

Statement of Modification

Ground Floor Shop 11 The Corso Manly NSW 2095

Development Application (DA) DA2019/1535 (as modified by Mod2020/0194 and Mod2020/0613) was approved by Northern Beaches Council on 9 May 2020 for alterations and additions to an existing building including use as a bookstore and licensed small bar. This Section 4.55(1A) is seeking to modify Conditions numbered 22, 26, 28 and 30 of DA2019/1535 in relation to the use.

Condition 22 is Hours of Operation. The Applicant seeks an amendment to the Hours of Operation to enable a more flexible use of the premises that is in accordance with and encouraged by the NSW State Government's recent changes to liquor licensing laws for small bars that offer diverse services, that includes bookstores.

Condition 26 is Compliance with the Plan of Management. The amendment requires that operations must comply with the amended plan of management submitted with this application that incorporates amendments to Conditions 22, 28 and 30 as sought by the Applicant.

Condition 28 is Minors. The amendment to this condition is directly related to the variation sought for the Hours of Operation and the recent reforms to liquor licensing laws that now permit minors in small bars.

Condition 30 is Security. The Applicant seeks the requirement for a security guard be removed. In view of the alternative and lower risk business model being offered by the Applicant and that it is a new licensee with no compliance history, the Applicant requests that it have the opportunity to operate and assess its risk profile before a security guard is required.

This statement includes a description of the site and surrounding area, the proposed modifications, an assessment of the proposed modifications pursuant to Section 4.15 of the Environmental Planning & Assessment Act (EP&A Act) in view of the Statement of Environmental Effects submitted with DA 2019/1535 and consideration of the proposed modification against Section 4.55(1A) of the EP&A Act.

Site Analysis and Surrounding Area

The subject site is located in the suburb of Manly which is within the amalgamated Northern Beaches Local Government Area. The site is within the Manly Town Centre and forms part of the ground floor of the building known as 11 The Corso Manly. The Corso at Manly is a pedestrian thoroughfare that runs generally east west between Manly Beach and Manly Cove, from the corner of Belgrave Street, East and West Esplanade to Steyne Street parallel to Manly beach. The buildings on The Corso are identified as heritage items of local significance pursuant to Schedule 5 of the Manly Local Environmental Plan 2013 (Manly LEP), item I106.

The site is identified below.



Site and surrounding locality



Site from The Corso

The legal description of the site is Lot 1 in Deposited 216273 being known as 11 The Corso Manly NSW 2095 and it is located within Zone B2 Local Centre pursuant to the Manly Local Environmental Plan 2013. The site is rectangular in shape with a total area of 217 square metres. Frontage to The Corso is 7.24 metres and rear frontage to Market Lane is 6.615 metres. The site comprises a two storey mixed use building currently occupied as follows:

- a) Ground floor The Corso - commercial premises
- b) First floor The Corso - commercial premises
- c) Ground floor rear - commercial premises (leased)
- d) First floor rear - residential premises (leased)
- e) Second floor rear - residential premises (leased)

The site is located at the south western end of The Corso on the northern side. The Corso comprises a combination of mixed use and commercial developments that largely consist of two to three storeys. The adjoining ground floor premises to the south is known as 7-9 The Corso Manly and consists of an arcade containing a waffle shop and florist fronting The Corso and a restaurant at the rear adjoining the corner of Whistler Street and Market Lane. The adjoining ground floor premises to the north is currently used as a laundromat. Opposite the site on The Corso is Westpac Bank. Ground floor uses on The Corso primarily consist of retail sale of clothing and goods, banking, food and drink premises and larger licensed premises that are generally found in busy town centre and tourist/visitor locations with significant pedestrian activity.

Proposed Modifications

Development Application (DA) DA2019/1535 (as modified by Mod2020/0194 and Mod2020/0613) was approved by Northern Beaches Council on 9 May 2020 for alterations and additions to an existing building including use as a bookstore and licensed small bar.

