

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2025/0524
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Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 48 DP 6248, 315 Barrenjoey Road NEWPORT NSW 2106
Proposed Development:	Use of Shop 2 as a Retail Premises (tobacconist)
Zoning:	E1 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Turnbull Planning International Pty Ltd

Application Lodged:	20/05/2025
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	12/06/2025 to 26/06/2025
Advertised:	Not Advertised
Submissions Received:	7
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 0.00
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EXECUTIVE SUMMARY

This development application seeks consent for use of the existing commercial premise as a shop (tobacconist) at shop 2, 315 Barrenjoey Road, Newport.

The application is referred to the Development Determination Panel (**DDP**) due to the application receiving more than 5 submissions during the public exhibition of the development application. The application was notified in accordance with the Northern Beaches Community Participation Plans, where the public exhibition of the application resulted in a total 7 submissions being received by Council, all in objection to the proposal.

Concerns raised in the objections predominantly relate to characterisation of land use and suitability of use, unauthorised works and operation, health impacts and links to unlawful activity. Each of the

issues raised have been addressed in detail within the submission section of the report.

While the concerns raised regarding potential health and unlawful activity are acknowledged, these issues fall outside the scope of the matters for consideration prescribed by the *Environmental Planning and Assessment Act (Act)* 1979.

A detailed assessment has been undertaken within this report regarding the overall suitability of a tobacconist for the subject site. However, as discussed within the report, the use is permitted within E1 Local Centre zone.

On balance, the assessment finds that the proposal is acceptable for the site and concludes with a recommendation that the DDP, as the consent authority, grant approval to the development application, subject to recommended conditions.

PROPOSED DEVELOPMENT IN DETAIL

The development application seeks consent for use of the site as a **shop**. No physical works are proposed under this application

A **shop** under the PLEP 2014 is defined as:

***shop** means premises that sell merchandise such as groceries, personal care products, clothing, music, homewares, stationery, electrical goods or the like or that hire any such merchandise, and includes a neighbourhood shop and neighbourhood supermarket, but does not include food and drink premises or restricted premises.*

The application proposes the following operational hours of consent:

Monday to Sunday: 07:00am - 9:00pm

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 E1 Local Centre

Pittwater Local Environmental Plan 2014 - 5.21 Flood planning

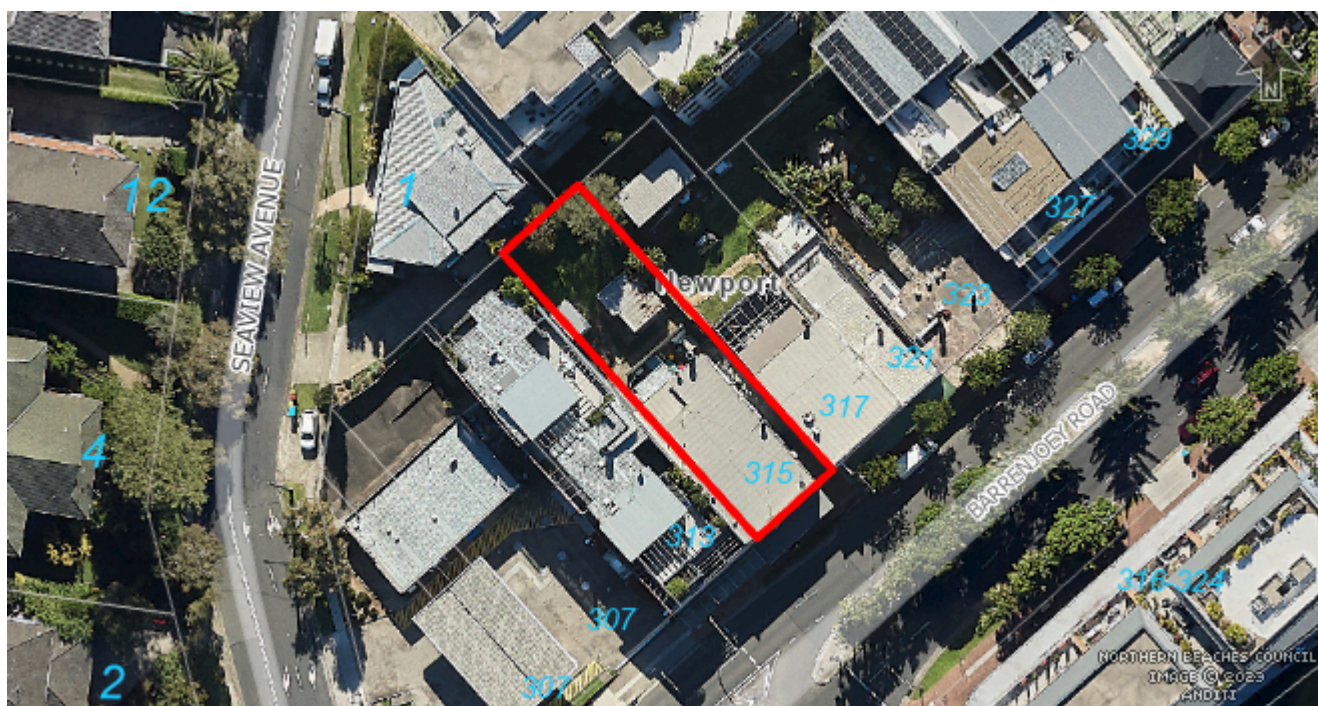
Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements

