

DEVELOPMENT APPLICATION ASSESSMENT REPORT

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| Application Number: | DA2023/0376 |
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| Responsible Officer: | Natalie Richter, Independent Planning Consultant |
| Land to be developed (Address): | 400 Barrenjoey Road, Bilgola Beach (Lot 7096 DP 1124092 Part Lot 7327 DP 1164236) |
| Proposed Development: | Use of (existing) Kiosk as a Café |
| Zoning: | RE1 (Pittwater LEP 2014) |
| Development Permissible: | Yes |
| Existing Use Rights: | N/A |
| Consent Authority: | Local Planning Panel |
| Land and Environment Court Action: | N/A |
| Owner: | The kiosk site is owned by Crown Lands NSW and is under the care control and management of Northern Beaches Council, under reserve number 58243. The reserve was gazetted as public recreation on 21 August 1925. |
| Applicant: | Northern Beaches Council |

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| Application Lodged: | 06/04/2023 |
| Integrated Development: | No |
| Designated Development: | No |
| State Reporting Category: | Local |
| Notified: | 17/04/2023 to 01/05/2023 and 26/06/2023 to 24/07/2023 |
| Advertised: | No |
| Submissions Received: | Two (2) |
| Clause 4.6 Variation: | No |
| Recommendation: | Approval subject to conditions |

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| Estimated Cost of Works: | \$0.00 (use only and no additional work) |
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EXECUTIVE SUMMARY

Development consent is sought to '*regularise the existing situation where the premises has been operating as a café for a number of years*' however the building only has consent for a 'kiosk'.

No alteration to the scale of use, building or hours are proposed.

The application is referred to the Northern Beaches Local Planning Panel, as the land is under the Council's control and Council is the applicant.

The proposal has been notified in accordance with Council's policies and relevant planning and community plans have been considered.

One (1) resident submission has been received and discussed within the assessment.

The proposed use does not present any concerns and is supported subject to compliance with updated conditions appropriate to the café style use. The use has been reviewed by appropriate Council officers including Parks, Building and Environmental Health and Protection.

As no work is proposed and with original conditions have been expanded upon, the proposal does not present any objectionable environmental issues.

The application is subject of the Management of Council related applications policy and he been notified for a period of 28 days and has a management strategy published on Council's website. The level of risk has been categorised as medium, necessitating independent assessment of the application.

The proposal is supported on merit, being consistent with planning frameworks, Section 4.15 considerations, and the public interest. The development is recommended for approval, subject to Conditions.

PROPOSED DEVELOPMENT IN DETAIL

The Statement of Environmental Effects ('SEE') lodged with the application details that:

- It is proposed under this DA to '*regularise the existing situation where the premises has been operating as a café for a number of years*' whilst it was originally approved and has historically operated as a 'kiosk'.
- No change is proposed to the operation or intensity and the use would continue to be restricted by conditions of consent relating to hours, capacity, noise, nature/no service of alcohol etc with no change to conditions proposed.
- The proposal is for a change of approved use from kiosk to café in order to be in step with the nature of the use, and the wording and clauses of the current Pittwater LEP 2014/planning definitions.
- No building work or alteration to the physical operation is proposed.
- The proposal will not result in an intensification of use as it will not alter any of the conditions of consent in the previous 2007 DA.
- Patrons of the building will continue to utilise the nearby public toilets as was approved under the original DA.
- Parking remains is available within the existing carpark, where the café is located. No change is proposed.
- No change is proposed to building form, environmental aspects, garbage location or storage materials or signage.
- The subject proposal has been further reviewed by relevant departments with additional contemporary conditions suggested by Council's Environmental Health and Protection Officer. These recommended conditions would update to contemporary wording and address the submission received (which is detailed in the assessment below).

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 on 5 June 2023 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.

SITE DESCRIPTION

The small, single storey kiosk/café building is located to the northern side of the existing carpark, next to Bilgola Beach, as can be seen in the following aerial photograph.

