



Section 4.55(1A) Modification to DA2024/1249

Manly Wharf – Felons Barrel Hall

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1. Introduction

1.1 Preliminary

This report has been prepared by Architectus on behalf of the applicant, Artemus Group, to support an application made pursuant to Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 (EP&A Act) to modify DA2024/1249 for the approved pub and artisan food and drink industry at tenancy 24.1 within Manly Wharf.

The proposed modification seeks to amend select operational parameters imposed by the NSW Police, as well as a revised kitchen arrangement to incorporate solid fuel cooking.

A detailed description of the Modification Application is provided in **Section 2** of this report.

1.2 The Site

The site is identified as tenancy 24.1 (see **Figure 1**) located within Manly Wharf, East Esplanade, Manly (formally Lot 1 in Deposited Plan 1170245).

The site was previously used as an Aldi supermarket until operations ceased in 2022, however is currently vacant.

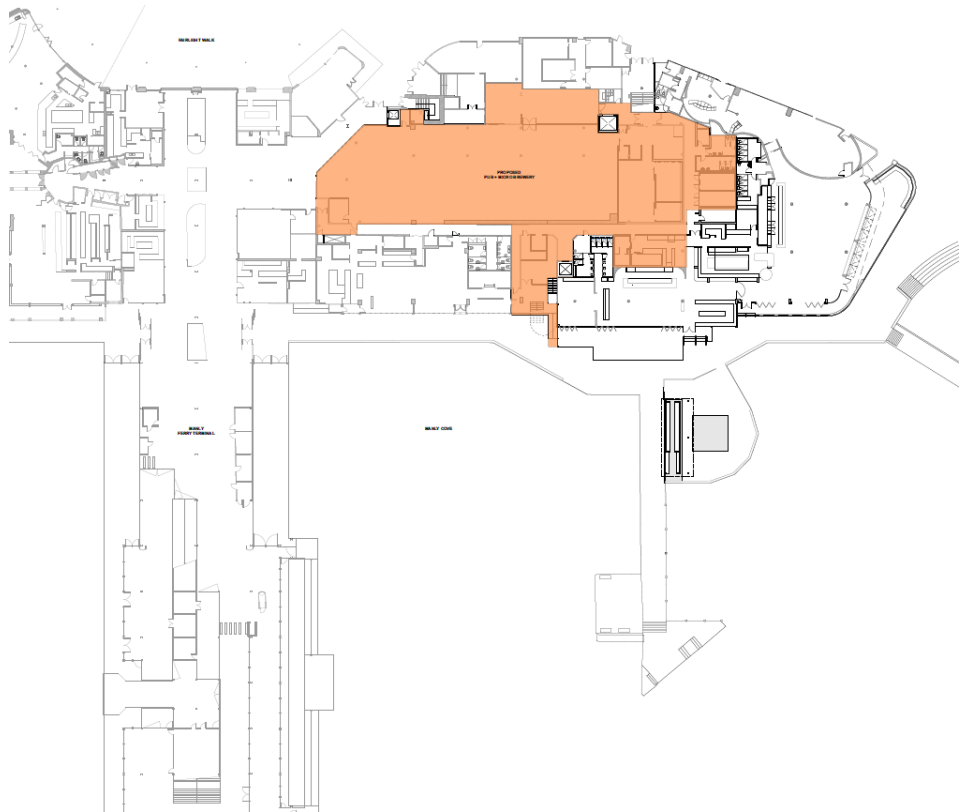


Figure 1 The Site
Source: Little Boat Projects

1.3 Approved Development

DA2024/1249 was approved by the Northern Beaches Local Planning Panel (LPP) on 5 February 2025 for 'alterations and additions including internal fit-out for use of premises as a pub and artisan food and drink industry', including:

- Change of use of vacant supermarket tenancy to a pub and micro-brewery with ancillary dining and occasional live performance;
- Demolition of existing external staircase, office spaces, storage spaces, cool rooms, freezers, supermarket staff toilets and basement public toilets and amenities;
- Internal fit-out including two bars, ancillary kitchen, small staff office, new toilets and amenities servicing customers and staff;
- New publicly accessible toilets and amenities for the convenience of all members of the public who visit Manly Wharf, including ferry commuters;
- An internal connection to provide controlled, secondary access for patrons who wish to make their way between the new premises and the existing Manly Wharf Hotel;
- Installation of micro-brewing equipment;
- Internal fit out works including new wall linings, floor coverings, ceilings and acoustic treatments;
- A new vestibule to provide entry to the premises, with direct connections to the waterside wharf promenade, the basement via both lift and stair, and a secondary access link to the existing Manly Wharf Hotel;
- Intermittent and occasional weekend markets inside the new premises, four Saturdays a year during daytime trading hours; and
- Hours of operation consistent with the Manly Wharf Hotel:
 - 7am to midnight, Monday to Wednesday and Sunday; and
 - 7am to 1am, Thursday to Saturday.