Pittwater 21 Development Control Plan - C2.11 Signage

SITE DESCRIPTION

Property Description:	Lot 48 DP 6248 , 315 Barrenjoey Road NEWPORT NSW 2106
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the north-western side of Barrenjoey Road.</p> <p>The site is regular in shape with a frontage of 12.19m along Barrenjoey Road and a depth of 45.72m. The site has a surveyed area of 556.34m².</p> <p>The site is located within the E1 Local Centre zone and accommodates an existing two storey shop-top housing development.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by mixed residential and commercial development along Barrenjoey Road and residential development to the north-east of the subject site.</p>

Map:



SITE HISTORY

The land has been used for commercial purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

N1019/02 - Change of Use from Office to Refreshment Room. (Approved 15 May 2003)

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	There are no current draft environmental planning instruments.
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	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.

Section 4.15 Matters for Consideration	Comments
Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 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 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 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 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</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) Environmental Impact 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) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
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

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 12/06/2025 to 26/06/2025 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 7 submission/s from:

Name:	Address:
Mr Lachlan Robert Campbell	6 / 23 Woolcott Street NEWPORT NSW 2106
Mr William John Cooper Mrs Nagar Predavec Cooper	105 / 3 Seaview Avenue NEWPORT NSW 2106
Withheld	MONA VALE NSW 2103
Mrs Kerry Anne Dujmovic	108 / 316 - 324 Barrenjoey Road NEWPORT NSW 2106
Mr Ian Maxwell Mcfarlane	Po Box 173 NEWPORT NSW 2106
Ms Anne Elizabeth Harvey	203 / 3 Seaview Avenue NEWPORT NSW 2106
Virginia Stubbs	2 Milga Road AVALON BEACH NSW 2107

The following issues were raised in the submissions:

- ***Mischaracterisation and prohibition of land-use.***

*The submissions raises the the concern that the proposed tobacconist is a '**restricted premises**' and not a '**shop**'.*

Comment:

A restricted premises is defined as:

"Restricted premises means premises that, due to their nature, restrict access to patrons or customers over 18 years of age, and includes sex shops and similar premises, but does not include a pub, hotel or motel accommodation, home occupation (sex services) or sex services premises"

A tobacconist does not fall within the definition of 'restricted premises' unless the premise is for the sale or display sexually specific material. The proposal does not seek to display such material.

The use is most accurate characterised as a 'shop' which is a type of retail premises, which is

permissible in the E1 Local Centre zone.

- **Operation**

The submissions states that the premise is currently operating as a tobacconist without consent.

Comment:

A site visit revealed that the site is currently actively operating as a tobacconist, this is also identified with the applicants application. While retrospective consent cannot be given for physical works already taken, a development application can be grant consent for the use to continue. Should the application be approved the use as 'shop' will be formalised, however no consent will be given for existing physical works.

- **Inconsistent with E1 Local Centre zone objectives and excessive signage.**

The submissions raised concern regarding the existing signage and works that have already occurred on site.

Comment:

Retrospective consent cannot be provided for works that have already occurred. If this application is to be approved, a conditions will be imposed to ensure that approval is given for the use only, with no physical works approved. With regard to unauthorised works, a request for investigation has been sent to building control team (compliance) to investigate this matter.

- **Potential health issues caused from proposed use**

The submissions raise concern with the potential health risks associated with a tobacconist.

Comment:

While the health impacts of tobacco use is recognized, the potential health impacts from tobacco use are not in the scope of consideration under the Act.

- **Link to criminal activities**

The submissions raise concern with the potential link between tobacconists and unlawful activity.

