

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/0294
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Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 45 SP 53211, 218 / 54 A West Esplanade MANLY NSW 2095
Proposed Development:	Use of premises as an indoor recreation facility for the purposes of a yoga/pilates studio including signage
Zoning:	Manly LEP2013 - Land zoned B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Keith Youman
Applicant:	David Moody

Application Lodged:	15/04/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	23/04/2021 to 07/05/2021
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 10,340.00
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PROPOSED DEVELOPMENT IN DETAIL

The development application seeks consent for use of an existing commercial premises as a recreation facility (indoor), internal fit out and signage, pursuant to *Manly Local Environmental Plan 2013* (MLEP 2013).

Specifically, the development involves:

- Use of the existing premise as a recreation facility (Indoor) (Yoga and Pilates Studio);
- Internal fit out;
- Signage.

The proposed operational details are as follows:

- Maximum 27 patrons;
- Hours of Operation:
 - Monday to Friday: 5:00am - 8:00pm
 - Saturday to Sunday: 6:00am - 2:00pm
- Staff
 - 2 Trainers.

Site Inspection

A site inspection conducted on 14 May 2021 revealed that proposed internal fit out works have been constructed. Council cannot grant retrospective consent under a development application, and as such these works have not been granted consent under this application. A suitable condition has been imposed as part of this recommendation to ensure this is clear as part of any consent.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 4.2.5.4 Car Parking and Access

Manly Development Control Plan - 4.4.3 Signage

SITE DESCRIPTION

Property Description:	Lot 45 SP 53211 , 218 / 54 A West Esplanade MANLY NSW 2095
Detailed Site Description:	<p>The subject site is a nine-storey mixed use development and is located on the northern side of West Esplanade, Manly.</p> <p>The site is irregular in shape with a frontage of approximately 97m along West Esplanade and a depth of 61m. The site has a surveyed area of 5412 m².</p>

The site is located within the B2 Local Centre zone and accommodates an existing mixed use development. The development incorporates commercial premises on the ground floor and residential at all floors above ground.

Detailed Description of Adjoining/Surrounding Development

The surrounding area is characterised by mixed use residential and commercial buildings. The subject site is adjacent to the West Esplanade Park and the Harbour Foreshore.

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:

CDC2020/0087- Internal alterations to existing restaurant, including construction of inter-tenancy wall to establish change of use as commercial office, retention of remainder of tenancy for restaurant - including associated fit out of restaurant & shopfront alterations.

DA194/2012 - Change of use to a restaurant with associated fit out and signage - shops 1, 2, 3 and 4. (Approved 22 February 2013).

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
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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	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for commercial purposes for an extended period of time. The proposed development retains the commercial use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>

Section 4.15 Matters for Consideration'	Comments
	Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<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>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 23/04/2021 to 07/05/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 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>Environmental Health have reviewed the provided information for the proposed Yoga/Pilates studio at 137-138, 54 West Esplanade, Manly.</p>

Internal Referral Body	Comments
	<p>The development proposal is accompanied with an plan of management and acoustic report.</p> <p>The operation hours of the proposed development: are Monday- Friday: 5:00am – 8:00pm; and Saturday & Sunday: 6:00am – 2:00pm.</p> <p>The main noise concern that doesn't appear to have been addressed in the application is the use of amplified music before 7am weekdays & Saturdays and 8am Sunday's and Public Holidays (EPA Noise Policy for Industry day time period: 7 am to 6 pm Monday to Saturday or 8 am to 6 pm on Sundays and public holidays). The applicant has advised in the management plan that the music played will be at low levels. However, in order to protect residential receptors Environmental Health recommends a condition relating to the audibility of amplified music within residential receptors in the early morning be imposed.</p> <p>Recommendation</p> <p>APPROVAL - subject to conditions</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>The unit faces on to West Esplanade, in an area mapped as Low / Medium Flood Risk Precinct. The flood affectation is due to some minor flooding in the 1% AEP event at the rear of the building, in Gilbert St.</p> <p>The proposal is for a change of use to to a Yoga/Pilates Studio, minor internal fit-out works.</p> <p>The proposal complies with the flood requirements of Council's flood related development controls.</p>
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	<p>The proposal has been referred to Heritage as the subject site is located opposite two heritage items</p> <p>I248 - Governor Phillip Monument - West Esplanade Reserve I251 - Park - West Esplanade</p>
	Details of heritage items affected
	<p>Details of the item as contained within the Manly inventory are as follows:</p> <p>Governor Philip Monument <u>Statement of significance:</u> Historic monument.</p> <p><u>Physical description:</u> Sandstone construction on the walkway of the West Esplanade, erected in 1928 by the Manly, Warringah and Pittwater Historical Society to commemorate the landing of Captain Arthur Phillip at Manly. Rock face stonework coursed, with brass plaque attached.</p>

