



Pre-lodgement Meeting Notes

Application No: PLM2024/0090
Meeting Date: 29 August 2024
Property Address: 1 Narrabeen Park Parade NORTH NARRABEEN
Proposal: Development Application Pre-lodgement Meeting
Alterations and additions to a café / restaurant for dual
occupancy mixed use development.
Attendees for Council: Alex Keller – Principal Planner
Fathima Shajar – Student Planner
Lili Avval – Urban Designer
Brendan Gavin – Heritage Planner
Kate Mercieca – Strategic Planning
James Bocklebank – Traffic Engineer
Ray Creer – Waste Services

General Comments/Limitations of these Notes

These notes have been prepared by Council's Development Advisory Services Team on the basis of information provided by the applicant and a consultation meeting with Council staff. Council provides this service for guidance purposes only.

These notes are an account of the advice on the specific issues nominated by the Applicant and the discussions and conclusions reached at the meeting.

These notes are not a complete set of planning and related comments for the proposed development. Matters discussed and comments offered by Council will in no way fetter Council's discretion as the Consent Authority.

A determination can only be made following the lodgement and full assessment of the application.

In addition to the comments made within these Notes, it is a requirement of the applicant to address the relevant areas of legislation, including (but not limited to) any State Environmental Planning Policy (SEPP) and any applicable sections of the Pittwater Local Environmental Plan 2014 and Pittwater 21 Development Control Plan, within the supporting documentation including a Statement of Environmental Effects, Modification Report or Review of Determination Report.

You are advised to carefully review these notes and if specific concern have been raised or non-compliances that cannot be supported, you are strongly advised to review your



proposal and consider amendments to the design of your development prior to the lodgement of any development application.

SPECIFIC ISSUES RAISED BY APPLICANT FOR DISCUSSION

Response to Matters Raised by the Applicant

Classification of use:

The proposal is classified as mixed use. Depending on the final design and use, the classification bridges a number of BCA Classes. For example if “bed and breakfast” was used in the dwelling component then Class 1b applies, however as a “sole occupancy Unit” mixed with another commercial space and carparking then it is likely to be class 4.

A Class 4 part of a building is a sole dwelling or residence within a building of a non-residential nature. An example of a Class 4 part of a building would be a caretaker’s residence. A Class 4 part can only be located in a Class 5 to 9 building.

Where it is unclear which classification should apply, the approval authority has the discretion to decide.

Dual occupancy and building height:

The Pittwater LEP requires 800sqm minimum area for dual occupancy in the R2 Low Density Residential zone. The site has less than half that requirement and would not be able to provide any landscaped open space normally associated with a dual occupancy. Additionally, a 3-storey outcome would be required, triggering a height non-compliance and other amenity impacts associated with setbacks, privacy, solar access / natural light and general DCP design requirements. A Clause 4.6 variation to the site area and height for such an intensification of use, coupled with the restaurant reliance on public parking and outdoor dining is not supportable. The variations are too significant and would compound existing precedents for substantial departures from the LEP.

Existing use rights:

The PLM process is not intended to provide legal advice on planning matters. It is intended to assist applicants in amending a design or proposal to maintain consistency with the LEP and DCP controls and assisting in preparing the necessary documentation in preparing a DA for Council to assess, pursuant to the EPA Act.

Council is likely to be satisfied (confirmation for this cannot occur outside a development application process) that the restaurant/café has existing use rights. However, it is noted that dwellings are permitted so conceivably the ‘mixed use’ is still holding on by one element. (See heritage details below). A historical research specialist consultant (professional historian) would be able to locate land use information prior to development consent No.87/200 that was granted for “*Change of use from the existing shop (milk bar) with attached dwelling to a refreshment room (restaurant) with attached dwelling and detached garage*”. It should be noted that existing use rights have undergone numerous “case law” decisions in the NSW Land and Environment Court and more recent decisions take a narrower or stricter consideration than some other more dated case law decisions, including the LEC Planning Principle on existing use



rights.

