

9 August 2022



Leslie Anthony Cassar
3/231 Whale Beach Road
WHALE BEACH NSW 2107

Dear Sir/Madam

Application Number: Mod2021/0983
Address: Lot B DP 316404 , 231 Whale Beach Road, WHALE BEACH NSW 2107
Proposed Development: Modification of Development Consent REV2021/0034 granted for demolition works and construction of a Mixed Use Development comprising Shop Top Housing and retail premises, with associated carparking, landscaping and strata subdivision

Please find attached the Notice of Determination for the above mentioned Application.

Please be advised that a copy of the Assessment Report associated with the application is available on Council's website at www.northernbeaches.nsw.gov.au

Please read your Notice of Determination carefully and the assessment report in the first instance.

If you have any further questions regarding this matter please contact the undersigned on 1300 434 434 or via email quoting the application number, address and description of works to council@northernbeaches.nsw.gov.au

Regards,



Steven Findlay
Manager Development Assessments

NOTICE OF DETERMINATION

Application Number:	Mod2021/0983
Determination Type:	Modification of Development Consent

APPLICATION DETAILS

Applicant:	Leslie Anthony Cassar
Land to be developed (Address):	Lot B DP 316404 , 231 Whale Beach Road WHALE BEACH NSW 2107
Proposed Development:	Modification of Development Consent REV2021/0034 granted for demolition works and construction of a Mixed Use Development comprising Shop Top Housing and retail premises, with associated carparking, landscaping and strata subdivision

DETERMINATION - REFUSED

Made on (Date)	03/08/2022
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Reasons for Refusal:

1. Pursuant to Section 4.55(2)(a) of the Environmental Planning and Assessment Act 1979, the Panel is of the view insufficient evidence was provided by the applicant to demonstrate the proposed modification is substantially the same development as approved given the need to ensure the qualitative impacts of the proposed modification are not significantly different from the existing approval. These impacts are associated with the large increase in patronage resulting in additional street parking, noise associated with the movement of patrons, and safety of pedestrians and patrons given the poor road alignment in the area.
2. Pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed modification should be refused, as it has not been demonstrated that the modification does not create unacceptable traffic and safety impacts in the area. These impacts relate to additional traffic generated by the additional patronage, particularly in relation to the potential conflict with the use of the public car park in peak times (summer months), the narrow carriageway, and lack of footpaths in the area.
3. Pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development should be refused because the ameliorative measures proposed in the acoustic report are highly unlikely to be consistently implemented in practice (e.g. consistent closure of windows and other openings on summer evenings), and failure will result in unacceptable noise impacts on adjoining and nearby residential properties.
4. Pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the proposed development should be refused as the modification application does not adequately demonstrate that the proposed patronage levels can be accommodated within the building, including back of house operations.

5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development should be refused because it is only able to provide minimal onsite parking, and existing approved development is already deficient relative to Pittwater DCP standards. It is noted that the Pittwater DCP standards are less demanding than those specified by the RTA guidelines for Traffic Generating Development, Section 5.8.2.

6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development should be refused as the modification is not in the public interest.

Important Information

This letter should therefore be read in conjunction with REV2021/0034 dated 1 December 2021.

Please note that on site works cannot proceed unless a Construction Certificate application for the modified proposal has been lodged with and approved by Council or an accredited certifier, and relevant conditions of the Development Application have been carried out.

Right to Review by the Council

You may request Council to review this determination of the application under Division 8.2 of the Environmental Planning & Assessment Act 1979. Any Division 8.2 Review of Determination application must be lodged on the NSW Planning portal within 28 days of this determination, to enable the assessment and determination of the application within the 6 month timeframe.

Right of Appeal

Section 8.10 of the Environmental Planning and Assessment Act confers on an applicant who is not satisfied with the determination of the Consent Authority a right of appeal to the Land and Environment Court within 6 months of determination.

NOTE: A fee will apply for any request to review the determination.

Signed On behalf of the Consent Authority



Name Steven Findlay, Manager Development Assessments

Date 03/08/2022