

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2021/0047
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<b>Responsible Officer:</b>	Thomas Prosser
<b>Land to be developed (Address):</b>	Lot 27 DP 5055, 22 Jubilee Avenue WARRIEWOOD NSW 2102
<b>Proposed Development:</b>	Modification of Development Consent DA2019/0123 granted for use of part of the carparking area associated with the Pittwater RSL Club for the purposes of an organic food market
<b>Zoning:</b>	B7 Business Park
<b>Development Permissible:</b>	Yes, under Clause 2.8 Temporary Use of Land of the PLEP 2014
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Pittwater RSL Club Ltd
<b>Applicant:</b>	Organic Food Markets

<b>Application Lodged:</b>	24/02/2021
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Commercial/Retail/Office
<b>Notified:</b>	04/03/2021 to 18/03/2021
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	29
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Refusal

### EXECUTIVE SUMMARY

Modification application (MOD2021/0047) has been made to modify a consent under DA2019/0123 which granted consent to the use of part of the car parking area associated with the Pittwater RSL Club for the purposes of an organic food market. The current modification application proposes to extend operation of the markets for a 5 year period from date of commencement (1 September 2019), thus removing the trial period. The application also seeks approval to the removal of condition 12 which provides a requirement for traffic wardens be removed.

Public exhibition of the application to modify the development consent resulted in significant support for

the application (16 submissions of support), whilst there were objections to the proposed modifications. These issues raised in the objections included noise, traffic, impact on amenity, and issues in regarding multiple and late applications being lodged.

The subject site is zoned B7 Business Park under the Pittwater Local Environmental Plan 2014 (PLEP 2014). Development for the purposes of markets are not permissible in this zone, however, the proposal is permissible under Clause 2.8 *Temporary Use of Land* under the Pittwater LEP.

The application has been made to modify a consent within the timeframe required under the *Environmental Planning and Assessment Act 1979*.

Council's Environmental Health officer has commented that the acoustic data provided is insufficient to enable a proper assessment of the application. Council's Traffic officer has also stated that the request to remove a requirement for traffic wardens is not accepted.

As such, the proposal in its current form cannot be supported as insufficient information has been provided in order to assess the acoustic impacts during the trial period.

Accordingly, the application is referred to the NBLPP with a recommendation for refusal to the Panel.

## **PROPOSED DEVELOPMENT IN DETAIL**

The proposal involves a request to modify condition 10 and delete condition 12. In detail, this involves:

- A request to extend operation for a 5 year period from the date of the commencement of the market under this consent (1 September 2019). This involves amending the time in which a modification can be lodged to extend the expiry date, and removal of a trial period through the amendment of condition 10. Condition 10 currently reads as follows:

*"This consent expires in 21 months from the date of commencement of operation of the market on site unless, by no later than 16 months after the date of commencement, the applicant lodges a modification application to extend the expiry date to 5 years and Council thereafter approves the modification.*

*Reason: To monitor the operation of the consent to ensure no adverse impact on any adjoining land or the amenity of the neighbourhood and the temporary use of the land in accordance with the consent."*

- A request is also made to delete condition 12 that requires Traffic wardens. Condition 12 currently reads as follows:

*"A suitably qualified traffic warden(s), under the requirements of SafeWork NSW, must be appointed to monitor and control traffic movements and car parking along Warriewood Road, Vineyard Street, Jubilee Avenue and Foley Street, Warriewood. Such warden(s) shall commence duties no later than 7.15am through to 2.45pm.*

*Reason: To ensure safe and orderly traffic movements and parking and to manage amenity impacts to local residents."*

## **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 - 2.8 Temporary use of land  
 Pittwater 21 Development Control Plan - C2.10 Pollution Control

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 27 DP 5055 , 22 Jubilee Avenue WARRIEWOOD NSW 2102
<b>Detailed Site Description:</b>	<p>The subject site consists of three (3) allotments located to the south-west of Mona Vale Road, north-west of Foley Street, and north of Jubilee Avenue.</p> <p>The site is irregular in shape with frontages of 267m along Mona Vale Road, 200m along Foley Street, and 100m along Jubilee Avenue. The site has an area of approximately 39,319m<sup>2</sup>.</p> <p>The site is zoned part R2 Low Density Residential and part B7 Business Park and accommodates the Pittwater RSL Club development, comprised of the club, sportsfields, bowling club and associated parking.</p> <p>The site slopes approximately 20m from east to south-west, and contains significant vegetation around the existing buildings, facilities and parking areas.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by industrial, commercial and low-density residential development.</p>

