

8th March 2021

The General Manager
Northern Beaches Council
PO Box 82
Manly NSW 1655

Attention: Anne-Marie Young

Dear Ms Young,

Additional information response
Modification of consent A212/63
Alteration and additions to the existing motel, restaurant and shops
Pasadena
1858 Pittwater Road, Church Point

Reference is made to your email correspondence of 16th February and 5th March 2021 in which you sought further justification in relation to the application being submitted pursuant to Section 4.55 of the Environmental Planning and Assessment Act 1979 (the Act), confirmation as to the existing/proposed hours of operation and a response to the concerns raised as a consequence of Council's formal notification of the application in relation to parking impacts and the perceived intensification of use on the site. You also requested a copy of the legal advice prepared in relation to the application of section 109(B)(1) of the Act which will be provided to you under separate cover on a strictly confidential basis. We respond to the various issues as follows.

Section 4.55 modification of development consent

On 27th March 1963 building approval A212/63 (deemed development consent) was granted by Warringah Shire Council involving an application proposing the conversion of the existing premises into a 13 room guest house with managers flat, ancillary restaurant and 3 ground floor shops. The premises recently underwent an extensive refurbishment pursuant to Construction Certificate C2017041 with the premises currently being occupied and operated pursuant to the 1963 deemed development consent.

The subject application seeks the relocation of the existing bathroom facilities to facilitate the reconfiguration and consolidation of the 3 existing shop tenancies as nominated on the stamped building approval and Construction Certificate plans into 2 shop tenancies. The existing general store and delicatessen use will occupy the larger of the 2 tenancies with such use recently acknowledged by Council as being lawfully as detailed in the correspondence at Attachment 1 of submitted Statement of Environmental Effects (SoEE).

As to whether the modified development is appropriately described as substantially the same as that approved pursuant to the 1963 deemed development consent (A212/63) we note the following:

- The total floor area of the building occupied by the existing shops is not increased as a consequence of the reconfiguration and consolidation of the associated floor space and to that extent the application does not represent an intensification of use as it relates to floor space,
- The established general store/delicatessen use is maintained and to that extent the application does not seek a change of use,
- The general store/ delicatessen will only provide takeaway food and beverages, consistent with its current use, with no indoor seating/ table service proposed. In this regard, we confirm that the stools nominated along the alignment of the proposed external deck are provided for the use of persons who have purchased takeaway food and beverages,
- The openings proposed within the western façade of the building facing Thomas Stephens Reserve are consistent with those depicted on the 1963 building approval plans as depicted in Figure 1 over page,
- The proposed servery window will facilitate the service of takeaway food and beverages without the need to enter the premises being an option actively sought by customers since the emergence of Covid 19.
- The application does not seek any changes to the established motel and ancillary restaurant uses on the site other than the reconfiguration of the associated bathroom facilities, and
- The modified development will continue to operate pursuant to the 1963 deemed development consent.

Accordingly, we are satisfied that the proposed modifications do not propose a change of use nor do they represent an intensification of use as they relate to the maintenance of the floor space established by the existing shops. In this regard, the pre-lodgement advice obtained from Council which questions whether the application should be lodged as a section 4.55 modification or as a new change of use development application was based on an assumption that the application involved a change of use and an intensification of use on the site. As outlined above, these assumptions do not reflect the detail of the application as proposed and as articulated within the SoEE submitted in support of the application.

Further, the modifications proposed to the bathroom facilities do not rely on existing use rights but rather the modification of the lawful 1963 deemed development consent as detailed within the legal advice provided under separate cover.

