point on Eustace Street was selected to retain West Promenade as the primary active street frontage and to restrict vehicular movements on the Gilbert Street frontage to loading and delivery only. Pedestrians are able to access the club and the residential component of the proposal via separate entries on West Promenade. This mitigates conflict with the vehicular entry to the basement car park on Eustace Street and the loading dock on Gilbert Street. Further, this mitigates conflict with passengers alighting from bus services, which are located on Belgrave Street. Finally, the proposal was referred to Council's Traffic Engineer, who raised no objections to the proposal in relation to pedestrian and vehicular safety, subject to recommended conditions of consent.

Auckland Garage Treatment

The heritage-listed Auckland Garage building is subject to conservation works, as detailed by the Conservation Management Plan. The proposal and Conservation Management Plan have been reviewed by Council's Heritage Advisor, who raised no objection to the treatment of the Auckland Garage. As such, no amendments are made to the proposed treatment of the Auckland Garage.

Dining Terrace – Corner of West Promenade and Gilbert Street

The terrace referred to in the proposal is shown on the Level Ground Plan.

79C(1) (e) - the public interest.

The proposed development is in the public interest.

S94 Contribution towards provision or improvement of amenities or services

This part of the Act relates to the collection of monetary contributions from applicants for use in developing key local infrastructure. The Act reads as follows:

- (1) If a consent authority is satisfied that development for which development consent is sought will or is likely to require the provision of or increase the demand for public amenities and public services within the area, the consent authority may grant the development consent subject to a condition requiring:*
- (a) the dedication of land free of cost, or*
 - (b) the payment of a monetary contribution, or both.*
- (2) A condition referred to in subsection (1) may be imposed only to require a reasonable dedication or contribution for the provision, extension or augmentation of the public amenities and public services concerned.'*

Comments:

In this case, the proposal involves a number of components relating to Section 94 Contributions. Comments on each component of contributions are as follows:

- Commercial: The proposed development is not considered to substantially alter the gross floor area of the Manly Civic Club as approved by previous Development Consent No. 149/2008 on the site. As a result, no contribution is payable in relation to the proposed registered club.
- Residential: The proposal includes thirty-eight (38) new dwellings on site. Accordingly a contribution of $38 \times \$20,000 = \$760,000$ applies.
- Car Parking: No contribution required, as parking provision is compliant.
- Previous Development: The applicant seeks a credit of \$475,000, stating that this amount was paid by the landowner in relation to the previous Development Consent No. 149/2008, DA149/2008 is to be surrendered to satisfy Condition No. ANS01, so any contribution paid in relation to this application may be credited or refunded (subject to compliance with Condition No. ANS01. However, Council only found evidence of payment for Section 94 contributions for DA149/2008 to the amount of \$121,125. As such, a credit of \$121,125 (indexed) is to be applied.
- Total: \$638,875 payable

Suitable conditions have been included in the recommendation.

CONCLUSION:

The application has been assessed having regard to Section 79C of the Environmental Planning and Assessment Act 1979, Manly Local Environmental Plan 2013 and the Manly Development Control Plan 2013 and is considered to be satisfactory for **Approval**, subject to conditions.

RECOMMENDATION

In consideration of the written request made by the applicant pursuant to Clause 4.6 of the Manly Local Environmental Plan 2013, the consent authority is satisfied that compliance with the development standards contained in Clause 4.3 (Height of Buildings) of the Manly Local Environmental Plan 2013 is unreasonable or unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify contravening the development standard.

That Development Application No. DA176/2016 for construction of a mixed-use development and alterations to the existing Auckland Garage building, comprising a registered club at ground level and residential accommodation above, basement car parking, associated landscaping and strata subdivision at 2 West Promenade, Manly be **Approved** subject to the following conditions:-

GENERAL CONDITIONS

1. The development, except where modified by the conditions of this consent, is to be carried out in accordance with the following plans and reference documentation;

Drawings affixed with Council's 'Development Consent' stamp relating to Development Consent No. 176/2016:

Plan No. / Title	Issue/ Revision & Date	Date Received by Council
A103 Site Plan	Revision A 20 February 2017	30 May 2017
A201 Basement Level 2 Plan	Revision A 20 February 2017	30 May 2017
A202 Basement Level 2 Plan	Revision A 20 February 2017	30 May 2017
A203 Level Ground Plan	Revision A 20 February 2017	30 May 2017
A204 Level 1 Plan	Revision B 25 May 2017	30 May 2017
A205 Level 2 Plan	Revision B 25 May 2017	30 May 2017
A206 Level 3 Plan	Revision B 25 May 2017	30 May 2017
A207 Level 4 Plan	Revision B 25 May 2017	30 May 2017
A208 Level 5 Plan	Revision B 25 May 2017	30 May 2017
A209 Roof Plan	Revision A 20 February 2017	30 May 2017
A301 Elevations – East	Revision A 20 February 2017	30 May 2017
A302 Elevations – West	Revision A 20 February 2017	30 May 2017
A303 Elevations – North	Revision A 20 February 2017	30 May 2017
A304 Elevations - South	Revision A 20 February 2017	30 May 2017
A401 Section AA	Revision A 20 February 2017	30 May 2017
A402 Section BB	Revision A 20 February 2017	30 May 2017
A403 Section CC	Revision A 20 February 2017	30 May 2017
LA01 Ground Floor Landscape Plan	Issue I 3 March 2017	17 March 2017
LA02 Level 1 Landscape Plan	Issue E 22 February 2017	17 March 2017
LA03 Level 4 Landscape Plan	Issue E 22 February 2017	17 March 2017
LA04 Level 5 Landscape Plan	Issue A 22 February 2017	17 March 2017

Reference Documentation affixed with Council's stamp relating to Development Consent No. 176/2016:

- Statement of Environmental Effects prepared by Robinson Urban Planning dated 30 June 2016 and received by Council on 1 July 2016
- Addendum to Statement of Environmental Effects prepared by Robinson Urban Planning dated 16 March 2017 and received by Council on 17 March 2017
- BASIX Certificate No. 729217M_02 dated 26 April 2017 and received by Council 26 April 2017
- ABSA Certificate No. 1010963237 dated 26 April 2017 and received by Council on 26 April 2017
- BCA Assessment Report prepared by Private Certifiers Australia dated 17 February 2017 and received by Council on 17 March 2017
- Acoustic Report prepared by Wood & Grieve Engineers dated 15 March 2017 and received by Council on 17 March 2017
- Traffic Impact Assessment prepared by Traffix dated February 2017 (Version 3) and received by Council on 17 March 2017
- Disabled Access Report prepared by Private Certifiers Australia dated 15 March 2017 and received by Council on 17 March 2017
- SEPP 65 Certification prepared by Mijollo International dated 3 March 2017 and received by Council 17 March 2017

- Heritage Impact Statement prepared by NBR Architecture dated March 2017 and received by Council on 17 March 2017
- Conservation Management Plan prepared by NBR Architecture dated March 2017 and received by Council on 17 March 2017
- Preliminary Geotechnical Investigation Report Reference 21496SBprt dated 14 September 2007 and received by Council 1 July 2016
- Geotechnical Investigation Report Reference 21496LBrpt prepared by JK Geotechnics dated 24 May 2016 and received by Council on 1 July 2016
- Preliminary Acid Sulfate Soil Assessment prepared by EIS dated 14 September 2007 and received by Council 1 July 2016
- Detailed Site Investigation (Contamination Report) prepared by SESL dated June 2016 and received by Council 1 July 2016
- Security Management Plan prepared by the applicant dated 14 June 2016 and received by Council 1 July 2016
- Letter from Ausgrid dated 24 May 2017 and received by Council on 24 May 2017
- Letter from NSW Police dated 20 July 2016 and received by Council on 28 July 2016

In the event of any inconsistency between the approved plans and supplementary documentation, the plans will prevail.

Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council

2. Prescribed Conditions

- All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- 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);
- 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:
 - showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - 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
 - 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.

- 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:
 - in the case of work for which a principal contractor is required to be appointed:
 - the name and licence number of the principal contractor, and
 - the name of the insurer by which the work is insured under Part 6 of that Act,
 - in the case of work to be done by an owner-builder:
 - the name of the owner-builder, and
 - 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 (DACPLB09)

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

ANS01

Prior to the issue of any Construction Certificate, Development Consent No. 149/2008 is to be surrendered to Council.

Reason: Development Consent No. 149/2008 must be surrendered to Council in order to apply the Section 94 Contributions credit.

ANS02

An Erosion and Sediment Management Plan which provides adequate measures for erosion and sediment control, must be submitted with the Construction Certificate and approved by the Council/Accredited Certifier. The Erosion and Sediment Management Plan shall comply with the requirements for Erosion and Sediment Management plans contained with Clause 2.1.11 of the Manly Development Control Plan, 2013 and Manly Council's Guidelines for Sediment and Erosion Controls on Building Sites, 2005.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

ANS03

A Remedial Action Plan must be developed in reference to the findings within the Detailed Site Investigation (ref: C8823Q5710B39331MCCDSIFA, dated June 2016) and submitted to the Certifying Authority, prior to the issue of the Construction Certificate. All works associated with the development must comply with requirements outlined in the Remedial Action Plan, State Environmental Planning Policy No. 55 (the SEPP 55) and the Managing Land Contamination Planning Guidelines. Following the remediation works, a Stage 4 Validation and Site Monitoring Report stating the site in its current condition is suitable for the proposed use without further works, will be required to be submitted to Council in accordance with the Managing Land Contamination Planning Guidelines. A Notice of Completion prepared by a suitably qualified contaminated land professional for all remediation work in accordance with the SEPP 55 must be submitted to Council upon completion of remediation works.

Any new information which comes to light during remediation, demolition or construction works which has the potential to alter previous conclusions about site contamination and remediation must be notified to Council as soon as reasonably practicable. The assessment of site contamination must be in accordance with the National Environment Protection (Assessment of Site Contamination) Measure.

Reason: To ensure contamination onsite is remediated for the proposed use in accordance with relevant legislation

ANS04

Separate approval must be sought for waters from dewatering operations to enter Council's stormwater drainage system. Such an application should include a dewatering management plan developed by a suitably qualified professional, outlining compliance with the Protection of the Environment Operations Act 1997 and ANZECC Water Quality Guidelines. The management plan must include (but is not limited to) the following:

- i) Dewatering procedures (including volume of water proposed to be discharged to ensure no erosion or scouring of the stormwater infrastructure)
- ii) Monitoring procedures
- iii) Method and frequency of sampling
- iv) Method of reporting

Testing of water samples must be analysed by a NATA accredited laboratory and must comply with the ANZECC Water Quality Guidelines and Protection of the Environment Operations Act 1997. Further approval from the NSW Department of Primary Industries may be required for dewatering operations.

Reason: To ensure compliance with legislation and to protect the surrounding natural environment.

ANS05

All roof mounted services are to be located to be grouped together in a central area and screened from view. Plans demonstrating compliance with this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

To reduce visibility of the service items from the locally listed parks within the vicinity.

1 (2AP03)

Consent given to build in close proximity to the allotment boundary is in no way to be construed as permission to build on or encroach over the allotment boundary. Your attention is directed to the provisions of the Dividing Fences Act 1991 which gives certain rights to adjoining owners, including use of the common boundary. In the absence of the structure standing well clear of the common boundary, it is recommended you make yourself aware of your legal position which may involve a survey to identify the allotment boundary.

Reason: To advise developers of their responsibilities and to protect the interests of adjoining owners.

2 (2BS01)

Detailed plans and specifications must be provided prior to the issue of the Construction Certificate complying with the requirements of Australian Standard 4764-2004 (Design, Construction and Fit-out of a Food Premises) and Food Safety Standard 3.2.3 (Food Premises and Equipment).

Reason: To ensure compliance with legislation and to protect public health and safety.

3 (2CD01)

Pursuant to Section 97 of the Local Government Act, 1993, Council requires prior to the issue of Construction Certificate, or commencement of any excavation and demolition works, payment of a Trust Fund Deposit as per the current rates in Council's Fees and Charges. The Deposit is required as security against damage to Council property during works on the site. The applicant must bear the cost of all restoration works to Council's property damaged during the course of this development. All building work must be carried out in accordance with the provisions of the Building Code of Australia.

Note: Should Council property adjoining the site be defective e.g. cracked footpath, broken kerb etc., this should be reported in writing, or by photographic record, submitted to Council at least seven (7) days prior to the commencement of any work on site. This documentation will be used to resolve any dispute over damage to infrastructure. It is in the applicant's interest for it to be as full and detailed as possible.

Where by Council is not the Principal Certifying Authority, refund of the trust fund deposit will also be dependent upon receipt of a final Occupation Certificate by the Principal Certifying Authority and infrastructure inspection by Council.

Reason: To ensure security against possible damage to Council property.

4 (2CD02)

A Dilapidation Report is required for this development. A photographic survey of adjoining properties detailing the physical condition of those properties, both internally and externally, including walls, ceilings, roof, structural members and other such items, is to be submitted to Council and the Accredited Certifier (where Council does not issue the Construction Certificate) prior to the issue of the Construction Certificate. This survey is to be prepared by an appropriately qualified person agreed to by both the applicant and the owner of the adjoining property/ies.

All costs incurred in achieving compliance with this condition must be borne by the person entitled to act on this Consent.

If access for undertaking the dilapidation survey is denied by an adjoining owner, the applicant must demonstrate, in writing, to Council's satisfaction attempts have been made to obtain access and/or advise the affected property owner of the reason for the survey and these attempts have been unsuccessful. Written concurrence must be obtained from Council in such circumstances.

