

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2019/1478
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<b>Responsible Officer:</b>	David Auster
<b>Land to be developed (Address):</b>	Lot 1 DP 1005148, 1 Narrabeen Park Parade NORTH NARRABEEN NSW 2101
<b>Proposed Development:</b>	Alterations and additions to an existing restaurant
<b>Zoning:</b>	R2 Low Density Residential
<b>Development Permissible:</b>	No - Zone R2 Low Density Residential Yes - Zone RE1 Public Recreation
<b>Existing Use Rights:</b>	Yes
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Petobi Pty Ltd
<b>Applicant:</b>	Petobi Pty Ltd

<b>Application Lodged:</b>	19/12/2019
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Commercial/Retail/Office
<b>Notified:</b>	26/05/2020 to 09/06/2020
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	37
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 23,000.00
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### Executive Summary

The proposal relates to an existing restaurant use, and proposes an increase in number of patrons, extended operating hours, the playing of live or amplified music, and works on the adjacent Crown Land to provide for an outdoor eating area.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposal is suitable and appropriate development for the subject site.

Council received 37 submissions, including four in support of the application, and a petition with over 1000 names also in support of the application. The objections to the proposal focused mainly on noise and amenity impacts, impacts to the Norfolk Pines to the south, and the encroachment and perceived

privatisation of the adjacent Crown Land.

Conditions are recommended in relation to customer numbers, trading hours, and live and amplified music, to reasonably maintain residential amenity. The condition relating to operational hours (trading and music) has also been recommended to be reviewed by Council after 12 months, and thereafter at the discretion of Council, to ensure that any unreasonable impacts can be managed by alteration of the approved operating hours.

The application has been assessed against the Environmental Planning and Assessment Act 1979 (EP&A Act 1979), Environmental Planning and Assessment Regulations 2000 (EP&A Regulations 2000), relevant Environmental Planning Instruments (EPIs) and Council policies. The outcome of this assessment is detailed within this report.

Accordingly, based on the detailed assessment contained in this report, it is recommended that the application be approved subject to conditions attached to this report.

## **PROPOSED DEVELOPMENT IN DETAIL**

The applicant seeks development consent for alterations and additions to an existing food and drink premises, extending the premises' hours of operation and increasing the seating capacity within the premises.

### Alterations and Additions

The proposed alterations and additions are confined to the southern exterior of the building and comprise:

- the construction of a 2.6m high pergola over an existing tiled area;
- the construction of a new 1.5m wide concrete pathway connecting the existing outdoor tiled area to an existing footpath within the Reserve;
- the construction of a stone and railway sleeper fence at a height of 1.2m around the perimeter of the outdoor area;
- the construction of railway sleeper 'deck' connecting the two tiled terrace areas; and
- associated soft landscaping (22.4m<sup>2</sup> total).

It is noted that the proposed works are located within the Lake Park Reserve and that Council as trustee, and the Department of Planning, Industry and Environment (Crown lands) have granted owner's consent for the proposed works.

### Hours of Operation

The existing hours of operation, as approved by Development Consent No. 87/200 dated 17 June 1987 and subsequently modified by Modification of Development Consent No. 87/200 dated 15 November 1990, are as follows:

- Wednesday to Sunday: 12 midday - 3.00pm;
- Wednesdays, Thursdays and Sundays: 6.30pm - 10.30pm; and
- Fridays and Saturdays: 6.30pm - 11.30pm.

The proposed hours of operation are as follows:

- Monday to Saturday: 6.30am - 12.00 midnight;
- Sunday: 6.30am - 10.00pm; and
- New Year's Eve: 6.30am - 2.00am.

### Seating Capacity

The existing seating capacity, as approved by Development Consent No. 87/200 dated 17 June 1987, is a maximum of 50 persons. Council has also granted an outdoor seating approval for a further 40 persons.

The application proposes to increase the seating capacity to 100 persons, spread over both the internal and external areas of the premises. It also proposes to allow for up to 180 persons for stand up cocktail functions.

### **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**

Pittwater Local Environmental Plan 2014 - Zone R2 Low Density Residential  
 Pittwater Local Environmental Plan 2014 - Zone RE1 Public Recreation  
 Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements  
 Pittwater 21 Development Control Plan - C1.6 Acoustic Privacy  
 Pittwater 21 Development Control Plan - D14.8 Side and rear building line

### **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 1 DP 1005148 , 1 Narrabeen Park Parade NORTH NARRABEEN NSW 2101
<b>Detailed Site Description:</b>	The development, being the subject of this application, occurs on two properties being:

- Lot 1 in DP 1005148, No. 1 Narrabeen Park Parade; and
- Lot 7069 in DP 1058602, No. 1A Narrabeen Park Parade (known as Lake Park Reserve).

#### No. 1 Narrabeen Park Parade

The site has an area of 345.3m<sup>2</sup> with a frontage to Narrabeen Park Parade of 9.82m. The southern boundary is a total of 41.15m in length, with the northern boundary being 36.11m.

The site accommodates a single storey brick, timber and metal roofed cafe which occupies approximately 208m<sup>2</sup> of the site. The cafe is constructed to the northern (side) and western (front) boundaries and partially to the southern (side) boundary. The remainder of the site (to the east) contains a detached garage building with access to the garage gained via an existing driveway from the Council public car parking area. The eastern portion of the site has a shared area with a ground level garage and awning area within the subject Lot 1 and a first floor level balcony over the garage being within the title of Lot 2 in DP 1005148.

The original building appears to have been constructed circa 1930, as a single storey structure on the front (west) and side boundaries of the site. The building is curved on its south-west corner. There have been several alterations to the original building, including new window and door openings to the west and south elevations. Constructed of brickwork, the building has a painted facade. There is a parapet surrounding a low pitched metal roof to this structure.

Extended to the rear of original building is a single storey timber weatherboard extension, which is setback from the southern boundary by about 1.15 metres. Painted to match the larger brick structure, the extension also has window and double door openings to the southern elevation. At the rear of the building is a timber lean-to element. There is pedestrian access from the rear of the building to a parking area comprising 3 garages. Access to these garages is achieved via the roadway within Lakeside Reserve. Pedestrian access is available across the garage turning area to the adjacent property, 3 Narrabeen Park Parade.

#### No. 1A Narrabeen Park Parade

The cafe is located adjacent to the northern edge of Lakeside Reserve at 1A Narrabeen Park Parade. The reserve includes the North Narrabeen Rock pool, Lagoon,

and public carpark. Immediately adjacent to the site of the proposed works to the south of 1 Narrabeen Park Parade are a group of Norfolk Pines with 3 being in close proximity to the proposal works.

The site is Crown Land, of which Council is the trustee under the Crown Lands Management Act 2016. Both Council and the Department of Planning, Industry and Environment have given owner's consent to the specific works proposed. Stamped plans from the Department have also been provided with the owners consent, which correspond to the plans lodged with the application. The applicable Plan of Management for the land is Pittwater's Ocean Beaches Plan of Management 7.0 North Narrabeen Rock Pool, which was adopted by Pittwater Council in June 2006. This Plan of Management expressly authorises an outdoor eating area in conjunction with the existing commercial outlet adjacent to the reserve.

Map:



## SITE HISTORY

The site has been the subject of the following matters:

### A1220/73

This Building Application was lodged on 25 June 1973 for renovations to the interior of the existing shop.

The application was approved on 4 September 1973.

### DA87/200

This application was lodged for a change use from an existing shop (milk bar) with attached dwelling to a refreshment room (restaurant) with attached dwelling and detached garage.



The application was approved on 17 June 1987 subject to conditions, the following of which are relevant to this application:

4. *Restaurant trading hours including any take away meals service shall be confined to 6.30pm to 10.30pm Wednesdays, Thursdays and Sundays, 6.30pm to 11.30pm Fridays and Saturdays, closed Mondays and Tuesdays. All staff and customers must vacate the restaurant premises by 12.00pm midnight.*
5. *Seating provision within the restaurant to not exceed 50 persons.*

During this occupation, paving was laid on the ground within the Reserve and outdoor seating provided in conjunction with the use of restaurant.

#### Granting of Trusteeship

The granting of trusteeship of the Reserve to Pittwater Council from the department of Conservation and Land Management was published in the Government Gazette No. 146 on 18 December 1992.

#### Access arrangements

On 29 December 1992 Council wrote to the property owner in relation to the granting of a licence over Crown land (being the Reserve) to enable the continuation of existing vehicle access to the rear of the site via the eastern end of the public car park (i.e. in the location of the proposed new landscaped area) pursuant to a decision at the Ordinary Council Meeting of 14 September 1992.

#### Building Approval 1038/93

This application was lodged on or around 28 May 1991 for the erection of additions (i.e. a double garage at the rear of the site).

The application was approved on 23 November 1993.

On the 4 March 1996, the Council advised the applicant that the outdoor seating was within the boundaries of the reserve. As such, use of the reserve for outdoor seating or use of the land for other activities ancillary to the restaurant was not permissible.

A meeting was held on 17 April 1996 with the relevant officers of the Council to determine the most appropriate course of action available to the applicant. A rezoning application was the outcome of that meeting.

#### Application to rezone the land

This application was lodged on or around 18 July 1996 and sought approval to rezone two (2) parcels of land (being Lot 1 and the Lakeside Reserve) to allow:

- use of the land occupied by Surfside Cafe, 1 Narrabeen Park Parade, Narrabeen, for restaurant refreshment room purposes;
- use of part of Lakeside Reserve, adjacent to 1 Narrabeen Park Parade, Narrabeen, for outdoor seating associated with a restaurant refreshment room.

The rezoning sought to amend the *Pittwater Local Environmental Plan 1993* in the following manner:

1. That Lot 1, DP 16625, be used for the purposes of a restaurant/ refreshment rooms; and
2. That part of the Lakeside Reserve, incorporating two areas of 4.2 metres x 9.0 metres; and 2.8

metres x 6.4 metres, adjacent to Lot 1, DP 16625, be used for outdoor seating associated with the adjacent restaurant/ refreshment rooms.

