

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2019/0558
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Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot CP SP 12989, 19 - 23 The Corso MANLY NSW 2095
Proposed Development:	Modification of Development Consent DA2019/0574 granted for Change of use to a pub alterations and additions to the premises fitout 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:	Proprietors of Strata Plan 12989
Applicant:	Hilrok Properties Pty Ltd Proprietors of Strata Plan 12989

Application Lodged:	12/11/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	26/11/2019 to 10/12/2019
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The proposed development seeks to modify development consent DA2019/0574 to amend the consented hours for consistency with previous approved hours, as follows:

Approved Hours:

Players Lounge: 7:00am to 1:00am (following day) daily

Proposed Hours:

Players Lounge:

- *Monday to Saturday: 9:00am to 3:00am (following day)*
- *Sunday: 9:00am to 12midnight*

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 - 4.2.5.6 Late Night Venues

SITE DESCRIPTION

Property Description:	Lot CP SP 12989 , 19 - 23 The Corso MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of three (3) allotments located on the north-western side of The Corso, Manly (Nos. 19-21, 23, and 25).</p> <p>The site is regular in shape with a frontage of 23.4m along The Corso and a depth of 29.7m. The site has an area of approximately 697m².</p> <p>The site is located within the B2 Local Centre zone and accommodates a retail premises and a pub.</p> <p>The site is level and does not contain vegetation.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by mixed use and commercial premises.</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:

- Pre-lodgement Meeting PLM2018/0134 was held on 26 June 2018 to discuss Alterations and Additions to existing building.
- DA2019/0512 for Alterations and Additions to an existing Shop Top Housing Development is currently under assessment.
- DA2019/0572 for Change of use to a pub, alterations and additions to the premises, fitout and signage was approved on 3 October 2019 under staff delegation.

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 DA2019/0574, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(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 DA2019/0574.
(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 2013 and Manly Development Control Plan 2013.
(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.	No submissions were received in relation to this application.

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 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan 2013 applies to this proposal.
Section 4.15 (1) (a)(iiiia) – 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 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 in the original 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 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> <p><u>Clause 143A</u> 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.</p>
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 2013 section in this report.</p>

Section 4.15 'Matters for Consideration'	Comments
	<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	No submissions were received in relation to this application.
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 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 of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Industrial)	<p>Environmental Health has considered the modification to the existing approval which relates to the relocation of the gaming room and specifically hours of operation.</p> <p>The applicant has requested that the original gaming room hours of operation be transferred to a new location.</p> <p>Acoustic report by Koikas Acoustics proprietary Limited dated 13 May 2019 assessed that compliance with noise legislation was achievable without nuisance to residential amenity neighbouring properties.</p>

Internal Referral Body	Comments
	<p>On this basis Environmental Health has no objection to the proposed hours in the modification application; being consistent with the previous gaming room operational hours.</p> <p>A condition has been added clarifying acoustic objectives.</p>

External Referral Body	Comments
NSW Police – Crime Prevention Office (Local Command matters)	The proposal was referred to the NSW Police. No response has been received 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)

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

Principal Development Standards

There are no relevant principal development standards under the MLEP 2013 to consider as part of this assessment.

Compliance Assessment

Clause	Compliance with Requirements
6.21 Noise impacts—licensed premises	Yes

Manly Development Control Plan

Built Form Controls

There are no relevant built form controls under the MDCP 2013 to consider as part of this assessment.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
4.2.5.6 Late Night Venues	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes

Detailed Assessment

4.2.5.6 Late Night Venues

Objective 1) To achieve for Manly's entertainment precinct as a place of excellence in which all people

- *for leisure and entertainment;*
- *in which late night venues can safely entertain and provide for the enjoyment of patrons without disturbing the peace of the community in terms of safety and security.*

Comment:

The proposed modification retains the use of the site for safe leisure and entertainment purposes, without disturbing the peace. This is demonstrated through the submitted acoustic report and plan of management.