Comment:

The assessment of the application is limited to the matters for consideration prescribed under Section 4.15 of the Act. Concerns raised with regard to potential criminal activity are a police matter and not a consideration under the Act.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p><i>Supported, with conditions</i></p> <p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>
Environmental Health (Food Premises, Skin Pen.)	<p><i>Supported, without conditions</i></p> <p>In consideration of the information included with the provided documentation, Environmental Health raises no objection to the proposal.</p> <p>Recommendation</p> <p>APPROVAL - no conditions</p>
NECC (Flooding)	<p><i>Supported, with conditions</i></p> <p>This proposal is for the conversion of an existing retail premises into a tobacconist. The proposal includes no physical changes to the property and only seeks to change the use of the premises.</p> <p>The proposal generally complies with Section B3.11 of the Pittwater DCP and Clause 5.21 of the Pittwater LEP.</p>

External Referral Body	Comments
NSW Police - Licensing (Clubs, Hotels, Pubs)	<p><i>No response received, concurrence assumed</i></p> <p>The application was referred for comment on 6 June 2025. As no response has been received 21 days of the application being referred to the NSW Police, concurrence may be assumed. If a response is received prior to determination, Council will consider the comments provided.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs 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 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 (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for commercial purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1) (b) and (c) of this Chapter and the land is considered to be suitable for the commercial land use.

Pittwater Local Environmental Plan 2014

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

No building works proposed.

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
5.21 Flood planning	Yes
7.2 Earthworks	N/A
7.10 Essential services	Yes

Detailed Assessment

Zone E1 Local Centre

The underlying objectives of the E1 Local Centre zone

- To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.*

Comment:

While particular the tobacconist provides a retail product that meets the needs of the people in the Newport area.

- *To encourage investment in local commercial development that generates employment opportunities and economic growth.*

Comment:

The business will generate employment in an accessible and commercially zoned area.

- *To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.*

Comment:

N/A

- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*

Comment:

The proposed tobacconist is a retail land use.

- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse, and functional streets and public spaces.*

Comment:

N/A. The proposed development is for the use only.

- *To create urban form that relates favourably in scale and in architectural and landscape treatment to neighbouring land uses and to the natural environment.*

Comment:

N/A. No change to the built form proposed.

The proposal complies with the zone objectives.

5.21 Flood planning

The application was referred to Council food engineer, who raised no concerns with the proposal.

Pittwater 21 Development Control Plan

Built Form Controls

No building works proposed.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
A4.10 Newport Locality	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	N/A	N/A
C2.2 Safety and Security	Yes	Yes
C2.11 Signage	N/A	N/A

Detailed Assessment

B6.3 Off-Street Vehicle Parking Requirements

The parking requirements for a restaurant and cafe (Refreshment room) is the same as a shop premises being 1 space per 30m² gross lettable area (GLA). Given there is no change to GLA proposed, there is no requirement for additional parking.

C2.11 Signage

No signage is proposed under this application.

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 2024

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 2021;
- 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

PLANNING CONCLUSION

This proposal, for use of the premise as a retail premise has been referred to the Development Determination Panel (DDP) due to the application receiving more than 5 submissions.

The concerns raised in the objections have been addressed and resolved by way of additional information and operational conditions of consent.

The critical assessment issues and issues raised in the submissions including land use permissibility, site suitability and unauthorised works have been addressed as follows:

- The use being a 'shop' is permissible in the E1 Local Centre zone;
- Existing alleged unauthorised works referred to building control to investigate; and
- Alleged links to criminal activity from the proposed use of the shop as a tobacconist is not a planning consideration and matter for police.

Overall, the application has demonstrated that the proposed use is suitable for the site, with acceptable documentation being provided demonstrating that the site could be utilised for the purposes of a restaurant without unreasonably impacting upon the amenity of the surrounding public open space and residential properties

REASON FOR DETERMINATION

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2025/0524 for Use of Shop 2 as a Retail Premises (tobacconist) on land at Lot 48 DP 6248, 315 Barrenjoey Road, NEWPORT, subject to the conditions printed below:

Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section

4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
1-1	-	Site Plan	High Design	April 2025
1-2	-	"As built" ground floor plan	High Design	April 2025

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Waste Management Plan	-	Turnbull Planning	N/A

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

2. 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 **shop**, in accordance with the Dictionary of the Pittwater Local Environmental Plan 2014, as follows:

shop means premises that sell merchandise such as groceries, personal care products, clothing, music, homewares, stationery, electrical goods or the like or that hire any such merchandise, and includes a neighbourhood shop and neighbourhood supermarket, but does not include food and drink premises or restricted premises.

Any variation to the approved land use 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.

3. No Approval for Land Use

No approval is granted under this Development Consent for any land use outside of the nominated 'tobacco shop' nominated on the approved plans.

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

4. **Extent of Consent**

No approval is granted or implied under this Development Consent for any physical works including signage.

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

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

5. **Graffiti removal**

During ongoing use of the premises, ensure graffiti is removed from the exterior of the building or associated structures, including any fences, site services and retaining/planter bed walls.

Reason: To ensure the safe operation of the premises and to protect the amenity of adjoining premises and the surrounding area.

6. **Amplified Noise**

The use of amplified sound equipment is not permitted.

Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.

7. **Hours of Operation**

The hours of operation are to be restricted to:

- Monday to Sunday - 07:00am - 09:00pm

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

Reason: Information to ensure that amenity of the surrounding locality is maintained.