Condition 22 - Hours of Operation

Condition 22 states that Hours of Operation are to be restricted to:

Bookstore

- Monday - 9.00am - 5.00pm
- Tuesday to Saturday - 9.00am - 10.00pm
- Sunday and Public Holidays - 9.00am - 10.00pm

Licensed Small Bar:

- Monday - Closed
- Tuesday to Saturday - 5.30pm - 12.00 midnight
- Sunday and Public Holidays - 5.30pm - 10.00pm

The Applicant is seeking the Hours of Operation be amended to the following:

Hours of Operation are to be restricted to:

Bookstore:

Monday - Saturday: 9.00am - 12.00 midnight

Sunday and Public Holidays: 9.00am - 10.00pm

Bar:

Monday - Saturday: 12.00pm - 12.00 midnight

Sunday and Public Holidays: 12.00pm - 10.00pm

The first amendment to the Hours of Operation is to permit the bookstore to close at the same time as the bar. The closure of the bookstore prior to closure of the bar is not feasible given both uses operate from the same space within the premises.

The second amendment is the bars trading hours be restricted to 12.00pm - 12.00am Monday to Saturday and 12.00pm - 10.00pm on Sunday/Public Holidays with a minors authorisation from 12.00pm - 9.00pm daily (6.00pm - 9.00pm only in the company of a responsible adult). As stated previously herein the NSW Statement Government recently introduced changes to liquor licensing laws for small bars. The changes were introduced to support lower risk small bar venues that offer a mix of services beyond bar services such as arts venues, bookstores and record stores. The reforms by the Government were designed and introduced to help small bars prosper as an essential part of the states 24 hour economy. The proposed changes requested by the Applicant are not only consistent with the recent legislative reforms for small bars but are actively supported by them.

There will be no detrimental acoustic impact within the site or on any surrounding site as there is no change to patronage numbers and the proposed amended hours of operation relate to trade during the day.

Condition 28 - Minors

From 6.00pm minors, unless with a responsible adult or guardian, will not be permitted on the premises and such minors on the premises at 5.30pm will be requested to leave by 6.00pm. Prior to 6.00pm minors not in the company of an adult will only be permitted at the front of the premises where books are located. Minors with a responsible adult will be permitted on the premises until 9pm and be requested at 8.30pm to leave by 9pm. The required statutory signage will be erected in a prominent location on the premises. The foregoing is subject to approval by the Independent Liquor and Gaming Authority.

Condition 30 - Security

The Applicant seeks the requirement for a security guard be removed on the following basis:

- a) independent small bars such as this are lower risk venues and offer higher staff to patron ratios allowing for closer monitoring of customer behaviour thereby enabling greater capacity to intervene to prevent intoxication and anti-social behaviour - the layout of the premises permits staff to view all patrons in the premises from one location;
- b) the premises will not be a late night venue and is offering an alternative business model beyond that further lowers its risk profile;
- c) as a new licensee with no compliance history the applicant requests, as a minimum, that it be afforded the opportunity to operate and assess the risk profile and develop an understanding of its patronage before a security guard is required.

Condition 26 - Plan of Management

To be amended to refer to the amended plan of management submitted with this application, being Mod2022/0575.

Assessment under section 4.15(1) of Environmental Planning and Assessment Act

Section 4.15(1) (a) (i) - any environmental planning instrument

Manly Local Environment Plan 2013

Clause 4.3 - Height of Buildings

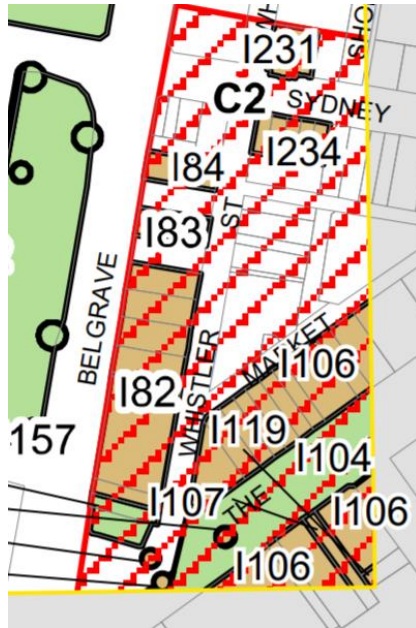
Not applicable as no change.

Clause 4.4 - Floor Space Ratio

Not applicable as no change.

Clause 5.10 - Heritage Conservation

The premises form part of the building 11 The Corso Manly. Pursuant to Part 1 of Schedule 5 of the Manly LEP 2013 the building is a heritage item under Item I106, being a group of commercial buildings - All Numbers, The Corso. Pursuant to part 2 of Schedule 5 of the Manly LEP 2013 the premises is also located within Town Centre Conservation Area marked 'C2'. The premises are located within close proximity to various other heritage items as shown in the figure below.



