

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2017/0335
----------------------------	--------------

Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot 165 SP 13245, 6 / 22 Central Avenue MANLY NSW 2095
Proposed Development:	Modification of Development Consent DA0289/2015 granted for alterations additions use as an indoor recreation facility and 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:	Nasus (NO 1) Pty Ltd
Applicant:	Swole Fitness Pty Ltd

Application lodged:	19/12/2017
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	22/12/2017 to 29/01/2018
Advertised:	Not Advertised
Submissions Received:	1
Recommendation:	Approval

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

SITE DESCRIPTION

Property Description:	Lot 165 SP 13245 , 6 / 22 Central Avenue MANLY NSW 2095
Detailed Site Description:	<p>The subject site is located on the western side of Central Avenue and contains a mixed use development.</p> <p>The premises is irregular in shape with a frontage of 7.5m along Central Avenue and an average depth of 22.3m. The site has a surveyed area of 266.1m².</p> <p>The site is located within the B2 Local Centre zone and accommodates numerous tenancies/premises.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by multi-storey mixed use and commercial development.</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:

DA289/2015 - Installation of a wall in an existing shop to create two (2) separate tenancies, change of use to an Indoor Recreation Facility, fit out, signage and hours of operation being Monday - Friday 6:00am to 8:00pm and Saturday from 7:00am to 10:00am - Shop 2 - F45 Training - Approved 18 February 2016.

DA289/2015 - Part 2 - Section 96 to modify approved DA289/2015 - Approved 9 November 2016.

PROPOSED DEVELOPMENT IN DETAIL

The proposed modification includes the amendment of Condition ANS11 to allow hours of operation of 5:00am to 8pm Monday to Friday and 7:00am to 10:00am Saturdays on a permanent basis.

Condition ANS11 reads as follows:

ANS11

- (a) The hours of operation of the premises (i.e. hours open for business) must not exceed 5.00am to 8.00pm Monday to Friday and 7.00am to 10.00am Saturdays without the prior approval of Council.
- (b) The premises may operate for the hours above at (a) for a period of 1 year commencing on the date of issue of an Occupation Certificate for the approved use of the premises ("Extended Hours"). A further development application or section 96 application may be lodged before the expiration date of the Extended Hours for Council's consideration for the continuation of the Extended Hours.
- (c) Provided that an application to continue the Extended Hours as above at (b) is made not earlier than 3 months and not later than 2 months prior to the expiration date of the Extended Hours, the premises may continue to operate between 5.00am to 8.00pm Monday to Friday and 7.00am to 10.00am Saturdays until the application is finally determined.
- (d) Any application to continue the Extended Hours must be accompanied by a report prepared by a suitably qualified acoustic consultant that demonstrates compliance with noise emission criteria at nearby residential development and includes an assessment of noise transmission and noise generated by users of the premises.

Reason: To ensure amenity of the surrounding locality is maintained.

The Applicant proposed to amend the condition as follows:

ANS11

The hours of operation of the premises (i.e. hours open for business) must not exceed 5:00am to 8:00pm Monday to Friday and 7:00am to 10:00am Saturdays without the prior approval of Council.

Reason: To minimise noise disturbance to neighbouring residential properties and ensure the amenity of the locality.

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment C.

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 DA0289/2015 - Part 2, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.15(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15(1A) - Other Modifications	Comments
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:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	Yes The modification, as proposed in this application, is considered to be of minimal environmental impact.
(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	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA0289/2015 - Part 2.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (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 of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Local Environment Plan 2011 and Manly Development Control Plan.
(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.	See discussion on "Notification & Submissions Received" in this report.

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	None applicable.
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 in the original 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, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No Additional information was requested.</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 clause is not relevant to this application.</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 clause is not relevant to this application.</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 clause is not relevant to this application.</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 in the original 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 un/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 “Public Exhibition” 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.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Mr Kevin Nicholson	214 / 48 - 52 Sydney Road MANLY NSW 2095

The following issues were raised in the submissions and each have been addressed below:

- Noise impact resulting from hours of operation.

The matters raised within the submissions are addressed as follows:

- Noise impact resulting from hours of operation.

Comment:

The proposed development will not result in any unreasonable acoustic impacts on surrounding residential or commercial premises, with Council receiving only one objection to the proposed modification and one prior noise complaint from a nearby commercial premises. A full assessment of acoustic privacy is completed under Part 3 General Principles of Development.

MEDIATION

No requests for mediation have been made in relation to this application.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Industrial)	<p>Environmental Health Comments:</p> <p><i>"Environmental Health is not satisfied with the acoustic report.</i></p> <p><i>The Acoustic consultant has only addressed how noise generated by the speakers is going to comply with condition ANS08 from DA289/2015, however there is no detail of how people noise (noise from instructors and clients) and noise generated from equipment is going to be maintained and not create an offence.</i></p> <p><i>There are residential properties directly across from the gym. Environmental Health recommended that additional acoustic testing to be undertaken to assess all noise generated from the gym between the hours of 5am -7am, testing shall take into consideration the sensitive receivers surrounding the property.</i></p> <p><i>Furthermore with the limiter is day light saving changes taken into consideration?"</i></p> <p>Planning Comments: The Applicant has provided an additional Acoustic Report as required by Council, including results of sound testing undertaken by the consultant. The Acoustic Report dated 2 May 2018 confirms that the installed sound system limiter has been reduced to comply with the relevant conditions of consent. The Plan of Management submitted by the Applicant for the approved S96 application DA289/2015 - Part 2 includes references to "Responsible Behaviour and Conduct - Management and Staff" and "Patron Behaviour" in relation to neighbouring properties and noise control limits. This Plan of Management will apply to any subsequent modification, including Mod2017/0335. The letter from DJW Projects dated 3 December 2016 states that the noise levels are "controlled by the internal timeclock and RMS Limiters". As the noise limiter is controlled by a clock on the premises it is reasonable to assume that daylight saving changes are taken into consideration.</p>
NECC (Development Engineering)	Development Engineer has no comment to the modification.