Internal Referral Body	Comments		
	Park <u>Statement of significance:</u> Part of earliest cultural treatment of Manly landscape and provision of designed open space. High visual significance.		
	<u>Physical description:</u> Open space, beach, sandstone retaining wall, pavings, grassed surfaces, monument, structures and cultural plantings of Norfolk Island pine, Moreton Bay Figs, Port Jackson figs and Canary Island Palms. Raised planting beds, with spilt stone edging of Edwardian period characterise the eastern part of the Park. Recent paving detracts from the Edwardian character.		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	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	N/A	
	Consideration of Application		
	The proposal seeks consent for the use of an existing commercial tenancy as a gym as well as external business identification signage. The tenancy is located on the ground floor of 54-68 West Esplanade with a frontage to West Esplanade only. It is located opposite the heritage listed park and monument. Given the minor external works proposed, it being located within a recessed colonnade and the separation afforded by West Esplanade, the proposal is considered to not impact upon either heritage item or their significance.		
	Therefore Heritage raises no objections and requires no conditions.		
	Consider against the provisions of CL5.10 of MLEP.		
Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No			
Further Comments			
COMPLETED BY: Brendan Gavin, Principal Planner			

Internal Referral Body	Comments
	DATE: 17 April 2021

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for commercial purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the commercial land use.

SEPP 64 - Advertising and Signage

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

The objectives of the policy aim to ensure that the proposed signage is compatible with the desired amenity and visual character of the locality, provides effective communication and is of high quality having regards to both design and finishes.

In accordance with the provisions stipulated under Schedule 1 of SEPP 64, the following assessment is provided:

The signage is not overbearing and assists with wayfinding.

Matters for Consideration	Comment	Complies
1. Character of the area Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	The proposed signage is compatible with the existing and desired future character of this particular areas of Manly	YES
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	The overall design, colours and size of the signage is consistent with other outdoor advertising in the area.	YES
2. Special areas Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	The subject site is not located within an environmentally sensitive area, heritage area or the like. The signage is to not be illuminated and therefore not considered to detract on the amenity or visual quality of the area.	YES
3. Views and vistas Does the proposal obscure or compromise important views?	The proposed signage will not obscure or compromise views.	YES
Does the proposal dominate the skyline and reduce the quality of vistas?	The signage will not dominate the skyline or reduce the quality of vistas.	YES
Does the proposal respect the viewing rights of other advertisers?	The subject site only adjoins residential properties and as such will not impede on the rights of other advertisers.	YES
4. Streetscape, setting or landscape Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	Given the context of this site and its overall frontage to West Esplanade the proposed scale, proportion and form of the proposed signage is considered appropriate	YES
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?		YES
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	The signage will not create visual clutter and will improve the overall appearance of the store's signage as a result of the modern design features.	YES
Does the proposal screen unsightliness?	There is no unsightliness to be screened.	YES
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	The proposed signs are appropriate in height and scale, remaining comfortably below the maximum allowable height of 8.5m	YES
5. Site and building Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	The proposed signs are to replace the existing site signs, and are considered compatible with the streetscape and surrounding development in regard to scale and proportion.	YES
Does the proposal respect important features of the site or building, or both?	The proposal is not considered likely to affect any important features within the site.	YES

