

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0005
Responsible Officer:	Anne-Marie Young
Land to be developed (Address):	Lot 142 DP 752046, 1858 Pittwater Road CHURCH POINT NSW 2105 Lot LIC 502589, 1858 Pittwater Road CHURCH POINT NSW 2105 Lot 320 DP 824048, 1858 Pittwater Road CHURCH POINT NSW 2105 Lot 1 DP 1148738, 1858 Pittwater Road CHURCH POINT NSW 2105 Lot 3 DP 1148738, 1858 Pittwater Road CHURCH POINT NSW 2105
Proposed Development:	Modification of consent A212/63 - Alterations and additions to the existing Motel, Restaurant and Shops
Zoning:	B1 Neighbourhood Centre W1 Natural Waterways
Development Permissible:	Yes - Zone B1 Neighbourhood Centre Yes - Zone RE1 Public Recreation Yes - Zone W1 Natural Waterways
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Altius Pty Ltd
Applicant:	Altius Pty Ltd

Application Lodged:	25/01/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	05/02/2021 to 19/02/2021
Advertised:	Not Advertised
Submissions Received:	80
Clause 4.6 Variation:	Nil
Recommendation:	Approval

EXECUTIVE SUMMARY

The application seeks consent for a modification of the original development consent A212/63 to allow

for the consolidation of the three (3) retail tenancies into (2) two. An ancillary outdoor seating area with awning above is also proposed to the west of the building associated with the general store/deli and the existing keg store / bin area located to the east is proposed to be enclosed.

The application is being referred to the NBLPP as a total of 75 unique submissions have been received (65 in objection 10 in support). The issues raised in the objections relate to concerns about the intensification of use, existing use rights, parking, operational issues and impacts on the public domain the Sir Thomas Stephen Reserve and access to the foreshore. The comments raised in support refer to the general improvement of the area and the enhanced service to the community.

There is no additional floor space proposed and subject to conditions to ensure that the tenancies operate in accordance with the definition of a Neighbourhood Shop there is no intensification of use and the proposal is substantially the same as the original consent. Conditions are also included in the recommendation to ensure that there is no commercial kitchen, no cooking (only food preparation and heating) a restriction in the hours of operation of the retail tenancies and outdoor seating area and standard noise conditions.

The external alterations are minor and there is no impact on the heritage significance of the area. The proposal will help activate the adjoining reserve and will not unreasonably impact on access to the reserve or the foreshore. As there is no additional floor space or change of use there is no need for additional parking.

In summary, the Panel can be satisfied that the proposal generally complies with the relevant controls contained within the Pittwater LEP and DCP. No objections have been raised from internal experts, subject to conditions. On balance, the proposal is recommended for approval having considered the relevant issues as part of the assessment of the plans submitted.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks a modification of the original 1963 consent (A212/163) to include alterations primarily to the three ground floor retail tenancies and other minor work. In detail, the proposal seeks modified consent for:

- 1 Demolition of toilets and external stair and internal walls to existing retail tenancies.
- 1 The consolidation of 3 shop tenancies to create 2 shop tenancies. The primary tenancy, namely the expanded existing general store and delicatessen has a retail floor area of 100sqm and the second tenancy a floor area of 17.6sqm. (Note: no details have been included in respect of the internal fit out of the smaller tenancy).
- 1 The internal fit out of the primary tenancy includes a new 28.4sqm kitchen with pick up/ take away window in the western elevation and a cool room and chilled display counter.
- 1 An outdoor seating area, enclosed with a 1.4m high wall, adjacent to the western perimeter of the building. The outdoor seating is associated with the general store / deli with indicative seating for and 15 customers and awning roof over.
- 1 New doors and window in the north and west elevation of the general store / deli.
- 1 The enclosure of the existing waste storage and empty keg collection handling areas within the south-eastern corner of the site.
- 1 The relocation of the existing bathroom facilities to facilitate the reconfiguration of the existing shop tenancies. A total of 7 unisex toilets are provided including 1 ambulant toilet. Access to the facilities is via both the existing restaurant and the general store/ deli (for staff).
- 1 The replacement of the existing external fire egress stair at the rear of the property and an expansion of the paved area to the north-west corner of the site in the area where the existing stair is located.

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:

- 1 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;
- 1 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;
- 1 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;
- 1 A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- 1 A review and consideration of all documentation provided with the application (up to the time of determination);
- 1 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 B1 Neighbourhood Centre
 Pittwater Local Environmental Plan 2014 - Zone RE1 Public Recreation
 Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area
 Pittwater 21 Development Control Plan - B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites
 Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements
 Pittwater 21 Development Control Plan - C2.12 Protection of Residential Amenity
 Pittwater 21 Development Control Plan - C2.21 Food Premises Design Standards
 Pittwater 21 Development Control Plan - C2.22 Plant, Equipment Boxes and Lift Over-Run
 Pittwater 21 Development Control Plan - C5.20 Liquor Licensing Applications
 Pittwater 21 Development Control Plan - D4.6 Side and rear building line

SITE DESCRIPTION

Property Description:	Lot 142 DP 752046 , 1858 Pittwater Road CHURCH POINT NSW 2105 Lot LIC 502589 , 1858 Pittwater Road CHURCH POINT NSW 2105 Lot 320 DP 824048 , 1858 Pittwater Road CHURCH POINT NSW 2105 Lot 1 DP 1148738 , 1858 Pittwater Road CHURCH POINT NSW 2105 Lot 3 DP 1148738 , 1858 Pittwater Road CHURCH POINT NSW 2105
Detailed Site Description:	The subject site is identified as 1858 Pittwater Road, Church Point (Lot 142, Deposited Plan 752046) and is located on

the northern side of Pittwater Road. A two storey mixed use building commonly referred to as "Pasadena" is located on the site. The building comprises the following: Ground floor: a restaurant, associated kitchen, store, toilets and outdoor dining to the restaurant. Three (3) shops fronting Pittwater Road including a general store and deli known as "The Pantry", a real estate agency and the entrance to the first floor motel. Level 1: thirteen (13) guests rooms and managers accommodation. Level 2 (roof level): laundry and store room.

The subject site is oriented towards the southwest and adjoins the Pittwater Road reserve. The southeast side boundary adjoins a public car park and residential properties are located at a higher level to the south of the site. The western boundary adjoins a paved public reserve (Thomas Stephens Reserve). Two commuter wharfs, one being heritage listed, and the two storey heritage listed Church Point Post Office are located further to the west. The Waterfront cafe and general store is located to the west of the site on the opposite side of the reserve. The northern boundary adjoins public land that includes public walkways between the subject site and Pittwater foreshore.

Map:



SITE HISTORY

There is an extensive history to the site. A summary of the relevant applications is provided below:

A212/63

Building Application reference 212/63 for alterations and additions for the conversion of store and dance hall into shops and hostel was approved on 23 March 1963. The floor plans illustrate 3 ground

floor shops fronting Pittwater Road, a restaurant, toilets and store at ground level, 13 rooms and a self contained 2 bedroom unit at level 1 and laundry, store and plant room at roof level.

A61/84

Building Application 61/84 for alterations and additions to Pasadena approved on 21 November 1961. The report to the Planning Committee described the proposal as including: Ground Floor - 3 shops, office, kitchen, 3 self contained rooms, toilets, reclamation, tea garden, swimming pool, car parking and boat moorings. First Floor 14 self contained rooms and second floor residence and roof gardens.

MOD2019/0605

MOD2019/0605 approved the modification of A212/63 for the installation of an accessible passenger lift into the existing stairwell void to service the motel. It is noted that the lift was required to satisfy the disability access provisions of the Building Code of Australia (BCA) and the Disability Discrimination Act 1992 (DDA).

PLM2020/0287

A pre-lodgement meeting (PLM2020/0287) was held on 17 December 2020 to discuss a modification of A212/63 for alterations and additions to an existing mixed development and a change of use (Shop to a Neighbourhood Shop and Take Away Food and Drink Premises). (Note: The plans proffered are the same as those to which the subject MOD relates). The issues raised at the PLM included:

- 1 Concern that the proposal is not substantially the same as that approved under A212/63 and therefore legal advice is required with respect to lodging the proposal as a Modification of Consent;
- 1 The change of use to a neighbourhood shop is considered to increase the intensity of use, particularly with the addition of kitchen and cool room amenities which lends itself to servicing an ancillary take away food and drink service.
- 1 The addition of outdoor seating adjacent to the neighbourhood shop and capacity for indoor dining could substantially increase the foot traffic to the site as well as generating additional vehicular traffic to the development.

