

**STATEMENT OF ENVIRONMENTAL
EFFECTS**

FOR

**SECTION 4.55 (1A) MODIFICATION
TO DEVELOPMENT CONSENT**

DA 2021/0699

FOR

**DEMOLITION WORKS AND
CONSTRUCTION OF A NEW
RESTAURANT,**

**CARPARKING AND ASSOCIATED
USES AT 1191 BARRENJOEY ROAD
PALM BEACH**

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1.0 INTRODUCTION

This Statement of Environmental Effects (SEE) has been prepared in support of a Section 4.55 (1A) application for the proposed modifications to the approved development on the subject site under DA2021/0699 comprising replacement of the existing Boathouse café/restaurant and associated infrastructure including carparking.

The requested modification seeks consent for the development consent 2021/0699 to be modified to-

- Amend the timeframe for documentation to be provided as **Conditions 28 (Environmental Management Plan)** and **Condition 38 (Dangerous Goods Storage)** are unable to be satisfied at this stage as the Management Plans rely upon the operation of equipment to be installed during future construction.

As the characteristics and performance of the equipment to be installed is currently unknown, it is therefore requested that these two conditions be modified to require the Management Plans to be deemed satisfactory by Council **prior to the issue of the final Occupation certificate** for the approved works.

It is my professional view that the proposed modifications should be assessed as “modifications involving minimal environmental impact and the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all)” pursuant to Division 4.55 (1A) of the Environmental Planning and Assessment Act, 1979, due to the fact that there will be no unreasonable adverse amenity impacts on adjoining properties or the public domain.

The Requested Modifications

The following modifications to the development consent 2021/0699 are proposed.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

28. Environmental Management Plan

An Environmental Management Plan (EMP) shall be prepared for the approved development.

The plan shall be prepared by a suitably qualified person and shall be to the satisfaction of Council and shall address:

Risk assessment of all Environmental Aspects and impacts to site and other potentially impacted properties

The impacts must at minimum consider the following areas:

- Hazardous Substances.*
- Water.*
- Air.*
- Noise.*
- Vibration.*
- Waste & Litter.*
- Land.*
- Community.*
- Environmental Protection objectives and control strategies.*
- Environmental conditions using measurable indicators and standards.*
- Emergency Response Plan.*
- Environmental monitoring and reporting plan.*

Reason: To ensure the appropriate operation and management of the approved use

38. Dangerous Goods Storage

Details shall be provided with the construction certificate demonstrating that the recommendations of the report titled 'Assessment Report – DG Advice, Ref 20225, Revision 1, dated 4/08/2020' with regard to the storage of Boat Fuel and LPG have been incorporated into the construction certificate plans and documentation.

The Plan of Management for the site is to be updated to include the recommendations of the above referenced report with regards to the handling of dangerous goods.

Details demonstrating compliance are to be provided to the Principle Certifying Authority prior to the issue of a construction certificate.

Reason: To ensure the safe handling and storage of dangerous goods.

Reasons for the Proposed Modification

The reasons for the support of the proposed Division 4.55 Modification are due to the fact that the requested Plans of Management for both the operational aspects of the proposal and the management of dangerous goods are unable to be completed at this stage due to individual components, yet to be selected, will determine the content of these plans of management.

It is therefore reasonable to require these Plans of Management to be completed to Council's satisfaction prior to the issue of the final Occupation Certificate.

To assist Council in its assessment of this modification application, the attached draft environmental Management plan for Boathouse Restaurant Palm Beach sets out the criteria to be included in the requested Management Plans for Environmental Management and Dangerous Goods Storage as required under the provisions of Conditions 28 and 38 of the consent.

2.0 DIVISION 4.55 ASSESSMENT

This modification application is submitted to Northern Beaches Council under the provisions of Division 4.55 – modification of consents– generally, **Part 1(A)**

modifications involving minimal environmental impact.

(a) it is satisfied that the proposed modification is of minimal environmental impact, and

The proposed works will not result in any impacts, over and above the impacts assessed under the parent DA, particularly with regard to environmental management and dangerous goods impacts thereby meeting the criteria to satisfy Clause 4.55, 1(A)

RESPONSE

The proposed modifications are considered to be of minimal environmental impact due to the approved development being unaltered by the requested modifications.

(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and

RESPONSE

The development as proposed to be modified will be the same development for which development consent was granted.

© It has notified the application in accordance with;

- i. The regulations, if the regulations so require, or***
- ii. A development control plan, if the consent authority in the Council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and***
- iii.***

RESPONSE

The requested modification does not change the description, or any operational aspects of the approved development and it is therefore

reasonable for the proposal not be notified.

(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

RESPONSE

As the proposed modifications do not alter the built form, footprint, height or any operational aspects of the approved proposal it is therefore unnecessary for the notification of the proposed modification.

4.0 DIVISION 4.15 EVALUATION

7.6 Matters for consideration—general

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

(a) the provisions of:

(i) any environmental planning instrument, and

(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and

RESPONSE

The relevant provisions of the PLEP and Coastal Management SEPP have been addressed in the body of the original Statement.