2. Proposed Modification

2.1 Overview

The proposed modification seeks to:

- Amend select operational parameters imposed by the NSW Police and reflected in Condition 3 of DA2024/1249; and
- Provide for a revised kitchen arrangement to incorporate solid fuel cooking.

A detailed overview of the proposed modification is provided below.

2.2 Amend Operational Parameters

It is proposed to amend select operational parameters contained within the NSW Police referral, which is listed as an approved document under Condition 3 of DA2024/1249.

The proposed changes are the result on ongoing discussions with NSW Police Manly Local Area Command, to align with operating parameters for nearby venues. The amendments will also rationalise security management, ensure consistency with other conditions of consent and enable venue flexibility, while maximising public safety.

The proposed amendments to the police referral are listed in **Table 1** below. Changes are emphasised by Architectus in **bold** (additions) and ~~strikethrough~~ (omissions), along with the rationale for each proposed change.

Table 1 Proposed amendments to the NSW Police referral under Condition 3

Reference	Proposed Modifications	Rationale
Clause 2 Maximum Patron Capacity	a. Signage (in lettering not less than 15mm in height on a contrasting background) is to be erected in a prominent position near the main principle entry to the premises. The signage shall state: Approved patron capacity is limited to 794 700 .	To ensure consistency with approved patron capacity under Condition 47 of DA2024/1249. Fire safety, access and amenities have been designed to accommodate the approved 700 patrons.
	b. A comfortable seating position must be available for each patron upon the premises. This will include a seat and access to table/bench space generally in accordance with the approved plans.	As the venue has an approved capacity of 700 patrons, current wording requires provision of 700 fixed seats, which are unable to be reconfigured.
	c. The seating plan as set out in accordance with the approved plans are not to be re-arranged while the drink on-premises authorisation is being utilised.	This provision is beyond operational requirements, impacts customer experience and reduces flexibility in adjusting venue layout to accommodate various functions or potential events.
	d. Signage (in lettering not less than 15mm in height on a contrasting background) is to be erected near the main principle entry to the premises; in such manner that it would be reasonable to expect that a person leaving the premises will be alerted to its contents. The signage shall state: Upon	The venue is intended to be a flexible multipurpose space, accommodating various events and functions including, however not limited to: <ul style="list-style-type: none">– Live music performances, including showcasing local talent;– Comedy nights;– Movie nights (with beanbags);

	<p><i>leaving, please respect local residents by minimising noise.</i></p> <p><i>Signage specified in sub clause (a) and (d) is to be erected prior to the commencement of operations.</i></p>	<ul style="list-style-type: none"> – Trivia nights; – Markets. <p>Each of the above requires flexibility to rearrange or remove furniture, which will be reinstated at the conclusion of events/functions etc.</p>
<p>Clause 13</p> <p>Live Entertainment</p>	<p>Live music can occur on site during operating hours consistent with Manly Wharf Hotel from Midday—10pm. Live music must cease at 10pm.</p> <p><i>The venue must take all adequate steps to minimise the noise from live music, such as, close the windows and door to keep the noise to minimum.</i></p> <p>Airlocks are to be installed and closed at all times while live music is occurring.</p>	<p>Condition 49 of DA2024/1249 approves the venue to operate until midnight on Monday to Wednesday and Sunday, and until 1am on Thursdays, Fridays and Saturdays.</p> <p>The limiting of live music to 10pm is an additional restriction that was not proposed under the DA, was not considered to be required under the approved acoustic report, nor is reflected under the conditions of consent for DA2024/1249. This would also remove the ability for the venue operator to relocate noise generating events from the adjoining Felons Manly venue into the subject venue (both of which are owned and managed by the same operator).</p> <p>Conditions 1, 2, 41 already provide acoustic limits relating to the playing of music, in addition to other legislation or policies, including the Protection of the Environment Operations Act 1997 (POEO Act) and EPA Noise Policy for Industry (NPI).</p> <p>Live music and entertainment traditionally run later in evenings, and limiting this to 10pm would unreasonably affect trade, customer experience and operational flexibility.</p>
<p>Clause 15</p> <p>Ratio of security personnel to patrons</p>	<p><i>The licensee must arrange for security personnel with ratio of no less than 1 security officer per 100 patrons or part thereof every Thursday to Sunday Friday, Saturday and Public Holiday from 6.00pm until close of business and security are to provide for half an hour after close of business and security personal to patrol the licensed area regularly patrol all licensed areas.</i></p> <p>The licensee is expected to self-manage on other nights accordingly.</p>	<p>As the venue is proposed to be a multipurpose space, this would require additional security during mid-week events, such as movie or trivia nights.</p> <p>The venue operator, Artemus Group (as a subsidiary of Howard Smith Wharves (HSW)) is also the leaseholder of Manly Wharf and operate a number of other nearby venues, including the adjoining Felons Manly.</p> <p>Since taking ownership of the site in March 2024, Artemus Group has introduced 24/7 venue security for the entirety of Manly Wharf, with a dedicated on-site security office. As such, there is the ability to self-</p>

