

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2023/0698
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<b>Responsible Officer:</b>	Nick Keeler
<b>Land to be developed (Address):</b>	Lot 172 SP 13245, 14 / 22 Central Avenue MANLY NSW 2095
<b>Proposed Development:</b>	Modification of Development Consent DA2023/0597 granted for Alterations and Additions to Existing Mixed-Use Development
<b>Zoning:</b>	Manly LEP2013 - Land zoned E1 Local Centre
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Nasus (NO 1) Pty Ltd
<b>Applicant:</b>	Nasus (NO 1) Pty Ltd

<b>Application Lodged:</b>	15/01/2024
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	23/01/2024 to 06/02/2024
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks to modify development consent DA2023/0597 granted for alterations and additions to an existing mixed-use development (Manly National building) to create three new tenancies within the former Australia Post tenancy, use of two tenancies as a recreation facility (indoor) and one tenancy as a business premises, internal fit-out, and footpath awning.

The modification seeks to delete the part of the partition wall separating the approved tenancies 2 & 3 to create a single tenancy, alter the fit-out of the new tenancy, alter the operating hours of the new tenancy to allow 24/7 operation and change the use of the former tenancy 3 to a recreation facility (indoor) to match the new tenancy 2.

The proposed operational details of each new tenancy is as follows:

### Tenancy 1 (unaltered from original consent)

Use and fit out of tenancy 1 as a recreation facility (indoor).

- Hours of Operation: Monday to Sunday – 5:30am to 9pm
- Staff: Maximum two (2) staff at anytime
- Class Numbers: Ten (10) to twenty (20) patrons with up to eight (8) classes a day
- Parking: Three (3) parking spaces

### Tenancy 2

Use and fit out of tenancy 2 as a recreation facility (indoor).

- Hours of Operation: 24 hours, 7 days
- Staff: Two (2) staff
- Patron Capacity: Maximum 46 people
- Parking: Six (6) parking spaces

The modification includes new business identification signage and extend the operation hours for the new tenancy 2. However, as signage was not an element of the original development consent and the proposed 24 hour operation significantly departs from the approved hours of operation, it is not considered that the proposed signage or hours of operation is substantially the same as the original development consent and is excluded from the scope of this modification of 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 - 4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor

Manly Development Control Plan - 4.2.5.4 Car Parking and Access

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 172 SP 13245 , 14 / 22 Central Avenue MANLY NSW 2095
<b>Detailed Site Description:</b>	<p>The subject site consists of strata one (1) allotment located at the ground floor fronting the western side of Central Avenue.</p> <p>The site is irregular in shape with a frontage of 33.9m along Central Avenue and a surveyed area of 572m<sup>2</sup>.</p> <p>The site is located within the E1 Local Centre zone and accommodates a 24 storey mixed use building with residential and commercial tenancies.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by mixed use developments of varying density and architectural style.</p>

Map:



## SITE HISTORY

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

Application **CDC2023/0073** for works associated to the make good of the existing Australia Post tenancy was approved on 27/01/2023 by a private building certifier.

Application **DA2023/0597** for Alterations and Additions to Existing Mixed-Use Development was approved on 19/07/2023 by Council staff.

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

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

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2023/0597, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - 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 development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2023/0597 for the following reasons:</p> <ul style="list-style-type: none"> <li>• the modification is generally consistent with the approved alterations and additions (except the proposed signage which was not approved in the original consent and the proposed 24 hour operation. These elements are excluded from the scope of this modification)</li> <li>• the modification does not alter the land use of the site (includes deletion of the approved business premises use)</li> <li>• all expected outcomes of the original assessment are maintained under the modification</li> </ul>
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division	Development Application DA2023/0597 did not require concurrence from the relevant Minister, public authority or approval body.