Internal Referral Body	Comments
Property Management and Commercial	The proposal is for the modification of an existing consent to retain opening hours of 5am-8pm. Property has no objection to the proposal as submitted.

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)

Nil

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
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Manly Development Control Plan

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.4.2 Privacy and Security	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

3.4.2.3 Acoustical Privacy (Noise Nuisance)

a) Consideration must be given to the protection of acoustical privacy in the design and management of development.

b) Proposed development and activities likely to generate noise including certain outdoor living areas like communal areas in Boarding Houses, outdoor open space, driveways, plant equipment including pool pumps and the like should be located in a manner which considers the acoustical privacy of neighbours including neighbouring bedrooms and living areas.

c) Council may require a report to be prepared by a Noise Consultant that would assess likely noise and vibration impacts and may include noise and vibration mitigation strategies and measures. See particular requirements for noise control reports for licenced premises below at paragraph g) below.

Comment:

The Plan of Management submitted with DA289/2015 - Part 2 and noise limiter installed at the premises ensure that appropriate consideration has been given to the protection of acoustical privacy and that any impact on the amenity of the surrounding premises is minimised. Furthermore, acoustic testing results have been submitted by the Applicant in order to demonstrate compliance with the required noise levels. The premises has been operating from 5:00am Monday to Friday on a temporary basis since 9 November 2016 with only one DA submission received and one prior noise complaint, which was investigated by Council with no further action recommended. Based on the acoustic information submitted, measures implemented by the premises and minimal level of public interest, the proposal is unlikely to result in any unreasonable impact on acoustical privacy.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect 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

Manly Section 94 Development Contributions Plan

S94 Contributions are not applicable to 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 approval to Modification Application No. Mod2017/0335 for Modification of Development Consent DA0289/2015 granted for alterations additions use as an indoor recreation facility and signage. on land at Lot 165 SP 13245,6 / 22 Central Avenue, MANLY, subject to the conditions printed below:

A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

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

a) Modification Approved Plans

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Acoustic Letter	3 December 2016	DJW Projects
Acoustic Report	2 May 2018	The Acoustic Group

c) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

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

f) The development is to be undertaken generally in accordance with the following:

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans. (DACPLB01)

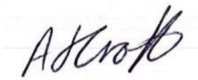
B. Modify Condition ANS11 to read as follows:

ANS11

The hours of operation of the premises (i.e. hours of operation for business) must not exceed 5:00am to 8:00pm Monday to Friday and 7:00am to 10:00am Saturdays without the prior approval of Council.
Reason: To minimise noise disturbance to neighbouring residential properties.

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

Signed



Adam Croft, Planner

The application is determined under the delegated authority of:




Rodney Piggott, Manager Development Assessments

ATTACHMENT A

No notification plan recorded.

ATTACHMENT B

	Notification Document	Title	Date
	2017/537797	Notification Map	22/12/2017

ATTACHMENT C

Reference Number	Document	Date
 2017/537163	Report - Statement of Environmental Effects	19/12/2017
 MOD2017/0335	6A/22 Central Avenue MANLY NSW 2095 - Section 96 Modifications - Section 96 (1a) Minor Environmental Impact	19/12/2017
 2017/530587	DA Acknowledgement Letter - Swole Fitness Pty Ltd	19/12/2017
 2017/537165	Report - Acoustic	22/12/2017
 2017/537161	Modification Application Form	22/12/2017
 2017/537162	Applicant Details	22/12/2017
 2017/537773	DA Acknowledgement Letter (not integrated) - Swole Fitness Pty Ltd	22/12/2017
 2017/537797	Notification Map	22/12/2017
 2017/537852	Notification Letter - 951	22/12/2017
 2018/004699	Online Submission - Nicholson	04/01/2018
 2018/004722	Online Submission - Nicholson	04/01/2018
 2018/013982	Submission Acknowledgement Letter - Kevin Nicholson - SA2018/004722	05/01/2018
 2018/014007	Submission Acknowledgement Letter - Kevin Nicholson - SA2018/004699	05/01/2018
 2018/029098	Property Referral - MOD2017/0335 - 6A/22 Central Avenue, Manly	09/01/2018
 2018/103708	Comments previously made 11.1.18 Environmental Health (Industrial) - Assessment Referral - Mod2017/0335 - 6 / 22 Central Avenue MANLY NSW 2095	08/02/2018
 2018/104562	Property and Commercial Development Referral Response	09/02/2018
 2018/165750	Environmental Health Referral Response - industrial use	09/03/2018
 2018/180516	Engineering Referral Response	17/03/2018
 2018/266370	Outgoing Email 1/05/2018 to Wayne Collins requesting update on Acoustic Report	01/05/2018
 2018/272643	Incoming email from Wayne Collins - Attached Acoustic Report	02/05/2018
 2018/274795	Report - Acoustic	04/05/2018