Note: This documentation is for record keeping purposes only, and may be used by an applicant or affected property owner to assist in any action required to resolve any dispute over damage to adjoining properties arising from the works. It is in the applicant's and adjoining owner's interest for it to be as full and detailed as possible.

Reason: To maintain proper records in relation to the proposed development.

5 (2CD03)

The applicant is to lodge a Hoarding Application with Council for any protective hoardings, fences and lighting which are to be provided during demolition, excavation and building works. The Hoarding Application is to be submitted to Council with the appropriate fee, prior to any works on site or prior to the issue of the Construction Certificate.

All hoardings must be in accordance with Council's Hoarding Application Form and must comply with the requirements of the Department of Industrial Relations, Construction Safety Act, the SafeWork NSW Authority and relevant Australian Standards.

Note: On corner properties, particular attention is to be given to the provision of adequate sight distances.

Reason: To ensure public safety and amenity on public land.

6 (2CD04)

Where any shoring for excavation is to be located on or is supporting Council's property, or any adjoining private property, engineering drawings and specifications certifying the shoring will be adequate for their intended purpose and must be submitted to the Council/Accredited Certifier for approval with the Construction Certificate. The documentation prepared and certified by an appropriately qualified and practicing structural engineer is to show all details, including the extent of encroachment and the method of removal and de-stressing of shoring elements. A copy of this documentation must be provided to the Council for record purposes at the time of Construction Certificate application.

Reason: To ensure the protection of existing public infrastructure and adjoining properties.

7 (2CD05)

Detailed engineering drawings of all work must be submitted for approval by the Council/Accredited Certifier prior to the release of the Construction Certificate.

Reason: To ensure the provision of public infrastructure of an appropriate quality arising from the development works to service the development.

8 (2CD08)

A Geotechnical Survey, on the stability of the subject site, is to be prepared by a suitably qualified geotechnical engineer in accordance with the guidelines contained in the current Manly Development Control Plan 2013. All recommendations of the report are to be complied with during the construction process. The report is to be submitted to the Council/Accredited Certifier prior to the issue of the Construction Certificate.

Reason: To ensure structural integrity of the works maintained.

9 (2CD09)

A Geotechnical Survey is to be prepared by a suitably qualified geotechnical engineer for the proposed excavation. The requirements for a Geotechnical Survey are contained within the Dictionary of the Manly Development Control Plan 2013. All recommendations of the survey are to be complied with during the construction process. The survey is to be submitted to the Council/Accredited Certifier prior to the issue of the Construction Certificate.

Reason: To ensure excavation is undertaken in an appropriate manner.

10 (2CD10)

The proposed structure/s are to be located clear of any existing Council drainage easement. Information regarding the location of any services within the drainage easement should be sought from Council's engineers before structural elements and their locations are finalised. A certificate from a registered surveyor is to be submitted to Council verifying the location of the structure/s after footings have been poured and before the construction of any walls.

Reason: To allow maintenance of services within the easement without affecting the building and to ensure there is no damage to public assets.

11 (2CD12)

The excavation drawing must show all proposed excavation with RLs existing and proposed. The excavation drawing must include rainwater tanks and pool plant locations and showing proposed depths, and comply with the other conditions of this consent. This information must also be included on architectural drawings. The excavation drawing and other details required by this condition is to accompany the drawings lodged with the Construction Certificate.

Reason: To ensure all excavation complies with this consent.

12 (2CD13)

All plumbing and drainage, including sewerage drainage stacks, ventilation stacks and water service pipes are to be concealed within the building. Plumbing other than stormwater downpipes must not be attached to the external surfaces of the building.

13 (2DS01)

A detailed stormwater management plan is to be prepared to fully comply with Council's Specification for On-site Stormwater Management 2003 and Specification for Stormwater Drainage 2003 and must be submitted to Council prior to issue of the Construction Certificate. The stormwater management plan and designs are to be prepared by a suitably qualified engineer with experience in hydrology and hydraulics.

Reason: To ensure appropriate provision is made for the disposal and management of stormwater generated by the development, and to ensure that infrastructure reverting to Council's care and control is of an acceptable standard.

14 (2DS02)

A Stormwater Management Plan (SWMP) in line with Council's stormwater management guidelines and signed off by a practising Chartered Professional Engineer on the National Professional Engineer's Register (NPER) at Engineers Australia is to be submitted to the Council/Accredited Certifier, prior to issue of the Construction Certificate. The SWMP is to include but is not limited to the following:

- Increase in the impervious area (m²)
- Impervious percentage (%) post development

- Demonstration of no-adverse flooding issues to the downstream and upstream properties
- Peak flow rate to street drainage system in a 1:100 Average Recurrence Interval (ARI) flood event
- Connection details and location of the outlet drainage pipe, if applicable.
- If it is an absorption trench zone (Zone 2 as per Storm Water Management guidelines), then the detail calculations along with the soil report to be submitted for review by demonstrating no-adverse drainage issues due to this development.
- Details of the Chartered Engineer including full name, signature and registration number is required.

Reason: To ensure appropriate provision is made for the disposal and management of stormwater generated by the development, and to ensure public infrastructure in Council's care and control is not overloaded.

15 (2DS04)

The basement car parking level is to be adequately protected from flooding. Details are to be submitted to the Council/Accredited Certifier prior to the issue of the Construction Certificate.

Reason: To prevent property damage and ensure adequate provision is made for the discharge of stormwater from the excavated parts of the site.

16 (2DS05)

Pump systems will only be permitted for the drainage of seepage waters from basement areas. In this case, pump systems should be inspected and serviced regularly. Hydraulic analyses carried out by suitable qualified hydraulic engineer, confirming suitability of pumps should be submitted to Council.

Reason: To ensure adequate provision is made for stormwater drainage from the site in a proper manner which protects adjoining properties.

17 (2DS06)

All balconies (above 2 storeys) are to be graded and drained to an internally concealed drainage system.

Reason: To ensure adequate provision is made for stormwater drainage from the balconies.

18 (2DS07)

Detailed plans and specifications of the design of the rainwater tanks must be provided prior to the issue of the Construction Certificate complying with the requirements:-

- Australian/New Zealand Standard AS/NZS 3500:2003,
- NSW Code of Practice Plumbing and Drainage, 2006 produced by Committee on Uniformity of Plumbing and Drainage Regulations in NSW (CUPDR).
- Council's rainwater tank policy.

Reason: To protect public health and amenity.