History of subject site

On 17 March 2021, additional information was submitted including an Estuarine Management Report, confidential legal advice in respect of existing use rights and a report from Boston Blyth Flemming Planners. It is noted that the continued use of the site relies upon Sc 4.70(2) (b) (Savings provisions) of the Environmental Planning and Assessment Act 1979 which has the effect of preserving the original approvals.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

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:

- 1 An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated

regulations;

- 1 A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- 1 Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for A212/63, in full, with amendments detailed and assessed as follows:

The application was submitted as a 4.55(1a) Modification, it is Council Officers opinion that the application should be assessed as a 4.55(2) Modification which requires notification in accordance with the regulations.

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - Other Modifications	Comments
<p>A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:</p>	
<p>(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and</p>	<p>Consideration of whether a development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted, Justice Bignold established the following test in the Moto Projects (No 2) Pty Ltd v North Sydney Council (1999) 106 LGERA 289 where His Honours states:</p> <p><i>"[54] The relevant satisfaction required by s96(2)(a) to be found to exist in order that the modification power be available involves an ultimate finding of fact based upon the primary facts found. I must be satisfied that the modified development is substantially the same as the originally approved development.</i></p> <p><i>[55] The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is "essentially or materially" the same as the (currently) approved development.</i></p> <p><i>[56] The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper</i></p>

Section 4.55 (2) - Other Modifications	Comments
	<p><i>contexts (including the circumstances in which the development consent was granted)."</i></p> <p>The applicant has provided the following justification to support their argument that the modifications are substantially the same:</p> <p><i>- The proposal does not represent an intensification of use on the subject site with no changes to the established motel and ancillary restaurant land use. The proposed modifications maintain the established general store/ delicatessen land uses, do not increase publicly accessible floor space and maintain the established land uses such that there will be no additional traffic generation as a consequence of the modifications sought.</i></p> <p><u>Comment</u></p> <p>The approved retail shops are consistent with the definition of a <i>Neighbourhood Shop</i> in the PLEP 2011. A condition is recommended to ensure that the consolidated tenancies operate in accordance with the definition of a <i>Neighbourhood Shop</i>, refer to discussion under section Zone B1 (Neighbourhood Centre) within this report.</p> <p>Conditions are also recommended to ensure that there is no intensification of use. Conditions prohibit the fitout of a commercial kitchen and cooking within the tenancies (only food preparation and heating), no table service is allowed to the outdoor seating and trading hours are restricted.</p> <p>The proposal will not increase the gross floor area or change the approved use, as such, there is no additional parking required.</p> <p><i>- The approved development remains, in its modified state, a development which will continue to relate to its surrounds and adjoining development in the same fashion as originally approved in terms of view sharing, height, side boundary setbacks and landscape outcomes. The modifications will not significantly alter the 3-dimensional built form, residential amenity or heritage conservation outcomes achieved through approval of the original scheme.</i></p> <p><u>Comment</u></p> <p>It is agreed that the proposed modifications will not</p>

Section 4.55 (2) - Other Modifications	Comments
	<p>increase the approved built form or result in unreasonable impacts in terms of residential amenity or heritage, subject to conditions.</p> <p><i>- The external building appearance, envelope and volume as perceived from adjoining properties and the public domain is not significantly altered.</i></p> <p><u>Comment</u> It is agreed the external appearance and envelope of the building is not significantly altered.</p> <p>Significant public concerns has been expressed about the impact of the outdoor seating and new openings on the adjoining reserve and the effect of privatising the public space. It is Council's opinion that the outdoor seating will help activate the adjoining reserve. The area to which the outdoor seating relates is within the site boundary, leased by the applicant from Council and Council's Parks and Reserve Unit have no objections to the proposal.</p> <p>Reviewing the above comments and the court judgement by Justice Bignold established in the <i>Moto Projects (No 2) Pty Ltd v North Sydney Council (1999) 106 LGERA 289</i> it is concurred that the proposed modification is consistent with the (original) consent and can be considered under Section 4.55 of the Act.</p>
<p>(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and</p>	<p>Development Application A212/63 did not require concurrence from the relevant Minister, public authority or approval body.</p>
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require, or</p> <p>(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that</p>	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, the Pittwater Local Environmental Plan 2011, Pittwater 21 Development Control Plan and the Community Participation Pan .</p>

Section 4.55 (2) - Other Modifications	Comments
requires the notification or advertising of applications for modification of a development consent, and	
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on “Notification & Submissions Received” in this report.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of 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&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 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 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to concerns raised in submissions</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>regarding the intensification of use.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&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.</p> <p><u>Clause 98</u> of the EP&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&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&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>
<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>	<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>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered suitable for the proposed development.</p>
<p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>See discussion on “Notification & Submissions Received” in this report.</p>
<p>Section 4.15 (1) (e) – the public interest</p>	<p>No matters have arisen in this assessment that would justify the refusal of the application in the public interest.</p>

EXISTING USE RIGHTS

The use relies on Section 4.70(2) (b) of the Environmental Planning and Assessment Act 1979

(Savings of existing consents) and not existing use rights.

Section 4.70 provides the following:

4.70 Saving of effect of existing consents (previous s109B)

(1) Nothing in an environmental planning instrument prohibits, or requires a further development consent to authorise, the carrying out of development in accordance with a consent that has been granted and is in force.

(2) This section—

(a) applies to consents lawfully granted before or after the commencement of this Act, and
(b) does not prevent the lapsing, revocation or modification, in accordance with this Act, of a consent, and

(c) has effect despite anything to the contrary in section 4.66 or 4.68.

(3) This section is taken to have commenced on the commencement of this Act.

Council has previously investigated the issue of the validity of the works undertaken in 2018 at the Pasadena pursuant to a construction certificate obtained by the owner in late 2017. It is considered that works undertaken in accordance with the construction certificate are lawful because the original approvals for a motel, shops and restaurant granted in 1961 and 1963 are approvals which remain in force. It is also understood that the provisions of the Warringah Planning Scheme Ordinance including clauses 66 and 68 had the effect of preserving those original approvals and they were then further preserved on the coming into force of the Environmental Planning and Assessment Act in 1979.

Pursuant to clause 4.70 (2) (b) of the Act the preserved consent can be modified. The proposed alterations to the retail tenancies and keg store can therefore be considered as a S4.55 modification to the 1963 consent relying on section 4.70 (2) (b) as detailed above.

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 development application has been publicly exhibited from 05/02/2021 to 19/02/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 80 submission/s from:

Name:	Address:
Wayne Michael Lazarides	15 Warringulla Avenue ELVINA BAY NSW 2105
Mr Mark Charles Gray	2133 Pittwater Road CHURCH POINT NSW 2105
Mrs Virginia Ann Gray	2133 Pittwater Road CHURCH POINT NSW 2105
Ms Helen Jillanne Bridgman	PO Box 273 CHURCH POINT NSW 2105
Anne Sutherland	Address Unknown
Mr John Anthony Nicholas	12 Pine Hill Avenue DOUBLE BAY NSW 2028

