

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0848
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Responsible Officer:	Kye Miles
Land to be developed (Address):	Lot 2 DP 1005148, 3 Narrabeen Park Parade NORTH NARRABEEN NSW 2101 Lot 1 DP 1005148, 1 Narrabeen Park Parade NORTH NARRABEEN NSW 2101
Proposed Development:	Modification of Development Consent DA2019/1478 granted for alterations and additions to an existing restaurant
Zoning:	R2 Low Density Residential
Development Permissible:	No - Zone R2 Low Density Residential Yes - Zone RE1 Public Recreation
Existing Use Rights:	Yes
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	NSW Department Of Industry - Lands Olga Arslan
Applicant:	Turnbull Planning International Pty Ltd

Application Lodged:	13/12/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	17/12/2021 to 22/01/2022
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval

This assessment report is submitted to the Northern Beaches Local Planning Panel for the consideration of Modification application No. Mod2021/0848, which seeks retrospective approval for a constructed elevated deck to the southern exterior of the building and deletion of the open fencing approved along the southern elevation. It is noted that the proposed works are located entirely within the Lake Park Reserve and that Council as trustee, and the Department of Planning, Industry and Environment (Crown lands) have granted owner's consent for the modified works.

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

Council received one (1) submission during the formal notification period. The objection to the proposal mainly focused on parking and noise.

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

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

PROPOSED DEVELOPMENT IN DETAIL

Modification of DA2019/1478, which approved alterations and additions to a restaurant, including operational changes relating to trading hours and seating capacity. This modification seeks retrospective approval for a elevated deck to the southern exterior of the building and deletion of the open fencing approved along the southern elevation. The modified deck includes the following dimensions;

- 15.5sqm (+1.6sqm increase),
- 5.84m wide (No change from approval),
- 2.52m depth (+0.12m increase),
- FFL 0.3m above existing ground level (+0.3m increase).

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone R2 Low Density Residential
Pittwater Local Environmental Plan 2014 - Zone RE1 Public Recreation

SITE DESCRIPTION

Property Description:	<p>Lot 2 DP 1005148 , 3 Narrabeen Park Parade NORTH NARRABEEN NSW 2101 Lot 1 DP 1005148 , 1 Narrabeen Park Parade NORTH NARRABEEN NSW 2101</p>
Detailed Site Description:	<p>The development, being the subject of this application, occurs on two properties being:</p> <ul style="list-style-type: none"> • Lot 1 in DP 1005148, No. 1 Narrabeen Park Parade; and • Lot 7069 in DP 1058602, No. 1A Narrabeen Park Parade (known as Lake Park Reserve). <p><u>No. 1 Narrabeen Park Parade</u></p> <p>The site has an area of 345.3m² with a frontage to Narrabeen Park Parade of 9.82m. The southern boundary is a total of 41.15m in length, with the northern boundary being 36.11m.</p> <p>The site accommodates a single storey brick, timber and metal roofed cafe which occupies approximately 208m² of the site. The cafe is constructed to the northern (side) and western (front) boundaries and partially to the southern (side) boundary. The remainder of the site (to the east) contains a detached garage building with access to the garage gained via an existing driveway from the Council public car parking area. The eastern portion of the site has a shared area with a ground level garage and awning area within the subject Lot 1 and a first floor level balcony over the garage being within the title of Lot 2 in DP 1005148.</p> <p>The original building appears to have been constructed circa 1930, as a single storey structure on the front (west) and side boundaries of the site. The building is curved on its south-west corner. There are have been several alterations to the original building, including new window and door openings to the west and south elevations. Constructed of brickwork, the building has a painted facade. There is a parapet surrounding a low pitched metal roof to this structure.</p> <p>Extended to the rear of original building is a single storey timber weatherboard extension, which is setback from the southern boundary by about 1.15 metres. Painted to match the larger brick structure, the extension also has window and double door openings to the southern elevation. At the rear</p>

of the building is a timber lean-to element. There is pedestrian access from the rear of the building to a parking area comprising 3 garages. Access to these garages is achieved via the roadway within Lakeside Reserve. Pedestrian access is available across the garage turning area to the adjacent property, 3 Narrabeen Park Parade.