Section 4.55 (2) - Other Modifications	Comments
5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	
(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 2021, and the Northern Beaches Community Participation 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 (2) the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

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



Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&amp;A Regulation 2021 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 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to a BCA report.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 2001: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&amp;A Regulation 2021 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 69</u> of the EP&amp;A Regulation 2021 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 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental	<p>(i) <b>Environmental Impact</b></p> <p>The environmental impacts of the proposed development on the natural and built environment are addressed under the</p>

Section 4.15 'Matters for Consideration'	Comments
impacts on the natural and built environment and social and economic impacts in the locality	<p>Manly Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> 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 application has been publicly exhibited from 23/01/2024 to 06/02/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respects to aspects relevant the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>

Internal Referral Body	Comments
Environmental Health (Industrial)	<p><b>General Comments</b></p> <p>This application is seeking consent for modifications to DA2023/0597 for alterations and additions to an existing mixed-use development at 14/22 Central Avenue, Manly. This proposed modification includes:</p> <p>Modification from three to two tenancies only</p> <p>Use of tenancy 2 (previously tenancies 2 and 3) as a recreation facility (indoor) for plus fitness. No classes are proposed inside plus fitness.</p> <p>An acoustic assessment has been provided which outlines recommended noise mitigation measures which will be conditioned. In addition, there are 2 levels of carparking above the Plus Fitness space therefore reducing a noise impact on residential occupants.</p> <p>Environmental Health recommends approval subject to conditions.</p>
NECC (Coast and Catchments)	<p>The proposal seeks approval for modification of development consent DA 2023/0597 granted for alterations and additions to existing mixed-use development.</p> <p>The proposed modifications include the following:</p> <ul style="list-style-type: none"> <li>- Modification from three to two tenancies only</li> <li>- Use of tenancy 2 (previously tenancies 2 and 3) as a recreation facility (indoor) for plus fitness</li> <li>- Modification to operational details</li> </ul> <p>The subject property is located within the Coastal Use Area' map of the Coastal Zone and also in the Foreshore Scenic Protection area,</p> <p>This application was assessed in consideration of:</p> <p>Supplied plans and reports, including;</p> <ul style="list-style-type: none"> <li>• Statement of Modifications prepared by Four Towns Planning Pty. Ltd. dated 15 December 2023</li> </ul> <p>Coastal Management Act 2016 State Environmental Planning Policy (Resilience &amp; Hazards) 2021 Relevant LEP and DCP Clauses</p> <p>The objectives and requirement of the CMA 2016, SEPP -R &amp; H 2021 and relevant LEP and DCP Clauses have been met.</p> <p>The proposed modifications appear consistent with the design intent of the original proposal.</p> <p>No conditions in additions to those for the original development application are considered necessary.</p>



Internal Referral Body	Comments		
NECC (Flooding)	<p>The proposed development is for modifications to DA2023/0597. The modifications involve the removal of a partition wall, changing the plan from three commercial lots into two commercial lots.</p> <p>Subject to the retention of the conditions of consent from DA2023/0597, the modifications comply with Section 5.4.3 of the Manly DCP 2013 and Clause 5.21 of the Manly LEP 2013.</p>		
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS		
	Discussion of reason for referral		
	<p>The proposal has been referred to Heritage as the broader site adjoins a heritage conservation area</p> <p><b>C2 - Manly Town Centre Conservation Area</b></p>		
	Details of heritage items affected		
	<p><b>C2 - Manly Town Centre Conservation Area</b> <u>Statement of Significance</u> The Manly Town Centre Conservation Area (TCCA) is of local heritage significance as a reflection of the early development of Manly as a peripheral harbor and beachside village in the fledgling colony of New South Wales. This significance is enhanced by its role as a day-trip and holiday destination during those early years, continuing up to the present time, and its association with H G Smith, the original designer and developer of the TCCA as it is today.</p>		
	Other relevant heritage listings		
	SEPP (Biodiversity and Conservation) 2021	No	
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	N/A	
	Consideration of Application		
<p>The proposal seeks consent to modify the approved DA2023/0597, for the alterations and additions to an existing mixed-use development, to create new ground floor tenancies and new signage. The subject site adjoins the HCA, however, the proposed works are not in close proximity to the HCA. The proposed</p>			