Name:	Address:
Tregoning	
Ms Julie-Anne Maxwell	11 Carisbrook Street LINLEY POINT NSW 2066
Ronald Stewart Thiessen	PO Box 551 CHURCH POINT NSW 2105
Mr Bruce Anthony Deane	183 McCarrs Creek Road CHURCH POINT NSW 2105
Ms Catherine Anne Kubany	183 McCarrs Creek Road CHURCH POINT NSW 2105
Mr Frank Joseph Soriano	2195 Pittwater Road CHURCH POINT NSW 2105
Ms Diane Jayne Dromgold	221 McCarrs Creek Road CHURCH POINT NSW 2105
Mr Patrick Harry Broughton Melinda Elizabeth Houston Broughton	PO Box 526 CHURCH POINT NSW 2105
Karen Lambert	4 Portions LOVETT BAY NSW 2105
Zoe Shacklady	8 Baroona Road CHURCH POINT NSW 2105
Mr Kurt Matthew Sims Mrs Alexandra Sims	14 McCarrs Creek Road CHURCH POINT NSW 2105
Jenny Cullen	62 Greycliffe Street QUEENSCLIFF NSW 2096
Ms Lisa Atkins	35 Wurringulla Avenue ELVINA BAY NSW 2105
Roy Atkins	PO Box 143 CHURCH POINT NSW 2105
John McCririck	Address Unknown
Ms Vicki Anne Hare	90 McCarrs Creek Road CHURCH POINT NSW 2105
Mrs Celia Joy Keyte	28 Eastview Road CHURCH POINT NSW 2105
John Smeaton	Address Unknown
Mr Ian Peter Robinson	227 McCarrs Creek Road CHURCH POINT NSW 2105
Ms Jennifer Marion Cummins	39 McCarrs Creek Road CHURCH POINT NSW 2105
Ms Camila Marchioreto Hardy	12 Robertson Road SCOTLAND ISLAND NSW 2105
Mr Chris Hardy	12 Robertson Road SCOTLAND ISLAND NSW 2105
Ms Elaine Hensby	13 Quarter Sessions Road CHURCH POINT NSW 2105
Mrs Kristina Sarah Thomas	476 Barrenjoey Road AVALON BEACH NSW 2107
Mrs Nevine Neill	PO Box 432 CHURCH POINT NSW 2105
J Jobson	PO Box 364 CHURCH POINT NSW 2105
Mr Roy Baxter	191 McCarrs Creek Road CHURCH POINT NSW 2105
Mrs Jane Caroline Baxter	191 McCarrs Creek Road CHURCH POINT NSW 2105
Mr Richard John Layton	2137 A Pittwater Road CHURCH POINT NSW 2105
Ms Jackie Graham	7 Wurringulla Avenue ELVINA BAY NSW 2105
Mr Richard Walter Hughes	95 Richard Road SCOTLAND ISLAND NSW 2105
Mr Terrence Charles Mackaness	32 Wurringulla Avenue ELVINA BAY NSW 2105
Mrs Catherine Elizabeth Nicholl	25 Eastview Road CHURCH POINT NSW 2105
Gina Leone	6 McCarrs Creek Road CHURCH POINT NSW 2105
Mrs Claire Margaret Gorman	141 McCarrs Creek Road CHURCH POINT NSW 2105
Mr Wes Dickson	6 McCarrs Creek Road CHURCH POINT NSW 2105

Name:	Address:
Mr Robert Mander	22 Quarter Sessions Road CHURCH POINT NSW 2105
Piyaporn Ikin	PO Box 8 CHURCH POINT NSW 2105
Petra Godfrey	PO Box 206 CHURCH POINT NSW 2105
Ms Janice Beatrice Murray	91 Florence Terrace SCOTLAND ISLAND NSW 2105
Mrs Rosemary Jane Haskell	PO Box 443 CHURCH POINT NSW 2105
Mr Robert Waddell Fox	PO Box 346 CHURCH POINT NSW 2105
Mr Michael Zulman De Berg	144 McCarrs Creek Road CHURCH POINT NSW 2105
Mr Mark Thomas Ethell	61 Florence Terrace SCOTLAND ISLAND NSW 2105
Ms Tejinder Kaur Gill	5 Wirringulla Avenue ELVINA BAY NSW 2105
Mr Alec Beckett	87 Thompson Street SCOTLAND ISLAND NSW 2105
Ms Ainslie Gaye Murray	137 McCarrs Creek Road CHURCH POINT NSW 2105
Ms Lesley Jill Scott	PO Box 625 CHURCH POINT NSW 2105
Ms Jane Christine Rich	1 Thompson Street SCOTLAND ISLAND NSW 2105
Withheld	NSW
Mrs Therese Bakker	PO Box 215 CHURCH POINT NSW 2105
Jeff Delaney	Address Unknown
Margaret Stephens	Address Unknown
Mr Stephen Michael Todd	PO Box 273 CHURCH POINT NSW 2105
West Pittwater Community Association	PO Box 289 CHURCH POINT NSW 2105
Church Point Friends	PO Box 88 CHURCH POINT NSW 2105
Bruce Hunt	19 McCarrs Creek Road CHURCH POINT NSW 2105
Mrs Monique Stidwill	44 Sturdee Lane LOVETT BAY NSW 2105
Mr Bradley Robert Jones	PO Box 65 CHURCH POINT NSW 2105
Ms Janet Marjorie Tinkler	89 McCarrs Creek Road CHURCH POINT NSW 2105
Mrs Margaret Holley	117 Richard Road SCOTLAND ISLAND NSW 2105
Withheld Cassandra Brooks	NSW
Withheld Cassandra Brooks	Address Unknown
Ms Susan Rushforth	7 Quarter Sessions Road CHURCH POINT NSW 2105
Judith Kubanyi	Address Unknown
Ms Samantha Lecky	2115 Pittwater Road CHURCH POINT NSW 2105
John Smith	Address Unknown
Mr Paul David John Chudleigh	2115 Pittwater Road CHURCH POINT NSW 2105
Mr Jeffrey Raymond Quinn	11 Eastview Road CHURCH POINT NSW 2105
Ms Carole Anne Cooper	109 McCarrs Creek Road CHURCH POINT NSW 2105
Hayley Croft	Address Unknown
Sally Victoria Crompton	PO Box 65 CHURCH POINT NSW 2105
Ray Schembri	Address Unknown

Name:	Address:
Mrs Pippin Elizabeth Schembri	111 McCarrs Creek Road CHURCH POINT NSW 2105
Ms Anne Tenney	88 McCarrs Creek Road CHURCH POINT NSW 2105
Church Point Community Projects	PO Box 40 CHURCH POINT NSW 2105

A total of eighty (80) submissions have been received, however, a number of submissions are from the same property, therefore, in accordance with the Community Participation Plan a total of seventy five (75) unique submissions have been received sixty five (65) in objection and ten (10) in support.

The following issues were raised in the objections:

- 1 **Impact on the adjoining public domain the Sir Thomas Stephens Reserve and Foreshore**
- 1 **Intensification of use / patron numbers**
- 1 **Parking**
- 1 **Noise**
- 1 **Conditions required on operation of entire premise**
- 1 **Existing use rights**
- 1 **Alcohol corridor**
- 1 **Heritage impacts**

The issues raised in the objections have been addressed below:

- 1 ***Impact on the character of the Sir Thomas Stephens reserve which is a local meeting point, especially for off shore residents.***

Comment

The minor external alterations will not impact on the character of the adjoining public reserve.

- 1 **Loss and miss-use of the Crown Land at Thomas Stephens Reserve. The proposal is contrary to Council plans to upgrade the reserve as part of the Church Point Plan of Management to maintain the community value of the public space and should be considered as part of this upgrade. Council needs to progress a fully independent Conservation Management Plan for the Church Point Precinct prior to considering any future developments in the area.**

Comment

The proposal to upgrade the Sir Thomas Stephen Reserve is currently on exhibition. The subject application has been referred to Council's Parks Team who confirm that the proposal will not impact on the proposed plans to upgrade the reserve and will provide the opportunity for beneficial community interaction and transition between private and public land.

The outdoor seating area is contained with the subject site and will not result in a loss of public open space. The proposal is not considered to represent a loss or miss use of the reserve.

- 1 **The permanent commercial kitchen with servery windows for increased take-away services replaces the small take away coffee cart.**

The existing Pasadena coffee cart and associated seating privatises the space, the expansion of private use in the public reserve which is orientated to take advantage of the reserve will add to unreasonable public impacts. The wall along the western edge to the outdoor seating will impact on public access to the reserve and foreshore.

Comment

Conditions are included in the recommendation to ensure that a commercial kitchen will not be installed in the consolidated tenancy and that no cooking is permitted, only food preparation and heating. It is not considered that the patrons queuing in the reserve for take-away from the servery will have an unreasonable impact on the reserve and it likely that there will be a neutral impact to the existing arrangement with the coffee cart and associated seating.