The application was rejected by Council at its meeting of 24 March 1997 for the following reasons:

1. *The rezoning would rely upon carparking within a public reserve to support a commercial use;*
2. *The proposal has potential adverse impacts upon the existing Norfolk Island Pines located within the reserve;*
3. *The rezoning would alienate public open space for commercial purposes;*
4. *The intensification of the approved restaurant within the residential 2(a) zoned land is able to be considered through the Development Application process under the existing use rights provisions of the EPA Act 1979.*

In addition to these reasons, Council also resolved in relation to the existing work in the following manner:

*"That the planter boxes placed on Crown Land be moved back to the boundary of the premises so as not to alienate the public open space."*

The applicant was advised of this decision by letter dated 14 April 1997.

#### Compliance Action for the alleged Illegal use of outdoor seating

On 3 April 1998 Council issued a Directive ('cease use') Letter with respect to the apparent illegal land use for the purposes of outdoor seating in conjunction with the restaurant at Lot 1, DP 16625 No 1 Narrabeen Park Parade, North Narrabeen (the subject site).

In response, on 22 April 1998 the tenant of the property (Surfside Cafe) requested an extension of time to enable the removal of the outdoor seating. This was rejected by Council and a further Directive Letter was issued on 13 May 1998 requiring the tenant to show cause within 28 days why Council should not proceed to take appropriate legal action.

The matter was subsequently referred to Council's solicitors on 26 June 1998 to commence legal action.

#### PP0001/17

This application was lodged on or around 30 March 2017 to permit a new 4-storey building comprising 8 residential units, 2 commercial units and basement carparking, by amending the *Pittwater Local Environmental Plan 2014* to:

- rezone the subject lots from R2 Low Density Residential to B1 Neighbourhood Centre; and
- increase the maximum permitted building height from 8.5m to 13m.

At its meeting on 27 June 2017, the Council resolved to reject the proposal.

#### Outdoor Dining Approval

On 1 September 2017 Council approved a 10m x 4.6m outdoor seating area at the south-western corner of the existing building within the Reserve. The approval expires on 1 September 2020.

The approval includes:

- Operating hours 7.00am to 10.00pm.
- Maximum provision of 10 tables and 40 chairs.

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under 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 commercial purposes for an extended period of time. The proposed development retains the commercial use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 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&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted.</p> <p><u>Clause 92</u> of the EP&amp;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&amp;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 of consent.</p> <p><u>Clause 98</u> of the EP&amp;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&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of</p>



Section 4.15 Matters for Consideration'	Comments
	<p>Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&amp;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) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> 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	See discussion on “Notification & Submissions Received” in this report.
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

- Does the existing use satisfy the definition of "existing use" under the *Environmental Planning and Assessment Act 1979* (the 'Act')?

Section 4.65 of the Act defines an existing use as:

*"(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part, have the effect of prohibiting that use, and*

*(b) the use of a building, work or land:*

- (i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
- (ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse."*

This necessarily requires the following questions to be answered:

1. Was the use of the building, work or land a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part 4 of the Act, have the effect of prohibiting that use?

Comment

The Applicant has provided evidence in the form of the original consent (87/200) and subsequent approvals (modification to 87/200 dated and 15 November 1990 and an Outdoor Dining Approval granted on 1 September 2017), which reveal that the use of the land commenced as a lawful purpose prior to the coming into force of Pittwater Local Environmental Plan 2011 on 27 June 2014.

2. Was the use of the land granted development consent before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use?

Comment

The use of the land was lawfully approved by Council on 17 June 1987, prior to the coming into force of Pittwater Local Environmental Plan 2011 on 27 June 2014.

3. Has the use of the land been carried out within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse?

Comment

Council records reveal through various inspections that the use of the land was carried out on 11 February 2015 which is within one year from the date on which the provision having the effect of prohibiting the use commenced.

- **What is “the land on which the existing use was carried out” for the purposes of cl 42(2) (b) of the Environmental Planning and Assessment Regulation 2000 (“the Regulation”)?**

Meagher JA in *Steedman v Baulkham Hills Shire Council* [No. 1] (1991) 87 LGERA 26 stated (at 27) the rule to be applied as follows: “if the land is rightly regarded as a unit and it is found that part of its area was physically used for the purpose in question it follows that the land was used for that purpose”.

Comment

Having regard to the above case law, it is noted that the whole of the area of the land was physically used for the purpose in question and therefore, it is considered that the land was used for that purpose and that existing use rights apply to the whole of the subject site.

- **What are the planning principles that should be adopted in dealing with an application to alter enlarge or rebuild and existing use?**

The judgement in *Fodor Investments v Hornsby Shire Council* (2005) NSWLEC 71, sets out the planning principles that should be applied in dealing with development applications seeking to carry out development on the basis of existing use rights.

The following four principles adopted by the NSW Land and Environment Court in this case will have general application in dealing with development applications that rely on existing use rights:

### **1. How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?**

*While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessments.*

#### Comment

The works subject to this application are incidental to the approved use and occur entirely outside the building (the majority of which is sited with the neighbouring RE1 Public Recreation zone to the south).

The development which is the subject of this proposal, and which occurs in the R2 Low Density Residential zone, is part of the pergola which crosses the property boundary into the neighbouring RE1 Public Recreation zone. The pergola therefore provides a nil side setback to the property boundary.

The pergola structure does not adversely affect the relationship to the existing and future context as it is of a lightweight construction and compliments the cafe use both aesthetically and functionally. The placement of the pergola does not unreasonably prejudice the future development of land on both zones as it of a lightweight construction which could be removed should the need arise.

### **2. What is the relevance of the building in which the existing use takes place?**

*Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists. However, where the existing building is proposed for demolition, while its bulk is clearly an important consideration, there is no automatic entitlement to another building of the same floor space ratio, height or parking provision.*

#### Comment

The building has been used as a restaurant/cafe since 1987 and is not subject to a change of use or demolition.

The additions which form the subject of this application do not add unreasonable bulk to the existing built form given the lightweight construction of the pergola and the use of umbrellas to cover the remainder of the existing terrace.

### **3. What are the impacts on adjoining land?**

*The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.*

#### Comment

The impacts on adjoining land have been considered in terms of bulk, scale, impact on the environment (i.e. trees), and amenity (i.e. acoustic privacy).

In each instance it is considered that the development, subject to conditions (particularly pertaining to noise generated by amplified music) will achieve a satisfactory level of impact.

#### 4. What is the internal amenity?

*Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.*

#### Comment

The building is used as a cafe and the terrace/patio is ancillary to that use. In this respect, and because the pergola provides shade to outdoor diners, the internal amenity is considered to be maintained at a satisfactory level.

#### **Conclusion**

The use has been approved under a previous environmental planning instrument and, therefore, is a lawful use. Subsequently, the use can be retained under the current environmental planning instrument (Pittwater Local Environmental Plan 2014).

#### **BUSHFIRE PRONE LAND**

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the application that included a certificate (prepared by Building Code and Bushfire Hazard Solutions, dated 30 September 2019) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

#### **NOTIFICATION & SUBMISSIONS RECEIVED**

The subject development application has been publicly exhibited from 26/05/2020 to 09/06/2020 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 process council is in receipt of 37 submission/s from:

<b>Name:</b>	<b>Address:</b>
Mr Michael John Morris	5 Narrabeen Park Parade NORTH NARRABEEN NSW 2101
Mrs Susanne Erica Morris	5 Narrabeen Park Parade MONA VALE NSW 2103
Mrs Betsy Ellen Faen	9 Narrabeen Park Parade NORTH NARRABEEN NSW 2101
Michael Morris	5 Narrabeen Park Parade NORTH NARRABEEN NSW 2101
Mrs Diane Munro	17 Narrabeen Park Parade NORTH NARRABEEN NSW 2101
Marjorie Colman	24 Island Parade NORTH NARRABEEN NSW 2101
Mrs Allison Bosley	24 Edwin Avenue AVALON BEACH NSW 2107
Mr Peter Muller Mrs Gwenyth Muller	PO Box 127 CHURCH POINT NSW 2105
Alan Ginns	Address Unknown
Mr Peter Gurtner	Po Box 284 MONA VALE NSW 1660

Name:	Address:
Michael Simpson	11 Narrabeen Park Parade NORTH NARRABEEN NSW 2101
Kristel Ness	7 Narrabeen Park Parade NORTH NARRABEEN NSW 2101
Mrs Elizabeth Mary Kelly	29 Collins Street NORTH NARRABEEN NSW 2101
Mr Peter Henderson	21 Narrabeen Park Parade NORTH NARRABEEN NSW 2101
Sanford Jaffe	Address Unknown
Marilyn Irons	5 Beach Parade NORTH NARRABEEN NSW 2101
Mr David Michael Holst	28 Collins Street NORTH NARRABEEN NSW 2101
Ms Janet Craig	Address Unknown
Mr Alexander Clive Morgan	19 Island Parade NORTH NARRABEEN NSW 2101
Mrs Margaret Gladys Woods	42 A Elimatta Road MONA VALE NSW 2103
Mrs Rosemary Ramage	26 Wimbledon Avenue NORTH NARRABEEN NSW 2101
Ms Janine Elizabeth Clark	16 Lake Park Road NORTH NARRABEEN NSW 2101
Monte Bruce Wilson	12 Peal Place WARRIEWOOD NSW 2102
Shannon O'Neill	220 Ocean Street NARRABEEN NSW 2101
Mrs Vicki Maree Stephenson	49 Arnott Crescent WARRIEWOOD NSW 2102
Mrs Katia Morosi	10 / 26 Wetherill Street NARRABEEN NSW 2101
Mr Nigel Bennett Bramley	3 Narrabeen Park Parade NORTH NARRABEEN NSW 2101
Mrs Robyne Dawn Coutts	19 Collins Street NORTH NARRABEEN NSW 2101
Ms Philippa Cranswick	7 Peal Place WARRIEWOOD NSW 2102
Mr Paul Stewart Whitter	7 Peal Place WARRIEWOOD NSW 2102
Ms Kim McMahon Ms Pauline Mary McMahon	31 Narrabeen Park Parade WARRIEWOOD NSW 2102
Jeffrey Gordon	5 Narrabeen Park Parade NORTH NARRABEEN NSW 2101
Mrs Dianne Mary Munro	17 Narrabeen Park Parade NORTH NARRABEEN NSW 2101
Jessica Gordon	5 Narrabeen Park Parade NORTH NARRABEEN NSW 2101
Jacqueline Marlow	154 Woorarra Avenue ELANORA HEIGHTS NSW 2101
Mr Ian George Ralph	154 Woorarra Avenue ELANORA HEIGHTS NSW 2101
BBF Town Planners	1 / 9 Narabang Way BELROSE NSW 2085

Of the 37 submissions received, four were in support of the application, and the others were objecting to the proposal. A petition was also submitted, including over 1000 names, in support of the application.