No. 1A Narrabeen Park Parade

The cafe is located adjacent to the northern edge of Lakeside Reserve at 1A Narrabeen Park Parade. The reserve includes the North Narrabeen Rock pool, Lagoon, and public carpark. Immediately adjacent to the site of the proposed works to the south of 1 Narrabeen Park Parade are a group of Norfolk Pines with 3 being in close proximity to the proposal works.

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

Map:



SITE HISTORY

The site has been the subject of the following matters:

A1220/73

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

The application was approved on 4 September 1973.

DA87/200

This application was lodged for a change use from an existing shop (milk bar) with attached dwelling to a refreshment room (restaurant) with attached dwelling and detached garage. The application was approved on 17 June 1987 subject to conditions.

Granting of Trusteeship

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

Access arrangements

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

Building Approval 1038/93

This application was lodged on or around 28 May 1991 for the erection of additions, including double garage at the rear of the site.

The application was approved on 23 November 1993.

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

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

Application to rezone the land

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

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

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

1. That Lot 1, DP 16625, be used for the purposes of a restaurant/ refreshment rooms; and
2. That part of the Lakeside Reserve, incorporating two areas of 4.2 metres x 9.0 metres; and 2.8 metres x 6.4 metres, adjacent to Lot 1, DP 16625, be used for outdoor seating associated with

the adjacent restaurant/ refreshment rooms.

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

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

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

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

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

Compliance Action for the alleged Illegal use of outdoor seating

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

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

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

PP0001/17

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

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

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

Outdoor Dining Approval

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

The approval includes:

- Operating hours 7.00am to 10.00pm.

- Maximum provision of 10 tables and 40 chairs.

At the time of completing this assessment an outdoor dining license is currently under negotiation with Crown Lands.

Development Application No. 2019/1478

This application was lodged on or around 12 December 2019 for alterations and additions to a restaurant, including operational changes relating to trading hours and seating capacity.

The application was approved by the NBLPP on 04 November 2020.

The approval includes;

Restaurant trading hours including take away meals service (Subject to Condition 30 (b)):

- Wednesday to Sunday midday - 3.00pm
- Wednesdays, Thursdays and Sundays 6.30pm-10pm
- Fridays and Saturdays 6.30pm-11.30pm

The capacity of the premises is limited to 100 patrons, including the Crown Land areas.

Building Information Certificate No. 2021/0111

This application was lodged on or around 07 May 2021 for the unauthorised elevated deck that is subject to this application. This application is under assessment at the time of completing this report.

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:

- 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;
- 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;
- 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 DA2019/1478, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(1A) - Other Modifications	Comments
	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

Section 4.55(1A) - Other Modifications	Comments
regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	<p>Yes</p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <ul style="list-style-type: none"> • The modified deck achieves reasonable compliance with the approved built form, • The works will not give rise to any adverse amenity impacts.
(b) 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>The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2019/1478 for the following reasons:</p> <ul style="list-style-type: none"> • The modified deck will largely remain within the approved footprint, as discussed in the 'Detailed Description of Development' section of this report, • The works are considered to be of a minimal environmental impact.
<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 requires the notification or advertising of applications for modification of a development consent, and</p>	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation Plan.</p>
(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.	<p>See discussion on "Notification & Submissions Received" in this report.</p>

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 4.55 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 residential purposes for an extended period of time. The proposed development retains the residential 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)(iia) – 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>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</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>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

The use of the land as a Restaurant is a prohibited land use under Pittwater Local Environmental Plan (PLEP) 2014. However, the site has Existing Use Rights for the purposes of a restaurant as per Division 4.11 of the Environmental Planning and Assessment Act, 1979. This was established within DA2019/1478 (dated 04 November 2020), as the Applicant had provided evidence in the form of the original consent (87/200) and subsequent approvals (modification to 87/200 dated and 15 November 1990 and an Outdoor Dining Approval granted on 1 September 2017), which revealed that the use of the land commenced as a lawful purpose prior to the coming into force of PLEP 2014 on 27 June 2014.

BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application that included a certificate (prepared by Building Code and Bushfire Hazard Solutions, dated 25 October 2021) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 17/12/2021 to 22/01/2022 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 1 submission/s from:

Name:	Address:
Madeleine Melderis	16 Island Parade NORTH NARRABEEN NSW 2101

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

- **Parking,**
- **Noise.**

The matters raised within the submissions are addressed as follows:

- **Parking:** Concern is raised that the increased patron capacity will restrict parking within the immediate area.

Comment:

No changes to parking or the approved patron capacity are proposed under this modification.