1 Illegal use of the reserve with tables and umbrellas in the space.

Comment

The current use of the reserve with tables and chairs associated with commercial businesses is not a matter for consideration under the subject modification. Council's Compliance Unit have been asked to investigate this matter separately.

1 Additional patrons (15 seats) to the seating area with the potential for additional seating to the north. Insufficient information regarding patron numbers. The total patron numbers for the entire Pasadena should be maintained at 138. There are no existing conditions on noise, patron numbers, hours of use, parking, plan of management etc.

Comment

It is acknowledged that the original 1963 consent (A212/63) was limited in terms of the operational conditions imposed for the use of the retail tenancies / the entire premise. The modification relates to alterations to the retail tenancies and keg storage area only. The use of the Pasadena restaurant and motel is not part of the subject modification and issues relating to the operations of these aspects of the site, including patron numbers, noise, hours of use and management of the entire operation of the building cannot be considered or imposed under the modification.

It is noted that the liquor license for the Pasadena provides conditions relating to the operation of the venue.

In respect of the subject modification a conditions are recommended to limit the hours for the operation of the consolidated tenancy and ancillary outdoor seating area are limited to between 6.30am and 8.30pm Sunday to Thursday and 6.30am to 9.00pm Friday and Saturdays. Internal trading of the retail tenancies is limited to between 6.30am - 9.00pm Sunday to Thursday and up to 10.00pm on Fridays and Saturdays. Standard noise conditions are also recommended to ensure that there will be no unreasonable impacts on neighbouring acoustic privacy.

The inclusion of proposed conditions to regulate the operation of the consolidated retail tenancy and ancillary outdoor seating area meets the Newbury test for assessing the validity of the conditions. The conditions are reasonable and fairly and reasonably relate to the proposed modified development particularly given that the original consent is 58 years old was quite simple with limited conditions (no operational conditions).

1 The premise does not have sufficient parking for its current operation and more patrons will require more parking. Conditions should be included to require functions with 10

people or more to be busses to the venue via private coaches or public transport.

Comment

As noted above, the modification only relates to the retail premises and not the Pasadena restaurant and motel, therefore, issues relating to the operations of these aspects of the site, including parking and the transportation of customers to attend functions, cannot be considered under the modification. The application was referred to Council Traffic Engineer who confirms that the proposal seeks to continue the approved retail use and there is no impact on parking provision requirements under the DCP as there is no increase in floor area.

- 1 **The proposal represents new development and not a modification and should be lodged as a DA as it increases the intensification of the use with extra seating capacity and a new kitchen. The proposal represents new development and not a modification and should be lodged as a DA as it increases the intensification of the use with extra seating capacity.**

Comment

As discussed above, there is no change of use or intensification of use. Conditions are included in the recommendation requiring the tenancies to operate in accordance with the definition of a *Neighbourhood Shop* with no commercial kitchen or cooking permitted. The area to which the outdoor seating relates is narrow and limited in area, as such, the indicative suggestions for 15 seats within the area is not unreasonable. The proposal, subject to conditions, is substantially the same as that approved under the 1963 consent, namely ground floor retail tenancies, and can be assessed as a modification. Refer to discussion under Section 4.55(2) of this report.

- 1 **Noise impacts.**

Comment

The use of the outdoor seating area is limited in terms of patron numbers and hours of use and conditions are included in the recommendation requiring compliance with standard noise limits.

- 1 **Existing use rights relating to the use of the premise are unfounded.**

Comment

The use of the ground floor retail premise was approved under the 1963 consent. The continued use of the site as a motel, restaurant and retail relies upon S4.70 (Savings Provisions) of the Environmental Planning and assessment Act 1979.

As noted above, the original approvals for a motel, shops and restaurant granted in 1961 and 1963 are approvals which remain in force. The provisions of the Warringah Planning Scheme Ordinance including clauses 66 and 68 had the effect of preserving those original approvals and they were then further preserved on the coming into force of the Environmental Planning and Assessment Act in 1979.

Pursuant to clause 4.70 (2) (b) of the Act the preserved consent can be modified. The proposed alterations to the retail tenancies and keg store can therefore be considered as a S4.55 modification to the 1963 consent relying on section 4.70 (2) (b) as detailed above.

- 1 **The outdoor seating area will be used as an alcohol corridor linked to the licensed area**

which will cause policing issues. Conditions are required to ensure that alcohol is not served within the outdoor seating area and the tenancy is not operating as a bottle shop.

Comment

The license area does not extend into the outdoor seating area and customers are not permitted to take alcohol into this area. A condition restricts the consumption of alcohol within the outdoor seating area (this would require separate approval from the Liquor Licensing Authority). The management of the Pasadena will be responsible for ensuring conditions relating to the liquor license for the premise and condition of the modified development consent are adhered to in accordance with the relevant liquor license.

- 1 **The new opening on the current blank western wall of the Pasadena will impact on the amenity of the reserve in terms of privacy. Light could be provided to the western tenancy via high level windows.**

Comment

The proposed openings along the western elevation will not impact on privacy to the public space and will help activate the frontage. The openings will also allow for improved access to light and ventilation to the western tenancy.

- 1 **Impact in the heritage significance of the area including the reserve.**

Comment

The proposal is contained to the subject site and given the small scale of the external changes Council's Heritage Specialist has no issues with the proposal in terms of the impacts on the heritage significance of the area. Refer to comments in the Referral section of this report.

- 1 **The proposed roof should not be used by patrons access is only for maintenance.**

Comment

The awning roof proposed over the outdoor seating area is not accessible to patrons.

- 1 **The proposal should be for internal alterations only.**

Comment:

The minor external alterations can be considered as part of the modification as they are substantially the same as the original consent.

Ten (10) submissions have been received in support of the application which note the following:

- 1 **Improved facilities.**
- 1 **The business provides a benefit to the community.**
- 1 **Alleged impacts on the reserve and parking are unfounded.**
- 1 **The proposal will enhance the reserve providing a complementary ancillary use.**
- 1 **The awning along the western elevation will provide shade.**
- 1 **Natural light and ventilation will be provided to the western tenancy, and**
- 1 **Removal of the deteriorated stairway which is visually intrusive.**

Comment

Council generally concur with the comments made in support. Issues in respect of the current use of the reserve and ongoing parking issues are not directly relates to the application.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Food Premises, Skin Pen.)	<p>Supported (Subject to conditions)</p> <p>Environmental Health has been requested to consider this proposal for "Modification of Development Consent A212/63 granted for alterations and additions to install an accessible lift to the motel".</p> <p>The statement of Environmental Effects lists elements of the proposed development as:</p> <ul style="list-style-type: none">1 The enclosure of the existing waste storage and empty keg collection handling areas,1 The relocation of the existing bathroom facilities to facilitate the reconfiguration of the existing shop tenancies,1 The consolidation of 3 shop tenancies to create 2 shop tenancies,1 The expansion of the existing general store and delicatessen to include a new pick up/ take away window, access doors and roofed deck orientated towards the adjacent reserve, and1 The replacement of the existing external fire egress stair at the rear of the property. <p>The original referral response from Environmental Health referenced the potential non-compliance with the Building Code of Australia (BCA) in relation to sanitary facilities, in particular, the provision of urinals for male patrons as well as "unisex" facilities.</p> <p>In response, the applicant has submitted amended plans which include the provision of a male urinal within the area of the sanitary facilities.</p> <p>There are 5 existing toilets that serve the site and the alterations to the toilets will result in a total of 6 toilets which is an increase in the current arrangement.</p> <p>As this modification application seeks consent for work relating to the retail tenancies and not the restaurant, it is considered appropriate that conditions be recommended to ensure that there is no intensification of use within the retail tenancies, and that there will be a restriction on cooking</p>
NECC (Bushland and Biodiversity)	<p>Supported (subject to conditions)</p> <p>Council's Natural Environment Unit - Biodiversity referral team have</p>