The re-introduction of a dwelling may impact parts of the approved restaurant / café operations (such as displacement of carparking or back-of-house facilities) and therefore EUR will need to be addressed as part of any DA to re-instate a dwelling on the land.

The site is also bushfire affected due to its proximity to the nearby coastal bushland reserve. (This can have a potential impact on the Norfolk Island trees in the canopy area that overhangs the site should NSW RFS require standardised compliance conditions that are based on strict bushfire protection criteria)

Planning reforms:

Council is in the process of preparing a new LEP for the northern beaches (to consolidate the existing Warringah, Pittwater and Manly LEP's). A rezoning of the site as a neighbourhood centre would not necessarily invoke an increased height limit for a single site adjacent residential land. Any Planning Proposal to rezone the land or allow additional permitted uses would require supporting studies and documentation to demonstrate the strategic outcomes are being achieved without adverse impacts on adjacent land. The previous planning proposal for the site was not supported. The *Northern Beaches Local Strategic Planning Statement – Towards 2020* is insufficient on its own to support a spot rezoning of the site.

PITTWATER LOCAL ENVIRONMENTAL PLAN 2014 (PLEP 2014)

PLEP 2014 can be viewed at

<https://www.legislation.nsw.gov.au/view/html/inforce/current/epi-2014-0320>

Part 2 - Zoning and Permissibility	
Definition of proposed development: (ref. PLEP 2014 Dictionary)	Mixed use (residential and café), the café component is likely an “existing use”
Zone:	R2 Low Density Residential
Permitted with Consent or Prohibited:	Dwellings are permitted with consent.

Clause 4.6 - Exceptions to Development Standards

Clause 4.6 enables the applicant to request a variation to the applicable Development Standards listed under Part 4 of the LEP pursuant to the objectives of the relevant Standard and zone and in accordance with the principles established by the NSW Land and Environment Court.

A request to vary a development Standard is not a guarantee that the variation would be supported as this needs to be considered by Council in terms of context, impact and public interest and whether the request demonstrates sufficient environmental planning grounds for the variation.



Part 4 - Principal Development Standards			
Standard	Permitted	Proposed	Compliance
Building height	8.5m	9.2m part storey / roof span. (plus	Does not comply
Site area (dual occupancy)	800sqm required for dual occupancy.	Two dwellings (plus the existing restaurant) on 345sqm	Does not comply

PITTWATER 21 DEVELOPMENT CONTROL PLAN (P21DCP)

P21DCP can be viewed at

<https://eservices.northernbeaches.nsw.gov.au/ePlanning/live/Pages/Plan/Book.aspx?exhibit=PDCP>

The following notes include the identified non-compliant areas of the proposal only.

Part		
Control	Permitted	Proposed
D11.1 North Narrabeen Character		
<p><i>Buildings which front the street must have a street presence and incorporate design elements (such as roof forms, textures, materials, the arrangement of windows, modulation, spatial separation, landscaping etc) that are compatible with any design themes for the locality.</i></p> <p><i>Any building facade to a public place must incorporate at least two of the following design features:</i></p> <ul style="list-style-type: none"> <i>i. entry feature or portico;</i> <i>ii. awnings or other features over windows;</i> <i>iii. verandahs, balconies or window box treatment to any first floor element;</i> <i>iv. recessing or projecting architectural elements;</i> <i>v. open, deep verandahs; or</i> <i>vi. verandahs, pergolas or similar features above garage doors.</i> <p><i>The bulk and scale of buildings must be minimised.</i></p> <p><i>Landscaping is to be integrated with the building design to screen the visual impact of the built form. In residential areas, buildings are to give the appearance of being secondary to landscaping and vegetation.</i></p> <p>Opportunity exists to restore the original awning to the building as part of overall works. The use of eaves is also encouraged for new dwellings, however, in this case the new dwelling storey will need to be at the rear of the original shopfront (retained as single storey) with appropriate materials, roof pitch, setbacks and window fenestration. Two dwellings on the site will not be supported.</p>		



