

15th February 2019

The General Manager
Northern Beaches Council
PO Box 82
Manly NSW 1655

Dear Sir,

Statement of Environmental Effects
Modification of Development Consent DA153/2016
Change of use – expansion of existing educational establishment and increase
in student population – International College of Management
46 – 48 East Esplanade, Manly

1.0 Introduction

On 2nd February 2015, development consent DA238/2014 was granted for “*Part change of use to Educational Establishment, associated fit-out and signage*”. Condition ANS02 of the consent limited the number of students to a maximum of 90.

On 17th August 2016, development consent DA153/2016 was granted for “*Change of use – expansion of existing educational establishment and increase in student population by 76 – International College of Management*” subject to a number of conditions as contained within the associated notice of determination. We note that although this subsequent consent does not contain a condition limiting maximum student numbers that a maximum student population of 166 is implied (90+76) through the development consent descriptor as outlined.

We also note that condition ANS02 of DA 153/2016, the subject of this application, prescribes the following hours of operation for the premises:

ANS02

The hours of operation of the premises (i.e. hours open for business) must not exceed 8:00am to 6:00pm – Monday to Friday without the prior consent of Council.

Reason: To ensure that the amenity of the surrounding area is maintained and hours of operation are consistent with those in surrounding locality.

We have been engaged by ICMS to prepare an application pursuant to Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 (the Act) seeking to increase the overall registered student numbers for the Manly Corso Campus to 400 to accord with the recent Notice of Decision by the Tertiary Education Quality and Standards Agency (TEQSA). A copy of this decision is at Attachment 1.

The application also seeks an extension to the approved hours of operation to permit operation between 6am and 10pm Monday to Friday and between 8am and 10pm Saturday and Sunday. ICMS requires an increase in the hours of operation for the following reasons:

- ICMS are servicing a new cohort of students due to an expansion of their education course offerings. ICMS are enrolling more professional full-time workers and part-time students. This is in both the postgraduate and undergraduate courses. As a result of this new student mix ICMS need to update the course timetable to allow for evening shifts of classes. ICMS would like to do this at the Aspire Campus in 46-48 East Esplanade.
- By timetabling the evening classes at East Esplanade it will be safer and more convenient for the students because the campus is closer to public transport such as the ferry and buses. It is also closer to the Manly Town Centre.

We note that the increase in total student numbers proposed does not reflect an increase in the maximum number of student able to be accommodated within the premises at any one time but simply an increase in the overall number of registered students utilising the existing premises over the expanded operating hours proposed. The application does not propose any physical changes to the existing building.

In relation to the proposed hours of operation we note that the established educational use is located within the Manly Town Centre and directly opposite Manly Wharf and Bus Terminal with a plethora of commercial premises within immediate proximity of the site operating between the hours of operation now proposed.

The existing shuttle bus arrangement between St Patricks Campus and the Manly Corso Campus will continue to operate with the existing public transport options readily accommodating the transportation needs of students during the proposed expanded hours of operation.

We have formed the considered opinion that the modifications sought represents the orderly and economic use and development of the land and will not give rise to any unacceptable or reasonably unanticipated residential amenity impacts given the locational attributes of the site, the consistency of the proposed hours of operation with those established by other commercial uses within the Manly Town Centre and the ongoing responsible operation and management of the College pursuant to development consent DA238/2014.

Council can be satisfied that the modifications involve minimal environmental impact and the development as modified represents substantially the same development as originally approved and therefore appropriately dealt with by way of s4.55(1A) of the Act.

2.0 Detail of Modifications Sought

The application seeks to modify the consent descriptor to read:

Change of use – Expansion of existing educational establishment and an increase in the overall registered student population to a maximum of 400.

The application also seeks the modification of condition ANS02 to read:

The hours of operation of the premises (i.e. hours open for business) must not exceed 6:00am to 10:00pm – Monday to Friday and 8:00am to 10:00pm Saturday and Sunday without the prior consent of Council.

Reason: To ensure that the amenity of the surrounding area is maintained and hours of operation are consistent with those in surrounding locality.

3.0 Section 4.55(1A) of the Environmental Planning and Assessment Act 1979

Section 4.55(1A) of the Act provides that:

- (1) *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*
 - (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 before that consent as originally granted was modified (if at all), and*
 - (c) *it has notified the application in accordance with:*
 - (i) *the regulations, if the regulations so require, and*
 - (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 modification of a development consent, and*
 - (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.*
- (3) *In determining an application for modification of a consent under this section, 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 consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.*

In answering the above threshold question as to whether the proposal represents “substantially the same” development the proposal must be compared to the development for which consent was originally granted, and the applicable planning controls.

In order for Council to be satisfied that the proposal is “substantially the same” there must be a finding that the modified development is “essentially” or “materially” the same as the (currently) approved development - *Moto Projects (no. 2) Pty Ltd v North Sydney Council* [1999] 106 LGERA 298 per Bignold J.

The above reference by Bignold J to “essentially” and “materially” the same is taken from Stein J in *Vacik Pty Ltd v Penrith City Council* (unreported), Land and Environment Court NSW, 24 February 1992, where his honour said in reference to Section 102 of the Environmental Planning and Assessment Act (the predecessor to Section 96):

“Substantially when used in the Section means essentially or materially or having the same essence.”

What the abovementioned authorities confirms is that in undertaking the comparative analysis the enquiry must focus on qualitative elements (numerical aspects such as heights, setbacks etc) and the general context in which the development was approved (including relationships to neighbouring properties and aspects of development that were of importance to the consent authority when granting the original approval).

