

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2024/0030
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Responsible Officer:	Olivia Ramage
Land to be developed (Address):	Lot 20 DP 235980, 19 Sydney Road MANLY NSW 2095
Proposed Development:	Modification of Development Consent DA2023/1293 granted for Use of Premises as an educational establishment
Zoning:	Manly LEP2013 - Land zoned E1 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Hampic Management Pty Ltd Cinemeccanica Australia Pty Ltd
Applicant:	Michelle Bejcek

Application Lodged:	02/02/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	12/02/2024 to 26/02/2024
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

This modification proposes to amend the approved hours of operations stipulated by Condition 12 of DA2023/1293.

The proposed hours of operation are Monday to Friday - 7:00am to 10:00pm and Saturday and Sunday - 7:00am to 6:00pm.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

There are no assessment issues.

SITE DESCRIPTION

Property Description:	Lot 20 DP 235980 , 19 Sydney Road MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the southern side of Sydney Road.</p> <p>The site is regular in shape with a frontage of 12m along Sydney Road and a frontage of 12m to Market Place. The site has a surveyed area of 379.28m².</p> <p>The site is located within the E1 Local Centre zone under the MLEP 2013. The site is currently occupied by a three storey commercial building.</p> <p>The site is relatively flat.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by various businesses premises.</p>

Map:



SITE HISTORY

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

- DA 5217/1992 - Development application for Unilluminated flush wall sign. Approved 14 July 1992.
- DA 296/1995 - Development application for Strata subdivision. Approved 20 March 1997.
- DA 602/1999 - Development application for Office fit-out within existing building. Approved 30 November 1999.
- DA 220/2002 - Development application for new building fire upgrade. Approved 25 July 2002.
- DA 279/2011 - Development application for Alterations and additions - shop fitout, flood lighting and signage. Approved 29 November 2011.
- DA 39/2014 - Development application for Alterations and additions - change of use to a cafe, fitout, signage. Approved 23 April 2014.
- DA2023/1293 - Development application for Use of premises as an educational establishment. Approved 8 January 2024.
- DA2022/2199 - Development application for Demolition works and construction of shop top housing. Approved 7 February 2024.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2023/1293, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(1A) - Other Modifications	Comments
<p>A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:</p>	
<p>(a) it is satisfied that the proposed modification is of minimal environmental impact, and</p>	<p>Yes</p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <ul style="list-style-type: none"> • The proposed changes to the hours of operation are not expected to create noise nuisance or additional environmental impacts. As such, the proposed modification is of minimal environmental impact.
<p>(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and</p>	<p>The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2023/1293 for the following reasons:</p> <ul style="list-style-type: none"> • The proposal remains for the use of premises as an educational establishment with amendments to the approved hours of operation. As such, the proposed development is substantially the same.
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising</p>	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.</p>

Section 4.55(1A) - Other Modifications	Comments
of applications for modification of a development consent, and	
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	No submissions were received in relation to this application.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 2001: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 62</u> and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p>Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
<p>Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</p>	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered suitable for the proposed development.</p>
<p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>See discussion on “Notification & Submissions Received” in this report.</p>
<p>Section 4.15 (1) (e) – the public interest</p>	<p>No matters have arisen in this assessment that would justify the refusal of the application in the public interest.</p>

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 12/02/2024 to 26/02/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Environmental Health (Industrial)	<p>General Comments</p> <p>This application is seeking consent for modification to operating hours. The development is proposing to operate within the following times and days:</p> <p>Monday - Friday 7:00am - 10:00pm Saturday 7:00am - 6:00pm Sunday 7:00am - 6:00pm</p> <p>The educational facility is not proposing learning classes that are expected to create a noise nuisance and this particular location of Manly would have a high background noise activity level based on the commercial operations in this area.</p> <p>Environmental Health recommends approval subject to conditions.</p>
Strategic and Place Planning (Heritage Officer)	<p>HERITAGE COMMENTS</p> <p>Discussion of reason for referral</p> <p>The proposal has been referred to heritage as the subject property sits within the C2 - Manly Town Centre Conservation Area and is within the vicinity of a number of heritage items:</p> <p>Item I106 - Group of commercial buildings - All numbers, The Corso, Manly Item I108 - Group of commercial buildings - 41–45 The Corso, Manly Item I234 - Group of 5 commercial buildings - 39–47 Sydney Road, Manly Item I233 - Commercial and residential building - 12 Sydney Road, Manly</p> <p>Details of heritage items affected</p> <p>C2 - Manly Town Centre Conservation Area <u>Statement of significance</u> The Manly Town Centre Conservation Area (TCCA) is of local heritage significance as a reflection of the early development of Manly as a peripheral harbor and beachside village in the fledgling colony of New South Wales. This significance is enhanced by its role as a day-trip and holiday destination during those early years, continuing up to the present time, and its association with H G Smith, the original designer and developer of the TCCA as it is today.</p> <p>Item I106 - Group of commercial buildings <u>Statement of significance</u> The streetscape and its special qualities are of major significance to the state. The Corso has important historical links to the development of tourism and recreation which is still present and likely to continue. It's role as the pedestrian link between harbour and ocean, city and sea - for the tourist, is fundamental to Manly's</p>