Internal Referral Body	Comments
	<p>reviewed the application for consistency against the relevant environmental legislation and controls, including:</p> <ul style="list-style-type: none"> 1 Biodiversity Conservation Act 2016 (BC Act) 1 State Environmental Planning Policy (Coastal Management) 1 Pittwater Local Environmental Plan (PLEP) - 7.6 Biodiversity Protection <p>The application will not impact upon prescribed trees, and is unlikely to indirectly impact upon nearby biodiversity values. Subject to conditions the Bushland and Biodiversity referral team find the application to be consistent against relevant environmental controls.</p>
NECC (Coast and Catchments)	<p>Supported (subject to conditions)</p> <p>The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP.</p> <p>Coastal Management Act 2016</p> <p>The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development.</p> <p>The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p>State Environmental Planning Policy (Coastal Management) 2018</p> <p>The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13, 14 and 15 of the CM SEPP apply for this DA.</p> <p>Comment:</p> <p>On internal assessment, the DA satisfies requirements under clauses 13, 14 and 15 of the CM SEPP. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p> <p>Pittwater LEP 2014 and Pittwater 21 DCP</p> <p>Estuarine Risk Management</p>

Internal Referral Body	Comments
	<p>The subject property has also been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to any proposed development of the site.</p> <p>In accordance with the Estuary Risk Management Report prepared by Advisian Pty. Ltd. dated April 2016 and Addendum dated March 2021, a base estuarine planning level (EPL) of RL 2.00m AHD has been recommended for the subject site. A reduction factor (RF) based upon the distance from the foreshore of proposed development may also apply at a rate of 0.06m reduction to the EPL for every 5.00m distance from the foreshore edge up to a maximum distance of 40.00m.</p> <p>As assessed in the submitted Estuary Risk Management Report prepared by Advisian Pty. Ltd. dated April 2016 and Addendum dated March 2021, the ground floor level for the proposed additions and alterations is located at 2.15m AHD.</p> <p>The submitted report made certain recommendations and hence, proposed development is subject to conditions to satisfy the relevant estuarine risk management requirements of P21 DCP.</p> <p>Development on Foreshore Area</p> <p>A section of the subject property is within the foreshore building line. Part 7, Clause 7.8 –Limited development on foreshore area of the Pittwater LEP 2014 applies for any development within the foreshore area.</p> <p>The DA proposes alterations within existing building located on the foreshores area and hence, the DA does not require to satisfy the objectives and requirements of Part 7, Clause 7.8 of the Pittwater LEP 2014.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>Supported (subject to conditions) The southern and eastern edges of the property are affected by a 1% AEP flood level of 1.92m AHD.</p>

Internal Referral Body	Comments
	<p>The bin area to be enclosed already just above this level. Other works are outside of the flood affected area.</p> <p>Note that the floor level of the bin area is 2.1m AHD, which is below the FPL of 2.22m AHD. If hazardous goods are to be stored in the bin area, they must be stored above the FPL.</p> <p>The proposed development generally complies with the flood requirements of the DCP and LEP.</p>
Parks, reserves, beaches, foreshore	<p>Supported</p> <p>The Pasadena site adjoining Sir Thomas Stephens Reserve. The modification application includes works within the property facing the Reserve, including a proposed servery window that may be accessed by persons within the Reserve, and the proposed opening of the western façade of the building and external deck for the use of persons who have purchased takeaway food and beverages.</p> <p>Parks and Recreation are currently exhibiting a proposal to upgrade the Reserve.</p> <p>It is considered that the modification application will not impact upon the use of the Reserve nor the upgrade proposal, and will provide the opportunity for beneficial community interaction and transition between private and public land.</p> <p>Parks, Reserves and Foreshores Referral support the application.</p>
Strategic and Place Planning (Heritage Officer)	<p>Supported - HERITAGE COMMENTS</p> <p>Discussion of reason for referral</p> <p>The proposal has been referred to Heritage as it adjoins a heritage item and is within the vicinity of two others</p> <p>Church Point Post Office Store - 1860 Pittwater Road Church Point</p> <p>Church Point Wharf - 1860B Pittwater Road Church Point</p> <p>Graveyard and Site of Former Methodist Church - 1 Mccarrs Creek Road Church Point</p> <p>Details of heritage items affected</p> <p>Details of the items as contained within the Pittwater inventory is as follows:</p> <p>Church Point Post Office Store <u>Statement of significance:</u> The Church Point Post Office and store complex is an extremely important landmark for Pittwater. The cultural significance of the post office and store is demonstrated by its role as an interchange for water based transportation to the Western Foreshores of Pittwater and Scotland Island. The architectural value of the property is demonstrated by the corrugated iron gable roof and sandstone retaining sea wall dating back to the late 19th Century. It is closely linked with the Church Point Wharf and holds social value</p>

Internal Referral Body	Comments	
	<p>for the community, which was reflected in the public involvement in preventing the closure of the store in 1978.</p> <p><u>Physical description:</u> The Post Office is a c.1895 building with a 1903 store. It is a single storey painted timber structure with a corrugated iron gabled roof and veranda facing the street. Built on the foreshore, the rear of the building projects over the water and is supported by a timber wharf. Site also contains a war memorial stone.</p> <p>Church Point Wharf <u>Statement of significance:</u> The Church Point Wharf is an extremely important landmark for Pittwater. It has close associations with the post office and is socially significant for its role in waterborne transportation to the Western Foreshores of Pittwater and Scotland Island.</p> <p><u>Physical description:</u> Stone pier and timber jetty with steel balustrade.</p> <p>Graveyard and Site of Former Methodist Church <u>Statement of significance:</u> The Graveyard and Site of Former Methodist Church is a small secluded cemetery which is significant as a memorial to local pioneers buried there. Its simplicity of style and arrangement is typical of rural aesthetic style in the nineteenth century. It also has connections with the naming of the area as it was attached to the church which gave its name to Church Point. It is an aesthetically pleasing and tranquil place.</p> <p><u>Physical description:</u> Grassed area on hillside above Pittwater Road with filtered views of Pittwater through the Spotted Gum trees. Accessed by footpath from Quarter Sessions Road or Pittwater Road</p>	
	Other relevant heritage listings	
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No
	Australian Heritage Register	No
	NSW State Heritage Register	No
	National Trust of Aust (NSW) Register	No
	RAIA Register of 20th Century Buildings of Significance	No
	Other	N/A
	Consideration of Application	

Internal Referral Body	Comments
	<p>The proposal seeks consent for modifications to the Pasadena building including rearrangement of the commercial tenancies, enclosure of the delivery and bin area, new outdoor dining area and awning on the western side of the site adjoining the reserve and changes to the rear external staircase. Directly adjoining the site to the west and north is the heritage listed Church Point Wharf. Further to the west is the general store and to the south west across the road is the graveyard and former church site. The proposal is contained to the subject site and given the small scale of external changes it is considered to have minimal impact upon the identified heritage items or their significance.</p> <p>Therefore Heritage raises no objections and requires no conditions.</p> <p>Consider against the provisions of CL5.10 of PLEP.</p> <p>Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? A short statement is contained within the Statement of Environmental Effects.</p>
Traffic Engineer	<p>Supported (subject to conditions)</p> <p>The modification is described as minor and provided the use continues as retail only then there is no impact on parking provision requirements under the DCP as the use has not changed. A change of use application would trigger the re-assessment of parking provision and the need for a parking assessment. Modification is supported subject to conditions.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>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.</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 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 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 Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for its continued commercial land use.

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 proposal generally relates to the fitout of the existing building (ground floor tenancies and toilet area and the enclosure of the existing keg store area to the southern corner of the building. The proposed alterations will not harm marine vegetation.

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 proposed development will not significantly impact on the ecological integrity of the adjacent

coastal wetland or the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland.

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 are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.*

Comment:

The proposal will not alter coastal processes to the detriment of the natural environment or reduce public amenity, access to and use of the foreshore.

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 proposal is unlikely to cause and adverse impact on the quality of the ecological, coastal and marine environment, vegetation or water quality.

- (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 subclause (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:

As discussed above, the proposal will not result in adverse impacts on the natural environment or reduce public amenity, access to and use of the foreshore.

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 proposal will not impact on access, view loss or overshadowing to the foreshore or the cultural and built environmental heritage of the area.

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 proposal is not likely to cause increased risk of coastal hazards on the land.