19 (2FP02)

Detailed drawings and specifications of all works (including but not limited to structures, road works, driveway crossings, footpaths and stormwater drainage) within existing roads, must be submitted to and approved by Council under the Roads Act 1993, before the issue of any Construction Certificate. Specific works include:

- 1) Full width vehicular crossings having a maximum width, at the back of layback, and in accordance with the current policy of Council and Specifications for the construction of vehicle crossings; and
- 2) Longitudinal sections for both sides of the vehicular crossing and driveway commencing at the centre line of the road carriageway must be provided for assessment. Gradients and transitions must be in accordance with Australian Standard AS 2890.1 – 2004, Part 1 – Off-Street Car Parking. The driveway profile submitted to Council must be to scale at 1:25 (for template checking purposes) and contain all relevant details: reduced levels, proposed grades and distances.

Driveway to be designed to provide for existing or future footpaths across driveway, in accordance with Council's Specification for Civil Infrastructure Works, Developments & Subdivisions 2003 and Australian Standard AS 1428.1:2001 - Design for access and mobility.

Reason: To facilitate suitable vehicular access to private sites.

20 (2FP03)

No portion of the proposed building or works, as approved within the subject site, are to encroach upon any road reserve or other public land except as may be permitted by the Local Government Act 1993. This includes the opening and closing of gates and doors which must open and close within the subject site.

Reason: To ensure structures are contained within the site.

21 (2FP04)

The pedestrian footpaths and pavements in the streets surrounding the proposed development are to be constructed as per Manly Council Paving Design Guidelines as amended. The design details are to be submitted with the Construction Certificate application for approval by Council prior to the issue of the Construction Certificate.

Reason: To ensure appropriate quality of public infrastructure arising from the development works.

22 (2HT07)

A schedule of external colours is to be submitted to Council's satisfaction prior to the issue of Construction Certificate. The external colour schemes of new buildings are to be in keeping with the original character of the heritage buildings on the site. On the heritage buildings the external colour scheme for surfaces intended for painting is to be based, where possible, on physical and documentary evidence in keeping with the architectural style and period of the buildings.

Reason: To ensure the proposed colour scheme is appropriate to the type and style of the building and the surrounding area

23 (2MS01)

Where construction or excavation activity requires the disturbance of the soil surface and existing vegetation, details including drawings and specifications must be submitted to Council accompanying the Construction Certificate, which provide adequate measures for erosion and sediment control. As a minimum, control techniques are to be in accordance with Manly Council Guidelines on Erosion and Sediment Control, or a suitable and effective alternative method. The Sediment Control Plan must incorporate and disclose:

- 1) all details of drainage to protect and drain the site during the construction processes,
- 2) all sediment control devices, barriers and the like,
- 3) sedimentation tanks, ponds or the like,
- 4) covering materials and methods, and
- 5) a schedule and programme of the sequence of the sediment and erosion control works or devices to be installed and maintained.

Details from an appropriately qualified person showing these design requirements have been met must be submitted with the Construction Certificate and approved by the Council/Accredited Certifier prior to issuing of the Construction Certificate.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

24 (2NL01)

Details are to be submitted to the Council/Accredited Certifier indicating the method of sound attenuation and/or acoustic treatments for all roof terraces, decks and balconies in compliance with the Building Code of Australia, prior to issue of the Construction Certificate.

Reason: To protect the acoustic amenity of neighbouring properties and the public.

25 (2NL02)

Any air conditioning unit on the site must be installed and operated at all times so as not to cause "Offensive Noise" as defined by the Protection of the Environment Operations Act 1997. Domestic air conditioners must not be audible in nearby dwellings between 10:00pm to 7:00am on Monday to Saturday and 10:00pm to 8:00am on Sundays and Public Holidays.

Details of the acoustic measures to be employed to achieve compliance with this condition must be prior to the issue of the Construction Certificate.

Reason: To ensure compliance with legislation and to protect public health and safety.

26 (2NL03)

Details of the proposed mechanical exhaust systems, detailing compliance with the relevant requirements of Clause F4.12 of the Building Code of Australia and Australian Standard 1668 Parts 1 and 2 are to be submitted to Council or the Principal Certifying Authority for approval prior to the issue of a Construction Certificate.

Reason: To ensure compliance with legislation and to protect public health and safety.

27 (2NL04)

Prior to the issue of the Construction Certificate, a Noise and Vibration Management Plan is to be prepared by a suitably qualified person addressing the likely noise and vibration from demolition, excavation and construction of the proposed development and provided to Council or the Principal Certifying Authority.

The Plan is to identify amelioration measures to ensure the noise and vibration levels will be compliance with the relevant legislation and Australian Standards. The report that itemises equipment to be used for excavation works. The Plan shall address, but not limited to, the following matters:

- Identification of activities carried out and associated noise sources
- Identification of potentially affected sensitive receivers, including residences, churches, commercial premises, schools and properties containing noise sensitive equipment
- Determination of appropriate noise and vibration objectives for each identified sensitive receiver
- Noise and vibration monitoring, reporting and response procedures
- Assessment of potential noise and vibration from the proposed demolition, excavation and construction activities, including noise from construction vehicles
- Description of specific mitigation treatments, management methods and procedures to be implemented to control noise and vibration during construction
- Construction timetabling to minimise noise impacts including time and duration restrictions, respite periods and frequency
- Procedures for notifying residents of construction activities likely to affect their amenity through noise and vibration
- Contingency plans to be implemented in the event of non-compliances and/or noise complaints. A register should be kept of complaints received, and the action taken to remediate the issue.

Reason: To protect acoustic amenity of surrounding properties and the public.

28 (2PT01)

The driveway/access ramp grades, access and car parking facilities must comply with the Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking.

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicles.

29 (2PT02)

All driveways, car parking areas and pedestrian paths are to be suitably surfaced. Details of the treatment to these areas are to be submitted to the Council/Accredited Certifier prior to issue of the Construction Certificate.

Reason: To provide suitable stormwater disposal and to prevent soil erosion and runoff.

30 (2PT03)

The dimensions of car parking bays and aisle widths in the car park are to comply with Australian/New Zealand Standard for Off-Street Parking AS/NZS 2890.1-2004.

Reason: To ensure compliance with this consent and Australian Standards relating to manoeuvring, access and parking of vehicles.

31 (2US01)

A Section 94 contribution is to be paid for the provision of or increase the demand for public amenities and public services as a consequence of the development in the area. The total contribution for this development of construction of a mixed-use development and alterations to the existing Auckland Garage building, comprising a registered club at ground level and residential accommodation above, basement carparking, associated landscaping and strata subdivision is **\$638,875**, being \$20,000 per additional dwelling (\$760,000), minus \$121,125 contribution credit paid against Development Consent 149/2008 (to be surrendered as per ANS01). This contribution shall be paid to Council prior to the release of the Construction Certificate.

Reason: To enable the provision of public amenities and services required/anticipated as a consequence of increased demand resulting from the development.

32 (2WM02)

A Waste Management Plan is to be submitted with the application prior to a Construction Certificate being issued in accordance with the Manly Development Control Plan 2013.