Part		
D11.3 Building colours and materials	See DCP chart.	Design changes recommended
The Pittwater DCP prescribes dark and earthy tones to be used with a colour chart depicted in part D11.3.		
D11.6 Front building line	6.5m	Design changes recommended
The new first-floor level setback should be at least 11m to the back of the original stepped brick façade walls. This would likely limit the dwelling to 2 bedrooms only. The bedrooms should face south as there will not be sufficient space (bedroom separation) against the height of No.3 Narrabeen Park Parade to gain adequate light or privacy to the adjacent taller dwelling to the north.		
D11.7 Side setback	0.9m	Design changes recommended
The setback along the northern boundary should seek to achieve a 2m setback for the upper storey. Note that a lower ceiling height can be placed over bedroom and laundry areas, however 2.7m floor to ceiling is considered sufficient for internal amenity for all rooms and will minimise any non-compliance to the side boundary envelope.		
D11.9 Building envelope	45 at 3.5m	Design changes recommended
The setback height plane is 45 degrees in above 3.5m. The proposal may not fully comply due to the existing building arrangement. The DCP allows that: <i>Eaves or shading devices that provide shade in summer and maximise sunlight in winter, shall be permitted to extend outside the building envelope.</i>		
D11.10 Landscape area	50% required	Does not comply
The proposal will be unable to achieve this requirement. Landscaped area must be maximised.		
D1.4 Scenic protection - General	North Narrabeen	Design changes recommended
<i>Development shall minimise any visual impact on the natural environment when viewed from any waterway, road or public reserve.</i> Issue of bulk and scale as well as styling of the building (colours / materials) need to achieve a 'good fit' to the scenic protection and DFC of North Narrabeen.		



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Permissibility

- The site is zoned R2 Low Density Residential under *Pittwater Local Environmental Plan 2014* (PLEP2014), which permits dual occupancy with consent. However, a minimum lot size of 800m² is prescribed for dual occupancy (Clause 4.1B *Minimum lot sizes for dual occupancies*).
- The site has a lot size of approx. 345m² which is considerably less than the prescribed minimum lot size development standard.
- Given that the existing café development will be retained on site, the preliminary drawings submitted for the DA PLM present a bulky built form which resembles a shop top housing development, rather than a dual occupancy development. Shop top housing is prohibited under the R2 Low Density Residential zone within PLEP 2014.
- Due to the site constraints and inconsistency with cl. 4.1B, Strategic and Place Planning would not support a dual occupancy development on the site.

Consolidated Northern Beaches LEP

- Development of a consolidated Northern Beaches Local Environmental Plan and Northern Beaches Development Control Plan for the Northern Beaches Council is currently underway.
- At its extraordinary Council meeting held on 17 June 2024, Council resolved to submit the Planning Proposal for the creation of a consolidated LEP to the Minister for Planning and Public Spaces for 'Gateway Determination' under Section 3.34 of the *Environmental Planning and Assessment Act 1979*. Following receipt of Gateway Determination, the LEP Planning Proposal will be placed on statutory public exhibition where the community has the opportunity to provide feedback. Council anticipates public exhibition will occur mid 2025.
- The Northern Beaches Local Environmental Plan is largely a translation of the existing 4 Local Environmental Plans. At this stage, minimum lot size of 800m² for dual occupancies will remain.

NSW low and mid-rise housing reforms

- Stage 1 low rise housing reforms related to dual occupancy (Housing State Environmental Planning Policy, Part 12) do not provide any additional development uplift for the site, as dual occupancy is already a permissible use under the R2 Low Density Residential zone within PLEP2014.
- Stage 2 low mid rise housing reforms are currently in draft form and have not yet been adopted. Based on the exhibited non-refusal standards, the site will likely not benefit from the reforms due to its lot size (345m²) and distance from centres (as defined in the [explanation of intended effects](#)).