The following issues were raised in the submissions and each have been addressed below:

- Owner's consent
- Noise
- Appearance of privatisation of crown land
- Impacts on Norfolk Island Pines and wildlife
- Existing use rights extending beyond boundary
- Trading hours
- Increase in patrons beyond property boundary
- Replacement of existing path
- Service of alcohol



- Flooding
- Proposed landscaping
- Outdoor dining requirements
- Petition

The matters raised within the submissions are addressed as follows:

- **Owner's consent**

Concerns were raised that the owner's consent provided was a letter from Council granting owner's consent for works to the outside dining area and nothing more, and that owner's consent for the proposal as presented was therefore insufficient.

Comment:

In response to the concerns raised early in the assessment process, an updated owner's consent letter from Council was provided (Council ref: 2020/031245), granting owner's consent specifically for the works proposed as part of the application, subject to conditions should the proposed development application be approved. A further letter was provided from the Department of Planning Industry & Environment granting owner's consent for the development application, along with stamped plans acknowledging the owner's consent (Council ref: 2020/446146 and 2020/446155).

- **Noise**

Concerns were raised regarding noise arising from the proposal, including live and amplified music being played.

Comment:

These concerns have been extensively addressed by Council's Environmental Health department (see Referrals section of this report). Environmental Health is generally satisfied with the proposal, subject to strict conditions in relation to live or amplified music, including days and hours of operation, and the location, number, orientation, and volume of speakers. Speakers are to be confined to indoors at the premises. Further, a 12 month trial period has been recommended, at the end of which the applicant will need to demonstrate that no unreasonable impacts are caused for the proposed operating conditions to continue.

Environmental health has also recommended a condition stating that live or amplified music may only be played inside the premises of 1 Narrabeen park parade under the following circumstances; On Thursday to Saturday except new years eve and new years day Between the hours of 12:00pm (midday) and 10:00pm, except new years eve to new (31 December - 1 January) where live or amplified music may be played from 12:00pm (midday) to 2:00am.

These recommendations are noted. However, given the location of the premises in or adjacent to the residential area, it is recommended that these times be more conservative. The recommended condition has been altered to state that live or amplified music may only be played inside the premises of 1 Narrabeen park parade under the following circumstances; On Thursday between 12.00pm and 8.30pm, Friday to Saturday except new years eve and new years day between the hours of 12:00pm (midday) and 10:00pm, except new years eve to new (31 December - 1 January) where live or amplified music may be played from 12:00pm (midday) to 12:00am.

Further to this, the trial period recommended by Environmental Health is not supported. Instead,

the condition relating to operational hours (trading and music), is recommended to be reviewed by Council pursuant to section 4.17(10B) of the Environmental Planning and Assessment Act 1979. This will enable Council to carry out a review of the condition at the end of 12 months from the date of issue of an occupation certificate, and thereafter at the discretion of Council should environmental impacts arising from the operating hours be found to be creating unreasonable environmental impacts. Subject to such a review in accordance with the Act and the Regulations, Council will have the ability to alter the permitted operating hours if necessary.

Subject to these comments and conditions, the concerns are considered to have been satisfactorily addressed, and will be reviewed at the end of 12 months after an occupation certificate is issued. Further, the proposed operating hours are not supported in full and will be limited by condition (see discussion under Trading hours below).

- **Appearance of privatisation of crown land**

Concerns were raised that the proposed pergola and landscaping over the crown land would appear to privatise this land, and that this is not in the public interest.

Comment:

The proposed works are consistent with the Plan of Management for the land, which expressly authorises Council to lease the land for an outdoor eating area in conjunction with the commercial outlet adjacent to the reserve. Further, both Council and the Department of Planning, Industry and Environment (Crown Lands) have provided owner's consent for the proposal. Council's Parks, Reserves, Beaches, Foreshores department has also indicated their support for the proposal in the Referrals section of this report, including the specific embellishments shown on the plans, and the proposed operating hours. The proposed works include structures such as a pergola and rail way sleepers, which will be relatively easy to remove in the future should that be required.

Given the above considerations, the proposal is considered acceptable in the circumstances with respect to the works on the crown land. The proposal is considered to be generally in the public interest, given its consistency with the Plan of Management for the site.

- **Impacts on Norfolk Island Pines and wildlife**

Concerns were raised in relation to impacts to the Norfolk Island Pines adjacent to the site to the south, and regarding impacts of lighting and noise to birdlife.

Comment:

Impacts to the Norfolk Island Pines have been assessed by Council's Landscape Officer (see Referrals section of this report). This assessment concluded that the proposed works are satisfactory, subject to conditions of consent including implementing the recommendations of the arborist report provided with the application. Council's Bushland and Biodiversity department also assessed the application, and did not identify any potential impacts or biodiversity issues. Verbally, Council's Bushland and Biodiversity team indicated they are aware of a nest in Rat Park to the north east, but are unaware of any permanent nesting sites within the Norfolk pines adjacent to the subject site.

Subject to these comments and conditions, the concerns are considered to have been satisfactorily addressed.

- **Existing use rights extending beyond boundary**

Concerns were raised that existing use rights should not apply beyond the boundary of 1

Narrabeen Park Parade, and should not extend onto the crown land to the south. Particular concerns were raised with respect to clauses 42 and 42 of the Environmental Planning and Assessment Regulation 2000.

Comment:

The proposal is considered to benefit from existing use rights (see discussion under Existing Use Rights in this report) at 1 Narrabeen Park Parade, which is zoned R2 Low density residential. However, the land to the south is zoned RE1 Public Recreation. Restaurants or cafes are a permissible use in this zone, and a reliance on existing use rights on this land is therefore unnecessary. The works proposed on the crown land are ancillary to the restaurant/cafe use, and are therefore deemed to be a permissible use on that land. Further, the Plan of Management relating to the crown land specifically allows for an outdoor eating area in conjunction with the commercial outlet.

The Environmental Planning and Assessment Regulation 2000 includes the following clauses:

**42 Development consent required for enlargement, expansion and intensification of existing uses**(cf clause 40 of EP&A Regulation 1994)

- (1) Development consent is required for any enlargement, expansion or intensification of an existing use.
- (2) The enlargement, expansion or intensification—
  - (a) must be for the existing use and for no other use, and
  - (b) must be carried out only on the land on which the existing use was carried out immediately before the relevant date.

**43 Development consent required for alteration or extension of buildings and works**(cf clause 41 of EP&A Regulation 1994)

- (1) Development consent is required for any alteration or extension of a building or work used for an existing use.
- (2) The alteration or extension—
  - (a) must be for the existing use of the building or work and for no other use, and
  - (b) must be erected or carried out only on the land on which the building or work was erected or carried out immediately before the relevant date.

As discussed above, the restaurant/cafe use on the Crown land is a permissible use in the RE1 zone, and so does not rely on existing use rights, and the Plan of Management for the site also expressly allows for this use. Further, even were that not the case, it is noted that there is existing approval for use of the Crown land for outdoor eating (where the existing umbrellas are located), and it may be considered that the 'existing use' therefore already applies to 1A Narrabeen Park Parade in any case.

The submissions are not supported in this regard.

- **Trading hours**

Concerns were raised regarding the proposed trading hours, including past 10pm and until 2am on new years eve.

Comment:

Council's Environmental Health department has detailed extensive considerations of the proposed trading hours (see Referrals section of this report), including related impacts such as noise from live and amplified music. Subject to conditions in relation to noise, trading hours of Monday – Saturday: 6.30am – 12.00 midnight, Sunday: 6.30am – 10.00pm, and New Year's

Eve – until 2.00am have been recommended for approval. Other conditions recommended include compliance with the plan of management, the keeping of a complaints register, and a twelve month trial period, at the end of which the noise impacts must be reviewed and found to be acceptable if the trading hours and conditions on music are to continue.

Despite the assessment of the Environmental Health team, it is recommended that the operating hours above be more limited. Council's standard practice with regard to operating hours of restaurants in residential areas has been to generally limit trading hours to around 10pm. It is noted that the location of this property is 'on the edge' of the residential area, and noise may generally be expected to be projected mainly to the south, across the lagoon. It is further noted that the operational plan of management submitted by the applicants states that live music will cease at 10pm.

Given these considerations, and the assessment and conditions provided by Environmental Health, it is recommended that trading hours until 11.30pm be permitted on Fridays and Saturdays, but be limited to 10.30pm Sunday to Thursday, due to the existing approved operating hours for Wednesday, Thursday and Sunday allowing for a 10.30pm closing time. It is also recommended that the proposed closing time for new years eve of 2.00am be limited to 12.30am. These opening hours will still be subject to Council review (as discussed under 'Noise' above), and will be reviewed at the end of 12 months, and thereafter at the discretion of Council.

- **Increase in patrons beyond property boundary**

Concerns were raised that any increase in numbers of diners should be confined within the property boundary of 1 Narrabeen Park Parade, and not on the crown land. Concerns were also raised that the business should not be permitted more patrons than other nearby businesses, and that no more than 40 patrons should be permitted outside.

Comment:

The Council Plan of Management (POM) relating to the property expressly authorises the future leasing of an outdoor eating area in conjunction with the existing commercial outlet adjacent to the reserve. Given that the POM specifically allows for this, the submissions are not supported with regard to patrons being allowed to use the reserve.