		manage security and safety across the site depending on venue needs throughout the week.
<p>Crime Prevention Works</p> <p>Page 6, paragraph 1</p>	<p>Service of alcohol will not commence prior to 10:00am on all days of operation without exception. Alcohol is permitted to be served prior to 10am with written notice to licensing police seven days prior.</p>	<p>This change is intended to support select events, such as:</p> <ul style="list-style-type: none"> – ANZAC day; – The Olympics; – Superbowl; – World Cups. <p>For events where alcohol is proposed to be served before 10am, written notice will be provided to the licensing police seven days prior.</p>
	<p>All liquor purchased at the venue must be consumed within the licensed area of the premises. It is proposed for liquor produced by Felons and purchased at the venue will be made available for takeaway.</p> <p>The sale and/or supply of liquor must cease 30 minutes prior to the cessation of the respective hours of operation.</p>	<p>The approved venue includes a microbrewery. This amendment is sought to enable takeaway sales of beer brewed on site.</p>
<p>Liquor taken from premises</p> <p>Page 8, paragraph 5</p>	<p>Liquor sold or supplied in open containers (including glass) is not to be taken off the licensed premises other than internally to the adjoining licensed hotel but only whilst both licensed premises are operated by the same business operator. The licensee will ensure that adequate practices are implemented to minimise the likelihood of patrons/customers consuming liquor purchased from the premises in the carpark or the immediate vicinity of the premises.</p>	<p>The venue operator, Artemus Group (as a subsidiary of Howard Smith Wharves) is also the leaseholder of Manly Wharf and operates number of other nearby venues, including the adjoining Felons Manly. This change is intended to provide operational flexibility between venues and rationalise security management.</p>

2.3 Solid Fuel Cooking

The proposed modification also seeks a revised kitchen arrangement to incorporate solid fuel cooking. This will necessitate additional mechanical exhaust ventilation to ensure adequate ventilation and airflow.

Existing roof mounted exhaust outlets will require augmentation to accommodate the proposed cooking method, however are not considered to result in any perceptible impact from the public domain.

Exhaust outlets are collocated with other existing mechanical plant within the roof form and will be screened from the public domain. However, screening is not proposed under this modification, with screening details subject to an alternate approval process in response to Condition 9 of DA2024/1375, which requires:

“The new mechanical exhaust is to be relocated to be less visible from the public domain or, if relocation is not feasible, screening measures are to be implemented to minimise the visual impact of the exhaust. Details demonstrating compliance with this condition are to be submitted to Council's Heritage Advisor for approval prior to the issue of the Construction Certificate.”

No additional air pollution in the form of odour or fumes is anticipated as a result of the proposed modification. Refer to the updated Architectural Drawings at **Appendix A**.

3. Statutory Context

3.1 Applicable Planning Framework

The Statement of Environmental Effects submitted with DA2024/1249 dated 9 August 2024 took into consideration relevant planning framework relating to the proposal, including the:

- Environmental Planning and Assessment Act 1979;
- Coastal Management Act 2016;
- Heritage Act 1977;
- State Environmental Planning Policy (Biodiversity and Conservation) 2021;
- State Environmental Planning Policy (Resilience and Hazards) 2021;
- State Environmental Planning Policy (Industry and Employment) 2021;
- State Environmental Planning Policy (Sustainable Buildings) 2023;
- State Environmental Planning Policy (Transport and Infrastructure) 2021;
- Manly Local Environmental Plan 2013;
- Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005;
- Manly Development Control Plan 2013;
- Manly Development Control Policy for Manly Cove 1996; and
- Strategic Planning Context.