Does the proposal show innovation and imagination in its relationship to the site or building, or both?	The signs are a contemporary advancement to the existing site signage.	YES
6. Associated devices and logos with advertisements and advertising structures Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	No safety devices or platform proposed	YES
7. Illumination Would illumination result in unacceptable glare, affect safety for pedestrians, vehicles or aircraft, detract from the amenity of any residence or other form of accommodation?	No illumination proposed	N/A
Can the intensity of the illumination be adjusted, if necessary?	N/A	N/A
Is the illumination subject to a curfew?	N/A	N/A
8. Safety Would the proposal reduce the safety for any public road, pedestrians or bicyclists?	No	YES
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	No	YES

Accordingly, the proposed signage is considered to be of a scale and design suitable for the locality. The proposal is therefore deemed to be consistent with the provisions of the SEPP and its underlying objectives.

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

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

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

Compliance Assessment

Clause	Compliance with Requirements
6.1 Acid sulfate soils	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.11 Active street frontages	Yes
6.12 Essential services	Yes
6.13 Design excellence	Yes
6.16 Gross floor area in Zone B2	Yes

Manly Development Control Plan

Built Form Controls

Built Form Controls	Requirement	Proposed	% Variation*	Complies
4.2.5.4 Car Parking	8 spaces	1	87.5%	No
4.4.3 Signage	2 Signs per frontage	5	60%	No

***Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example: $38/40 \times 100 = 95$ then $100 - 95 = 5\%$ variation)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.3 Townscape (Local and Neighbourhood Centres)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.2.1 FSR (Consideration of Exceptions including Arcades)	Yes	Yes
4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2)	Yes	Yes
4.2.3 Setbacks Controls in LEP Zones B1 and B2	Yes	Yes
4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor	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	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.3 Signage	No	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

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.

Comment:

The application proposes the following operating hours for the yoga/pilates studio.

Hours of Operation:

- Monday to Friday: 5:00am - 8:00pm
- Saturday to Sunday: 6:00am - 2:00pm

The proposed use of the premise as a yoga/pilates studio raises concern in regard to the level of noise generated from the proposed use, noting the close proximity of the premise to residential development within the existing building. Given the surrounding residential use, appropriate measures are required to ensure that noise emissions do not unreasonably diminish the amenity of neighbouring residential development. The acoustic report (prepared by Rodney Stevens dated 1 April) lodged with the application has assessed the the potential noise impact of the development and provided recommendations to mitigate these issues. Council Environmental Health Officer has reviewed the application and finding and recommendations imposed within the report, and is supportive of the use and proposed hours of operation, subject to conditions relating to noise management.

The hours of operation are consistent with other recently approved indoor recreation facilities in the Manly town centre including gymnasiums at 22 Central Avenue, Manly and 39 East Esplanade, Manly.

The proposed hours of operation are considered acceptable within the context of the B2 Local Centre zone and mixed use of the existing building and conditioned suitably.

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

Comment:

Subject to recommended conditions of consent, the proposal will achieve this objective.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

Existing levels of neighbourhood security are maintained.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.2.5.4 Car Parking and Access

Description of non-compliance

The RMS publication Guide to Traffic Generating Developments off-street parking requirements for gymnasiums are as follows:

- 2.8 parking space for every 100sqm of gross floor area.

The proposed gymnasium has 270sqm of gross floor area. Therefore, a minimum of 8 spaces (7.6

space rounded up) of off-street parking spaces are required for the proposed development. The proposal does not provide any off-street parking, which fails to comply with this control.

This clause allows for exceptions to parking rates/requirements in Manly Town Centre where the following is demonstrated:

- (i) in the case of all uses other than dwellings, the dimensions or topography of the site would physically prevent the provision of some or all of the required spaces;*
- (ii) the required access interferes with the continuity of retail frontage or interrupts the frontage of the property in other ways such that there would be a conflict with any other provisions of this DCP in particular the townscape objectives; or*
- (iii) the movement of vehicles to and from the site would cause unacceptable conflict with pedestrian movements, special servicing arrangements for pedestrianised areas or contribute to congestion at key intersections.*

The proposal relates to the fit-out and a use of an existing commercial building to a business premises being a yoga/pilates studio. Strict compliance with the carparking requirement to the subject premises is considered to be unreasonable as there is no provision or ability to provide further carparking on the site. Introducing further carparking to the frontage of the property would lead to unreasonable townscape impacts.