Pittwater Local Environmental Plan 2014

Is the development permissible?	Zone B1 : Yes Zone RE1: Yes Zone W1 : 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 B1 : Yes Zone RE1: Yes Zone W1 : Yes

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.35m	No change	N/A	N/A

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
7.3 Flood planning	Yes
7.6 Biodiversity protection	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes

Clause	Compliance with Requirements
Schedule 5 Environmental heritage	Yes

Detailed Assessment

Zone B1 Neighbourhood Centre

The proposal seeks consent for the consolidation of three existing commercial tenancies into two. The largest tenancy is described as a *general store / delicatessen* has a 100sqm retail floor area and includes a servery and chilled food counter and kitchen. The original 1963 development consent approved three retail shops all with a GFA of less than 100sqm. The original consent, which did not include any operational conditions, was approved under the Cumberland Planning Ordinance dated 1951. The Cumberland Planning Ordinance, 1951 defined "Shop" as

"any building or place or portion of a building or place, used for the purposes of exposing or offering goods for the sale by retail, and any premises which may be licensed by the council as a refreshment room and any premises licensed under the Liquor Act 1912, as amended by subsequent Acts."

Planning legislation has evolved in the last 70 years and in terms of comparing the approved 1963 (A212/63) "shop" (retail) use with the relevant current planning instrument and its definitions, namely the Pittwater LEP 2014, the approved shops compares closes to that of a Neighbourhood Shops which are permissible within the B1 Neighbourhood zone.

A site inspection confirms that the primary tenancy, known as the *Pantry Pasadena*, is being used as a premise which sells general merchandise and cold foodstuff. It also offers a dry cleaning service.

A *Neighbourhood Shop* is defined in the Pittwater LEP as

a premises used for the purposes of selling general merchandise such as foodstuffs, personal care products, newspapers and the like to provide for the day-to-day needs of people who live or work in the local area, and may include ancillary services such as a post office, bank or dry cleaning, but does not include neighbourhood supermarkets or restricted premises.

It is recommended that a condition be imposed requiring the use of the consolidated ground floor retail tenancies to be consistent with the PWLEP 2012 definition of a Neighbourhood Shop. In summary, the continuation of the use of the ground floor tenancies as shops is permitted within the B1 Neighbourhood Centre zone and consistent with the objectives of the zone that seek to:

- 1 *To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.*
- 1 *To provide healthy, attractive, vibrant and safe neighbourhood centres.*

Zone RE1 Public Recreation

The area to the west of the building comprises the Sir Thomas Stephens Reserve and is zoned RE1 (Public Recreation). The area is currently used as an area of outdoor seating and is partially occupied by a coffee truck which is consistent with other uses that surround the reserve. It is noted that the 1963 consent did not include any details on the use of this area.

The proposal seeks consent for the use of part of the western edge of the building as outdoor seating in association / ancillary to the general store / deli (Neighbourhood Shop). The work includes the construction of a low wall which defines the outdoor seating area with a canopy above and a new door and a survey window.

The ancillary outdoor seating use associated with the approved Neighbourhood Shop is permissible within the RE1 zone which allows for restaurants, or cafes and take away food and drink premises and is consistent with the objectives of the RE1 zone as discussed below:

To enable land to be used for public open space or recreational purposes.

Comment:

The proposal has a neutral impact on the use of the land as public open space and recreation given its current use.

To provide a range of recreational settings and activities and compatible land uses.

Comment:

The proposal provides a compatible land use to the reserve.

To protect and enhance the natural environment for recreational purposes.

Comment:

The proposal will have no impact on the natural environment for recreational purposes.

To allow development that does not substantially diminish public use of, or access to, public open space resources.

Comment:

The proposal will not substantially diminish public use of or access to public open space given its current use.

To provide passive and active public open space resources, and ancillary development, to meet the needs of the community.

Comment

The proposal provides a suitable ancillary development that meets the needs of the community.

7.8 Limited development on foreshore area

The work proposed along the western perimeter of the site associated with the outdoor seating is located within the foreshore building line.

Clause 7.8 (2) allows for:

(a) the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, but only if the development will not result in the footprint of the building extending further into the foreshore area.

Comment

The proposed work associated with the outdoor seating along the western perimeter of the existing building will not extend the footprint of the building further into the foreshore area. As such, the outdoor area is acceptable in principle.

(b) boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).

Comment:

The proposal provides an outdoor facility that will activate the adjoining public reserve.

Clause 7.8 (4) states that in deciding whether to grant consent for development in the foreshore area, the consent authority must consider whether and to what extent the development would encourage the following:

(a) continuous public access to and along the foreshore through or adjacent to the proposed development.

Comment:

The proposal will have a neutral impact on access to the foreshore (and the adjoining reserve).

(b) public access to link with existing or proposed open space.

Comment:

As noted above, the proposal will have a neutral impact on public access to link with the reserve and foreshore.

(c) public access to be secured by appropriate covenants, agreements or other instruments registered on the title to land.

Comment:

Access via an agreement or other instrument is not considered to be necessary.

(d) public access to be located above mean high water mark.

Comment:

The proposal will not change the levels of the land.

(d) the reinforcing of the foreshore character and respect for existing environmental conditions.

Comment:

The proposal will not result in unreasonable impacts in respect of existing environmental conditions, refer to the comments from Council's Coast and Catchment Officer.

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line (south)	3.5m	Nil (existing)	unaltered	N/A
Rear building line (north)	3.0m	Nil (existing)	unaltered	N/A
Side building line (east)	3.0m	Nil (existing)	unaltered	N/A
Side building line (west)	3.0m	1.9m (existing)	unaltered	N/A
Building envelope	3.5m	Outside envelope	unaltered	N/A

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.4 Church Point and Bayview Locality	Yes	Yes
A4.15 Waterways Locality	Yes	Yes
B1.1 Heritage Conservation - Heritage items, heritage conservation areas and archaeological sites listed in Pittwater Local Environmental Plan 2014	Yes	Yes
B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.9 Estuarine Hazard - Business, Light Industrial and Other Development	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.6 On-Street Parking Facilities	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
C2.2 Safety and Security	Yes	Yes
C2.3 Awnings	Yes	Yes
C2.7 Building Facades	Yes	Yes
C2.9 Waste and Recycling Facilities	Yes	Yes
C2.10 Pollution Control	Yes	Yes
C2.12 Protection of Residential Amenity	Yes	Yes
C2.21 Food Premises Design Standards	N/A	N/A
C2.22 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C2.24 Take-away Food Premises	Yes	Yes
C5.17 Pollution control	Yes	Yes
C5.20 Liquor Licensing Applications	N/A	N/A
C5.22 Environmental Sustainability	Yes	Yes
D4.1 Character as viewed from a public place	Yes	Yes
D4.2 Scenic protection - General	Yes	Yes
D4.3 Building colours and materials	Yes	Yes
D4.5 Front building line	N/A	N/A
D4.6 Side and rear building line	Yes	Yes
D4.14 Scenic Protection Category One Areas	Yes	Yes
D15.1 Character as viewed from a public place	Yes	Yes
D15.2 Scenic protection - General	Yes	Yes
D15.3 Building colours and materials	Yes	Yes

Detailed Assessment

B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites

The proposal will not have an unreasonable impacts on the heritage significance of the neighbouring heritage items. Refer to Heritage Officers comments in the referrals section of this report.

B6.3 Off-Street Vehicle Parking Requirements

Concern has been raised in the submissions regarding the intensification of the use and the impact on the availability of parking. Clause B6.3 of the PDCP requires 1 space per 30sqm gross floor area for retail premises. It is noted that the same rate applies to restaurants and cafes. The proposal will not result in an increase in the floor area, as such, in accordance with the controls the proposal does not result in a need for additional car parking spaces and Council's Transport Unit offer no objections to the proposal.

C2.12 Protection of Residential Amenity

Clause C2.12 applies where development adjoins land zoned or used for residential purposes.

Comment

The site has a spit land zoning with the existing building being located within a B1 (Neighbourhood Centre) zone and the land to the west of the building zoned RE1 (Public Recreation). The land to the south of the RE1 zone, on the opposite side of Pittwater Road, is mapped as E4 (Environmental Living). In order to protect the amenity of the residential area to the south conditions are recommended to ensure that there will be no intensification of the retail use approved in the 1963 consent and standard noise conditions are also recommended to ensure that there is no unreasonable impacts in terms of noise nuisance.