The proposed modification does not introduce any inconsistencies with the above planning framework, and the use of the approved development remains the same. Accordingly, the same legislative consideration undertaken for the approved DA2024/1249 remains applicable to the proposed modification.

3.2 Environmental Planning and Assessment Act 1979

Section 4.55(1A) of the EP&A Act states that a consent authority may modify a development consent if it is satisfied the development, as it is proposed to be modified, is substantially the same development for which consent was originally granted.

The proposed modification seeks to amend select operational parameters imposed by the NSW Police, as well as a revised kitchen arrangement to incorporate solid fuel cooking. It is considered the development remains substantially the same development as that originally approved for the reasons detailed at **Table 2** below.

Table 2 Review against S4.55(1A) of the EP&A Act

Clause	Response
<i>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:</i>	
<i>(a) It is satisfied that the proposed modification is of minimal environmental impact</i>	An environmental assessment of the proposed modification is provided at Section 4 of this report which confirms the proposal is of minimal environmental impact.
<i>(b) It is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and</i>	The proposed modification seeks minor amendments to operational requirements imposed by NSW Police and to incorporate solid fuel cooking at the site. The proposed modification does not alter the approved land

before that consent as originally granted was modified (if at all)	<p>use, layout, capacity, hours of operation or overall intent of the approved development and will not impact on the broader community use of Manly Wharf.</p> <p>The approved development, as it is proposed to be amended, remains substantially the same development.</p>
<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 that requires the notification or advertising of applications for modifications of a development consent</p>	The proposal will be publicly exhibited in accordance with the provisions of the EP&A Act, and any submissions will be considered by the consent authority.
(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.	The applicant will prepare a response to any submissions received.

3.3 Heritage Act 1977

The *Heritage Act 1977* identifies items of state heritage significance and promotes the adaptive reuse and conservation of these items. Manly Wharf is listed as an item of state heritage significance on the NSW State Heritage Register and as a local heritage item under the Manly LEP 2013.

The proposed modification would take place across both the interior of the building and exterior through the flue supporting the mechanical exhaust fan. Under section 57(1) of the *Heritage Act 1977*, the following must not be undertaken without the approval of Heritage NSW:

- Alter the building, work, relic or moveable object; and
- Display any notice or advertisement on the place, building, work, relic, moveable object or land, or in the precinct.

A Statement of Heritage Impact (SoHI) assessing the modifications potential impact on the Wharf was prepared by City Plan and can be found at **Appendix B**. The statement concludes the impact of the proposed modification would be minimal, attributed to the proposed kitchen exhaust outlet only, will not be visible from the public domain and is considered to be acceptable from a heritage perspective.

3.4 Environmental Planning Instruments

Environmental Planning Instruments (EPIs) considered in the assessment of DA2024/1249 included:

- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Industry and Employment) 2021
- State Environmental Planning Policy (Sustainable Buildings) 2023

- State Environmental Planning Policy (Transport and Infrastructure) 2021
- Manly Local Environmental Plan 2013

The proposed modification seeks to amend select operational parameters imposed by the NSW Police, as well as a revised kitchen arrangement to incorporate solid fuel cooking.

The above EPIs have been considered in the assessment of the proposed modification. There are no provisions within the above EPIs that would preclude the undertaking of the proposed modification, and the proposal will not alter previous conclusions relating to consistency with the planning framework.

3.5 Manly Development Control Plan 2013

The Manly Development Control Plan 2013 (DCP) provides detailed planning controls for the site.

The proposed modification has been reviewed against, and is not considered to alter previous conclusions relating to compliance with the DCP 2013.

4.

Assessment of Impacts

4.1 Section 4.15 (1)(a) Matters for Consideration – General

Matters for consideration under this clause have been addressed in **Section 3** of this report. There are no substantive provisions under the applicable planning framework or proposed instrument that would preclude the undertaking of the proposed modification. An assessment of the likely impacts of the proposed modification is provided below.