Internal Referral Body	Comments																					
	<p>status as a resort.</p> <p><u>Physical description</u> The Corso acts as a low scale horizontal corridor which steps down from the harbour to the ocean. The atmosphere of The Corso is of a 19th century place. Its special qualities include the contrasts of horizontal (low scale architecture) and vertical (planting) dimensions, and urban and natural elements.</p> <p>Item I108 - Group of commercial buildings</p> <p><u>Statement of significance</u> The group is of major significance for its contribution to the streetscape of The Corso and as extant 19th century commercial architecture.</p> <p><u>Physical description</u> Group of (originally) five two storey brick buildings with painted stone face and mixture of slate, iron and tiled roofs. The buildings were originally constructed as a symmetrical group: the two end buildings bearing paired gabled ends over first floor with mock Tudor design in timber and render on the western end and intaglio design on the eastern. The buildings either side of the centre had triangular pediments above first floor windows and the central building has a segmental pediment of the same width containing two semi-circular windows with multi-paned glazing. The central building also has heavily ornamented pilasters at first floor level. Two (of a possible four) tall stone chimneys survive. Two halves of the eastern end buildings have been demolished and the space infilled. Ground floor shopfronts are modern.</p> <table border="1" data-bbox="528 1294 1434 1832"> <thead> <tr> <th colspan="3" data-bbox="528 1294 1434 1328">Other relevant heritage listings</th> </tr> </thead> <tbody> <tr> <td data-bbox="528 1328 858 1435">SEPP (Biodiversity and Conservation) 2021</td> <td data-bbox="858 1328 951 1435">No</td> <td data-bbox="951 1328 1434 1435"></td> </tr> <tr> <td data-bbox="528 1435 858 1507">Australian Heritage Register</td> <td data-bbox="858 1435 951 1507">No</td> <td data-bbox="951 1435 1434 1507"></td> </tr> <tr> <td data-bbox="528 1507 858 1579">NSW State Heritage Register</td> <td data-bbox="858 1507 951 1579">No</td> <td data-bbox="951 1507 1434 1579"></td> </tr> <tr> <td data-bbox="528 1579 858 1650">National Trust of Aust (NSW) Register</td> <td data-bbox="858 1579 951 1650">No</td> <td data-bbox="951 1579 1434 1650"></td> </tr> <tr> <td data-bbox="528 1650 858 1758">RAIA Register of 20th Century Buildings of Significance</td> <td data-bbox="858 1650 951 1758">No</td> <td data-bbox="951 1650 1434 1758"></td> </tr> <tr> <td data-bbox="528 1758 858 1832">Other</td> <td data-bbox="858 1758 951 1832">No</td> <td data-bbox="951 1758 1434 1832"></td> </tr> </tbody> </table> <p>Consideration of Application The proposal seeks consent to modify a Development Consent - DA2023/1293, to change Condition 12 - hours of operation. Given the application does not involve any physical modifications, the proposal is considered to not impact the heritage items in the vicinity or the HCA.</p> <p>Therefore, no objections are raised on heritage grounds and no</p>	Other relevant heritage listings			SEPP (Biodiversity and Conservation) 2021	No		Australian Heritage Register	No		NSW State Heritage Register	No		National Trust of Aust (NSW) Register	No		RAIA Register of 20th Century Buildings of Significance	No		Other	No	
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Internal Referral Body	Comments
	<p>conditions required.</p> <p><u>Consider against the provisions of CL5.10 of MLEP 2013.</u></p> <p>Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No</p> <p>Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No</p>
Traffic Engineer	<p>Proposal description: Modification of Development Consent DA2023/1293 granted for Use of Premises as an educational establishment.</p> <p>The proposal is for modifying Condition 12 of the Notice of Determination for DA2023/1293 to extend the approved operating hours for the proposed educational centre. The proposed new operating hours would be from 7:00am to 10:00pm, Monday to Friday and from 7:00am to 6:00pm, Saturday to Sunday. The original operating hours were from 8am to 1:30pm, and from 4pm to 10pm, Monday to Thursday and from 8:00 am to 1:30 pm, Friday to Sunday.</p> <p>The Plan of Management, Issue A, prepared by Archispectrum dated January 2024, and the Statement of Environmental Effects to accompany a Section 4.55 Application, prepared by Archispectrum, dated January 2024 have been reviewed by the Traffic team.</p> <p>Traffic team notes:</p> <ul style="list-style-type: none"> No changes to the previously approved number of staff are proposed. According to the Plan of Management dated January 2024, the college will employ 3 full-time and 2 part-time staff members, who may all be on-site at any one time. Further, there will only be one class occurring at any given time, and there will only be one staff member instructing the class at any one time. Other staff members may be on-site performing administrative tasks and necessary class preparation. As outlined in the email from info@fluencyhub.com.au dated 8 December 2023, the centre will have staff/teachers who all live in Manly / Northern Beaches. Any visitors to the centre would either come by bus or ferry. Staff members will be made aware of public transport availability in the locality, so as to be able to provide relevant information to students. International students, who are the primary target of the establishment, are also coming from overseas without a need or means to purchase a car. The reports, however, do not specify the number of students that are expected to use the proposed facility. Some information about the anticipated number of students is conditioned to be included in the SEE and Plan of Management reports. This will help ensure that the facility is designed and managed in a way that