When one undertakes the above analysis in respect of the subject application it is clear that the increase in total student numbers proposed does not reflect an increase in the maximum number of student able to be accommodated within the premises at any one time but simply an increase in the overall number of registered students utilising the existing premises over the expanded operating hours proposed. The application does not propose any physical changes to the existing building.

In this regard, the approved development remains, in its modified state, a development which will continue to relate to its surrounds and adjoining development in the same fashion to that originally approved.

The Court in the authority of *Stavrides v Canada Bay City Council* [2007] NSWLEC 248 established general principles which should be considered in determining whether a modified proposal was “substantially the same” as that originally. A number of those general principles are relevant to the subject application, namely:

- The proposed use and maximum student numbers able to be accommodated on the premises at any one time does not change; and
- The modifications maintain the previously approved environmental outcomes in terms of residential amenity and heritage conservation.

On the basis of the above analysis we regard the proposed application as being of minimal environmental impact and “essentially or materially” the same as the approved development such that the application is appropriately categorised as being “substantially the same” and appropriately dealt with by way of Section 4.55(1A) of the Act.

4.0 Matters for Consideration Pursuant to Section 4.15(1) of the Environmental Planning and Assessment Act 1979 as amended

The following matters are to be taken into consideration when assessing an application pursuant to section 4.15(1) of the Act.

The provision of any planning instrument, draft environmental planning instrument, development control plan or regulations.

4.1 Manly Local Environmental Plan 2013

The modifications sought provide for the ongoing lawful use of the premises as an educational establishment with no physical changes to the established building form.

Accordingly, the modifications do not alter the developments performance when assessed against the clause 4.3 - Building height, clause 4.4 Floor space ratio, clause 5.10 – Heritage conservation, clause 6.9 – Foreshore scenic protection, clause 6.11 – Active street frontages or the clause 6.16 Gross floor area in Zone B2 provisions of Manly Local Environmental Plan 2013 (MLEP).

4.2 Manly Development Control Plan 2013

Having regard to the applicable Manly Development Control Plan 2013 (MDCP) provisions we note the following:

- The modifications sought propose no physical changes to the established building form.
- In relation to the proposed hours of operation we note that the established educational use is located within the Manly Town Centre and directly opposite Manly Wharf and Bus Terminal with a plethora of commercial premises within immediate proximity of the site operating between the hours of operation now proposed. The existing shuttle bus arrangement between St Patricks Campus and the Manly Corso Campus will continue to operate with the existing public transport options readily accommodating the transportation needs of students during the proposed expanded hours of operation.

5.0 Conclusion

The application seeks to increase overall registered student numbers for the Manly Corso Campus to 400 to accord with the recent Notice of Decision by the Tertiary Education Quality and Standards Agency (TEQSA). A copy of this decision is at Attachment 1. The application also seeks an extension to the approved hours of operation to permit operation between 6am and 10pm Monday to Friday and between 8am and 10pm Saturday and Sunday to meet student demand for the recently expanded educational course offerings. By timetabling the evening classes at East Esplanade it will be safer and more convenient for ICMS students because the campus is closer to public transport such as the ferry and buses and within the Manly Town Centre.

We note that the increase in total student numbers proposed does not reflect an increase in the maximum number of student able to be accommodated within the premises at any one time but simply an increase in the overall number of registered students utilising the existing premises over the expanded operating hours proposed. The application does not propose any physical changes to the existing building.

In relation to the proposed hours of operation we note that the established educational use is located within the Manly Town Centre and directly opposite Manly Wharf and Bus Terminal with a plethora of commercial premises within immediate proximity of the site operating between the hours of operation now proposed. The existing shuttle bus arrangement between St Patricks Campus and the Manly Corso Campus will continue to operate with the existing public transport options readily accommodating the transportation needs of students during the proposed expanded hours of operation.

We have formed the considered opinion that the modifications sought represents the orderly and economic use and development of the land and will not give rise to any unacceptable or reasonably unanticipated residential amenity impacts given the locational attributes of the site, the consistency of the proposed hours of operation with those established by other commercial uses within the Manly Town Centre and the ongoing responsible operation and management of the College pursuant to development consent DA238/2014.

Council can be satisfied that the modifications involve minimal environmental impact and the development as modified represents substantially the same development as originally approved and therefore appropriately dealt with by way of s4.55(1A) of the Act.

Yours sincerely

BOSTON BLYTH FLEMING PTY LTD



Greg Boston

B Urb & Reg Plan (UNE) MPIA

Director

Attachment 1

Notice of Decision of TEQSA.



Mr Mun Hoe Lee
Director Quality Assurance & Accreditation
International College of Management Sydney

mlee@icms.edu.au

Dear Lee,

Notice of Decision – Change student capacity on CRICOS

I write regarding the application from International College of Management, Sydney Pty. Limited (01484M) ('ICMS') to increase capacity by 274 at the 46 - 48 East Esplanade campus. The application to increase the overall student capacity to 400 is approved and the changes are now reflected in PRISMS.

However, ICMS needs to provide consent from the Northern Beaches Council stating that ICMS is permitted to operate on weekdays and Saturdays after 6:00 pm by Friday, 1 February 2019.

If you have any questions regarding this notice, please do not hesitate to contact Nohelia Hain at Nohelia.hain@teqsa.gov.au

Yours sincerely

Cris Vega
Assistant Director ESOS/CRICOS Team
Assessment and Investigations Group

21 December 2018

TEQSA