Further, convenient public transport options that service the greater Northern Beaches, North Shore and the City are available nearby. The Ferry Wharf terminal to access the city of Sydney is approximately 100m away in distance. The bus terminal to access the Northern Beaches and the North Shore area is located along West and East Esplanade also approximately 15m away in distance. Given the location of the site is within a commercial / retail centre of the Corso, it is anticipated that customers will be engaged in multi-purpose trips. There are four (4) Council car parks located within the Manly Town Centre all easily accessible to the Corso. The four (4) car parks provide over two hundred and forty five (245) parking spaces. All are available for the use by the general public.

Customers/patrons of the yoga/pilates studio are anticipated to walk from local business premises and nearby residential properties during work and outside work hours when attending sessions at the gym premise.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of Manly LEP 2013 / Manly DCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.4.3 Signage

Description of non-compliance

Clause 4.4.3 of the MDCP 2013 limits individual developments to a maximum of 2 identification signs per boundary frontage. The proposal comprises five (5) identification signs, which exceeds the numeric requirement.

Merit consideration

With regard to the consideration of a variation, the proposed development is considered against the underlying objectives of the control as follows:

Objective 1) To ensure that advertising does not detract from the scenic beauty and amenity of the

Municipality; harmonises with its surroundings and the buildings to which they are attached.

Comment:

The nature of the signage is consistent with established identification signage within the Manly Town Centre Heritage Conservation Area. Therefore, the proposal will be keeping within the established streetscape character.

Objective 2) To minimise the visual impact by encouraging fewer more effective signs that may otherwise degrade the existing and likely future quality of residential environments or result in excessive, unnecessary signage, visual clutter and confusion caused by a proliferation of signs in local and neighbourhood centres.

Comment:

There are numerous examples of commercial premises' with more than identification signs within the town centre. The signage is appropriately scaled and sited and will not result in visual clutter. The signage is considered to be of a high quality design. Overall, the proposal meets this objective.

Objective 3) To permit building and business identification signs which communicate the facilities (including tourist facilities), amenities, goods and services in local and neighbourhood centres which do not interfere with the streetscape or amenity of residents.

Comment:

The signage is consistent with what would be expected for commercial development within the town centre. The signage will be illuminated, which will limit the interference with the streetscape or amenity of residents.

Objective 4) Signs should enhance the distinctive urban character and scenic amenity of the Municipality and contribute to the atmosphere of the streets in local and neighbourhood centres and should be designed in sympathy with both the building to which it is attached and any adjoining buildings, taking into account the architectural styles and finishes of buildings in local and neighbourhood centres.

Comment:

The signage has been adequately designed to harmonise with the surrounding built environment.

Objective 5) To prevent signage from impacting on the presentation of the heritage item or area to the general public on heritage items and conservation areas.

Comment:

The proposed signage has been reviewed by Council's Heritage Officer and is found to be acceptable in this regard.

Objective 6) To ensure all signage is of high standards of graphic and textural content.

Comment:

The signage depicts a clear image of the company's logo and does not result in visual clutter.

Objective 7) To encourage co-ordinated advertising in the Industrial Zone by the use of appropriately sized street numbers and complex names, and the use of directory boards to identify multiple unit complexes, so as to reduce adverse impact on the streetscape and confusion to traffic.

Comment:

The signage is proposed within a business zone and therefore, this objective is not of relevance.

Concluding Remarks

Having regard to the above assessment, it is concluded that the objectives of the control have been achieved. Furthermore, an assessment against State Environmental Planning Policy No. 64 - Advertising and Signage has concluded that the proposed signage aligns with the requirements of the SEPP. For these reasons, the proposed development is supported on merit.