The plan should detail the type and estimate the amount of demolition and construction waste and nominate how these materials will be sorted and dealt with. Weight dockets and receipts must be kept as evidence of approved methods of disposal and recycling. All demolition and excess construction materials are to be recycled where ever practicable. It should include consideration of the facilities required for the ongoing operation of the premises' recycling and waste management services after occupation. A template is available from the Manly Council website.

Reason: To plan for waste minimisation, recycling of building waste and on-going waste management.

33 (2WM03)

Garbage rooms or grease arrester rooms must be constructed of solid material: cement rendered and steel trowelled to a smooth even surface. The door to the garbage room is to be designed and constructed to ensure the room is vermin proof and can be opened from the inside at all times. The garbage room is to be ventilated to the external air by natural ventilation or an approved air handling exhaust system.

Reason: To keep garbage rooms in a clean and sanitary condition to protect public health.

34 (2WM04)

The building must include not less than two independently designated areas or garbage rooms for commercial and for residential occupants; to keep commercial waste and recycling separate to residential waste and recycling.

Reason: To ensure the appropriate separation and collection of waste generated by commercial and residential activities.

35 (2WM05)

All Multi Unit Dwellings (MUDs) must locate the waste storage and recycling area with convenient access to Council's usual collection point.

To assist the servicing of a Council provided bins. Council allocates a 240L general waste bin, a 240L paper recycling bin and a 240L co-mingled recycling bin to be shared by every 4 residential dwellings. Provision for an additional 240L vegetation bin should be included.

The storage area for MUDs of 17 or more dwellings must be accessible to Council Garbage Collectors unless bins requiring collection are normally be presented at kerbside. For residential MUDs with 16 or fewer dwellings, kerbside collection is usually required. Refer to Manly Development Control Plan 2013.

Reason: To ensure Multi Unit Dwelling developments allow sufficient space for waste bins.

36 (2WM06)

All Multi Unit Dwellings must provide a location for dry recycling systems (i.e. recycling of paper and recyclable containers) and services. Manly Council provides recycling services to all residential dwellings.

Reason: To provide of dry recycling systems as required by the Department of Environment and Climate Change (DECC).

CONDITIONS TO BE SATISFIED PRIOR TO COMMENCEMENT

37 (3CD01)

Building work, demolition or excavation must not be carried out until a Construction Certificate has been issued.

Reason: To ensure compliance with statutory provisions.

38 (3CD02)

Demolition must be carried out by a registered demolition contractor. Documentary evidence of registration must be submitted to Council prior to the commencement of demolition work.

Reason: To ensure demolition is carried out in an appropriate manner that is non-disruptive to the locality and the public.

39 (3CD03)

An adequate security fence is to be erected around the perimeter of the site prior to commencement of any excavation or construction works, and this fence is to be maintained in a state of good repair and condition until completion of the building project.

Reason: To protect the public interest and safety.

40 (3CD04)

The hoarding be in place prior to the commencement of works on the site. Trees which are affected by the hoarding and located outside the boundaries of the allotment are not to be cut, trimmed or removed without the prior approval of Council. The hoarding be removed immediately at the applicant's expense, if any of these conditions relating to hoardings are not fully complied with.

Reason: To ensure public safety and amenity on public land.

41 (3FP01)

The applicant must complete an application form and pay applicable fees for an application to Council for the construction of a Vehicular Crossing, for the design, specification and inspection by Council. Applications are to be made a minimum of two (2) working days prior to commencement of proposed works on Council's property.

Reason: To provide suitable vehicular access to private sites, without disruption to pedestrian and vehicular traffic.

42 (3PT01)

In accordance with the Roads Act 1993, written consent from Council must be obtained and must be in hand prior to any track equipped plant being taken in or onto any roadway, kerb & gutter, footway, nature strip, or other property under Council's control.

Reason: To ensure appropriate protection of public infrastructure and facilitate access for public and vehicular traffic.

43 (3PT02)

Applications for a construction zone on a local road require 28 days' notice to Council indicating location and length. All construction zones require the approval of the Manly Traffic Committee.

Reason: To ensure Council and the Traffic Committee have sufficient time and information to assess the traffic and access implications of a proposed construction zone and to develop appropriate responses to those implications.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND CONSTRUCTION

ANS06

Conservation measures within the Conservation Management Plan are to be adhered to during demolition, construction and ongoing operation of the proposed development.

Reason: To ensure compliance with the Conservation Management Plan.

44 (4AP02)

A copy of all stamped approved drawings, specifications and documents (including the Construction Certificate if required for the work incorporating certification of conditions of approval) must be kept on site at all times so as to be readily available for perusal by any officer of Council or the Principal Certifying Authority.

Reason: To ensure the form of the development undertaken is in accordance with the determination of Council, public information and to ensure ongoing compliance.

45 (4BS01)

The construction and fit-out of the food premises must comply with the following:-

- Food Act 2003,
- Food Regulations 2004,
- Australian Standard AS 4674-2004: Construction and fit out of food premises,
- Australia and New Zealand Food Standards Code 3.2.3: Food Premises and Equipment.

Reason: To ensure compliance with legislation and to protect public health and safety.

46 (4CD01)

All of the following are to be satisfied/complied with during demolition, construction and any other site works:

- 1) All demolition is to be carried out in accordance with Australian Standard AS 2601-2001.
- 2) Demolition must be carried out by a registered demolition contractor.
- 3) A single entrance is permitted to service the site for demolition and construction. The footway and nature strip at the service entrance must be planked out.
- 4) No blasting is to be carried out at any time during construction of the building.
- 5) Care must be taken during demolition/ excavation/ building/ construction to prevent any damage to adjoining buildings.
- 6) Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.
- 7) Any demolition and excess construction materials are to be recycled wherever practicable.
- 8) The disposal of construction and demolition waste must be in accordance with the requirements of the Protection of the Environment Operations Act 1997.
- 9) All waste on the site is to be stored, handled and disposed of in such a manner as to not create air pollution (including odour), offensive noise or pollution of land and/or water as defined by the Protection of the Environment Operations Act 1997. All excavated material should be removed from the site in an approved manner and be disposed of lawfully to a tip or other authorised disposal area.
- 10) All waste must be contained entirely within the site.
- 11) Section 143 of the Protection of the Environment Operations Act 1997 requires waste to be transported to a place which can lawfully accept it. All non-recyclable demolition materials are to be disposed of at an approved waste disposal depot in accordance with legislation.
- 12) All materials on site or being delivered to the site are to generally be contained within the site. The requirements of the Protection of the Environment Operations Act 1997 must be complied with when placing/stockpiling loose material, disposing of concrete waste, or other activities likely to pollute drains or water courses.
- 13) Details as to the method and location of disposal of demolition materials (weight dockets, receipts, etc.) should be kept on site as evidence of approved methods of disposal or recycling.
- 14) Any materials stored on site must be stored out of view or in such a manner so as not to cause unsightliness when viewed from nearby lands or roadways.