In addition, a condition requires noise generating plants and the like shall not produce noise levels that

exceed 5dBA above the background noise when measured from the nearest property boundary and noise generated from the use not to be offensive as defined by the Protection of the Environment Operations Act 1997.

C2.21 Food Premises Design Standards

It is noted that a kitchen is included in the plans for the extended general store / deli. However, a condition requires that there is no commercial kitchen and no cooking, the kitchen shall only be used for food "warming". The general store / deli shall continue to operate as a "*Neighbourhood Shop*" in accordance definition contained in the Pittwater LEP and not a food and drink premises.

C2.22 Plant, Equipment Boxes and Lift Over-Run

Clause C2.22 requires:

Plant or noise generating equipment such air conditioning units or garbage collection area or similar to be sited to protect the acoustic privacy of workers, residents and neighbours.

Comment:

There is no change in the location of the keg storage area or garbage collection area to the south-east and the enclosure of the space will help minimise impacts on acoustic privacy to residential properties. It is also noted that the proposed kitchen is not a commercial kitchen and there will be no mechanical plant associated with this aspect of the proposal. The air conditioning units are maintained within the building and standard noise conditions are recommended.

C5.20 Liquor Licensing Applications

Clause C5.20 requires a premise that intends to serve alcohol, which may include pubs, registered clubs and restaurants or cafes, must obtain a liquor license from the Casino, Liquor and Gaming Control Authority prior to the serving of alcohol for sale on premises.

Comment:

There is no change of use from the existing retail tenancies and a condition is included in the recommendation that alcohol will not be served to customers in the outdoor seating area.

D4.6 Side and rear building line

Clause D4.6 requires a 3m side set back.

Comment

The proposal maintains a 1.9m set back to the west. A low wall enclosing the outdoor dining area with an awning above is proposed to extend 1.9m from the western elevation.

The proposed awning and wall has been assessed as a minor encroachment into the setback, ancillary structures which will offer weather protect and define the outdoor dining area. Subject to conditions the proposal will achieve the outcomes of the side building line control as discussed below:

To achieve the desired future character of the Locality.

Comment:

The proposal minor external modifications will not result in unreasonable impacts on the character of the Church Point area.

The bulk and scale of the built form is minimised.

Comment:

The alterations are minor with no increase in the envelope of the existing building.

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

Comment

There will be no impacts on views and vistas from public or private places.

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

Comment

There will be no unreasonable impacts on view sharing.

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

Comment

There will be no unreasonable impacts on residential amenity in terms of privacy or solar access.

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

Comment

There is no change in the landscaping the works are generally contained within the existing building.

Flexibility in the siting of buildings and access.

Comment

The proposal allows for improved access to the retail tenancies.

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

Comment

Not relevant the works are generally internal . There is no loss of vegetation.

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

Comment

Not relevant the works are generally internal and there is no change to the landscaping.

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

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2019. A monetary contribution of \$1,398 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$139,800.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- 1 Environmental Planning and Assessment Act 1979;
- 1 Environmental Planning and Assessment Regulation 2000;
- 1 All relevant and draft Environmental Planning Instruments;
- 1 Pittwater Local Environment Plan;
- 1 Pittwater Development Control Plan; and
- 1 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:

- 1 Consistent with the objectives of the DCP
- 1 Consistent with the zone objectives of the LEP
- 1 Consistent with the aims of the LEP
- 1 Consistent with the objectives of the relevant EPIs
- 1 Consistent with the objects of the Environmental Planning and Assessment Act 1979

The proposed modification for the consolidation of the retail tenancies and ancillary outdoor seating is substantially the same as the original 1963 (A212/63) consent. Conditions are recommended to ensure that there is no intensification of use including a restriction in the operation of the tenancies in accordance with the definition of a Neighbourhood Shop. In addition conditions are recommended to ensure that there is no commercial kitchen, no cooking (only food preparation and warming), a restriction in the operating hours of the tenancies and the number of patrons that can be seated within the outdoor area. The proposal will not result in an increase in the gross floor area and with no change of use no additional parking is required.

The minor external alterations will not impact on the heritage significance of the area. The proposal will help activate the adjoining Sir Thomas Stephens Reserve and a condition requires the deletion of the enclosing wall to the outdoor seating area to ensure that there is no impacts on public access to the reserve of the foreshore.

The issues raised in the submissions have been addressed with conditions and it is considered that the proposal generally satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

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

RECOMMENDATION

THAT Northern Beaches Local Planning Panel as the consent authority grant approval to Modification Application No. Mod2021/0005 for Modification of consent A212/63 - Alterations and additions to the existing Motel, Restaurant and Shops on land at Lot 142 DP 752046, 1858 Pittwater Road, CHURCH POINT, Lot LIC 502589, 1858 Pittwater Road, CHURCH POINT, Lot 320 DP 824048, 1858 Pittwater Road, CHURCH POINT, Lot 1 DP 1148738, 1858 Pittwater Road, CHURCH POINT, Lot 3 DP 1148738, 1858 Pittwater Road, CHURCH POINT, subject to the conditions printed below:

A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
S4.55-A-050 Rev C Site Plan	05/11/2020	Quattro Architecture
S4.55-A-099 Rev C Ground Level Plan Demo	05/11/2020	Quattro Architecture
S4.55-A-100 Rev C Ground Level Plan	05/11/2020	Quattro Architecture
S4.55-A-200 Rev C Building Existing Elevations (Demo of stair)	05/11/2020	Quattro Architecture
S4.55-A-201 Rev C Building Proposed Elevations	05/11/2020	Quattro Architecture

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Estaraine Risk Management Report	02/03/2021	Advisian

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

c) The development is to be undertaken generally in accordance with the following:

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

Add Condition 10 RESTRICTION ON THE USE OF THE RETAIL TENANCIES to read as follows:

The retail tenancies shall operate in accordance with the definition of a *Neighbourhood Shop* as prescribed in the Pittwater LEP 2013, namely

a premises used for the purposes of selling general merchandise such as foodstuffs, personal care products, newspapers and the like to provide for the day-to-day needs of people who live or work in the

local area, and may include ancillary services such as a post office, bank or dry cleaning, but does not include neighbourhood supermarkets or restricted premises. The retail floor area shall be limited to 100sqm.

The tenancies shall operate in accordance with the following:

- (a) The primary tenancy shall be used for the purposes of selling food, light refreshments. There shall be no commercial kitchen, i.e. no stove, oven, deep fryer, grease trap or extraction fan(s) only food preparation and warming facilities for small food items.
- (b) The operating hours of both tenancies shall be limited to between 6.30am - 9.00pm Sunday to Thursday, 6.30am - 10.00pm Friday and Saturday.
- (c) The consolidated retail tenancies shall not be licensed.
- (d) Any intensification of the use of the retail premises in relation to serving of food will be subject to approval by way of a separate development application.

Reason: To ensure that the tenancy does not operate as a food and drink use and to protect neighbouring residential amenity.

Add Condition 11 DEAD OR INJURED WILDLIFE to read as follows

If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To protect native wildlife.

Add Condition 12 NO WEEDS IMPORTED ON TO THE SITE to read as follows

No Priority or environmental weeds are to be imported on to the site prior to or during construction works. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to issue of any Occupation Certificate.

Reason: To reduce the risk of site works contributing to spread of Priority and environmental weeds.

Add Condition 13 FLOODING to read as follows

In order to protect property and occupants from flood risk the following is required:

Building Components and Structural Soundness – C3

Any new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed and/or located above the Flood Planning Level of 2.22m AHD. All existing electrical equipment and power points located below the Flood Planning Level must have residual current devices installed to cut electricity supply during flood events.

Storage of Good - D1

Hazardous or potentially polluting materials shall not be stored below the Flood Planning Level of 2.22m AHD unless adequately protected from floodwaters in accordance with industry

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

Reason: To reduce the risk of impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

Add Condition 14 ESTUARINE HAZARD DESIGN REQUIREMENTS to read as follows

All development or activities must be designed and constructed such that they will not increase the level of risk from estuarine processes for any people, assets or infrastructure in surrounding properties; they will not adversely affect estuarine processes; they will not be adversely affected by estuarine processes.