The proposed modification will not cause any adverse impact on the heritage nature or significance of the heritage item and also will not be detrimental to any nearby heritage items.

Clause 6.1 - Acid Sulfate Soils

Not applicable as no change.

6.9 Foreshore Scenic Protection Area

Not applicable as no change.

Clause 6.11 - Active Street Frontages

Not applicable as no change.

6.12 Essential Services

Not applicable as no change.

Clause 6.16 - Gross Floor Area in Zone B2

Not applicable as no change.

Clause 6.21 - Noise Impacts

Not applicable as no change.

Section 4.15(1)(a)(ii) - any proposed or draft environmental planning instruments

There are no known draft environmental planning instruments which affect the proposed development site.

Section 4.15(1) (a) (iii) – any development control plan

Manly Development Control Plan 2013

Clause 3.1.3

Not applicable as no change.

Clause 3.2 Heritage Considerations

Not applicable as no change

Clause 3.4.2.3 – Privacy & Security

Not applicable as no change in respect of acoustic impact.

Clause 3.4.4 – Other Nuisance

The proposed amendment to trading hours relate to trade during the day when noise levels are substantially increased in the surrounding area and there is no change to patronage numbers. Therefore, the proposed modification will not cause any adverse acoustic impact.

Clause 3.6 – Accessibility

Not applicable as no change.

Clause 3.8 – Waste Management

Not applicable as no change

Clause 4.2.4 – Car parking, Vehicular Access and loading

Not applicable as no change.

Clause 4.2.5.6 – Late Night Venues

Not applicable as no change.

Clause 4.4 – Other development

Not applicable as no change.

Clause 5.1 – Manly Town Centre

Not applicable as no change.

Section 4.15(1) (a) (iiia) - any planning agreement or draft planning agreement entered into under section 7.4

No planning agreements are relevant to this proposal.

Section 4.15(1) (a) (iv) - the regulations

The development is classified as Local Development. The proposal is viewed as sufficient to enable a proper evaluation to be carried out by Northern Beaches Council under the planning regulations

Section 4.15(b) - likely impacts of the development including environmental impacts and social and economic impacts

The modification proposed remains compatible with other commercial activities located within the Manly Town Centre and will not be a late night venue. The Applicant will have adequate harm minimisation practices in place to ensure that minors do not obtain access to liquor at any time, as such there are no undesirable socio-economic impacts that will result from the proposal.

The proposal has taken into consideration the surrounding locality of the premises which is within the Manly Town Centre area. The proposed amended hours of operation are consistent with that of nearby licensed premises hours and within the reasonable permitted hours in the Manly Town Centre area.

Section 4.15(c) - the suitability of the site for the development

Not applicable as no change.

Section 4.15(1) (d) - submissions

Not applicable.

Section 4.15(1) (e) - the public interest.

The proposal is not contrary to the public interest, as the use is appropriate for the Manly Town Centre to support trading, revitalise the area, increase the diversity of business in the Town Centre area and also pedestrian traffic. The proposal will have no significant detrimental effect relating to environmental and social or economic impacts on the locality.

Substantially the Same Development

The proposed modification is considered to be substantially the same development, having regard to the following:

1. The proposed modifications do not seek to change the use, maximum building height or gross floor area or any other physical aspect of the building of which the premises form part;
2. The proposed modifications will not increase noise emissions at the site;
3. The proposed modifications are consistent with the environmental impacts assessed under DA2019/1535 (as modified by Mod2020/0194 and Mod2020/0613).

Other than the proposed modifications referred to herein there will be no change to the original development consent.

In view of the above the consent authority may be satisfied that the development consent, as proposed to be modified, will remain substantially the same as the original development consent, with the proposed modifications being of minimal environmental impact and consistent with the approved development.

Conclusion

This Statement of Modification assesses the application having regard to the applicable planning controls. The proposal is permissible in the zone, complies with the development standards applicable to the site, has no adverse impact on the conservation area, the heritage significance of the property if any or any nearby heritage items and complies with noise emission requirements. The proposal will contribute to the social amenity of local residents and also visitors and contribute to the economy and attraction of the Manly Town Centre during both the day and evening. There are no negative environmental impacts and the development remains substantially the same.

NC Coombes & Co Solicitors

Date: 24 October 2022