Objective 2) To regulate the activities and design of late night venues to minimize late night disturbances

- *frontages to public spaces must be designed to minimize conflict between customers;*
- *the applicant demonstrate (see lodgement requirements at Council's Administrative Manual) for families; and*
- *obligations of any current Accord are addressed in minimizing anti-social behaviour.*

Comment:

The proposed modification is supported by a plan of management, detailing the management of the use of the site, including in relation to disturbances, conflicts, safety and security, and patron behaviour.

Intensity of Development

a) *In order to provide diversity, it is proposed to limit the number of patrons which attend late-night within Late Night Venues must not exceed 8000 persons. Exceptions to this will only be granted for alternative entertainment activities.*

Comment:

The proposed modification to the approved development does not increase or alter the approved intensity of the development.

Hours of Operating (maximum)

- b) *The maximum hours for hotels, nightclubs, restaurants & food outlets are as follows:*
- i) *Hotels & Nightclubs: from 5am up to 2am (next day) and with a restricted entry policy for*
 - ii) *Restaurants & Food Outlets: from 5am up to 1am (next day).*

Comment:

The proposed hours are 9am to 3am Monday to Saturday and 9am to 12midnight Sunday. These hours are inconsistent with the requirement above. The intention of this control is to limit the impact of use of the premises in relation to noise and social amenity. The existing pub has been operating to these hours for an extended period of time, without significant or unreasonable impact. The pub use employs noise restriction measures to reduce the impact of the late trading hours, such as acoustic attenuation materials and closure of external windows and doors after 11pm. This is supported by the submitted Acoustic Report, which details that use of the gaming room will not result in audible nuisance, including during the later hours. The pub use is also supported by a plan of management, detailing noise control and security measures employed to manage any social impacts arising from the premises. This demonstrates that, despite the proposed operation of the premises outside of the ordinary hours anticipated by the control, the proposed hours do not result in any unreasonable impact.

Noise Control

- c) *Requirement of this plan in relation to licenced premises at paragraph 3.4.2.4 d - g apply to lice*

Comment:

The proposed modification is supported by an acoustic report, demonstrating no unreasonable noise impacts from the use of the site during the proposed hours.

Security

- d) *Proprietors of Late Night Venues must enter into arrangements with Council for the provision of*

Comment:

The proposed modification is supported by a plan of management, detailing suitable security measures for the use.

Access to Public spaces

- e) *Frontages to public spaces must be designed to minimise conflict between customers within the*

Comment:

The proposed modification does not alter approved access points.

Decks, Balconies & Roof Top Area

- f) *Balconies, verandahs, any roof top areas and any external access thereto must be closed to pa*

Comment:

The proposed modification does not alter decks, balconies, or roof top areas.

Liquor Accord

- g) *Proprietors of the licensed premises must be a financial member of any applicable Liquor Accor*

Comment:

The proposed modification does not alter the premises in relation to the Liquor Accord and its obligations.

Design

- h) *Applications must demonstrate how the design and operation of licensed venues take into acco*

Comment:

The proposed modification does not alter the approved design of the premises.

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

Northern Beaches Section 7.12 Contributions Plan 2019

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 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. Mod2019/0558 for Modification of Development Consent DA2019/0574 granted for Change of use to a pub alterations and additions to the premises fitout and signage on land at Lot CP SP 12989,19 - 23 The Corso, MANLY, subject to the conditions printed below:

A. Modify Condition 19. Hours of Operation to read as follows:

The hours of operation for the gaming room are to be restricted to:

Players Lounge:

- Monday to Saturday: 9:00am to 3:00am (following day)
- Sunday: 9:00am to 12midnight

Upon expiration of the permitted hours, all service, gaming, 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.

B. Add Condition 23. Compliance with Acoustical Assessment to read as follows:

The operation of the gaming room must be done in accordance with the Acoustical Assessment prepared by by Koikas Acoustics Pty Ltd dated 13 May 2019, and must ensure that gaming room noise will be inaudible from any residential premises at any time.

Reason: To maintain residential amenity to neighbouring residential premises.

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

Signed



Claire Ryan, Principal Planner

The application is determined on 20/12/2019, under the delegated authority of:



Matthew Edmonds, Manager Development Assessments