Internal Referral Body	Comments
	<p>signage relates to window signage and does not include any illuminated signage. Therefore, the proposed works are considered to not have an adverse impact upon the significance of the heritage items in the vicinity or the HCA.</p> <p>Therefore, no objections are raised on heritage grounds and no conditions required.</p> <p><u>Consider against the provisions of CL5.10 of MLEP.</u>  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</p>

### ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)\*

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

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

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

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

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?	
zone objectives of the LEP?	Yes

### Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	25m	4.5m (awning)	Unaltered	N/A	Yes
Floor Space Ratio:	3:1	Unaltered	Unaltered	N/A	Yes

### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
5.21 Flood planning	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.11 Active street frontages	Yes
6.12 Essential services	Yes

## Manly Development Control Plan

### Built Form Controls

The modification application does not alter the built form of the existing building. As such, the development is considered to be consistent with the built form control objectives of MDCP and is acceptable on merit.

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.3 Townscape (Local and Neighbourhood Centres)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.6 Energy efficiency/conservation requirements for non-residential developments	Yes	Yes
3.5.7 Building Construction and 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

Clause	Compliance with Requirements	Consistency Aims/Objectives
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	No	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
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**

#### Description of non-compliance

The modification proposes to expand the approved hours of operation of Tenancy 2 to permit 24 hour operation.

This expansion of operating hours has the potential to cause acoustic privacy impacts upon nearby residences.

#### 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 applicant has submitted an Operational Noise Emission Assessment (acoustic report) outlining recommendations to ensure unreasonable acoustic amenity impacts upon nearby residences are mitigated. A condition of consent is recommended to require compliance with the recommendations of the acoustic report. Council's Environmental Health officer has reviewed the proposal and raises no objection to the proposed hours of operation, subject to condition.

*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:

Unreasonable acoustic privacy impacts are able to be appropriately managed by implementing the recommendations of the submitted acoustic report.

*Objective 3) To encourage awareness of neighbourhood security.*

Comment:

Appropriate 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 MDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

#### **4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor**

Refer to Part 4.2.5.4 for detailed assessment regarding onsite parking.

##### **4.2.5.4 Car Parking and Access**

Description of non-compliance

Schedule 3 of the MDCP requires the following parking rates to be applied:

Recreation facility (indoor): 3 spaces per 100m<sup>2</sup> GFA (RTA Guide to Traffic Generating Developments)

Based on these rates, the required parking spaces are as follows:

Tenancy 1 (163m<sup>2</sup> GFA): 5 spaces

Tenancy 2 (338m<sup>2</sup> GFA): 10 spaces

The proposal includes three (3) spaces for Tenancy 1 and six (6) spaces for Tenancy 2.

As such, tenancy 1 is deficient of two spaces and tenancy 2 is deficient of four spaces.

Merit consideration

As the site is located in the Manly Town Centre, exceptions to the parking rates/requirements may be considered on a merit basis.

When considering the proposal on merit, it is important to note that providing off-street parking on the subject site is unfeasible due to the need to significantly alter of the existing building to facilitate a compliant amount of parking. The subject site is unable to provide on-site car parking to satisfy the above rate and it would be unreasonable to request parking to be provided. However, the site is conveniently located to alternate modes of transport, including regular bus routes and ferries at Manly Wharf. It is not unreasonable to expect that a large number of patrons would arrive using these modes

of transport. Alternatively, car parks exist in the Manly Town Centre that provide patrons who arrive by private vehicle to park their car and walk to the businesses. Despite the proposed recreation facility use requiring a higher parking rate, the parking demand is not expected to significantly increase due to the reasons outlined above.