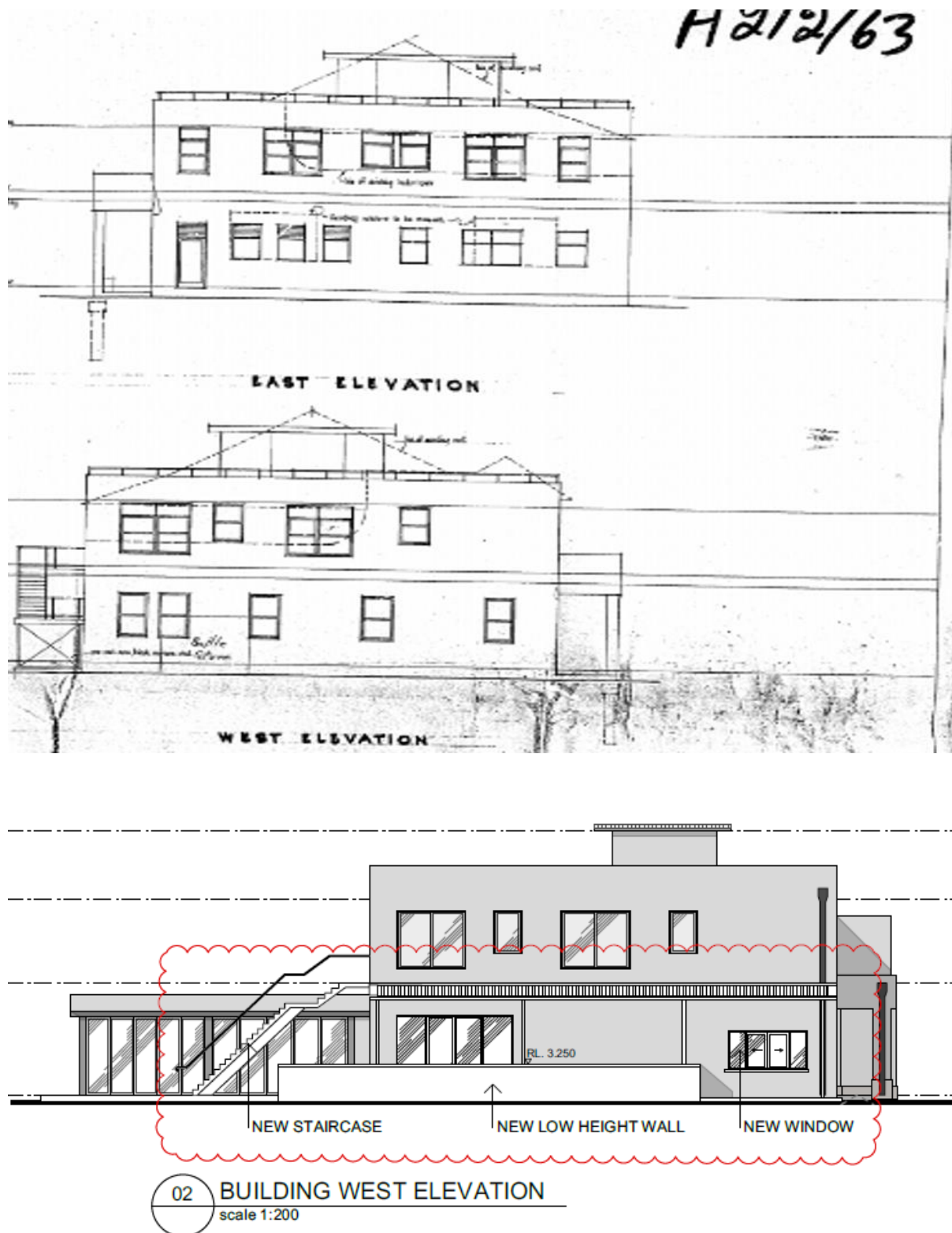


Figure 1 – Western façade extract of 1963 deemed development consent (A212/63) and current 4.55(1A) plan

On the basis of the above analysis, we are of the opinion that the development the subject of this application is “essentially and materially” the same as the originally approved development such that the application is appropriately categorised as being “substantially the same” and appropriately dealt with by way of Section 4.55(1A) of the Act.

Hours of operation

We confirm that the 1963 deemed development consent pursuant to which the existing premises operates does not prescribe hours of operation. As the application does not seek a change of use or an intensification of use on the site, we do not consider there to be any reasonable nexus in relation to the imposition of a condition restricting hours of operation and accordingly any such condition would fail the Newbury Test in relation to reasonableness.

Intensification of use

A number of submissions received by Council in relation to the application incorrectly assume that the application seeks a change of use and an intensification of use on the site. For the reasons previously outlined in this submission such assumptions are factually incorrect.

Parking impacts

As previously indicated, the proposed modifications do not propose a change of use nor do they represent an intensification of use. The general store/ delicatessen use will continue to service local residents, the offshore community and members of the public visiting Church Point in the same manner as the existing general store/delicatessen use albeit with a more spacious floor space arrangement. Under such circumstances, the modifications sought will not generate any increase traffic generation or car parking demand.

We trust that this submission comprehensively responds to the issues raised and will enable the favourable determination of the application. Please do not hesitate to contact me should you have any questions or wish to discuss any aspect of this submission.

Yours sincerely

Boston Blyth Fleming Pty Limited



Greg Boston

B Urb & Reg Plan (UNE) MPIA

Director