- 15) Public footways and roadways adjacent to the site must be maintained and cleared of obstructions during construction. No building materials, waste containers or skips may be stored on the road reserve or footpath without prior separate approval from Council, including payment of relevant fees.
- 16) Building operations such as brick-cutting, washing tools or paint brushes, and mixing mortar not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
- 17) All site waters during excavation and construction must be contained on site in an approved manner to avoid pollutants entering into waterways or Council's stormwater drainage system.
- 18) Any work must not prohibit or divert any natural overland flow of water.

Reason: To ensure that demolition, building and any other site works are undertaken in accordance with relevant legislation and policy and in a manner which will be non-disruptive to the local area.

47 (4CD02)

In order to maintain the amenity of adjoining properties, audible site works must be restricted to between 7.00am and 6.00pm, Monday to Friday and 7.00am to 1.00pm Saturday (including works undertaken by external contractors). No site works can be undertaken on Sundays or public holidays. Unless otherwise approved within a Construction Traffic Management Plan, construction vehicles, machinery, goods or materials must not be delivered to the site outside the approved hours of site works.

Reason: To prevent disturbance to the surrounding community.

48 (4CD03)

Toilet facilities are to be provided at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 person or part of 20 persons employed at the site, by effecting either a permanent or temporary connection to the Sydney Water's sewerage system or by approved closets.

Reason: To maintain sanitary conditions on building sites.

49 (4CD04)

All hoardings must be lit between the hours of sunset and sunrise. Lights are to be erected at intervals of not greater than 5.0 metres for the length of the hoarding. The applicant must keep the hoarding presentable to the public for the whole of the time it is erected. There must be no catch points or protrusions likely to cause injury or damage to the public from the hoarding. The hoarding must be constructed of demountable timber frame sections lined with a smooth face material, and painted with an approved white paint which will not wash or rub off.

Reason: To ensure public safety and amenity on public land.

50 (4CD05)

Retaining walls being constructed in conjunction with excavations must be in accordance with structural engineer's details. Certification by a suitably qualified structural engineer that the constructed works comply with the structural detail must be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

Reason: To ensure the structural adequacy of the retaining walls.

51 (4CD06)

All construction works must be strictly in accordance with the Reduced Levels (RLs) as shown on the approved drawings. A copy of approved drawings should be kept at site. Certification from a registered surveyor is to be submitted to the Principal Certifying Authority during construction to confirm floor and finished ridge levels.

Reason: To ensure compliance with the consent.

52 (4CD07)

Anyone who removes, repairs or disturbs bonded or a friable asbestos material must hold a current removal licence from SafeWork NSW. Before starting work, a work site-specific permit approving each asbestos project must be obtained from SafeWork NSW. A permit will not be granted without a current SafeWork licence.

All removal, repair or disturbance of or to asbestos material must comply with the following:

- The Work Health and Safety Act 2011.
- The Work Health and Safety Regulation 2011.
- How to Safely Remove Asbestos Code of Practice – SafeWork NSW.

The owner or occupier of the premises must consult an appropriately qualified and Australian Institute of Occupational Hygienists registered professional to undertake an assessment of the site to determine the potential for contamination. The owner or occupier must develop a management plan and be issued with Clearance Certificate before the commencement of any work.

Reason: To ensure the health of site workers and the public.

53 (4DS01)

A suitable sub-surface drainage system is to be provided adjacent to all excavated areas and such drains being connected to an approved disposal system. The details of this drainage system should be shown in a plan and submitted to Council/Accredited Certifier prior to issue of the Construction Certificate.

Reason: To prevent uncontrolled seepage entering excavated areas.

54 (4DS02)

Any de-watering from the excavation or construction site must comply with the Protection of the Environment Operations Act 1997 and the following:

- 1) Ground water or other water to be pumped from the site into Council's stormwater system must be sampled and analysed by a NATA accredited laboratory or Manly Council for compliance with ANZECC Water Quality Guidelines, and
- 2) If tested by NATA accredited laboratory, the certificate of analysis issued by the laboratory must be forwarded to Council as the appropriate regulatory authority under the Protection of the Environment Operations Act 1997, prior to the commencement of de-watering activities; and
- 3) Council will grant approval to commence site de-watering to the stormwater based on the water quality results received, and
- 4) It is the responsibility of the applicant to ensure during de-watering activities, the capacity of the stormwater system is not exceeded, there are no issues associated with erosion or scouring due to the volume of water pumped; and turbidity readings must not at any time exceed the ANZECC recommended 50ppm (parts per million) for receiving waters.

Reason: To ensure compliance with legislation and to protect the surrounding natural environment.

55 (4DS03)

Rainwater tanks must be installed on residential properties by a suitably qualified and licensed plumber and in accordance with the following:

- Australian/New Zealand Standard AS/NZS 3500:2003,
- NSW Code of Practice Plumbing and Drainage, 2006 produced by Committee on Uniformity of Plumbing and Drainage Regulations in NSW (CUPDR).
- Council's rainwater tank policy

Reason: To protect public health and amenity.

56 (4FP01)

The existing footpath level and grade at the street alignment of the property must be maintained.

Reason: To ensure appropriate access and infrastructure protection.

57 (4HT01)

The proposed works are to be carried out in a manner which minimises any demolition, alteration, new penetrations/fixing or irreversible damage to the significant fabric of the existing buildings which are listed as heritage items in Schedule 5 – Environmental Heritage of the Manly Local Environmental Plan 2013. Particular care must be taken to minimise damage to the significant fabric of the building during the carrying out of the internal fit out and any electrical or plumbing works.

Reason: To ensure the heritage significance of the site is not adversely affected and best practice for heritage conservation is undertaken.

58 (4HT04)

Should any potentially historic relics be discovered on the site during excavation, all excavation or disturbance to the area is to stop immediately and the Heritage Division of the NSW Department of Environment and Heritage should be informed in accordance with Section 146 of the Heritage Act 1977. “Relics” are any deposit, artefact, object or material evidence that relates to the settlement of the area that comprises New South Wales, not being Aboriginal settlement, and are of State or local heritage significance.

Should any potentially significant Aboriginal material be discovered on the site, all excavation or disturbance of the area is to stop immediately and the Heritage Division of the NSW Department of Environment and Heritage is to be informed in accordance with Section 91 of the National Parks and Wildlife Act 1974.

Reason: To ensure the proper management and preservation of potentially significant archaeological material.

59 (4HT07)

Alterations to, and demolition of, the existing building shall be limited to that documented on the approved plans (by way of notation) or conditioned in this consent. No approval is given or implied for removal and/or rebuilding of any portion of the existing building which is shown to be retained. Should any portion of the existing building which is indicated on the approved plans to be retained, be damaged for whatever reason, all the works in the area of this damaged portion are to cease and written notification given to Council. No work is to resume until the written approval of Council is obtained.

Reason: To ensure that all matters relating to significant fabric and spaces are resolved using best practice for heritage conservation.