The control includes a provision where only 50% of the required parking rate is to be provided within the Manly Town Centre with the other 50% offset by a monetary contribution under the Manly Section 94 Contributions Plan. As this plan has been repealed and no longer applies to the subject site, this provision does not strictly apply. However, its intent reduces the required number of parking spaces 15 spaces to nine spaces. This results in the proposal being compliant across the two tenancies.

Overall, the proposed change of use not considered to result in any significant traffic or parking generation. In this regard, Council can be satisfied that the proposed businesses will not result in adverse traffic generation or parking demand. Likewise, the proposal is not expected to require additional loading capacity for the building.

## **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

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

## **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

## **POLICY CONTROLS**

### **Northern Beaches Section 7.12 Contributions Plan 2022**

Section 7.12 contributions were levied on the Development Application.

## **CONCLUSION**

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

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

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

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



- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant 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. Mod2023/0698 for Modification of Development Consent DA2023/0597 granted for Alterations and Additions to Existing Mixed-Use Development on land at Lot 172 SP 13245,14 / 22 Central Avenue, MANLY, subject to the conditions printed below:

## Modification Summary

The development consent is modified as follows:

### MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
PAN-399619 - Mod2023/0698	The date of this notice of determination	<p>Modification of Development Consent DA2023/0597 granted for Alterations and Additions to Existing Mixed-Use Development</p> <ul style="list-style-type: none"> <li>• Add Condition No. 1A - Modification of Consent - Approved Plans and supporting documentation</li> <li>• Modify Condition No. 3 - Approved Land Use</li> <li>• Add Condition No. 3A - Modification of Consent - No Approval for any External Signage</li> <li>• Add Condition No. 5A - Modification of Consent - Noise Management</li> <li>• Modify Condition No. 12 - Building Code of Australia Fire Safety Requirements</li> <li>• Modify Condition No. 13 - Access and Facilities for Persons with Disabilities</li> <li>• Add Condition No. 14A - Modification of Consent - Adequacy of Sanitary Facilities</li> <li>• Add Condition No. 19A - Modification of Consent - Acoustic Treatment</li> <li>• Modify Condition No. 21 - Hours of Operation</li> </ul>

- Add Condition No. 23 - Modification of Consent - Compliance with Operational Plan of Management

## **Modified conditions**

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

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

<b>Approved Plans</b>				
<b>Plan Number</b>	<b>Revision Number</b>	<b>Plan Title</b>	<b>Drawn By</b>	<b>Date of Plan</b>
A001	F	Existing/Demolition Plan	Khadijah Tahir	07/02/2024
A002	F	Proposed Tenancy Plan	Khadijah Tahir	07/02/2024
A003	F	Floor Finishes Plan	Khadijah Tahir	07/02/2024
A004	F	Wall Finishes Plan	Khadijah Tahir	07/02/2024
A005	F	Interior Elevations	Khadijah Tahir	07/02/2024
A006	F	Exterior Elevations	Khadijah Tahir	07/02/2024

<b>Approved Reports and Documentation</b>			
<b>Document Title</b>	<b>Version Number</b>	<b>Prepared By</b>	<b>Date of Document</b>
Access Compliance Assessment Report (Ref: 12451)	00	AE&D Group	08/02/2024
BCA Compliance Assessment Report (Ref: 12451)	01	AE&D Group	05/02/2024
Flood Risk Management Plan	-	Taylor Consulting	January 2024
Operational Noise Emission Assessment (Ref: 6198R002.LB.231208)	0	Acoustic Dynamics	13/12/2023
Operational Plan of Management	-	Four Towns Planning	Undated

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

### **B. Modify Condition No. 3 - Approved Land Use to read as follows:**

Nothing in this consent shall authorise the use of the tenancies as detailed on the approved plans for

any land use beyond the definitions of the following, in accordance with the Dictionary of the Manly Local Environmental Plan 2013:

- Tenancy 1 - *Recreation facility (Indoor)*
- Tenancy 2 - *Recreation facility (Indoor)*

Any variation to the approved land use and occupancy of any unit 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.