In relation to the number of patrons proposed, it is not considered reasonable to base on other nearby businesses, that will all have different circumstances. The number of patrons should be assessed on the expected environmental impacts associated with the proposal. In this case, the POM for the reserve specifically envisions an outdoor eating area in this location in association with the commercial tenancy, and the proposal is not considered to be unreasonable or unexpected in this regard. The proposed intensity of use has been assessed as not resulting in any unreasonable environmental impacts, including with regard to noise impacts (subject to conditions of consent). However, a condition is recommended to allow Council to review the operating hours, to ensure that no unreasonable impacts arise out of the approval. A condition has also been recommended limiting the number of patrons in the outdoor area to 50 (an increase in 10 over what has been previously approved). This number of patrons in the outdoor area will also be subject to the assessment by Council when the operator applies for a new outdoor dining approval.

The operational plan of management submitted with the application states that up to 180 patrons will be permitted for stand up cocktail events. However, no supporting information has been provided to justify such an increase in the intensity of use, and there are no details on the number of such events that are likely, or times of day that they would run. The application has not demonstrated that such an intensity of use would not result in unreasonable environmental impacts, particularly with regard to parking. As such, although the increase in patron numbers to

100 is supported, the allowance for stand up cocktail functions of up to 180 people is not supported. Further, the Plan of Management for the Crown Land states that:

*"This Plan of Management expressly authorises the future leasing of a proposed **outdoor eating area** in conjunction with the existing commercial outlet adjacent to the reserve."*

The proposed use of the area for 'stand up cocktail functions' is not necessarily considered to achieve the requirement that the area be leased for 'outdoor eating'. As such, this element of the proposal is not supported, and it is considered that the crown land area should be used for outdoor seating to enable eating.

A condition of consent is recommended to amend the operational plan of management for the proposal prior to an occupation certificate being issued. Subject to the recommended conditions of consent, the proposal is considered acceptable in the circumstances.

- **Replacement of existing path**

Concerns were raised regarding the proposed replacement of the existing path from the car park to the southern entrance, and potential damage to the Norfolk Island Pines.

Comment:

Council granted owner's consent to the development application subject to construction of a new concrete path to match the existing reserve path that it connects to. Given this was a requirement of Council's Park Assets department, and that Council's Landscape Officer is satisfied that (subject to conditions) no unreasonable impacts will occur to the Norfolk Island Pines, the submission is not supported.

- **Service of alcohol**

Concerns were raised regarding the service of alcohol and anti social behaviour impacting on surrounding residents and children who use the public reserve.

Comment:

The service of alcohol will be governed by the liquor licence for the premises. The use is primarily as a restaurant, and the service of alcohol is not considered to result in unreasonable impacts in and of itself. As discussed above, the proposal to allow stand up cocktail functions of up to 180 people is not supported, and this will limit the likelihood of alcohol related anti social behaviour occurring.

- **Flooding**

Concerns were raised that the land is flood effected.

Comment:

The land falls within the low risk flood area. The proposed works are open and will not impede the flow of flood waters. Council's Flood Engineer has previously commented that there are no flood related controls are applicable, and no flood report is required with the proposal. The submissions are not supported in this regard.

- **Proposed landscaping**

Concerns were raised that there was no need for the landscaped areas shown on the plans, and that it could result in the spread of weeds.



Comment:

Council's Landscape Officer has assessed the proposal and is satisfied subject to conditions of consent. The small landscaped areas shown on the plans either side of the new pergola are not considered to be offensive. A condition is recommended stating that environmental weeds are to be planted in the landscaped areas shown on the plans.

- **Outdoor dining requirements**

Concerns were raised that the proposal was inconsistent with Council policy for outdoor dining areas.

Comment:

Consistency with the outdoor dining policy will be assessed when the owners of the business apply for a new outdoor dining permit. However, given that Council has previously granted an outdoor dining licence in this area, and that Council's Parks and Reserves department has issued owner's consent to make the application, specifically acknowledging the proposed works, it appears unlikely that such an application would be rejected (subject to the application being properly made in accordance with the policy, and complying with the terms of the development consent). Further, Council's Property Department has also supported the application (see Referrals section of this report), and stated that the approval will allow them to properly regulate the area in accordance with the outdoor seating policy.

- **Petition**

Concerns were raised that the petition submitted in support of the application should be treated as invalid due to entries being unsigned, undated and the proposals being vaguely worded on the petition. Further concerns were raised that many of the addresses on the petition are not local to the area.

Comment:

The petition submitted includes approximately 1088 names in support of the application. These names include addresses and phone numbers. A number of these were selected at random and called to confirm they had signed, and all were genuine. The petition is considered a valid submission in support of the application. Council is obliged to consider all submissions, albeit the petition does not raise any specific issues beyond "support for operating hours of 6.30am - 12.00am Monday to Saturday, 6.30am - 10.00pm Sunday; the ability to support live music between 12.00pm and 10.00pm on Fridays, Saturdays, Sundays and public holidays; and the ability to utilise the outdoor dining area consistent with the operating parameters of the restaurant."

The fact that many (not all) of the names and addresses on the list are not local to the immediate area, and who are not therefore likely subject to the possible environmental impacts of the proposal is noted. It is also noted that the petition did not cover all aspects of the proposal, including the extended opening hours on new years eve, and the proposed number of patrons of up to 180 people. However, it must also be noted that the petition represents a significant number of people who are in general support of the use of this public area for this purpose.

- **Parking**

Concerns were raised regarding competition for parking spaces in the public car park, particularly with regard to cocktail functions of up to 180 people proposed.

Comment:

The existing use had approval for 50 patrons, plus an outdoor dining approval for another 40 patrons. The proposal therefore represents a relatively minor increase from existing approvals, from a total of 90 patrons to 100 patrons. The small increase will not have a significant impact on parking rates. An increase to 180 people for cocktail functions is however a significant increase, albeit that these functions would perhaps be more likely to take place during evening hours where the parking area was not at peak usage for recreational use of the surrounding lagoon and beach area.

However, the potential use of the site for up to 180 people for cocktail functions has not been addressed in any detail in information submitted with the application, including with regard to parking impacts, nor the likely times, days, or frequency of such events. As such, although the increase to 100 patrons is supported, permitting functions of up to 180 patrons is not supported. A condition of consent is recommended in this regard.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Environmental Health (Acid Sulphate)	<p><b>General Comments</b></p> <p>Environmental Health have been requested to provide comment on the development application. As part of this assessment the following matters were considered; Acid sulphate soils and Noise.</p> <p><b>Acid Sulphate soil</b></p> <p>Reference is made to the report “report on preliminary geotechnical investigation for proposed mixed use development at 1 – 3 Narrabeen Park Parade, North Narrabeen” dated December 2016 and referenced as 206-092.1. The report refers to demolition of existing property at 1-3 Narrabeen park parade and building a new structure with below ground carpark which was part of a previously refused development. This report is not referring to the current proposal of changing hours of operation and increased seating at 1 Narrabeen Park parade.</p> <p>Despite this the geotechnical investigation was undertaken on the property mentioned in this development application and the site</p>

Internal Referral Body	Comments
	<p>investigation found that "Potential Acid Sulphate Soils are not present within the marine sands encountered towards the front of the site whilst a water table was not intersected above the bedrock surface to 3.60m depth. Due to the clayey nature of the subsurface at the rear of the site, the presence of acid generating soils is highly improbable in this location." Based on this and no excavations being proposed for the development Environmental Health have no objections to acid sulphate soils on the above mentioned site.</p> <p>Environmental Health recommend approval.</p> <p><b>Recommendation</b></p> <p>APPROVAL</p>
Environmental Health (Industrial)	<p><b>General Comments</b></p> <p>Environmental Health have been requested to provide comment on the development application. As part of this assessment the following matters were considered; Noise.</p> <p><b>Noise</b></p> <p>Reference is made to the statement of environmental effects by Vaughan Milligan Development Consulting Pty Ltd, dated October 2019. The development proposal aims to extend the hours of operation from the current condition of consent which states;</p> <p>Restaurant trading hours including any take away meals service shall be confined to:</p> <ul style="list-style-type: none"> <li>• 12 midday- 3.00pm, Wednesday to Sunday</li> <li>• 6.30pm -10.30pm, Wednesdays, Thursdays and Sundays</li> <li>• 6.30pm -11.30pm, Fridays and Saturdays</li> </ul> <p>All staff and customers are to vacate the restaurant premises by 12 midnight</p> <p>The development proposes to alter the existing trading hours to the ones listed below;</p> <ul style="list-style-type: none"> <li>• Monday – Saturday: 6.30am – 12.00 midnight</li> <li>• Sunday: 6.30am – 10.00pm</li> <li>• New Year's Eve – until 2.00am closing.</li> </ul> <p>This proposal significantly increases the trading hours and allows</p>

Internal Referral Body	Comments
	<p>trading on Monday and Tuesday which if not properly managed or controlled can have a detrimental effect on the amenity of surrounding residence.</p> <p>The proposal also aims to increase the current seating capacity from a maximum of 50 persons to 100 persons to both indoor and outdoor areas. This increase in patronage is anticipated to increase noise generated from the premises especially if outdoor seating is used.</p> <p>The property department at Northern Beaches Council has been requested to comment on the outdoor dining at the property and they have advised that the approval mentioned in the SEE was for a previous business operator. Outdoor dining licences under section 68 of the Local Government Act are non-transferable and as such the business has no current approval for any outdoor dining. The property department state that "Any agreement going forward would be assessed under a Crown Land licence.". As there is currently no crown land licence agreement, this will need to be addressed prior to the issuing of any consent.</p> <p>As part of a request for additional information the applicant has submitted an acoustic report and a plan of management.</p> <p>The plan of management has multiple inconsistencies with the SEE i recommend conditioning that an amended plan of management be submitted prior to OC for approval from the Environmental Health Department. Below i have listed the problems i have identified;</p> <p>- The SEE list the proposed hours of operation as;</p> <p>Monday – Saturday: 6.30am – 12.00 midnight</p> <p>Sunday: 6.30am – 10.00pm</p> <p>New Year's Eve – until 2.00am closing.</p> <p>The POM list hours as;</p> <p>Monday – Saturday – 6.00am -12.00 midnight</p> <p>Sunday 6.00am -10.00pm</p> <p>New Year's Eve - - 2.00am</p> <p>This is inconsistent with the SEE's proposal, The plan of management must mirror the proposed hours in the SEE.</p> <p>- In (h) Shutdown Procedure it is stated that " All waste is removed to the rear bins and the areas tidied."</p> <p>Environmental Health would prefer if waste was enclosed and</p>