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 2019

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this 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 2000;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

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

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

- Consistent with the objectives of the DCP

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2021/0294 for Use of premises as an indoor recreation facility for the purposes of a yoga/pilates studio including signage on land at Lot 45 SP 53211, 218 / 54 A West Esplanade, MANLY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA1111/ Issue 1	17 February 2021	Harrison Architecture
DA2102/ Issue 1	17 February 2021	Harrison Architecture
DA2100/ Issue 7	5 March 2021	Harrison Architecture
DA3001/ Issue 3	5 March 2021	Harrison Architecture
DA3002/ Issue 2	5 March 2021	Harrison Architecture

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Plan of management	N/A	F45
Traffic and Car Parking Assessment	April 2021	GTK Consulting
Noise Impact Assessment	1 April 2021	Rodney Stevens

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

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

2. Approved Land Use

Nothing in this consent shall authorise the use of tenancies as detailed on the approved plans for any land use of the site beyond the definition of a recreation facility (indoor).

A **recreation facility (indoor)** is defined as:

"recreation facility (indoor) means a building or place used predominantly for indoor recreation, whether or not operated for the purposes of gain, including a squash court, indoor swimming pool, gymnasium, table tennis centre, health studio, bowling alley, ice rink or any other building or place of a like character used for indoor recreation, but does not include an entertainment facility, a recreation facility (major) or a registered club."

(development is defined by the Manly Local Environment Plan 2013 (as amended) Dictionary)

Any variation to the approved land use beyond the scope of the above definition will require the submission to Council of a new development application.

Reason: To ensure compliance with the terms of this consent.

3. **Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which

the work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative requirement.

4. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009

- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

FEES / CHARGES / CONTRIBUTIONS

5. Security Bond

A bond (determined from cost of works) of \$1,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, and details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

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

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

6. Plan of Management Update

The Plan of Management is to be updated to include measures to ensure that amplified sound is not audible as received in any residential habitable room before 7am weekdays & Saturdays and 8am Sunday's and Public Holidays.

The updated Plan of Management is to be submitted to Council's Environmental Health Team for review and approval

Reason: To maintain amenity of the surrounding area.

7. Unauthorised works

Nothing in this consent shall authorise consent for any physical works that have been undertaken on site without consent (internal fitout) relating to the studio on site.

This approval is for the use of the area for pilates/yoga studio and signage only.

Reason: Council cannot provide retrospective consent under a development application.

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

8. Acoustic certification

Prior to any occupation certificate being issued, a further acoustic assessment is to be undertaken by a qualified and experienced person(s) to confirm compliance with recommendations within the acoustic report by Rodney Stephens Acoustics referenced as R210194R1 and dated 1 April 2021. This is to include compliance testing of speakers and installation of an enclosed noise limiter. 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. The updated acoustic assessment is to be submitted to the satisfaction of Council's Environmental Health Team before providing to the Principle certifying authority for certification.

Reason: To protect residential amenity

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

9. Acoustic requirements

All recommendations of the acoustic report by acoustic report by Rodney Stephens Acoustics referenced as R210194R1 and dated 1 April 2021 and any further recommendations from compliance testing submitted to Council and the certifier prior to OC, are to be maintained for the life of the development.

Reason: To protect residential amenity (DACHPGOG5)

10. Compliance with plan of management

The plan of management and its associated hours of operation and maximum number of patrons are to be complied with at all times.

Reason: To protect surrounding residence, occupants and the environment from noise generated by the operation of the development.

11. Amplified Sound

Noise from amplified sound shall not be audible as received in any residential habitable room before 7am weekdays & Saturdays and 8am Sunday's and Public Holidays.

Reason: To minimise early morning noise within residential receptors.

12. **Hours of Operation**

The hours of operation are to be restricted to:

- Monday to Friday – 5:00am - 8:00pm
- Saturday, Sunday and Public Holidays – 6:00am - 2:00pm

Upon expiration of the permitted hours, all service 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.

13. **Patronage**

The maximum number of patrons shall not exceed twenty-seven (27) at any time.

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

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

Signed



Maxwell Duncan, Planner

The application is determined on 20/05/2021, under the delegated authority of:



Anna Williams, Manager Development Assessments