Heritage Comments



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The proposal is for a three-storey development with the retention of the café at the ground level at the front of the site, parking at the rear and two residential dwellings above. Although not listed, the existing café building is a 1940 brick Art Deco corner store and is regarded as having heritage significance. The Norfolk Island Pines planted in the reserve outside the site are associated with the corner store having been planted in response to a request from the then owner in 1941. They are also regarded as having heritage significance, although unlisted.

As currently proposed, Heritage would not be able to support the proposal due to its impact upon the former corner store. The three-level design extends too far forward into the corner store and its large bulk and scale overwhelms the item and its lower scale. Rather Heritage could support a single upper level at the rear of the site with a dwelling contained within it (ie max 2 storeys). This new upper level would have to be set back from the brick parapet where it runs along the southern elevation, and the existing metal gable roof above the store would have to be retained. The future design of this new rear section would also have to retain the current stepped approach where the rear timber clad section steps back into its site so as to provide a visual break and relief to the brick walls and their return. The new design of the rear would also have to be conscious of the retained front section and have a design that complements it, rather than one that competes with or attempts to recreate its character. This includes both its physical bulk and scale as well material choice. Heritage would support the ongoing retail/café use of the former corner store.

Noting that the Norfolk Island Pines are also regarded as being of heritage significance and are a distinct character element of the area, Heritage would not be able to support any proposal that would impact upon them, be it physically such as their roots or significance. This would include excavation within the site, adjustments to the driveway that further impact the trees or further encroachment of the outdoor dining into the reserve.

Any future development of the site would require a Heritage Impact Statement that considers the development and its impacts upon both the corner store and the pine trees in the reserve. This statement must incorporate the guidelines as prepared by Heritage NSW (dated June 2023). Further, any development must investigate the restoration of the general store and elements to improve its heritage character, such as the reinstatement of the missing wrap around awning. Note, as the corner store and trees are regarded as being of significance, Heritage Controls B1.1 and B1.2 of the Pittwater 21 DCP would also apply.



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Waste Management Comments



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Residential

A residential bin room is shown on the plans.

Council will provide 4 bins to each of the two dwellings.

Each dwelling will receive:

1 x 80 litre garbage bin – 460mm wide, 500mm deep

1 x 140 litre paper recycling bin – 540mm wide, 615mm deep

1 x 140 litre container recycling bin – 540mm wide, 615mm deep

1 x 240 litre vegetation bin - 600mm wide, 750mm deep

The applicant will need to allow for the storage of the 8 allocated bins.

Bins are to be presented on Narrabeen Park Parade for collection, between to post boxes and the crossing.

Outdoor dining may be impacted upon on waste collection day on the Narrabeen Park Pde frontage during waste collection operations (side arm truck lifting bins up and over the top of the truck).

Commercial

A commercial bin room is shown on the plans.

Council will not permit commercial bins to be placed on public land awaiting collection.

An arrangement must be put in place whereby the waste collection contractor enters the property, retrieves the bins, empties, and then returns to bins to bin storage room immediately after emptying.

Parks Reserves and Foreshores Referral

The proposed development site adjoins Lake Park Reserve. The proposal retains the existing café that adjoins Lake Park Reserve that currently operates with an outdoor dining lease on RE1 Public Recreation land. It is noted that the existing façade of the café is proposed for retention, and two occupancies are proposed behind the existing café structure.

The proposal does not include any excavation for basement.

No physical works are proposed upon public land zoned RE1, and existing elements such as driveway access are unaltered, such that the existing large Norfolk Island Pines located in proximity are not impacted. The existing Norfolk Island Pines present a visually dominant landscape character as seen from the surrounding areas, and in particular within the RE1 land area, and along and over the Ocean Street Bridge when travelling



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south to north. This view of the stand of Norfolk Island Pines presents a dominant visual element along the landscape at the edge of the lake and provides an emotive connection to nature along the lake and to the beach.