60 (4HT08)

Should any concealed building remnants or architectural features, not previously noted in the DA documentation, be discovered during demolition or building works, all works are to cease immediately and Council’s Heritage Advisor is to be contacted for advice.

Reason: To ensure the protection and conservation of Manly’s significant heritage resources.

61 (4MS02)

In order to ensure compliance with approved drawings, a Survey Certificate, to Australian Height Datum, must be prepared by a registered surveyor as follows:

- a) at the completion of the first structural floor level indicating the level of that floor and the relationship of the building to the boundaries, and
- b) at the completed height of the building, prior to the placement of concrete in form work, or the laying of roofing materials, and
- c) at completion, the relationship of the building, and any projections thereto, to the boundaries.

Progress certifications in response to points (a) through (c) must be provided to the Principal Certifying Authority at the time of carrying out relevant progress inspections. Under no circumstances will work be allowed to proceed should such survey information be unavailable or reveal discrepancies between the approved drawings and the proposed works.

Reason: To ensure compliance with the development consent.

62 (4MS03)

Each level of the building, at completion of construction of the external walls, is to be certified by a registered surveyor as complying with floor area calculations, with a certificate from the registered surveyor being submitted to the Principal Certifying Authority.

Reason: To ensure compliance with the development consent.

63 (4MS04)

An approved Erosion and Sediment Management plan is to be implemented from the commencement of works and maintained until completion of the development.

The design and controls addressed in the Sediment and erosion management plan must comply with the criteria identified in:

- Manly Development Control Plan 2013, Amendment 8, and
- Manly Councils Guidelines for Sediment and Erosion Controls on building sites, 2005, and
- The document "Managing Urban Stormwater: Soils and Construction" Volume 1, 2004.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

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

ANS07

A plan of management for the operation of the registered club must be submitted to the Certifying Authority for approval prior to issue of an Occupation Certificate. The ongoing operation of the restaurant must be in accordance with the approved Plan of Management.

The Plan of Management must include, but not be limited to:

- Measures implemented to minimise noise impacts from patrons of the registered club and entertainment provided on the premises, on surrounding residential premises
- Operational procedures of the registered club
- Waste management procedures including disposal of glass waste
- Security arrangements
- Method of recording and actioning complaints received directly from affected residents
- The responsible service of alcohol

Reason: This condition has been applied to maintain a reasonable level of amenity to the area.

ANS08

An Acoustic Compliance Report, prepared by an accredited acoustical consultant, must be submitted certifying noise levels emitted from the mechanical plant situated on the premises does not exceed 5dBA above the background level in any Octave Band Centre Frequency (31.5Hz-8kHz inclusive), measured at the boundary of the premises. Any recommendations made by the consultant must be implemented prior to issuing the Occupation Certificate in order to achieve compliance with noted conditions of this consent.

Note: This method of measurement of sound must be carried out in accordance with Australian Standard AS 1055.1-1997.

Reason: To ensure compliance with legislation and to protect public health and amenity.

ANS09

Prior to the issue of the Occupation Certificate, a carpark operational management plan is to be submitted to the satisfaction of the Certifying Authority.

Reason: To ensure that use of stacked parking, visitor parking spaces and residential spaces and ongoing maintenance of car stackers and traffic signals has been appropriately considered.

ANS10

Prior to the issue of the Occupation Certificate, the installer of the traffic signals certify the traffic signals within the carpark as operational.

Reason: To provide for safe carpark operation.

ANS11

Prior to the issue of the Occupation Certificate, the installer of the car stackers provide certification as to the suitability of the car stackers for operation and of the fitness for use of all car stacker spaces.

Reason: To provide for safe carpark operation.

ANS12

All visitor parking spaces are to be clearly marked for "RESIDENTIAL VISITOR" use.

Reason: To provide for clear carpark operation.

64 (5BS02)

Prior to the issue of the Occupation Certificate, the proprietor of the food business must notify their business operations to council. If the food business is licensed business (such as a butcher shop, dairy producer, or seafood processor) a license application with the NSW Food Authority must be lodged.

Reason: To ensure compliance with legislation and the Australia and New Zealand Food Standards Code.

65 (5CD01)

On completion of the works and prior to the issue of a final Occupation Certificate, a certificate is to be prepared stating that no damage has resulted to adjoining premises, and is to be provided to Council and the Principal Certifying Authority.

Alternatively, if damage is identified which is considered to require rectification, the damage is to be rectified or a satisfactory agreement for rectification of the damage is to be made with the affected person/s as soon as possible and prior to the issue of a final Occupation Certificate.

Reason: To ensure adjoining owners' property rights are protected.

66 (5FP01)

All surplus vehicular crossings and/or kerb laybacks must be removed and the kerb and nature strip reinstated prior to issue of the Occupation Certificate.

Reason: To provide on-street parking, suitable vehicular access to private sites, and infrastructure protection.

67 (5MS01)

At the completion of the installation of the mechanical exhaust ventilation system, a certificate from a practising mechanical engineer shall be submitted to Council or the Principal Certifying Authority prior to the issue of the Occupation Certificate indicating compliance with Australian Standard AS 1668.

Reason: To ensure the mechanical exhaust ventilation system complies with Australian Standard AS1668.

68 (5WM01)

The applicant must contact Sydney Water (Tel.- 131110) to determine whether a Trade Waste Permit is required before discharging any trade waste to the sewerage system.

Reason: To comply with legislation.

69 (5WM02)

Prior to issue of an Occupation Certificate, the owner must provide evidence of a contract with a licensed contractor for the removal of all trade waste.

Reason: Responsible disposal management of trade waste.

70 (5WM03)

The premises must have adequate holding facilities for waste oil to meet Australian Standards for bunding and provide evidence of a current contract for the waste oil's recycling to the Principal Certifying Authority prior to the issuing of the Occupation Certificate.

Reason: To ensure responsible disposal of waste oil.

ONGOING CONDITIONS RELATING TO THE OPERATION OF THE PREMISES OF DEVELOPMENT

ANS13

Parking for 71 cars and 25 bicycles shall not be reduced without prior consent of Council.

Reason: To ensure adequate parking is maintained on the site.

ANS14

The premises must comply with the following:

- (a) The LA10* noise level emitted from the premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz-8kHz inclusive) by more than 5dB between 7:00am and 12 midnight at the boundary of the property
- (b) The LA10* noise level emitted from the premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz-8kHz inclusive) between 12 midnight and 7:00am at the boundary of the property
- (c) Notwithstanding compliance with the above, the noise level from the premises shall not be audible within any habitable room in any residential premises between the hours of 12 midnight and 7:00am
- (d) The LA10 noise level emitted from the premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz-8kHz inclusive) by more than 3dB when assessed indoors at any occupied commercial premises whilst that premises in in operation

*(for the purposes of this condition, the LA10 can be taken as the average maximum deflection of the noise emission from the premises).