Map:



## SITE HISTORY

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

- DA2019/0006 for use of part of the carparking area associated with the Pittwater RSL Club for the purposes of an organic food market was rejected on 1 February 2019 under staff delegation due to inadequate Statement of Environmental Effects, plans, operational management plan, signage details, and waste management plan.
- DA2019/0046 for use of part of the carparking area associated with the Pittwater RSL Club for the purposes of an organic food market was rejected on 22 February 2019 under staff delegation due to inadequate plans and owners consent.
- DA2019/0123 for use of part of the carparking area associated with the Pittwater RSL Club for the purposes of an organic food market was approved by NBLPP on 19 June 2019, subject to conditions. This is the subject consent and there have also been two modification applications under MOD2019/0547 and MOD2020/0175 to modify conditions. The modifications proposed in MOD2019/0547 were not supported.

## 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 DA2019/0123 and MOD2020/0175, in full, with amendments detailed and assessed as follows:

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>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 DA2019/0123 and as modified under MOD2020/0175 for the following reasons:</p> <p>The proposal involves a request to modify conditions of consent relating to a trial period and a condition relating to traffic wardens. The hours of operation and the type of operation is not proposed to be change. As such, the use and operation would be substantially the same as the existing consent.</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 DA2019/0123 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 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, Pittwater Local Environmental Plan 2011 and the Community Participation Plan.</p>

<b>Section 4.55 (2) - Other Modifications</b>	<b>Comments</b>
(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 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:

<b>Section 4.15 'Matters for Consideration'</b>	<b>Comments</b>
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)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;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	<p>(i) <b>Environmental Impact</b></p> <p>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>

<b>Section 4.15 'Matters for Consideration'</b>	<b>Comments</b>
environment and social and economic impacts in the locality	<p>(ii) <b>Social Impact</b> Insufficient information in regard to acoustic testing has been provided to determine whether there will be a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## **EXISTING USE RIGHTS**

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 04/03/2021 to 18/03/2021 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 29 submission/s from:

<b>Name:</b>	<b>Address:</b>
Martin Vella	16/117-119 Homer Street EARLWOOD NSW 2206
Mrs Robyn Suzanne Murray	2 / 3 Vineyard Street MONA VALE NSW 2103
Ric Simpson	Address Unknown
Mr Stephen Choularton	10 Chiltern Road INGLESIDE NSW 2101
Rebecca Svenoy	330 / 79 - 91 Macpherson Street WARRIEWOOD NSW 2102
Erica Power	Address Unknown
Mrs Janice Lynette Bilton	8 / 6 Foley Street MONA VALE NSW 2103
Frank Kardos	Address Unknown
Mr John Moyle	Address Unknown
Camilla Stevens	Address Unknown
Mrs Barbara Kerstin Stevens	66 A Cabbage Tree Road BAYVIEW NSW 2104
Mrs Deborah Trakman	17 Bruce Street MONA VALE NSW 2103

<b>Name:</b>	<b>Address:</b>
Miranda Bakery Pty Ltd	19 Erskine Road CARINGBAH NSW 2229
Mrs Julliett McCann	19 Alameda Way WARRIEWOOD NSW 2102
Grant Jackson Jessica Jackson	Address Unknown
Cynthia Nadai	Address Unknown
Lynda O'Dell	92 Aubreen Street COLLAROY PLATEAU NSW 2097
Georgina Reed	Address Unknown
Kay Pittelkow	Address Unknown
Ash Perrow	Address Unknown
Fibre For Good Pty Ltd	11 Station Street PYMBLE NSW 2073
Igor Kovacevic	Address Unknown
Ms Courtney Mae Ings	88 Warriewood Road WARRIEWOOD NSW 2102
Amiley Olliver	Address Unknown
Ms Valerie Jensen	185 Warriewood Road WARRIEWOOD NSW 2102
Mr Peter William McDonald	10 / 6 Foley Street MONA VALE NSW 2103
Ron Bode	19 Jubilee Avenue WARRIEWOOD NSW 2102
Mr Daniel Glen Giles	80 Vineyard Street MONA VALE NSW 2103
Hayley Croft	Address Unknown

It is noted that 16 submissions were made in support of the proposal. These submissions provided reasons for support including community benefit, social benefit, health benefit and economic benefit.