Subject to the non-activation of public land within the RE1 zone for any construction activity, and protection measures for the Norfolk Island Pines, Council's Parks Assets business unit raise no concerns.

Parks Assets notes that any access for development works will be restricted to the existing driveway from the carpark only (subject to a traffic plan to permit ongoing public access to the carpark) and all other land areas within the RE1 land shall remain intact without any provisions for development access or storage.

An indicative Construction Management Plan shall be submitted at development application to assist in assessment of the construction works methodology outlining the routes for deliveries that shall be confined to the existing driveways and existing access through the carpark.

The existing carpark must remain open to the public and details shall be submitted on an indicative traffic plan.

No storage of materials or site facilities shall be permitted within RE1 land.

An arboricultural impact assessment shall be submitted outlining tree protection measures including fencing to the Norfolk Island Pines.

Flood Engineering

The proposal is in the low flood risk area and is not proposing any critical or vulnerable land uses. Therefore, there are no flood related development controls

Traffic Engineering

The existing café appears to have a driveway accessed from the North Narrabeen beach carpark which leads to a garage. It is unclear from the PLM material how many off-street carparking spaces are able to be accommodated within that garage however, it is assumed that the garage could accommodate parking for three cars. The PLM plans appear to suggest that these parking will be retained and are considered to be parking spaces that support the existing café/restaurant (existing development) on the site and not new parking spaces.

The PLM proposal therefore proposes only one additional parking space to support the 2 residential units. The units are both 3 bedroom and therefore require 2 parking spaces for each unit for compliance with DCP requirements. The proposed shop top housing should therefore be providing an additional 4 off-street parking spaces. As only one additional parking space is proposed the PLM proposal is not compliant with DCP



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parking requirements and would not be supported by the Transport Network team in its current form.

It would not be acceptable to argue that the adjacent beachside carpark or adjacent kerb space on Narrabeen Park Parade provides adequate capacity to support the shortfall in residential parking. The beachside carpark and parking on Narrabeen Park Parade near the site are frequently fully occupied during summer particularly on weekends and summer public holidays. These locations are unable to absorb parking shortfalls associated with development on the adjacent land.

All off-street parking spaces and parking aisle widths will need to be designed in compliance with AS/NZS2890.1 with the parking area designed to facilitate forwards entry and exit to/from the site. Reversing across the footpath in a high pedestrian volume area will not be supported.

It is acceptable to retain the existing single width vehicle crossing accessed from the beach carpark. Widening of this driveway would not be supported. Parking on the nature strip area i.e between the property boundary and the beach carpark would also not be supported as parking on this land would be contrary to the road rules.

Development Engineering

Vehicular Access

Vehicular access and parking design in accordance AS/NZS 2890.1:2004 and Councils Works Specification.

On-site detention

On-site detention is required in accordance with Section 9.3.1 Onsite Stormwater Disposal Requirements Region 1 – Northern Catchments of Council's Water Management for Development Policy.

Geotechnical Report

A geotechnical report is required in accordance with Appendix 5 - Geotechnical Risk Management Policy for Pittwater – 2009 of the Pittwater 21 Development Control Plan

Documentation to accompany the Development Application

- Lodge Application via NSW Planning Portal
- Statement of Environmental Effects
- Plans of existing internal building layout.
(Historical review indicates the premises had a dwelling at the rear)
- Demolition plan (elements to be demolished shown in red)
- Scaled and dimensioned plans:
 - Site Plan;
 - Floor Plans;