**C. Add Condition No. 3A - Modification of Consent - No Approval for any External Signage to read as follows:**

No approval is granted under this Development Consent for external and window signage (as defined under Manly Local Environment Plan 2013 and State Environmental Planning Policy (Transport and Infrastructure) 2021. A separate Development Application for any signs (other than exempt and signs permitted under Complying Development) must be submitted for the approval prior to the erection or display of any such signs.

Reason: Control of signage.

**D. Add Condition No. 5A - Modification of Consent - Noise Management to read as follows:**

The operational noise management controls recommended in Section 5 of the acoustic report prepared by Acoustic Dynamics dated 13 December 2023 are to be incorporated into a Noise Management Plan and adhered to during the operation of the Plus Fitness.

Reason: To ensure acoustic compliance in an operational situation.

**E. Modify Condition No. 12 - Building Code of Australia Fire Safety Requirements to read as follows:**

The Building Code of Australia fire safety requirements for the building as detailed and recommended in the Compliance Assessment Report prepared by AE&D Group, dated 5/2/2024, Report No. 12451, Rev 01, including any required Performance Reviews, are to be considered as part of the assessment for any Construction Certificate.

Details demonstrating compliance are to be provided to the Certifying Authority, prior to the issue of a Construction Certificate.

Reason: To ensure adequate provision is made for Health, Amenity, access and Fire safety for building occupant health and safety.

**F. Modify Condition No. 13 - Access and Facilities for Persons with Disabilities to read as follows:**

Access and facilities to and within the building are to be provided as required for Persons with a Disability in accordance with the Building Code of Australia and AS1428. In this regard the Access Compliance Assessment Report prepared by AE&D Group dated 8/2/2024, Report No. 12451, Rev 00, is to be taken into consideration as part of the Construction Certificate assessment.

Details are to be provided to the Certifying Authority prior to the issue of the Construction Certificate

and be implemented prior to occupation of the building.

Reason: To ensure adequate provision is made for access to and within the building for Persons with a disability.

**G. Add Condition No. 14A - Modification of Consent - Adequacy of Sanitary Facilities to read as follows:**

Prior to issue of the Construction Certificate the Principal Certifier is to be provided with details of sanitary facilities for patrons and staff as required by the Building Code of Australia for the Classification of the building under its approved use. Where a sanitary facility is shared by another occupancy on the same site the total number of potential users shall be taken into consideration in calculations for compliance with this condition.

Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure the provision of adequate sanitary and associated facilities for the premises.

**H. Add Condition No. 19A - Modification of Consent - Acoustic Treatment to read as follows:**

Prior to the issuing of an Occupation Certificate, the recommendation design noise control measures outlined in Section 5 of the acoustic report prepared by Acoustic Dynamics dated 13 December 2023, are to be implemented into the development.

Details demonstrating compliance are to be submitted to the Principal Certifier.

Reason: To ensure acoustic treatment is provided where necessary.

**I. Modify Condition No. 21 - Hours of Operation to read as follows:**

The hours of operation are to be restricted to:

Tenancy 1

- Monday to Sunday – 5:30am to 9:00pm

Tenancy 2

- Monday to Sunday – 5:30am to 9:00pm

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

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

**J. Add Condition No. 23 - Modification of Consent - Compliance with Operational Plan of Management to read as follows:**

Operations must comply with the Plan of Management as referenced in Condition No. 1A. A copy of the Plan of Management must be kept onsite at all times.

In the event of any inconsistency between the operational plan of management and a condition of this consent, the condition prevails to the extent of the inconsistency.

Reason: Effectively manage operational outcomes to minimise any detrimental impacts on amenity.

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

**Signed**



**Nick Keeler, Planner**

The application is determined on 15/03/2024, under the delegated authority of:



**Rodney Piggott, Manager Development Assessments**