The matters raised within the submissions are addressed as follows:

- Noise impacts on surrounding area  
Comment:  
Insufficient information has been provided in terms of acoustic data to be able to assess the viability of extending the operations of the markets by the removal of the trial period.
- Concern in regard to MOD2021/0047 and REV2020/0029 being lodged concurrently; suggestions that applications should have been immediately rejected; MOD2021/0047 was 'wrongly' lodged late; Claim that Council provided advice that the application would be withdrawn due to not being made in the legislated timeframe  
Comment:  
The current modification application was submitted in accordance with the Act and regulations. As such, Council has an obligation to assess the application. There is no legal impediment in Council considering the request to modify condition 10 by the extension of the expiry date as well as extending the date in which a modification application is to be lodged.

The development consent is valid and current in accordance with the provisions of the Environmental Planning and Assessment Act 1979.

Council staff provided advice that another application, REV2020/0029, was being withdrawn. Review application (REV2020/0029) was withdrawn on 24 March 2021. Council's assessing officer has not provided any advice in regard to the withdrawal of this application



(MOD2021/0047).

- Traffic congestion, traffic safety and parking problems; issues cause by one entrance; increase to traffic flow; claim that vehicle movements increase by 10 times during markets (as compared to another Sunday)

Comment:

The Applicant provided a Parking & Traffic Impact Assessment Report and traffic modelling to Council as part of the original application. Notwithstanding this, condition 12 was imposed requiring traffic wardens to be provided. Council's Traffic officer has reviewed the current request to delete condition 12 and they do not support the removal of the condition.

- Operation outside trading hours

Comment:

Any evidence to show operation outside the hours of any consent should be forwarded to Council's Compliance team at council@northernbeaches.nsw.gov.au.

- The same documents have been submitted for different applications.

Comment:

Council will assess all documents as they are relevant to each individual application.

- The applicant did not adopt requirement for traffic wardens

Comment:

Council's Traffic officer does not support the request to remove the traffic wardens. Further, any evidence of non-compliance with conditions of consent (such as a requirement for traffic wardens) should be reported to Council's compliance team at council@northernbeaches.nsw.gov.au.

- Pollution

Comment:

Due to the lack of acoustic information submitted with the application, an assessment of the acoustic impacts and local amenity impacts can not be made and the application is not supported.

## REFERRALS

Internal Referral Body	Comments
Environmental Health (Industrial)	<b>General Comments</b>  Environmental Health have been requested to provide comment in regards to the proposal for ' Modification of Development Consent DA2019/0123 granted for use of the carparking area associated with the Pittwater RSL Club for the purposes of an organise food market'. '  Reference is made to the report included with the application documentation titled "Noise Impact Statement Review" dated October 2020 by Acoustic Consultant Ian McGrath.

Internal Referral Body	Comments
	<p>The report acknowledges noise monitoring undertaken for the purposes of the report reveals that the Amenity Criteria and or the Intrusive Criteria has been breached.</p> <p>The report also makes comparisons to noise levels measured sampled in the inner city suburb of Annandale which are seen to be not applicable to this proposal. The report further states “The source of breaches of the Amenity Criteria and or the Intrusive Criteria being prescribed as L10 level ≤ rating background level or (L90), plus 5, are in the environment under study most likely generated by local through traffic movements at the crossroad not from the markets activity itself”.</p> <p>Accordingly, Environmental Health is of the opinion that in the absence of further data to the contrary, the application should be refused based on the above breach, and the fact that any increase in intensity of use of the site for the purpose of an organic market, would only exacerbate any potential noise issues.</p> <p><b>Recommendation</b></p> <p>REFUSAL</p>
Traffic Engineer	<p>The modification application has been assessed and in line with the Traffic and Parking Report by Greys Consulting dated October 2020 there is the need for traffic controllers to assist in managing the bump in and bump out process along with management of peak traffic flows from the site onto Ponderosa Parade to manage network congestion. As such the modification cannot be supported on traffic grounds.</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 residential 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 the residential land use.

**Pittwater Local Environmental Plan 2014**

Is the development permissible?	Zone R2 : No Zone B7 : No Zone SP2: No
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 B7 : Yes Zone SP2: Yes

Compliance Assessment

Clause	Compliance with Requirements
2.8 Temporary use of land	Yes
5.10 Heritage conservation	Yes

Detailed Assessment

**2.8 Temporary use of land**

The subject site is zoned R2 Low Density Residential, B7 Business Park and SP2 Infrastructure (Classified Road). The proposal is wholly contained within the R2 and B7 zoned land, and does not impact upon the SP2 zoned portion of land. The proposed development is not permissible in the R2 or B7 zones. The proposal relies on Clause 2.8 Temporary Use of Land of the PLEP 2014 for permissibility. Clause 2.8 requires that development consent must not be granted unless the consent authority is satisfied that:

*(a) the temporary use will not prejudice the subsequent carrying out of development on the land in accordance with this Plan and any other applicable environmental planning instrument, and*

Comment:

The proposed development would not prejudice the subsequent carrying out of development on the land, as the use of the site will not involve any permanent physical works. Upon cessation of the market events, the land is to be returned to its former state without any unreasonable impact.