Internal Referral Body	Comments
	<p>contained within in the premise until the following day where it is disposed in the rear bins. This is due to loading commercial bins at 11:45pm-12pm is quite a noisy activity for that late at night. This can be mitigated through this practice.</p> <p>- In Live Music/ Noise Management: section there is mention to recommendations from the acoustic report.</p> <p>This should refer to the conditions of consent Environmental Health propose to impose instead of the recommendations. As such I will be recommending that the POM be reviewed to the satisfaction of EH prior to OC where these change can be made.</p> <p>- Under Patronage: there is mention of 100 seated patrons and 180 in the event of a stand up cocktail event. There is no mention of 180 patrons within the SEE and as such this number should be removed from the POM. A condition of consent also be imposed to limit the number of patrons to 100 which is still double what the existing consent allowed.</p> <p>- In the conclusion section;</p> <p>The statement below alludes that DA 2019/1478 provides consent for the outdoor dining area. This is incorrect as a separate lease from crown lands/Council would permit its use;</p> <p>"The plan forms an integral part of the operation of the restaurant and the use of the outdoor dining area for which DA 2019/1478 provides approval."</p> <p>The acoustic report has been provided by the applicant by Pulse Accoustic consultancy referenced as 2020.064 One Café – Acoustic Assessment and dated 6 April 2020.</p> <p>The Acoustic report provides a number of recommendations based on the assessment undertaken in order to preserve the amenity of receivers these have been considered and associated conditions of consent have been proposed.</p> <p>Based on the number of submissions inconsistencies in the POM and significant increased intensity in the use of the site and hours of operation. A number of conditions of consent have been imposed to review the use of the site over a period of time. such as at OC stage, 12 month's after the interim OC is issued. This way if the use is not appropriate further conditions can be imposed.</p> <p><b>Further comments (12/06/2020)</b></p>



Internal Referral Body	Comments
	<p>A Submission has been received by Northern Beaches Council giving a peer review of the acoustic report submitted by the applicant of the proposed development. The Peer review document referenced as 50.5413.R1:MSC, dated 2 June 2020 and titled Peer-review of acoustic assessment one cafe, 1 Narrabeen Park Parade, North Narrabeen by the acoustic group, provides some clarity on the deficiencies of the acoustic report submitted by Pulse Acoustic Consultancy in some but not all matters. In considering this review Environmental Health has reconsidered some of its proposed conditions of consent to limit speakers within the building of 1 Narrabeen Park Parade. This was for a number of reasons including to remove a temporary administrative control and replace it with a physical structure (the building), Placing the onus on the applicant to gain consent for the use they desire on Crown land at 1A Narrabeen park parade and to enable a simpler approach to enforcement of conditions of consent i.e. If the speakers are outside of the property it is a breach of consent. It is deemed that the effect of live music can still be enjoyed by patron when played from speakers indoors while also protecting the amenity of surrounding residents. It is also anticipated that the physical structure will provide far greater noise mitigation than a noise curtain or wall outside.</p> <p>Due to the removal of the administrative control proposed some controls have been relaxed such as days and hours of operation of live and amplified music. This is due to speakers being required to be located within the premise and not outside. The original acoustic report based their assessment for outdoor music which has lead to a lack of information on internal noise reduction fittings. As a condition of consent another acoustic report is to be submitted prior to the consent lapsing for consideration. Any additional acoustic report is to address internal noise control measures should they be needed after one year of operation.</p> <p>Environmental Health recommend approval subject to the proposed conditions of consent being imposed.</p> <p><b>Recommendation</b></p> <p>APPROVAL - subject to conditions</p>
Environmental Health (Food Premises, Skin Pen.)	<p><b>General Comments</b></p> <p>Environmental Health have been requested to provide comment on the development application. As part of this assessment the following matters were considered; the fit out of the food premise.</p> <p><b>Food</b></p> <p>The proposal does not look at amending the kitchen. A condition should be imposed to ensure the current kitchen meets requirements of AS4674-2004 and mechanical ventilation requirements under AS1668.2-2012. This is to protect surrounding residents for any</p>

Internal Referral Body	Comments
	<p>additional noise or odours from the operation of the kitchen during the increased hours of operation.</p> <p>The proposal fails to mention any trade waste requirements based on the increased patronage as such the applicant is to contact Sydney water to determine if a trade waste licence would be required prior to OC.</p> <p><b>Recommendation</b></p> <p>APPROVAL - subject to conditions</p>
Landscape Officer	<p>The development application seeks the approval for the construction of alterations and additions to an existing restaurant and amendment of the hours of operation.</p> <p>In terms of this Landscape Referral, the landscape works include a new pergola, new concrete path, new sleeper edge, post and rail fence, and new soft landscaping.</p> <p>As requested by Council a post construction (for parts of the proposed works) arborist report has been undertaken to determine the impact upon the existing Norfolk Island Pines in the vicinity of works. A Arboricultural Impact Assessment by RainTree Consulting dated 5 May 2020 reports the following: The three Norfolk Island Pine trees have been subject to minor landscape works within the tree protection zone, and impacts have been discussed with recommendations for minimising impacts to trees for additional works provided, with the methodology involved as follows: Soil probing with a steel probing tool to 250mm in depth in areas where new posts, footpath and timber edge retaining wall beams are located to detect resistance by tree root activity.</p> <p>In determining impacts within the SRZ by previous additions and alterations the assessment conducted determined a negligible impact by design, however, no detailed tree root investigation by manual (exploratory hand root mapping) or pneumatic air spade inspection was conducted.</p> <p>The assessment concluded the likelihood of negligible impact due to the following discussions:</p> <ol style="list-style-type: none"> <li>1. Probing along retaining wall sleepers adjacent T3 &amp; T2, and adjacent the new concrete footpath between T1 &amp; T2 detected no root resistance at 250mm in depth. Soil type was considered very sandy and not compacted corresponding with Grozier Geotechnical Investigation report of deep sandy soils to the SSE of the site. Being sandy soils it is likely deep descending roots occur beyond the SRZ radius.</li> <li>2. The new concrete access footpath to the cafe was constructed</li> </ol>

Internal Referral Body	Comments
	<p>to finish above ground level, matching the existing raised level of the public verge pathway. It is likely minimal excavation was required to accommodate the construction of the path with no root resistance when soil probed at the path edge detected.</p> <p>3. The four sleeper post vertical design supporting the steel table tops are cosmetic only with the exception of one (1) post located directly adjacent T3 at 0.7m (700mm) from the face of tree. It is unclear if tree roots were damaged during central post and footing placement. The remainder of the sleepers do not extend below ground level and are directly attached to existing copper log posts. Some minor alteration (straightening) and concrete footing work may have occurred, with the works occurring in the existing post footprint indicating a likely negligible impact by the design upgrade.</p> <p>4. Timber sleeper path adjacent T2 is constructed to meet existing ground levels with minimal excavation to meet grade. The grated SW drain adjacent T3 is located outside of the SRZ radius with likely negligible root impact due to minor (&lt;10%) excavation occupancy within the TPZ.</p> <p>It is accepted by Council that the works conducted without approval have a negligible impact, with the exception of point iii. above that is inconclusive in determining the impact upon T3, and any decline in T3 shall be attributed to the works conducted without approval, and any tree rehabilitation costs within the next 12 months shall be borne by the cafe operator.</p> <p>Additional works to complete the landscape upgrade design proposal consist of an additional usage area and pergola adjacent T3 with line of stone wall cages under outdoor bar table tops. Works are located within SRZ setbacks and Conditions of Consent, as recommended in the Arboricultural Impact Assessment by RainTree Consulting dated 5 May 2020 shall be imposed.</p>
NECC (Bushland and Biodiversity)	The potential impacts of the proposed / completed works on the significant trees in the locality of the works is to be assessed by another section of Council. There are no biodiversity issues identified with respect to the application
NECC (Coast and Catchments)	This application has been assessed against coastal considerations of the Pittwater LEP, DCP, Coastal Management Act and Coastal Management SEPP. Supported subject to conditions.
NECC (Development Engineering)	<p>Council's Development Engineering &amp; Certification Team Manager confirmed no need for updated Geotechnical Report.</p> <p>No objection to approval, subject to conditions as recommended.</p>
Parks, reserves, beaches, foreshore	The proposed development involves the extension of an outdoor dining area on Council managed Crown reserve.

