

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2020/0665
Responsible Officer:	Nick Keeler
Land to be developed (Address):	Lot 1 DP 1170245, 0 Wharves And Jetties MANLY NSW 2095
Proposed Development:	Modification of Development Consent DA2019/0987 granted for the use of the premises as a licensed restaurant, fitout, and signage
Zoning:	SREP(Sydney Harbour Catchment)2005 - Land Zoned W2 Environmental Protection
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Transport for NSW TMG Developments Pty Ltd
Applicant:	Paul Papacosta

Application Lodged:	16/12/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	13/01/2021 to 27/01/2021
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks to modify development consent DA2019/0987 granted for use of premises as a licensed restaurant, fitout, and signage.

The proposed modification relates to the restrictions of the service of alcohol under Condition No. 6.

The condition restricts the service of alcohol to the internal area of the restaurant only. The applicant seeks to modify the condition to permit the service of alcohol in the outdoor licensed area of the tenancy.

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

There are no assessment issues.

SITE DESCRIPTION

Property Description:	Lot 1 DP 1170245 , 0 Wharves And Jetties MANLY NSW 2095
Detailed Site Description:	<p>The subject site is legally referred to as Lot 1 in DP 1170245 and is commonly known as Manly Wharf. The site is located within Manly Cove and is located at the junction of East Esplanade and West Esplanade, Manly.</p> <p>The proposed site within Manly Wharf is known as Shop 15.</p> <p>The area of the site where the proposed development is located within the boundaries defined as the Manly Wharf Lease Line and the line of the Mean High Water Mark. This site has an estimated area of 13.405m².</p> <p>The site is located within the W2 - Environmental Protection zone under the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.</p> <p>The site is oriented east west with the northern and southern boundaries fronting the western and eastern promenades and Manly Cove respectively.</p> <p>The development site is limited to the eastern wing of Manly Wharf. The eastern wing currently accommodates a single retail level and first floor accommodating centre</p>

management offices, with the Manly Wharf signage and clock tower above. The existing eastern wing has frontage to The Corso.

A single basement level sits below the Wharf deck level and is accessed from the intersection at East Esplanade and Wentworth Street. This level includes vehicle parking and loading facilities.

The site has multiple pedestrian accesses from the street as well as from the Ferry terminal. The Wharf is surrounded by sheltered marine environment. The surrounding waters and nearby harbour foreshore is known to provide habitat for Little Penguins and possess other marine ecology including seagrass beds.

Detailed Description of Adjoining/Surrounding Development

Opposite the site to the east is Manly Corso. The Corso is a wide open promenade and public open space between Manly Beach and Many Wharf and provides street furniture, public art and a focal point for the Manly Town Centre. Commercial uses including shops, offices, restaurants, cafes, licensed premises and services and amenities dominate the frontages of The Corso. The scale of development along The Corso is varied between two (2) to four (4) storeys.

The uses opposite the site along East Esplanade are dominated by mixed use developments mainly consisting of ground floor commercial uses such as shops, offices, restaurants and cafes with residential above. Some of the buildings along East Esplanade consist primarily of multistorey commercial developments. The scale of development along East Esplanade is predominately between three (3) to six (6) storeys.

The uses opposite the site along West Esplanade are dominated by mixed use developments mainly consisting of ground floor commercial uses such as shops, offices, restaurants and cafes with residential above. The scale of development along East Esplanade is predominately between three (3) to eight (8) storeys.

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:

Application **DA426/2000** for the change of use and shop fit-out with associated signage and seating for McDonald's was approved on 15/03/2001 by Council staff under delegated authority.

Application **DA2019/0987** for use of premises as a licensed restaurant, fit-out, and signage was approved on 10/03/2020 by Council staff under delegated authority.

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 DA2019/0987, 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
<p>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:</p>	
<p>(a) it is satisfied that the proposed modification is of minimal environmental impact, and</p>	<p>Yes The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <ul style="list-style-type: none"> • no fundamental change to the existing approved operation of the restaurant is proposed • the modification of condition to permit alcohol service in the outdoor area will improve consistency between restaurants in the Manly Wharf precinct
<p>(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</p>	<p>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 DA2019/0987 for the following reasons:</p> <ul style="list-style-type: none"> • the land use remains the same as the approved development • no built form change is required to facilitate the proposed modification
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require, or</p> <p>(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</p>	<p>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.</p>
<p>(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.</p>	<p>See discussion on “Notification & Submissions Received” in this report.</p>