*(b) the temporary use will not adversely impact on any adjoining land or the amenity of the neighbourhood, and*

Comment:

Insufficient information has been provided in regard to acoustic data to show amenity impact during the trial period. As such, it cannot be determined if the proposal for extension would adversely impact the amenity of adjoining land.

*(c) the temporary use and location of any structures related to the use will not adversely impact on environmental attributes or features of the land, or increase the risk of natural hazards that may affect the land, and*

Comment:

The proposed development involves temporary structures only, to be set up and removed for use

during operation of the markets only. In this way, the proposed development will not involve alteration to features of the land, nor increase the risk of natural hazards that may affect the land.

*(d) at the end of the temporary use period the land will, as far as is practicable, be restored to the condition in which it was before the commencement of the use.*

Comment:

As above, the proposed development will involve temporary structures only, to be set up and removed for use during operation of the markets only. Given the temporary nature of the structures, at the cessation of operation of the markets, the land will be restored to the condition in which it was before the use commenced.

The proposed development satisfies the requirements of this Clause.

**Pittwater 21 Development Control Plan**

Compliance Assessment

<b>Clause</b>	<b>Compliance with Requirements</b>	<b>Consistency Aims/Objectives</b>
A1.7 Considerations before consent is granted	Yes	Yes
A4.16 Warriewood Valley Locality	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.12 Climate Change (Sea Level Rise and Increased Rainfall Volume)	Yes	
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
C2.2 Safety and Security	Yes	Yes
C2.10 Pollution Control	No	No
C2.21 Food Premises Design Standards	Yes	Yes
D16.1 Character as viewed from a public place	Yes	Yes

Detailed Assessment

**C2.10 Pollution Control**

Insufficient information has been provided to determine the success of the trial period. In particular, Council's Environmental Health officer has provided comments that discuss a lack of information submitted including an absence of data to viability of the proposal in terms of acoustic amenity.

It is noted that since 2019, there have been two complaints to Council's compliance team in regard to the operation of the markets. These complaints have been investigated, and there has been no evidence or information found to suggest that the operation of the markets during the trial period has been unreasonable or that operation has caused disturbance that would preclude support for removal of the trial period condition (to allow an extension to operational dates).

**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.

## **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, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

This report provides an assessment of the application to modify DA2019/0123 which was granted for use of part of the car parking area associated with the Pittwater RSL Club for the purposes of an organic food market.

The site has been inspected and the application assessed having regard to the provisions of Section 4.15 of the EP&A Act, 1979, the provisions of relevant EPIs, the relevant codes and policies of Council, the relevant provisions of the Pittwater 21 DCP.

### Public Exhibition

The public exhibition of the DA resulted in a large response from the community (including 16 submissions of support and 4 objections to the proposal). Objections to the proposed development include concerns relating to noise, traffic, impact on amenity, and issues in regarding multiple and late applications being lodged.

The issues raised in the submissions have been addressed in the 'Public Exhibition & Submissions' section of this report.

Insufficient acoustic data in relation to the trial period has been provided. This does not allow for

Council to sufficiently assess the potential impact of noise as a result of extending the period that the markets may operate to 2024.

Based on the lack of acoustic data provided, it is recommended that the Northern Beaches Local Planning Panel refuse the application for the reasons detailed within the recommendation of this assessment.

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## **RECOMMENDATION**

THAT Council , as the consent authority REFUSE Modification Application No. Mod2021/0047 for Modification of Development Consent DA2019/0123 granted for use of part of the carparking area associated with the Pittwater RSL Club for the purposes of an organic food market on land at Lot 27 DP 5055,22 Jubilee Avenue, WARRIEWOOD, subject to the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C2.10 Pollution Control of the Pittwater 21 Development Control Plan.

Insufficient information has been provided to determine the success of the trial period. In particular, Council's Environmental Health officer has provided comments that discuss a lack of information submitted including an absence of data to viability of the proposal in terms of acoustic amenity.