This matter does not warrant the refusal of this application.

- **Noise:** Concern is raised that the extended operation hours will result in unreasonable noise impacts.

Comment:

This modification does not seek to alter the approved trading hours.

This matter does not warrant the refusal of this application.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Environmental Health (Industrial)	<p>General Comments</p> <p>No pollution considerations required for this modification which involves the use of an elevated deck at the front of the food business to allow patrons to sit at the front of the business. Outdoor dining already in place.</p> <p>Recommendation</p> <p>SUPPORTED- no conditions</p>
Environmental Health (Food Premises, Skin Pen.)	<p>General Comments</p> <p>Development application proposes to modify approved plans. This includes the use of an elevated deck at the front of the food business to allow patrons to sit at the front of the business. This does not involve the preparation of food for sale or affect the overall function of the kitchen space from a food safety perspective. There are no food safety/hygiene matters for further consideration.</p> <p>Recommendation</p> <p>SUPPORTED- no conditions</p>
Landscape Officer	<p>The application is for alterations and additions to the existing commercial premises under development consent DA2019/1478.</p>

Internal Referral Body	Comments
	<p>The modification proposal seeks approval to maintain the elevated timber deck that has been built over Crown Land. The deck was not built in accordance with the previous development consent, as such this application seeks to modify DA2019/0478, to incorporate the timber deck into the development consent.</p> <p>The built deck is in proximity to three existing large Norfolk Island Pine trees of significance. A Arboricultural Impact Assessment report is submitted with the modification and the trees are identified as T1, T2, and T3. Existing trees T1 and T3 are at some distance from the built deck and the report notes that impact is considered negligible</p> <p>The built deck in close proximity to existing tree T3 is determined in the report as construction in accordance with tree sensitive construction measures by suspending the deck above ground level, mitigating the impact of development encroachment, and the overall tree protection zone coverage and impact is considered negligible with the decking permitting precipitation and irrigation through timber gaps to contact natural ground.</p> <p>Landscape Referral raise no concerns subject to conditions.</p>
NECC (Coast and Catchments)	<p>The Modification application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, 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 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. 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 The subject land has been included on the 'Coastal Environment Area' map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13 and 15 of the CM SEPP apply for this DA.</p> <p>Comment:</p> <p>On internal assessment and as assessed in the submitted Statement of Modifications (SEE) report prepared by Turnbull Planning International Pty. Ltd. dated August 2021, the Modification DA</p>

Internal Referral Body	Comments
	<p>satisfies requirements under clauses 13 and 15 of the CM SEPP.</p> <p>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>No other coastal related issues identified.</p> <p>As such, it is considered that the modification application does comply with the requirements of the coastal relevant clauses of the Pittwater LEP 2014 and Pittwater 21 DCP.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>The proposed modification relates to the timber deck built on Crown Land. The property is partially affected only by the Low Flood Risk Precinct.</p> <p>There are no applicable flood related development controls.</p>
Parks, reserves, beaches, foreshore	<p>The application is for alterations and additions to the existing commercial premises under development consent DA2019/1478.</p> <p>The modification proposal seeks approval to maintain the elevated timber deck that has been built over Crown Land. The deck was not built in accordance with the previous development consent, as such this application seeks to modify DA2019/0478, to incorporate the timber deck into the development consent.</p> <p>Parks, Reserves and Foreshores Referral raise no concerns as assessed against any impact to public recreation and access.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP (Coastal Management) 2018

The site is subject to SEPP Coastal Management (2018).

An assessment under the SEPP was carried out for the original application.

The modification does not include any significant changes to the design of the works, as compliance with the approved built form is retained. In this regard, no further assessment, beyond that already conducted in the report for DA2019/1478, is required.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	Complies
Height of Buildings:	8.5m	Umbrellas: 3.5m Pergola: 2.6m	Deck balustrade: 1.3m	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	N/A
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone R2 Low Density Residential