Internal Referral Body	Comments
	<p>It is noted that the outdoor dining space is permissible under the Pittwater Ocean Beaches Plan of Management.</p> <p>Parks supports the proposed outdoor dining extension and specific associated embellishments, as outlined in Council's Owners Consent letter. Ref 2020/031245.</p> <p>Parks would be supportive of the hours of operation for the venue matching or being similar to other restaurant/cafe venues that are located around Narrabeen lagoon.</p> <p>No other issues with the proposal.</p>
Property Management and Commercial	<p>This is an application for alterations and additions to an existing restaurant and amendment of the hours of operation at 1 &amp; 1A Narrabeen Park Parade, North Narrabeen.</p> <p>Currently, the premises is occupying a significant section of outdoor land on the southern side of the building for outdoor dining and access. Construction of an unauthorised balcony style railing for holding drinks and installation of planter boxes underneath this has led to this area appearing as private land with exclusive use when it is public land. This should be regularised in any grant of development consent.</p> <p>This land is Crown land, and Northern Beaches Council is the Council Crown Land Manager. This area is currently governed by the Pittwater's Ocean Beaches Plan of Management 7.0 North Narrabeen Rock Pool, which was adopted by Pittwater Council in June 2006. This Plan of Management expressly authorises an outdoor eating area in conjunction with the existing commercial outlet adjacent to the reserve.</p> <p>It is noted that the PoM references an existing Outdoor Dining Approval, however this was granted to the previous restaurant proprietor, and licences are not transferable. As such, the business currently has no outdoor dining licence, although the current proprietor has submitted an application. During assessment of this application it was discovered that the proposed hours of operation and patron numbers for the outdoor dining component differed from those in the most recent development application, a 1987 consent for use of the building and a subsequent 1990 modification to consent. Licenced area on Crown land cannot be approved where there is a variation to approved hours of operation or overall patron numbers for the restaurant.</p> <p>Property has no issue with the development application as submitted, and supports the regularisation of patron numbers and hours of operation, as this will have a positive impact on the community and allow Property to regulate the outdoor component of the development in accordance with Council's Outdoor Dining and Footpath Merchandise Policy and other relevant policies .</p>

Internal Referral Body	Comments
	A 12 month licence for the use of this land for outdoor dining by the proprietor of the adjoining restaurant/café can be issued following a grant of development consent.
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.
Aboriginal Heritage Office	<p>The application was referred to the Aboriginal Heritage Office for review.</p> <p>No objection was raised to the proposal subject to the imposition of a standard condition which requires that, should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, the Department of Planning, Industry and Environment (DPIE) and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.</p> <p>As there are no earthworks proposed as part of this application, the condition is not required to be imposed in this instance.</p>

## 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)

### SEPP (Coastal Management) 2018

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

### 10 Development on certain land within coastal wetlands and littoral rainforests area

- (1) *The following may be carried out on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:*



- (a) *the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,*
- (b) *the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,*
- (c) *the carrying out of any of the following:*
  - (i) *earthworks (including the depositing of material on land),*
  - (ii) *constructing a levee,*
  - (iii) *draining the land,*
  - (iv) *environmental protection works,*
- (d) *any other development.*

Comment

The development is not located on land located within a coastal wetland or littoral rainforest area.

Clause 10 is not applicable.

## **11 Development on land in proximity to coastal wetlands or littoral rainforest**

- (1) *Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:*
  - (a) *the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or*
  - (b) *the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.*

Comment

The development is not located on land located within proximity to a coastal wetland or littoral rainforest area.

Clause 11 is not applicable.

## **12 Development on land within the coastal vulnerability area**

*Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:*

- (a) *if the proposed development comprises the erection of a building or works - the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and*
- (b) *the proposed development:*
  - (i) *is not likely to alter coastal processes to the detriment of the natural environment or other land, and*
  - (ii) *is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and*
  - (iii) *incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and*
- (c) *measures*

are in  
place  
to  
ensure  
that  
there  
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coastal  
hazards.

#### Comment

The NSW Department of Planning, Industry and Environment website refers to a Coastal Vulnerability Area as one that is subject to coastal hazards such as coastal erosion and tidal inundation. However, Clause 12 is preceded by a note which states "*at the commencement of this Policy, no Coastal Vulnerability Area Map was adopted and therefore no coastal vulnerability area has been identified*".

Therefore, Clause 12 is not applicable at this time.

### **13 Development on land within the coastal environment area**

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
  - (b) *coastal environmental values and natural coastal processes,*
  - (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
  - (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
  - (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
  - (f) *Aboriginal cultural heritage, practices and places,*
  - (g) *the use of the surf zone.*

#### Comment

The site is located within the Coastal Environment Area.

The development is situated at the southern side of the existing and approved cafe and are of a scale such that no impact will occur which would adversely affect the matters raised in Points (a) to (g).

- (2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
- (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in sub-clause (1), or
  - (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
  - (c) if that impact cannot be minimised - the development will be managed to mitigate that impact.

Comment

Council is satisfied that the development is designed, sited and managed (subject to condition) to avoid an adverse impact referred to in sub-clause (1).

The development satisfies Clause 13(1) and (2).

#### **14 Development on land within the coastal use area**

- (1)
- (a) has considered whether the proposed development is likely to cause an adverse impact on the following:
    - (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
    - (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
    - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
    - (iv) Aboriginal cultural heritage, practices and places,
    - (v) cultural and built environment heritage, and
  - (b) is satisfied that:
    - (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
    - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
    - (iii) if that impact cannot be minimised - the development will be managed to mitigate that impact, and
  - (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment

The site is not located within the Coastal Use Area.

Clause 14 is not applicable.

As such, it is considered that the application complies with the requirements of the *State Environmental Planning Policy (Coastal Management) 2018*.

#### **15 Development in coastal zone generally - development not to increase risk of coastal hazards**

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

#### Comment

The development responds to the nature of the site and utilises appropriate and existing waste and drainage to avoid any increased risk of coastal hazard.

The development satisfies Clause 15.

### **Pittwater Local Environmental Plan 2014**

Is the development permissible?	Zone R2 : No Zone RE1: Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Zone R2 : Yes Zone RE1: Yes

#### Principal Development Standards

Standard	Permitted	Proposed	% Variation	Complies
4.3 Height of Buildings	8.5m	Umbrellas: 3.5m Pergola: 2.6m	N/A N/A	Yes Yes

#### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	N/A
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.3 Flood planning	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

#### Detailed Assessment

### **Zone R2 Low Density Residential**

A restaurant use is prohibited within the R2 Low Density Residential zone.

### **Zone RE1 Public Recreation**

A restaurant is a permitted use within the RE1 Public Recreation zone. Although the development proposed within the RE1 zone is not a stand-alone restaurant, it is ancillary to a restaurant use.

## Pittwater 21 Development Control Plan

### Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
<b>R2 Low Density Residential</b>				
Front Building Line	6.5m or established building line (whichever greater)	16m (Pergola)	N/A	Yes
Rear Building Line	6.5m	17m (Pergola)	N/A	Yes
Side Building Line	2.5m - One Side 1.0m - Other Side	North: No Change South: Nil (Pergola)	N/A 100%	Yes <b>No</b>
Building Envelope	3.5 x 45°	Within Envelope	N/A	Yes
Landscape Open Space	40% (138.1m <sup>2</sup> )	Nil (No change)	N/A	N/A
<b>RE1 Public Recreation</b>				
Front Building Line	Merit Assessment	0.7m to 2.1m (Terrace)	N/A	Yes
Rear Building Line	Merit Assessment	68.6m	N/A	Yes
Side Building Line	Merit Assessment	98.5m	N/A	Yes
Building Envelope	3.5m x 45°	Within Envelope	N/A	Yes

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A4.14 Warriewood Locality	N/A	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.2 Bushfire Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	N/A	N/A
B3.11 Flood Prone Land	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	No	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.6 Acoustic Privacy	Yes	Yes
C1.13 Pollution Control	Yes	Yes
D14.1 Character as viewed from a public place	Yes	Yes
D14.2 Scenic protection - General	Yes	Yes
D14.3 Building colours and materials	Yes	Yes
D14.7 Front building line	Yes	Yes
D14.8 Side and rear building line	No	Yes
D14.11 Building envelope	Yes	Yes

### Detailed Assessment

#### **B6.3 Off-Street Vehicle Parking Requirements**

##### Description of Non-compliance

The existing development does not include parking, and there is no new parking proposed. The application includes an increase from the current 90 customers to 100 customers for the restaurant, and up to 180 customers for stand up cocktail functions. A merit assessment against the objectives is carried out below.

##### Merit Assessment

- **An adequate number of parking and service spaces that meets the demands generated by the development.**

The proposal to increase the number of seated patrons by 10 is considered relatively minimal given the location adjacent to a public car park. There is also on-street parking available in the vicinity, and further, it is likely that the restaurant caters to many customers either walking to the site from the near by caravan park or surrounding residences, or to customers coming to use the beach and lagoon at the same time. Given these considerations, the increase in seated customers by 10 is not considered unreasonable.

However, the application has not provided any justification for the proposed stand up cocktail functions of up to 180 customers. No traffic report or parking surveys have been provided, and no other arguments have been put forward. As such, this element of the proposal is not supported, and a condition of consent is recommended to delete the allowance for such numbers from the Plan of Management for the premises.

- **Functional parking that minimises rainwater runoff and adverse visual or environmental impacts while maximising pedestrian and vehicle safety.**

The existing public carpark is safe and functional.

- **Safe and convenient parking.**

The continued use of the adjacent public carpark and in the surrounding streets is considered acceptable for an increase of up to 10 customers compared to the existing approvals.



Given the above assessment, the proposal is considered acceptable in relation to parking for an increase of 10 customers to a total of 100.

### **C1.6 Acoustic Privacy**

Refer to comments from Council's Environmental Health department under Referrals section of this report. In summary, the proposal, subject to condition, is not considered to result in offensive noise as defined by the Protection of the Environment Operations Act 1997. Conditions have been recommended limiting the operating hours and live or amplified music. However, a condition enabling review and modification of the operating hours has also been recommended to ensure noise impacts are not unreasonable.

### **D14.8 Side and rear building line**

#### Description of non-compliance

The proposed pergola will create a technical nil setback to the southern side boundary, albeit it will actually carry over the boundary onto the crown land. As such, a merit assessment against the objectives is carried out below.

#### Merit Assessment

- ***To achieve the desired future character of the Locality.***

The proposal is considered to be generally consistent with the desired character statement in the Pittwater DCP. Further, the proposal will be consistent with the applicable Plan of Management for the Crown land.

- ***The bulk and scale of the built form is minimised.***

The pergola is a relatively light weight and low to the ground structure, that will not create any unreasonable issues with regard to bulk and scale.

- ***Equitable preservation of views and vistas to and/or from public/private places.***

No views will be unreasonably impacted upon by the proposal.

- ***To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.***

No views will be unreasonably impacted upon by the proposal.