- Elevations; and
- Sections. (include illustration for privacy screening / view lines for No.3 Narrabeen Park Parade)
- Certified Shadow Diagrams (depicting shadows cast at 9am, Noon and 3pm on 21 June).
- Cost of works estimate/ Quote
- Survey Plan (Boundary Identification Survey)
- Site Analysis Plan (with built form controls (height, setback, and relevant site constraints overlaid)
- Demolition Plan
- Legal opinion (case law) that the re-introduction of a dwelling (despite being permitted) is lawful as a 'mixed use' given the existing use has been retained but the dwelling component ceased (was converted) some years ago. The issue being 'mixed use / shop top housing' is prohibited, however one "leg" of that use still remains operating.
- Excavation and fill Plan
- Heritage report (include any 'restoration work such as restore original shop awning)
- Geotechnical report (include acid soils, coastal risk, dilapidation risk)
- Traffic and parking study (A delivery dock for the café/restaurant must be retained)
- Operational management (café hours / waste / noise / odour etc)
- Waste Management Plan (Construction & Demolition)
- Driveway Design Plan (if any change is proposed to the driveway)
- Erosion and Sediment Control Plan / Soil and Water Management Plan
- Stormwater Management Plan / Stormwater Plans and On-site Stormwater Detention (OSD) Checklist
- Arborist report for tree protection
- Bushfire report (including how public car park tree canopy is to be kept intact)
- External materials and colours schedule and photomontage
- Construction management plan (building materials, timeline, trade parking etc)

IMPORTANT NOTE FOR DA LODGEMENT

Please refer to the Development Application Lodgement Requirements on Council's website (link details below) for further detail on the above list of plans, reports, survey and certificates.

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/development-application-da-modification-or-review-determination/2060-da-modification-lodgement-requirements-mar21.pdf>

The lodgement requirements will be used by Council in the review of the application after it is lodged through the NSW Planning Portal to verify that all requirements have been met for the type of application/development.

Concluding Comments

These notes are in response to a pre-lodgement meeting held on 29 August 2024 to discuss alterations and additions for a mixed use development (dual occupancy with



Concluding Comments

ground floor (existing café restaurant) at No 1 Narrabeen Park Parade. The notes reference the plans prepared by *Mark Bennet Architect* dated 5 June 2024.

The proposal as presented at the PLM is not supported.

The property is currently a substantially undersized low density residential allotment with the existing use reliant on adjacent public land for outdoor dining and customer parking. The existing use component of the shop uses the substantive part of the existing site area for operational reasons, with historical changes over time since the building was first constructed. The 'back of house' areas for the café / restaurant require substantial space for storage, staff, food hygiene, waste management and environmental health compliance. Additionally, the whole of the carparking has been allocated to the café restaurant since the previous dwelling occupancy was converted. The re-introduction of a dwelling on the site is constrained by the site area, built form controls and surrounding development. Seeking two dwellings on the site is a significant overdevelopment and would overwhelm the original historical front element. A single dwelling is permitted on the site, however, this would have to be small and low key, setback from the original front section and sympathetically designed for the lakeside location and amenity of adjacent properties. Carparking for the dwelling must be contained on site and this would require 2 spaces, which means the café becomes even more reliant on the public car park. A reduction in approved overall seating capacity may be appropriate.

Council is in the process of preparing a new Local Environmental Plan to consolidate the current Pittwater / Manly / Warringah LEP's. Any planning proposal to rezone the land would have to be supported by relevant strategic studies and documentation. Previously the site has been subject to a planning proposal for shop top housing but it was not supported. The re-introduction of a single dwelling on the site would not require a rezoning since the existing use component (café) appears to have never been abandoned and a dwelling is permitted on the site. The concern being that as either 'shop top housing' or 'mixed use' is prohibited but the "existing use" has remained operational while the permitted use of a dwelling was abandoned (converted for the café / restaurant) some years ago. The return of a two bedroom 'managers residence' may be suitable with consideration of the NSW Planning Circular: *PS 13-001 – How to characterise development*.

Question on these Notes?

Should you have any questions or wish to seek clarification of any matters raised in these Notes, please contact the member of the Development Advisory Services Team at Council referred to on the front page of these Notes.