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

Zone RE1 Public Recreation

A restaurant is a permitted use within the RE1 Public Recreation zone. Although the development

proposed within the RE1 zone is not a stand-alone restaurant, it is ancillary to a restaurant use.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
R2 Low Density Residential				
Front Building Line	6.5m or established building line (whichever greater)	16m (Pergola)	Unaltered	N/A
Rear Building Line	6.5m	17m (Pergola)	Unaltered	N/A
Side Building Line	2.5m - One Side 1.0m - Other Side	North: No Change South: Nil (Pergola)	Unaltered Unaltered	N/A N/A
Building Envelope	3.5 x 45°	Within Envelope	Unaltered	N/A
Landscape Open Space	40% (138.1m ²)	Nil (No change)	Unaltered	N/A
RE1 Public Recreation				
Front Building Line	Merit Assessment	0.7m to 2.1m (Terrace)	Unaltered	N/A
Rear Building Line	Merit Assessment	68.6m	Unaltered	N/A
Side Building Line	Merit Assessment	98.5m	98.38m	Yes
Building Envelope	3.5m x 45°	Within Envelope	Unaltered	N/A

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.14 Warriewood Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.13 Pollution Control	Yes	Yes
D14.1 Character as viewed from a public place	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D14.2 Scenic protection - General	Yes	Yes
D14.3 Building colours and materials	Yes	Yes
D14.7 Front building line	Yes	Yes
D14.8 Side and rear building line	Yes	Yes
D14.11 Building envelope	Yes	Yes

Detailed Assessment

B6.3 Off-Street Vehicle Parking Requirements

The proposed modification does not involve any alterations to the existing parking arrangement nor does it seek to increase the patron capacity approved under DA2019/1478. In this regard, no further assessment is required.

D14.8 Side and rear building line

Description of non-compliance

The modified deck is located entirely on crown land. As such, a merit assessment against the objectives is carried out below.

Merit Assessment

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

Comment:

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

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

Comment:

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

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

Comment:

The proposal will not result in view loss.

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

Comment:

No views will be unreasonably impacted upon by the proposal.

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

Comment:

The modified deck will not give rise to any adverse amenity impact.

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

Comments:

The proposed modification will not result in the reduction of any approved landscaped areas. In addition, the application is supported by an Arborist report (Rain Tree Consulting, dated 13 June 2021), which details that the as built structure has been appropriately constructed without any adverse impacts on the nearby Norfolk Pines. In addition, this application has been reviewed by Council's Landscaping division who raised no concerns, subject to conditions.

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

Comment:

A degree of flexibility is considered appropriate in the circumstances, given the plan of management for the crown land specifically calls for a seated eating area in conjunction with the commercial premises.

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

Comment:

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

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

Comment:

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

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

Comment:

The proposal is to the south of the existing building, on the adjacent crown land. The modified deck will not impact on any buffer to residential neighbours.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

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

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

Conditions of consent have been recommended in relation to on-going Aboricultural care of the nearby Norfolk Pines and Bushfire certification.

Subject to the conditions below, approval is recommended.

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

RECOMMENDATION

THAT Northern Beaches Local Planning Panel as the consent authority grant approval to Modification Application No. Mod2021/0848 for Modification of Development Consent DA2019/1478 granted for alterations and additions to an existing restaurant on land at Lot 2 DP 1005148,3 Narrabeen Park Parade, NORTH NARRABEEN, Lot 1 DP 1005148,1 Narrabeen Park Parade, NORTH NARRABEEN, 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
DA-01 Rev B Site Plan	07 July 2021	o2 Architecture
DA-02 Rev B Ground Floor Plan	07 July 2021	o2 Architecture
DA-03 Rev B Floor Plan	07 July 2021	o2 Architecture

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Arborist Report	13 June 2021	Rain Tree Consulting
Bushfire Report	25 October 2021	Building Code & Bushfire Hazard Solutions

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

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

B. Add Condition No. 25A - Bushfire Requirements, to read as follows:

Compliance with the Bushfire Assessment Report dated 25/10/2021 prepared by Building Code and Bushfire Hazards Solutions, Ref 220227.

Details demonstrating compliance are to be provided to Council prior to the completion of works.

Reason: To ensure adequate provision is made for fire safety and building occupant safety.

C. Add Condition No. 32A - Arboricultural Care, to read as follows:

As recommended in the Arboricultural Impact Assessment, the following provisions and restrictions shall be carried out:

- i) under the direction of a AQF level 5 Arborist, and as scheduled for regular schedules, provide deep natural tree mulch within exposed soil and garden bed areas,
- ii) provide regular irrigation as advised,
- iii) no additional excavation within the tree protection zone is permitted,
- iv restrict sanitisation of outdoor public use areas within the tree protection zone,

Reason: To ensure the trees are appropriately managed.