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	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition 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 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 matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This 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
	<p>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.</p>
<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>	<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>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered suitable for the proposed development.</p>
<p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>See discussion on “Notification & Submissions Received” in this report.</p>
<p>Section 4.15 (1) (e) – the public interest</p>	<p>No matters have arisen in this assessment that would justify the refusal of the application in the public interest.</p>

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 13/01/2021 to 27/01/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

REFERRALS

External Referral Body	Comments
<p>NSW Police – Licensing (Clubs, Hotels, Pubs)</p>	<p>The application was referred to the Northern Beaches Police Area Command for comment.</p>

External Referral Body	Comments
	No objection is raised in relation to the modification provided the acceptance of the changes mentioned in the Statement of Modification and in conjunction with the approved Plan of Management.

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)

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

Manly Wharf is located outside the land application map for the *Manly Local Environment Plan 2013*. The subject property is located within the Sydney Harbour Catchment therefore the provisions of this plan apply to this development.

The subject site is located in Zone W2 Environmental Protection the *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*.

The objectives of this zone are as follows:

- (a) to protect the natural and cultural values of waters in this zone,
- (b) to prevent damage or the possibility of longer term detrimental impacts to the natural and cultural values of waters in this zone and adjoining foreshores,
- (c) to give preference to enhancing and rehabilitating the natural and cultural values of waters in this zone and adjoining foreshores,
- (d) to provide for the long-term management of the natural and cultural values of waters in this zone and adjoining foreshores.

Comment:

The application seeks to modify the development consent to change the change of use from a takeaway food and drinks premises (McDonalds) to a licensed restaurant to allow the service of liquor in the outdoor. The proposed modification does not involve any new or altered physical works to the approved development. As such, the outcomes of the original assessment are maintained.

An assessment of the proposal against Clause 2(1) (aims of the SREP), Clause 13 (nominated planning principles) and Clause 21 (relating to biodiversity, ecology and environmental protection) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. Given the scope of the modification, referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

Land Use Permissibly under the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The proposed development is land/water interface development under the *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005* and in accordance with clause 5(1) Northern Beaches Council is the consent authority.

The proposed development is not listed as a permissible use within clause 18 and as a result an assessment pursuant to clause 18(2) is necessary to consider the permissibility of the development.

Clause 18(2) states the following:

"(2) Despite subclause (1), development not referred to in the Table to this clause may be carried out with development consent, but only if the consent authority is satisfied that the development:
(a) is not inconsistent with the aims of this plan or the objectives of the zone in which it is proposed to be carried out, and
(b) is not inconsistent with any other environmental planning instrument that applies to the land, and
(c) will not otherwise have any adverse impacts."

Comment:

The proposed modification does not alter the approved land use for 'food and drinks premises'. The outcomes of the original assessment are considered to be maintained under the proposed modification.

SEPP (Coastal Management) 2018

The proposed modification does not alter the development's level of compliance with the requirements of CM SEPP as considered under the original assessment.

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.

HERITAGE EXEMPTION

As the site is identified as a State heritage item, the applicant has supplied a Heritage Exemption Notification Form that removes the requirement for the application to be referred to the Heritage Division of the Department of Planning, Industry and Environment.

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;
- 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. Mod2020/0665 for Modification of Development Consent DA2019/0987 granted for the use of the premises as a licensed restaurant, fitout, and signage on land at Lot 1 DP 1170245,0 Wharves And Jetties, MANLY, subject to the conditions printed below:

A. Modify Condition No. 6 - Service of Alcohol to read as follows:

In addition to compliance with the requirements contained within the Plan of Management dated 1 February 2020 and prepared by Liquor Advisory Services, the following measures are to be implemented throughout operation of the premises:

- (a) Alcohol not be supplied after 11pm in the outdoor licensed area.
- (b) Alcohol may only be consumed whilst the patron is seated.
- (c) No open containers containing alcohol may be removed from the restaurant and associated outdoor licensed area. Resealed bottle of wine purchased to be consumed with a meal may be removed if resealed.
- (d) Patrons must always remain within the outdoor licensed area and at no times encroach into the public domain.

Reason: To ensure suitable management of a premises supplying liquor, and to ensure that the development provides safety and security to premises users and the community.

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

Signed



Nick Keeler, Planner

The application is determined on 25/03/2021, under the delegated authority of:



Rodney Piggott, Manager Development Assessments