To ensure Council's recommended flood evacuation strategy of 'shelter-in-place', it will need to be demonstrated that there is safe pedestrian access to a 'safe haven' above the Estuarine Planning Level.

Reason: To minimise potential hazards associated with development in an estuarine habitat.

Add condition 15 ESTUARINE PLANNING LEVEL REQUIREMENTS to read as follows

A base Estuarine Planning Level (EPL) of 2.0m AHD has been recommended in the Estuarine Risk Management Report prepared by Advisian Pty. Ltd. dated April 2016 modified by an Addendum dated March 2021 and adopted by Council for the subject site and shall be applied to all development proposed below this level as follows:

1. All structural elements below adopted EPL shall be of flood compatible materials. It is noted that the proposed enclosure would need to be constructed from flood compatible materials and must be designed and constructed so that it will have a low risk of damage and instability due to wave action and tidal inundation. It is recommended that the enclosure be constructed from cementrendered brick to match the exterior of the surrounding building.
2. All structural elements below adopted EPL shall be of flood compatible materials.
3. All electrical equipment, wiring, fuel lines or any other service pipes and connections must be waterproofed to the EPL. It is recommended that any of these services within the storage area be set at 2.5 m AHD or above.
4. The storage of toxic or potentially polluting goods, chemicals or materials, which may be hazardous or pollute the waterway, is not permitted below 1.7m AHD (which is considered to be the EPL for this location 40 m away from the foreshore). Construction of an elevated platform at approximately 2.0 m AHD or higher for stowing the garbage bins may be considered to cater for future increased inundation risk.
5. All interior power supplies (including electrical fittings, outlets and switches) must be located at or above 2.5m AHD. All exterior power supplies (including electrical fittings, outlets and switches) shall be located at or above 2.5m AHD to avoid the likelihood of contact with splashing waves and spray.

Reason: To ensure aspect of the development are built at the appropriate level.

Add Condition 16 COMPLIANCE WITH ESTUARINE RISK MANAGEMENT REPORT to read as follows

The development is to comply with all recommendations of the approved Estuarine Risk Management Report prepared by Advisian Pty. Ltd dated April 2016 and updated with an Addendum dated March 2021, and these recommendations are to be incorporated into construction plans.

Reason: To minimise potential hazards associated with development in an estuarine habitat.

Add Condition 17 COMPLIANCE WITH ESTUARINE RISK MANAGEMENT REPORT to read as follows

The development is to comply with all recommendations of the approved Estuarine Risk Management Report prepared by Advisian Pty. Ltd. dated April 2016 and updated by an Addendum dated March 2021 and these recommendations are to be maintained over the life of the development.

Reason: To ensure preservation of the development and the estuarine environment.

Add Condition 18 OUTDOOR SEATING to read as follows

- (a) Seating shall be limited to fifteen (15) persons.
- (b) There shall be no table service.
- (c) The outdoor seating area shall not be licensed.
- (c) The operating hours of the ancillary outdoor seating area shall be limited to between 6.30am and 8.30pm Sunday to Thursday, 6.30am to 9.30pm Friday to Saturday.

Reason: In the public interest.

Add Condition 19 NOISE GENERAL to read as follows

The use of the retail tenancies and ancillary outdoor seating area must be controlled so that any emitted noise is at a level so as not to create an "offensive noise" as defined in the Protection of the Environment Operations Act 1997 to any affected receiver. Noise generating plants and the like associated with the consolidated tenancies shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary and noise generated from the use not to be offensive as defined by the Protection of the Environment Operations Act 1997.

Reason: To comply with Noise Legislation.

Add Condition 20 LIGHTING to read as follow

Lighting is to be shielded or located to minimise any likely adverse visual impact when viewed from the Waterway, any adjoining public land, and adjoining residences.

Reason: To protect public amenity.

Add Condition 21 SIGNAGE to read as follows

No signage is approved other than signage which may be permissible under the Exempt and Complying Code

Reason: To avoid visual clutter.

Add Condition 22 WASTE MANAGEMENT to read as follows

Waste and recyclable material, generated by this premises, must not be collected between the hours of 10pm and 6am on any day.

Add Condition 23 CONSTRUCTION AND FITOUT OF FOOD PREMISES to read as follows

The construction fit-out and finishes of any retail tenancy that involves the preparation and/or retail sale of food must comply with Standard 3.2.3 of the Australian and New Zealand Food Standards Code, the Food Act 2003 and Australian Standard AS 4674 'Design, construction and fit out of food premises'. Prior to any Occupation Certificate (OC) being issued certification is to be provided by a suitably qualified person that the fit-out complies with the above requirement.

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

Add Condition 24 FOOD PREPARATION EQUIPMENT to read as follows

No food preparation equipment may be used within the retail tenancies that has:

- (i) a total maximum electrical power input exceeding 8 kW; or
- (ii) a total gas power input exceeding 29 MJ/h; or

The total maximum power input to more than one apparatus must not exceed—

- (i) 0.5 kW electrical power; or
- (ii) 1.8 MJ gas,

Reason: To restrict equipment used on the premises that would facilitate cooking.

Add Condition 25 CONSTRUCTION TRAFFIC MANAGEMENT PLAN to read as follows

As a result of the site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) and report shall be prepared by an RMS accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to issue of any Construction Certificate.

Due to heavy traffic congestion throughout the town centre, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm. Truck movements must be agreed with Council's Traffic and Development Engineer prior to submission of the CTMP.

The CTMP must address following:

- 1 The proposed phased of construction works on the site, and the expected duration of each construction phase.
- 1 The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken.
- 1 Make provision for all construction materials to be stored on site, at all times.
- 1 The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period.
- 1 The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed.
- 1 The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site.
- 1 Make provision for parking onsite.
- 1 Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior.
- 1 Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic.
- 1 The proposed manner in which adjoining property owners will be kept advised of the timeframes

for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure.

- 1 Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees.
- 1 Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site.
- 1 The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site.
- 1 Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council.
- 1 The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent.
- 1 Proposed protection for Council and adjoining properties.

- 1 The location and operation of any on site crane.

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted.

Reason: To ensure Work zones are monitored and installed correctly.

Add Condition 26 WORK ZONES AND PERMITS to read as follows

Prior to commencement of the associated works, the applicant shall obtain a Work Zone Permit where it is proposed to reserve an area of road pavement for the parking of vehicles associated with a construction site.

A separate application is required with a Traffic Management Plan for standing of construction vehicles in a trafficable lane and a Roads and Maritime Services Work Zone Permit shall be obtained for State Roads.

Reason: To ensure Work zones are monitored and installed correctly.

Add Condition 27 IMPLEMENTATION OF CONSTRUCTION TRAFFIC MANAGEMENT PLAN to read as follows

All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all

traffic management control must be undertaken by personnel having appropriate RMS accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to Council on request.

Reason: To ensure compliance of the developer/builder in adhering to the Construction Traffic Management procedures agreed and are held liable to the conditions of consent.

Add Condition 28 OPERATIONAL MANAGEMENT PLAN to read as follows

The operation of the development. The OMP shall include, but not be limited to the following:

- 1 Management of car parking areas.
- 1 The location and content of directional signage.
- 1 Complaints management.
- 1 Noise management.
- 1 Truck delivery times and methods of control to manage the sequencing of the loading docks.
- 1 Waste management.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To ensure that the development operates with minimum disruption to the surrounding area.

Add Condition 29 Policy Controls to read as follows

Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$1,398 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$139,800.

The monetary contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate whichever occurs first, or prior to the issue of the Subdivision Certificate where no Construction Certificate is required. If the monetary contribution (total or in part) remains unpaid after the financial quarter that the development consent is issued, the amount unpaid (whether it be the full cash contribution or part thereof) will be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index. If this situation applies, the cash contribution payable for this development will be the total unpaid monetary contribution as adjusted.

The proponent shall provide to the Certifying Authority written evidence (receipt/s) from Council that the total monetary contribution has been paid.

The Northern Beaches Section 7.12 Contributions Plan 2019 may be inspected at 725 Pittwater

Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

This fee must be paid prior to the issue of the Construction Certificate. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.