- ***To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.***

This issue is discussed in detail under the submissions section of this report, particularly with regard to noise. In summary, the proposal is considered (subject to conditions of consent) to be able to maintain a reasonable level of amenity to surrounding residential properties. It is not considered to result in any

unreasonable privacy or solar access impacts.

- ***Substantial landscaping, a mature tree canopy and an attractive streetscape.***

The proposal includes a small amount of new landscaped area within the side setback of 1 Narrabeen Park Parade, which like the pergola, will extend onto the Crown land.

- ***Flexibility in the siting of buildings and access.***

A degree of flexibility is considered appropriate in the circumstances, given the plan of management for the crown land specifically calls for a seated eating area in conjunction with the commercial premises. The pergola will provide some weather cover for this area.

- ***Vegetation is retained and enhanced to visually reduce the built form.***

The works within the side setback area will not affect any vegetation. The impacts of the overall development on the Norfolk Pines adjacent to the south have been assessed by Council's Landscape Officer and found to be acceptable.

- ***To preserve and enhance the rural and bushland character of the locality.***

The site is not in a rural area, and as discussed above, the proposal will not have any unreasonable impacts on existing vegetation in the area.

- ***To ensure a landscaped buffer between commercial and residential zones is established.***

The proposal is to the south of the existing building, onto the adjacent crown land. The non-compliance to the side setback will not impact on any buffer to residential neighbours.

Given the merit assessment above, the proposed non-compliance to the side setback control is considered acceptable in the circumstances.

## **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.

## **POLICY CONTROLS**

### **Northern Beaches Section 7.12 Contributions Plan 2019**

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this 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;
- Pittwater Local Environment Plan;
- Pittwater 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

The proposed works and use of the area of Crown Land to the south of the subject site has been found to be generally consistent with the relevant requirements, including the applicable Plan of Management for the Crown Land.

Conditions of consent have been recommended in relation to operating hours and live and amplified music, to ensure residential amenity is reasonably maintained. These conditions are subject to review by Council, to ensure the operating hours (trading and music) do not give rise to any unreasonable impacts in the future.

Subject to the conditions below, approval is recommended.

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2019/1478 for Alterations and additions to an existing restaurant on land at Lot 1 DP 1005148, 1 Narrabeen Park Parade, NORTH NARRABEEN, subject to the conditions printed below:

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

#### 1. **Approved Plans and Supporting Documentation**

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

##### a) Approved Plans

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
DA-02 Rev B Site Plan	12.06.19	o2 Architecture
DA-02 Rev B Floor Plan	12.06.19	o2 Architecture
DA-03 Rev B Floor Plan	12.06.19	o2 Architecture

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
Bushfire Report 200278	30 September 2019	Building Code & Bushfire Hazard Solutions
One Narrabeen Park Parade North Narrabeen Plan of Management (as amended by conditions of this consent)	April 2020	Petobi Pty Ltd
Acoustic Assessment 2020.064	6 April 2020	Pulse Acoustic Consultancy

##### b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

#### 2. **Compliance with Other Department, Authority or Service Requirements**

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

<b>Other Department, Authority or Service</b>	<b>EDMS Reference</b>	<b>Dated</b>
Planning, Industry & Environment	Letter from Crown Lands providing owner's consent	31 July 2020

Northern Beaches Council Park Assets	Updated Owner's Consent Letter - specific works 1 Narrabeen park Parade - 20200117	17 January 2020
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(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au))

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

### 3. **Approved Land Use**

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a Restaurant or cafe.

A restaurant or cafe is defined as:

*"means a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, takeaway meals and drinks or entertainment are also provided."* (development is defined by the Pittwater Local Environment Plan (as amended) Dictionary)

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

Reason: To ensure compliance with the terms of this consent.

### 4. **Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
  - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
  - (i) in the case of work for which a principal contractor is required to be appointed:
    - A. the name and licence number of the principal contractor, and
    - B. the name of the insurer by which the work is insured under Part 6 of that Act,

- (ii) in the case of work to be done by an owner-builder:
  - A. the name of the owner-builder, and
  - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
  - (i) protect and support the adjoining premises from possible damage from the excavation, and
  - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
  - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
  - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative requirement.

## 5. General Requirements

- (a) Unless authorised by Council:  
Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until



the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
  - i) Building/s that are to be erected
  - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
  - iii) Building/s that are to be demolished
  - iv) For any work/s that is to be carried out
  - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
  - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992
  - (ii) Swimming Pools Amendment Act 2009
  - (iii) Swimming Pools Regulation 2008
  - (iv) Australian Standard AS1926 Swimming Pool Safety
  - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
  - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
  - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
  - (4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

## 6. **Outdoor Dining**

Any outdoor dining shall be the subject of a separate application to Council's Property, Commercial & Tourist Assets Department. Application forms for outdoor dining can be found at <https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/outdoor-dining-area-approval-application/4066-outdoor-dining-approval-jul19.pdf>

Reason: To ensure compliance with Council's Outdoor Dining Policy.

## 7. **Compliance with Standards**

The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure the development is constructed in accordance with appropriate standards.

## 8. **Adequacy of Sanitary Facilities**

The Principal Certifier is to be provided with details demonstrating compliance with the number and design of sanitary facilities for patrons, staff and persons with a disability as required by the Building Code of Australia for the Classification of the building under its approved use.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure the provision of adequate sanitary and associated facilities for the premises.

9. **Access for People with Disabilities**

Access to and within the building and to the external seating areas is to be provided for Persons with a Disability. In particular the front entrance doorway and access to the external seating areas is to comply with the Building Code of Australia and AS 1428.1.

Details are to be provided to the Certifying Authority prior to the issue of the Construction Certificate and be implemented prior to occupation of the building.

Reason: To ensure adequate access provision is made for Persons with a Disability.

10. **Tree Root Investigation**

A non-destructive root investigation shall be conducted complying with clause 3.3.4 (TPZ encroachment considerations) of AS 4970-2009 Protection of Trees on Development Sites within the tree protection zone of existing tree T3 (Norfolk Island Pine) as recommended in the Arboricultural Impact Assessment by RainTree Consulting dated 5 May 2020, to determine the location of pier footings for the proposed pergola.

The root investigation shall locate existing tree roots to be protected during excavation works for the proposed pier footings, and assist with structural engineering and construction design.

Reason: to investigate the location of existing tree roots as a basis for pier footing location, and protect the existing tree identified for retention.

11. **Root Mapping Plan and Pier Footing Plan**

The findings of the tree root investigation shall be documented in a Root Mapping Plan that documents 'no-go' areas that can't be excavated without supervision and guidance of a AQF Level 5 Arborist, and shall be the basis for determining the location of all pier footings for the proposed pergola.

The Root Mapping Plan shall be issued to the Certifying Authority and to the Structural Engineer as the basis for preparation of Construction Certificate structural design. The Root Mapping Plan shall provide pier footing layout recommendations.

The Arborist shall provide certification to the Certifying Authority that the Root Mapping Plan and clear distances recommended will ensure the long term survival of the existing tree T3 Norfolk Island Pine. The Certifying Authority shall approve Construction Certificate design that satisfies the recommendations of the Root Mapping Plan.

A Pier Footing Plan shall be developed in co-ordination with a AQF minimum Level 5 Arborist and a qualified Structural Engineer, and shall be issued to the Certifying Authority identifying suitable locations for all pier footing locations for the proposed pergola.

The Pier Footing Plan shall be issued to the Certifying Authority identifying a suitable locations for each pier footing. The Certifying Authority shall approve Construction Certificate design that satisfies the recommendations of the Pier Footing Plan.

Reason: to ensure protection of the existing trees identified for management and retention.

## **CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**

13. **Venue Opening Hours Review**

Prior to any lease being formalised, the applicant in conjunction with Council need to review the proposed opening hours to ensure they are consistent with similar venues around Narrabeen lagoon.

Reason: To ensure consistency of operation and preserve locality amenity.

14. **Installation and Maintenance of Sediment and Erosion Control**

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site

15. **Working on Reserves Permit**

Works (undertaken by principal contractors working without Council supervision) on land under Council's care control and management require a "Working on Reserves" permit prior to commencement. Applications can be obtained from Council's website or the Parks and Recreation business unit.

Reason: Public Safety and the protection of Council infrastructure.

## CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

16. **Maintenance of Road Reserve**

The public footways and roadways adjacent to the site shall be maintained in a safe condition at all times during the course of the work.

Reason: Public Safety.

17. **Tree Protection Measures**

A Project Arborist with AQF minimum Level 5 qualification in arboriculture/horticulture is to be appointed to supervise and certify tree protection measures for existing trees to be retained and protected, requiring site attendance during excavation and construction works, in accordance with AS4970- 2009 Protection of Trees on Development Sites, with particular reference to Section 4, and the recommendations of the Arboricultural Impact Assessment prepared by RainTree Consulting dated 5 May 2020, including the following:

- viii) Prior to works commencement, the trunk of trees are to be protected with timber beam trunk protection as detailed within Item 3 of Appendix-C. Timber beams should be no less than 2m in height and installed without causing injury to the tree,
- i) There is to be no excavation within SRZ radius' without prior root mapping or investigation works to determine impact on critical underlying tree roots, refer SRZ & TPZ distance column Appendix-C. The SRZ should be considered a development exclusion zone with no works occurring within the SRZ without prior arborist advice and certification,
- ii) All root investigation works are to be conducted by a minimum suitably qualified AQF Level 4 certified arborist with root mapping plan and/or certification report provided prior to obtaining a Construction Certificate (CC),
- iii) In specific detailed root mapping or exploratory root investigations should occur for pergola

pier footling locations adjacent T3,

iv) Stone cage wall proposal: construction methodology for the stone cage wall proposal should be more clearly detailed within construction drawings. In specific there should be no excavation or compaction to accommodate the wall proposal within the SRZ. Where the wall is proposed on natural ground level within the SRZ root mapping should occur to provide more information on the location, distribution and effect of works on critical underlying tree roots. Tree sensitive design such as placing the wall directly on top of or spanning the wall above ground level over the SRZ may be achievable pending the results of exploratory root investigations,

v) All tree roots at or >25mm(Ø) are to be retained. Should such roots require pruning all works are to be conducted by the site arborist, clean cutting and/or protecting encountered roots in accordance with AS4970-2009 – section 4.5.4 Root protection during works within the TPZ. Should there be any uncertainty with root management requirements a minimum AQF Level 5 project arborist is to be consulted,

vi) There is to be no compaction or additional excavation i.e. SW / hydraulics or electrical service trenching within the TPZ radius without prior arborist advice,

vii) Arborist certification: final certification is to consist of photographic evidence of excavation activities, root management (pruned & covered / protected roots from contamination), time of works and summary of activities conducted to manage tree roots within the tree protection zone.