Reason: To protect the acoustic amenity of neighbouring properties

ANS15

Within twenty-eight (28) days from the issue of the Occupation Certificate, a report prepared by an accredited acoustic consultant must be submitted to Council assessing compliance with noted noise conditions of this consent. Any recommendations made by the consultant must be implemented in order to achieve compliance with this consent.

Reason: To protect the acoustic amenity of neighbouring properties

ANS16

Delivery and service vehicles accessing the site be limited to Small Rigid Vehicles and that such vehicles exit the site in a forwards direction.

Reason: To prevent blocking of footpath and minimise impacts on traffic and parking)

ANS17

The hours of operation of the registered club premises (i.e. hours open for business) must not exceed the following, without the prior approval of Council:

- Indoors: Monday to Wednesday: 10.30 am to 11.00 pm, Thursday to Saturday: 10.30 am to 12 midnight and Sunday: 10.30 am to 10.00 pm
- Outdoors: Monday to Saturday: 10.30 am to 10.00 pm and Sunday: 10.30 am to 9.00 pm

Reason: To ensure amenity of the surrounding locality is maintained and hours of operation are consistent with those in surrounding locality.

71 (6AQ01)

The use of the premises must not give rise to air impurities in contravention of the Protection of the Environment Operations Act 1997 and must be controlled in accordance with the requirements of this Act.

Reason: To ensure compliance with legislation and to protect public health and amenity.

72 (6BS02)

The ongoing operation and fit out of the premises must be maintained in accordance with the following requirements:

- Food Act 2003
- Food Regulations 2004
- Australian Standard AS4674-2004: Construction and fit out of food premises
- Australia and New Zealand Food Standards Code 3.2.3: Food Premises and Equipment
- Australia and New Zealand Food Standards Code 3.2.2: Food Safety Practices and General Requirements

Reason: To ensure compliance with legislation and to protect public health and safety.

73 (6DS01)

The ongoing use and operation of the rainwater tank(s) must be maintained in accordance with:

- Sydney Water Guidelines for Rainwater Tanks on Residential Properties, 2003.
- Australian Government EnHealth Council publication Guidance on the use of Rainwater Tanks, 2004.

Reason: To protect public health and amenity.

74 (6LP03)

Landscaping is to be maintained in accordance with the approved Landscaping Drawing.

Reason: This is to ensure that landscaping is maintained appropriately.

75 (6MS02)

No person shall use or occupy the building or alteration which is the subject of this approval without the prior issue of an Occupation Certificate.

Reason: Statutory requirement, Environmental Planning and Assessment Act 1979.

76 (6NL02)

All lights used to illuminate the exterior of the buildings or site must be positioned and/or fitted with cut off luminaries (baffles) so as to prevent the emission of direct light onto adjoining roadways, adjoining land, dwellings and waterways.

Reason: To protect the amenity of neighbours and limit the obtrusive effects of outdoor lighting in public places.

77 (6NL03)

The ongoing use of the premises/property must not give rise to 'offensive noise' as defined under the provisions of the Protection of the Environment Operations Act 1997.

Reason: To ensure compliance with legislation and to protect public health and amenity.

78 (6NL04)

External sound amplification equipment or loud speakers must not be used for the announcement, broadcast, playing of music (including live music) or similar purposes.

Reason: To protect the acoustic amenity of neighbouring properties and the public.

79 (6NL07)

Noise associated with any entertainment within the premises including but not limited to live music, amplified music, background acoustic music, recording, comedy, dance, artistic expression or otherwise must not be audible within any residential habitable room at any time.

Reason: To minimise noise disturbance to neighbouring residential properties.

80 (6NL09)

Patron noise must be controlled so as not to disturb or intrude upon the surrounding residential community. Noise arising from patrons located within the grounds of the premises whether indoors, in the courtyard or within any approved outdoor dining area must not be audible within any residential habitable room at any time.

Reason: To minimise noise disturbance to neighbouring residential properties.

81 (6PT01)

The visitor parking is to be accessible at all times, and a sign post erected at the vehicular entry point(s) of the development indicating the location of the visitor parking.

Reason: To ensure visitors are not forced to park on public streets when visitor parking has been provided and is available within the development.

82 (6PT03)

Loading and unloading of vehicles and delivery of goods to the land must be carried out within the site. The car parking area shown on the approved drawings must be used for vehicle parking only. Any loading or unloading of materials of potential environmental damage must be appropriately bunded with adequate spill response equipment in place to ensure nil runoff from the site.

Reason: To ensure the safety and amenity of the general public using public streets, and to ensure the protection of the environment from spillage of materials.

83 (6WM02)

Deliveries and waste collection must only occur during the following hours:

- Weekdays – 7:00am – 8:00pm
- Weekends and Public Holidays – 8:00am – 8:00pm

Reason: To minimise disruption to neighbouring properties.

84 (6WM03)

Waste bins used for commercial premises are to be left on public footpaths for the minimum time necessary for waste collection and then promptly removed. Lids should be closed to prevent littering.

Reason: To ensure waste and bins are promptly removed from public places following collection; to limit obstruction of footpaths or roads; and to minimise public amenity impacts.

85 (6WM04)

All non-recyclable waste from commercial premises must be presented for collection in a lidded receptacle. Waste receptacles are not to be stored in public spaces such as footpaths.

Reason: Public amenity and litter minimisation.

86 (6WM05)

No waste generated on site from any commercial operation is to be placed in public place bins. Commercial operators must maintain their commercial waste bins in an organised, clean and sanitary condition, preventing potential for litter from overflowing bins.

Reason: To communicate policy regarding illegal trade waste dumping in public bins; and maintenance of trade waste bins.

87 (6WM06)

Signage on the correct use of the waste management system and materials to be recycled must be posted in the communal waste storage cupboard/room or bin bay prior to receiving an occupation certificate. Signs are available from Manly Council's Customer Service.

Reason: To ensure all residents are aware of Council's waste and recycling system with regard to their dwelling.

88 (6WM10)

The operation of the premises must be conducted in a manner that does not pollute waters as defined by the Protection of the Environment Operations Act, 1997.

Reason: To ensure compliance with legislation and to protect public health and amenity.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF ANY SUBDIVISION CERTIFICATE

89 (7US02)

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained. Application must be made through an authorised Water Servicing Coordinator; for details see the Sydney Water web site www.sydneywater.com.au or telephone 13 20 92.

Following application a 'Notice of Requirements' will be forwarded detailing water and sewer extensions to be built and charges to be paid. Please make early contact with the Coordinator since building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design.

The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to release of the linen plan/occupation of the development.

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

I am aware of the Council's Code of Conduct and, in signing this report, declare that I do not have a Conflict of Interest.

Claire Downie, Assessment Planner

Date: 14 June 2017

The application is referred to the Executive Manager (SNPP report):

Rod Piggott, Manager Development Assessments

Date: 14 June 2017