4.2 Section 4.15 (1)(b) The Likely Impacts

Safety and Security

The proposed changes to operational parameters are the result of ongoing discussions with NSW Police Manly Local Area Command, to align with operating parameters for nearby venues and rationalise security management, ensure consistency with other conditions of consent and enable venue flexibility, while maximising public safety.

The proposed modification does not alter the approved land use, layout, capacity, hours of operation or overall intent of the approved development. The amendments proposed relate to the ability to re-arrange venue seating based on changing needs, as well as to clarify that live music can be played within approved operating hours.

The proposed modification will enable efficiencies in security management between the subject venue and adjoining premises (which are also owned and managed by the applicant, Artemus Group) and provide for improved safety and security outcomes across Manly Wharf.

Heritage

The SoHI (**Appendix B**) deems the proposed development acceptable from a heritage perspective given its consistency with the heritage objectives and provisions of the Manly LEP 2013, the Manly DCP 2013 and the SEPP (Biodiversity and Conservation) 2021, as well as the relevant policies contained in the Manly Ferry Wharf Conservation Management Plan, 2016.

The proposed works are within the contemporary (c.1990) eastern retail wing of Manly Wharf. Required augmentation of exhaust outlets will be collocated with other existing mechanical plant within the roof form and will be screened from the public domain, in accordance with Condition 9 of DA2024/1375, which requires screening to be approved by Council's Heritage Advisor prior to a Construction Certificate. Given this screening, proposed works are not considered to result in any perceptible impact from the public domain.

The impacts of the proposed development on Manly Wharf as a heritage item and the broader character of Manly Town Centre are considered acceptable.

Built Form

The proposed modification also seeks a revised kitchen arrangement to incorporate solid fuel cooking. This will necessitate additional mechanical exhaust ventilation to ensure adequate ventilation and airflow. Existing roof mounted exhaust outlets will require augmentation to accommodate the proposed cooking method, however are not considered to result in any perceptible impact from the public domain.

Amenity

No additional air pollution in the form of odour or fumes is anticipated as a result of the proposed modification. Existing roof mounted exhaust outlets will require augmentation to accommodate the proposed cooking method, however are not considered to result in any perceptible impact from the public domain.

4.3 Section 4.15 (1)(c) Suitability of the Site

There are no known site conditions that would hinder the proposed modification. The site remains suitable for the development as it is proposed to be modified for the same reasons considered by Council in assessment of DA2024/1249.

4.4 Section 4.15 (1)(d) Submissions Made

Any submissions made on this the proposed modification application will be duly considered and addressed.

4.5 Section 4.15 (1)(e) The Public Interest

The proposed modifications do not significantly alter the design or intent of the approved development. The development, as it is proposed to be modified, is within the public interest for the same reasons considered by Council in assessment of DA2024/1249.

5. Conclusion

This report has been prepared by Architectus on behalf of Artemus Group, to modify DA2024/1249 for the approved pub and artisan food and drink industry at tenancy 24.1 within Manly Wharf.

DA2024/1249 was approved by the Northern Beaches Local Planning Panel on 5 February 2025 for 'alterations and additions including internal fit-out for use of premises as a pub and artisan food and drink industry'.

The proposed modification seeks to amend select operational parameters imposed by the NSW Police, as well as a revised kitchen arrangement to incorporate solid fuel cooking.

The proposed changes are the result of ongoing discussions with NSW Police Manly Local Area Command, to align with operating parameters for nearby venues. The amendments will also rationalise security management, ensure consistency with other conditions of consent and enable venue flexibility, while maximising public safety.

The development, as it is proposed to be modified, remains substantially the same development for which consent was originally granted and is consistent with the applicable planning framework.

The proposed modification does not alter the approved land use, layout, capacity, hours of operation or overall intent of the approved development. The proposed modification will enable efficiencies in security management between the subject venue and adjoining premises (which are also owned and managed by the applicant, Artemus Group) and provide for improved safety and security outcomes across Manly Wharf.

The proposed modification has examined and considered to the fullest extent possible all matters affecting or likely to affect the environment. The proposal will not have significant adverse effects on the environment and does not result in any impacts that were not considered in granting consent to DA2024/1249.

Having regard to the above, and in light of the matters for consideration listed under Sections 4.55(1A) and 4.15(1) of the EP&A Act, it is recommended this application be considered favourably. For these reasons, the modifications outlined in this report can be supported by Northern Beaches Council.

Appendix A: Architectural Plans by Little Boat Projects

Appendix B: Statement of Heritage Impact, Prepared by City Plan