

Memo

Environment

To:	Rodney Piggott , Development Assessment Manager
From:	Claire Ryan, Planner
Date:	31 July 2018
Application Number:	Mod2018/0318
Address:	Lot 1 DP 859455 , 2 West Promenade MANLY NSW 2095
Proposed Modification:	Modification of Development Consent DA176/2016 granted for construction of a mixeduse development and alterations to the existing Auckland Garage building comprising a registered club at ground level and residential accommodation above basement carparking and associated landscaping

Background

The abovementioned development consent was granted by the Sydney North Planning Panel on 28 June 2017 for construction of a mixed-use development and alterations to the existing Auckland Garage building, comprising a registered club at ground level and residential accommodation above, basement carparking, associated landscaping and strata subdivision.;

Details of Modification Application

Under Section 96(1) of the EPA Act 1979, a consent containing an error or mis-description may be amended. Manly DCP 2103 does not require the notification of Section 96(1) modification applications as they are considered to be for minor changes that do not affect the development or the amenity of adjoining properties.

The application seeks to modify condition No. ANS15, which reads as follows:

ANS15

The premises must comply with the following:

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

Reason: To protect the acoustic amenity of neighbouring properties.

The modification proposes it to be amended as follows:

The use of premises must comply with the following:

(a) The LA10* noise level emitted from the premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz-8kHz inclusive) by more than 5dB between 7:00am and 12 midnight at the boundary of any residential receiver.

(b) The LA10* noise level emitted from the premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz-8kHz inclusive) between 12 midnight and 7:00am at the boundary of any residential receiver.

(c) Notwithstanding compliance with the above, the noise level from the premises shall not be audible within any habitable room in any residential premises between the hours of 12 midnight and 7:00am

(d) The LA10 noise level emitted from the premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz-8kHz inclusive) by more than 3dB when assessed indoors at any occupied commercial premises whilst that premises is in operation

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

Reason: To protect the acoustic amenity of neighbouring properties.

Consideration of error or mis-description

The Applicant submits that parts (a) and (b) of Condition No. ANS15 are unreasonable and beyond what Council can lawfully enforce. The Applicant also submits that the residence likely to be affected by the approved development is some distance from the noise source and the requirement for acoustic assessment at the boundary of the subject site is onerous. Council's Environmental Health Officer (being the expert in this case) has reviewed the application, agrees with the submissions made by the Applicant. Condition No. ANS15 has been amended accordingly. No other issues are raised.

Conclusion

It is considered that the modification is minor in nature and consistent with the provisions of section 4.55(1) of the EPA Act 1979 and is therefore recommended for approval.

Recommendation

THAT Council as the consent authority approve Modification Application No. Mod2018/0318 for Modification of Development Consent DA176/2016 granted for construction of a mixeduse development and alterations to the existing Auckland Garage building comprising a registered club at ground level and residential accommodation above basement carparking and associated landscaping on land at Lot 1 DP 859455,2 West Promenade, MANLY, as follows:

Acoustic Amenity

The use of premises must comply with the following:

(a) The LA10* noise level emitted from the premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz-8kHz inclusive) by more than 5dB between 7:00am and 12 midnight at the boundary of any residential receiver.

(b) The LA10* noise level emitted from the premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz-8kHz inclusive) between 12 midnight and 7:00am at the

boundary of any residential receiver.

(c) Notwithstanding compliance with the above, the noise level from the premises shall not be audible within any habitable room in any residential premises between the hours of 12 midnight and 7:00am

(d) The LA10 noise level emitted from the premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz-8kHz inclusive) by more than 3dB when assessed indoors at any occupied commercial premises whilst that premises is in operation

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

Reason: To protect the acoustic amenity of neighbouring properties.

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

Signed



Claire Ryan, Planner

The application is determined under the delegated authority of:



Rodney Piggott, Manager Development Assessments

ATTACHMENT A

No notification plan recorded.

ATTACHMENT B

No notification map.

ATTACHMENT C

Reference Number	Document	Date
 2018/401459	Report - Acoustic Assessment	25/05/2018
 2018/401467	Mills Oakley legal advice re Acoustic Condition	22/06/2018
 2018/401458	Consent Condition Modification Request	25/06/2018
 MOD2018/0318	2 West Promenade MANLY NSW 2095 - Section 96 Modifications - Section 96 (1) Misdescription	26/06/2018
 2018/401407	Development Application Form	02/07/2018
 2018/401412	Applicant Details	02/07/2018
 2018/401494	DA Acknowledgement Letter - White And Partners (Sydney Investments) Pty Ltd	02/07/2018
 2018/404955	Environmental Health (Industrial) - Assessment Referral - Mod2018/0318 - 2 West Promenade MANLY NSW 2095	03/07/2018
 2018/437358	Environmental Health Referral Response - Mod to Noise Conditions	09/07/2018