The Project Arborist shall submit certification that the works and activities described in the above sections have been correctly installed and adhered to during the construction period.

The tree protection measures specified in this clause must:

viii) be in place before work commences on the site, and

ix) be maintained in good condition during the construction period, and

x) remain in place for the duration of the construction works.

The Certifying Authority or the Project Arborist AQF Level 5 must ensure that:

xi) the activities listed in section 4.2 of AS4970- 2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and

xii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

A separate permit or development consent may be required if the branches or roots of a protected tree on the site or on an adjoining site are required to be pruned or removed.

Reason: to retain and protect significant planting on development and adjoining sites.

#### 18. **Pollution Control**

All stockpiles, materials, waste and slurry associated with works (including excavated material) is to be contained at source within the construction area and enclosed in waterproof covering and/or sediment and erosion control while not in use. All waste/debris is to be removed off site and disposed of as frequently as required in accordance to local regulations.

Reason: To protect the surrounding environment, and ensure that pollutants and building associated waste do not leave the construction site.

#### 19. **Pollution Control**

Any excess materials such as cleaning paintbrushes, lacquers, and any water from cleaning tools must not enter the stormwater network and/or receiving waterways.

Reason: To ensure that building associated chemicals and pollutants don't enter the

surrounding environment.

## **CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO COMPLETION**

**20. Condition of retained vegetation**

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist with AQF minimum Level 5 qualifications in arboriculture/horticulture shall be submitted to the Certifying Authority, assessing the health and impact on all existing trees required to be retained, and in particular T3, including the following information:

- i) compliance to any Arborist recommendations for tree protection and excavation works,
- ii) extent of damage sustained by vegetation as a result of the construction works,
- iii) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: to retain and protect significant planting on development and adjoining sites.

**21. Registration of Food Business**

The food business must be registered with the Appropriate Regulatory Authority, prior to Occupation Certificate being issued.

Reason: Food premises are required to be registered with the Appropriate Regulatory Authority.

**22. Sydney Water Trade Waste Agreement**

The applicant must contact Sydney Water to determine what trade waste provisions you are required to provide to your food premises. Should a grease trap be required by Sydney Water, it must be located in an area that is easily accessible for the removal of waste water and must not be installed in any kitchen, food preparation or food stage area. The design and location of the grease trap should also not impede on any commercial right of way or pedestrian access.

Reason: To ensure waste water generated as part of the kitchen activities is adequately treated when required and that access is not impeded by the design and installation of the grease trap.

**23. Removal of All Temporary Structures/Material and Construction Rubbish**

Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure reserve amenity.

**24. Kitchen Design, construction and fit out of food premises certification**

Prior to the issuing of any interim / final occupation certificate, certification is to be provided from a person who is eligible as a 'Member' of Environmental Health Australia (EHA) that the design, construction and fit out of food premises kitchen is compliant with the requirements of AS 4674 Design, construction and fit out of food premises.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To ensure that the kitchen complies with the design requirements.

**25. Mechanical ventilation**

Where Mechanical ventilation is required to be installed in the food premises it must comply with



Australian Standard (AS) 1668.2 "The use of ventilation and air-conditioning in buildings - Mechanical ventilation in buildings" Prior to any Occupation Certificate (OC) being issued, certification is to be provided by a suitably qualified person that the mechanical ventilation complies with the above requirements.

Reason: To ensure that the installed mechanical ventilation complies with the requirements of the Australian Standard 1668.2.

26. **Plan of management review**

Prior to the issuing of any interim / final occupation certificate, a completed plan of management is to be submitted to Northern Beaches Council's Environmental Health Department for review. Northern Beaches Council's Environmental Health Department are to provide approval or approval with amendment in writing to the applicant once the plan of management has been reviewed. The updated plan of management is to be consistent in all respects with these conditions of consent, including the following:

- Operational hours limited as per these conditions
- Live or amplified music hours limited as per these conditions
- The capacity of the premises is limited to 100 customers, including the Crown Land areas shown on the approved plans as 'Exist. Tiled Area, New Sleepers on Ground, New Landscaped Area and New Pergola'. Note that this capacity is subject to approval being granted for an outdoor dining licence in accordance with these conditions of consent.
- No approval is given for up to 180 customers or stand up cocktail functions on the crown land, and this element must be removed from the plan of management.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To ensure the premises a maintained in an appropriate manner in perpetuity.  
(DACHPFPOC6)

## ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

27. **Maintenance of Infrastructure**

All embellishment within the reserve is to be maintained in good working order by the proprietor for the life of the outdoor dining area lease. If/when the lease ends and is not renewed, the embellishments need to be removed by the proprietor and the reserve reinstated to its previous state.

Reason: To ensure the amenity of the reserve.

28. **Waste collection and delivery times**

Waste collection and deliveries for the premise must not occur between the hours of 10:00pm and 7:00am Monday to Sunday, without prior approval of Council.

Reason: to minimise disruption to neighbouring properties. (DACHPGOG5)

29. **Plan of management**

The requirements of the One Narrabeen Park Parade Plan of Management North Narrabeen required by this consent is to be fully implemented in perpetuity from the issue of any interim / final occupation certificate.

Reason: To ensure the premises a maintained in an appropriate manner in perpetuity.  
(DACHPGOG6)

30. **Complaint management register**

A complaint management register is to be kept on-site at all times and be available for review by Council Staff or NSW Police upon request. Any complaint management register record is to be kept for a minimum period of 12 months from when the complaint was received and is to identify the following aspects of any complaint made;

- The nature of the complaint.
- How the complaint was received.
- The time and date the request was received.
- The time and date the complaint refers to, if known.
- How the complaint was addressed, responded to, rectified or process put into place to address the request.
- An action item to effectively address each complaint received and a due date for the completion of the action item.
- Any community engagement undertaken to manage repeated requests.

Reason: To assist in the management of complaints(DACHPGOG6)

31. **Hours of operation – reviewable condition**

This condition is imposed under s4.17(10B) of the Environmental Planning and Assessment Act to enable Council to review the performance of the approved development with respect to extended hours of operation. This review will take place with 14 days notice within the first 12 months of operations, or with 14 days notice at any time following the first 12 months of operations, where Council is in receipt of complaints related to hours of operation and amenity impacts.

Restaurant trading hours

Restaurant trading hours including any take away meals service shall be confined to:

- Friday – Saturday: 6.30am – 11.30pm
- Sunday - Thursday: 6.30am – 10.30pm
- New Year's Eve – until 12.30am.

All customers are to have vacated the restaurant premises by the above mentioned closing times, and staff by 30 minutes after those times.

Playing of live or amplified music

Live or amplified music may only be played inside the building premises of 1 Narrabeen Park Parade during the following operating hours:

- Thursday between 12.00pm (midday) to 8.30pm.
- Friday and Saturday except new years eve between the hours of 12:00pm (midday) and 10:00pm.
- New Years Eve (31 December - 1 January) from 12:00pm (midday) to 12:00am (midnight).

If upon a review of this condition, and following a proper investigation, Council finds that limiting the hours of operation and the playing of live or amplified music is the most efficient and effective means of reducing amenity impacts, then the hours of operation will be required, at the expiration of 14 days written notice, to revert to the following:

Restaurant trading hours

Restaurant trading hours including any take away meals service shall be confined to:

- Wednesday to Sunday: 12 midday - 3.00pm;
- Wednesdays, Thursdays and Sundays: 6.30pm - 10.30pm; and

- Fridays and Saturdays: 6.30pm - 11.30pm.

Playing of live or amplified music

No live or amplified music is permitted.

Reason: Management of noise and protection of amenity.

**32. No Planting Environmental Weeds**

No environmental weeds are to be planted on the site. Information on weeds of the Northern Beaches can be found at the NSW WeedWise website (<http://weeds.dpi.nsw.gov.au/>).

Reason: Control of weeds.

**33. Number of patrons**

The capacity of the premises is limited to 100 patrons, including the Crown Land areas shown on the approved plans as 'Exist. Tiled Area, New Sleepers on Ground, New Landscaped Area and New Pergola'. The maximum number of patrons permitted in the outdoor area is limited to 50.

Note that this capacity is subject to a separate approval being granted for an outdoor dining licence in accordance with these conditions of consent.

Reason: To control patron numbers and preserve neighbouring amenity.

**34. Limitations to live or amplified music**

Live or amplified music may only be played inside the premises of 1 Narrabeen Park Parade under the following circumstances:

- From two or less speakers.
- Any speaker/s in operation are to be located solely within the premises of 1 Narrabeen Park Parade and 2 meters within the property boundary of 1 Narrabeen Park Parade.
- Each speaker is to have a maximum sound power level indicated in Table 10 of the acoustic assessment by Pulse Acoustic Consultancy referenced as 2020.064 One Café – Acoustic Assessment, dated 6 April 2020.
- Whilst in operation any speaker/s are to be westward facing.
- When played using the in-house speaker system.
- When controlled by a calibrated noise limiter, and set to a maximum of 92dB(A) when measured 5m in front of any speaker/s. The actual noise limits for the limiter (dB(A), dB(C), dB(ext filter) or dB(Lin)) appropriate for the limiter are to be determined by compliance testing which is to be completed by an appropriately qualified acoustic consultant. The limiter is to be installed in a tamper proof enclosure (or in the case of a DSP based limiter) with no access to the limiter controls by staff or management of the hotel.

Reason: Management of noise and protection of amenity.