(iii) any development control plan,

RESPONSE

The relevant provisions of the Pittwater 21 DCP have been considered by Council during the assessment of the parent DA, no changes are proposed to the approved development design of location.

(iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4,

RESPONSE

No applicable.

and

(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),

RESPONSE

The relevant regulations have been given due regard in the consideration of this request.

and

(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,

RESPONSE

The requested modifications will have no impacts upon the environment, either natural or built as the modifications do not change the environmental performance of the proposal.

(c) the suitability of the site for the development,

RESPONSE

The subject site, by virtue of its existing layout, topography and locality is suitable for the modified proposal.

(d) any submissions made in accordance with this Act or the regulations,

RESPONSE

Due to the nature of the modifications requested, notification is not warranted as there is no change to the proposal.

(e) the public interest.

RESPONSE

The proposal endorses the public interest by allowing the proposal to progress in an identical manner as the approved proposal but modifying the timeline

for preparation of the requisite Plans of Management.

**(2) Compliance with non-discretionary development standards—
development other than complying development**

If an environmental planning instrument or a regulation contains non-discretionary development standards and development, not being complying development, the subject of a development application complies with those standards, the consent authority:

(a) is not entitled to take those standards into further consideration in determining the development application, and

(b) must not refuse the application on the ground that the development does not comply with those standards, and

(c) must not impose a condition of consent that has the same, or substantially the same, effect as those standards but is more onerous than those standards, and the discretion of the consent authority under this section and section 4.16 is limited accordingly.

(3) If an environmental planning instrument or a regulation contains non-discretionary development standards and development the subject of a development application does not comply with those standards:

(a) subsection (2) does not apply and the discretion of the consent authority under this section and section 4.16 is not limited as referred to in that subsection, and

(b) a provision of an environmental planning instrument that allows flexibility in the application of a development standard may be applied to the non-discretionary development standard. Note. The application of non-discretionary development standards to complying development is dealt with in section 4.28 (3) and (4).

(3A) Development control plans

If a development control plan contains provisions that relate to the development that is the subject of a development application, the consent

authority:

(a) if those provisions set standards with respect to an aspect of the development and the development application complies with those standards—is not to require more onerous standards with respect to that aspect of the development, and

(b) if those provisions set standards with respect to an aspect of the development and the development application does not comply with those standards—is to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development, and

(c) may consider those provisions only in connection with the assessment of that development application. In this subsection, standards include performance criteria.

(4) Consent where an accreditation is in force

A consent authority must not refuse to grant consent to development on the ground that any building product or system relating to the development does not comply with a requirement of the Building Code of Australia if the building product or system is accredited in respect of that requirement in accordance with the regulations.

(5) A consent authority and an employee of a consent authority do not incur any liability as a consequence of acting in accordance with subsection (4).

(6) Definitions

In this section: (a) reference to development extends to include a reference to the building, work, use or land proposed to be erected, carried out, undertaken or subdivided, respectively, pursuant to the grant of consent to a development application, and (b) non-discretionary development standards means development standards that are identified in an environmental planning instrument or a regulation as non-discretionary development standards.

Environmental Planning Instruments

The proposal as approved and as modified remains a permissible

development under the provisions of the Pittwater Local Environmental Plan.

Development Control Plans

The proposal is bound by the provisions of Pittwater Development Control Plan.

Impact on the Natural Environment.

The proposed modification will not impact upon flora and fauna, soil or water quality, air quality or the conservation of natural resources.

Impact on the Built Environment.

Scenic qualities – The proposed modification is consistent with the current and future character of the locality.

Compatibility with adjacent land uses –The proposed modification will not materially alter the compatibility with the adjacent land uses.

Bulk and scale – The proposed amendments will not materially impact upon bulk and scale of the approved development of the Boathouse restaurant and associated works.

Overshadowing – The proposed modification will not impact upon the solar access to nearby sites.

Views and vistas – There will be no impacts upon views and vistas across or around the subject site.

Site design – The refinements to the approved works are considered reasonable for the subject site.

Public domain – There are no works proposed in the public domain aside from the approved works.

Amenity Impacts – I consider that there will be no unreasonable amenity impacts from the proposed modification.

Impact on the Social and Economic Environment.

The proposal is unlikely to result in any negative social or economic impacts.

Suitability of the Site.

The subject site, by virtue of its existing development, zoning, topography and locality is suitable for the proposal.

6.0 SUMMARY

The necessity for the submission of this application has occurred as a consequence of the required Plans of Management only being able to be reasonably created once the applicant has a reasonable knowledge of the performance of various plant and equipment to be provided within the approved development.

It is not possible to provide a credible Plan of Management at this stage due to the lack of certainty over plant and equipment to be installed however it is noteworthy that only plant and equipment that is worthy of the proposal and its environmental considerations will be installed.

The attached Draft Environmental Management Plan sets out the criteria to be assessed under the final EMP for the subject site when the assessment can be carried out when plant and equipment is installed..

It is therefore reasonable for Council to favourably consider this submission and endorse the requested modifications due to the reasonableness of the proposal and lack of material impacts.

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