Internal Referral Body	Comments
	<p>accommodates the needs and limitations of the target audience.</p> <ul style="list-style-type: none"> It is relevant to note that the proposed educational establishment is located in the CBD pedestrian-dominant environments, there is no possibility of retrofitting car parking for this centre. Further, the central location of the site supports attendance by pedestrians or bike riders to maximise public transport patronage and encourage walking and cycling. <p>Conclusion</p> <p>The modification application can be supported on traffic grounds. Some information should be included into the reports about the number of students expected to use the proposed facility. Apart from that, no new conditions are proposed with all previously imposed conditions in DA2023/1293 to remain in place.</p> <p><u>Planner Note:</u></p> <p>The recommended condition is not adequate for limiting site occupancy and is not relevant to the modified hours of operation. As such, this condition is deleted.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

There are no principal development standards relevant to this application.

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
6.2 Earthworks	Yes
6.9 Foreshore scenic protection area	Yes
6.11 Active street frontages	Yes
6.12 Essential services	Yes
6.13 Design excellence	Yes

Manly Development Control Plan

Built Form Controls

There are no built form controls relevant to this application.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.2 Heritage Considerations	Yes	Yes
4.2.5 Manly Town Centre and Surrounds	Yes	Yes
4.2.5.1 Design for Townscape	Yes	Yes
4.2.5.2 Height of Buildings: Consideration of Townscape Principles in determining exceptions to height in LEP Zone B2 in Manly Town Centre	Yes	Yes
4.2.5.4 Car Parking and Access	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.1.1 General Character	Yes	Yes
5.1.2 The Corso	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

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

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2024/0030 for Modification of Development Consent DA2023/1293 granted for Use of Premises as an educational

establishment on land at Lot 20 DP 235980, 19 Sydney Road, MANLY, subject to the conditions printed below:

Modification Summary

The development consent is modified as follows:

MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
PAN-407902	The date of this notice of determination	Modification of Development Consent DA2023/1293 granted for Use of Premises as an educational establishment Modify Condition No.12 - Hours of Operation Add Condition No.13 - Acoustic Requirements

Modified conditions

A. Modify Condition No.12 - Hours of Operation to read as follows:

The hours of operation are to be restricted to:

- Monday to Friday - 7:00am to 10:00pm
- Saturday and Sunday - 7:00am to 6:00pm

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

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

B. Add Condition No.13 - Acoustic Requirements to read as follows:

Classes cannot involve activities which generate offensive noise to neighboring residents.

Reason: To prevent a noise nuisance to any neighbouring receiver.

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

Signed

Olivia Ramage

Olivia Ramage, Planner

The application is determined on 28/02/2024, under the delegated authority of:

Adam Richardson

Adam Richardson, Manager Development Assessments