The Bilgola Beach kiosk was approved for re-building under a 2007 development consent (DA 0038/07, approved on 8 November 2007). The building is contemporary in design with low scale flat and curved roof elements. The roof height was subject to specific consent conditions.

Plans of the existing building/premises are provided below.

An outdoor seating area is located next to the kitchen and service area, closest to the beach side. This opens customers out to directly take in the aspect, view and breezes.

A small, enclosed garbage storage area is located on the other side of the service area, next to the carpark allowing for storage and collection.

At the other side of the carpark is the Surf Club building, outdoor beach showers and public toilet block.

The carpark is ticketed/time restricted.

An ocean lap swimming pool, known as the 'Bilgola Rockpool' is located to the south of the beach, near the rocks/cliff.

The broader area is characterised by residential homes within a coastal and landscaped setting.

The site is located away busy roads and the closest shopping/service areas would be Newport and Avalon Beaches.

LOCATION

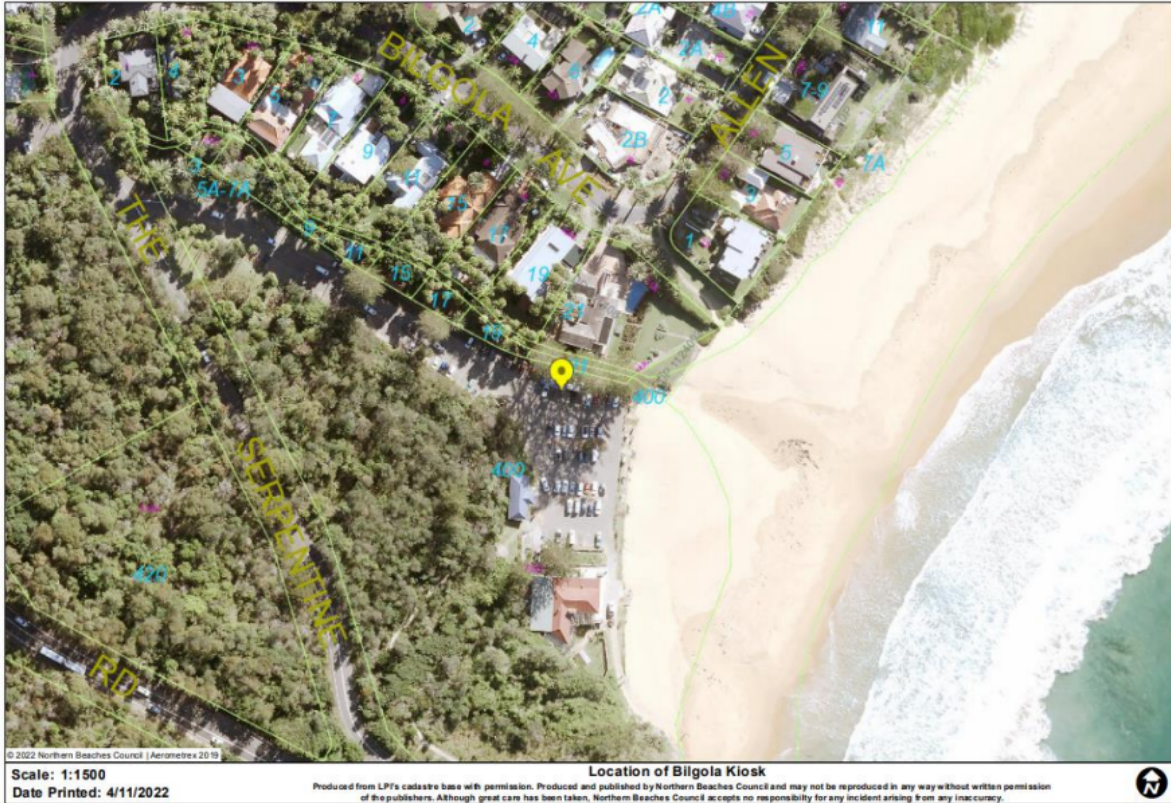


Figure 1 Map, courtesy SEE provided by NBC

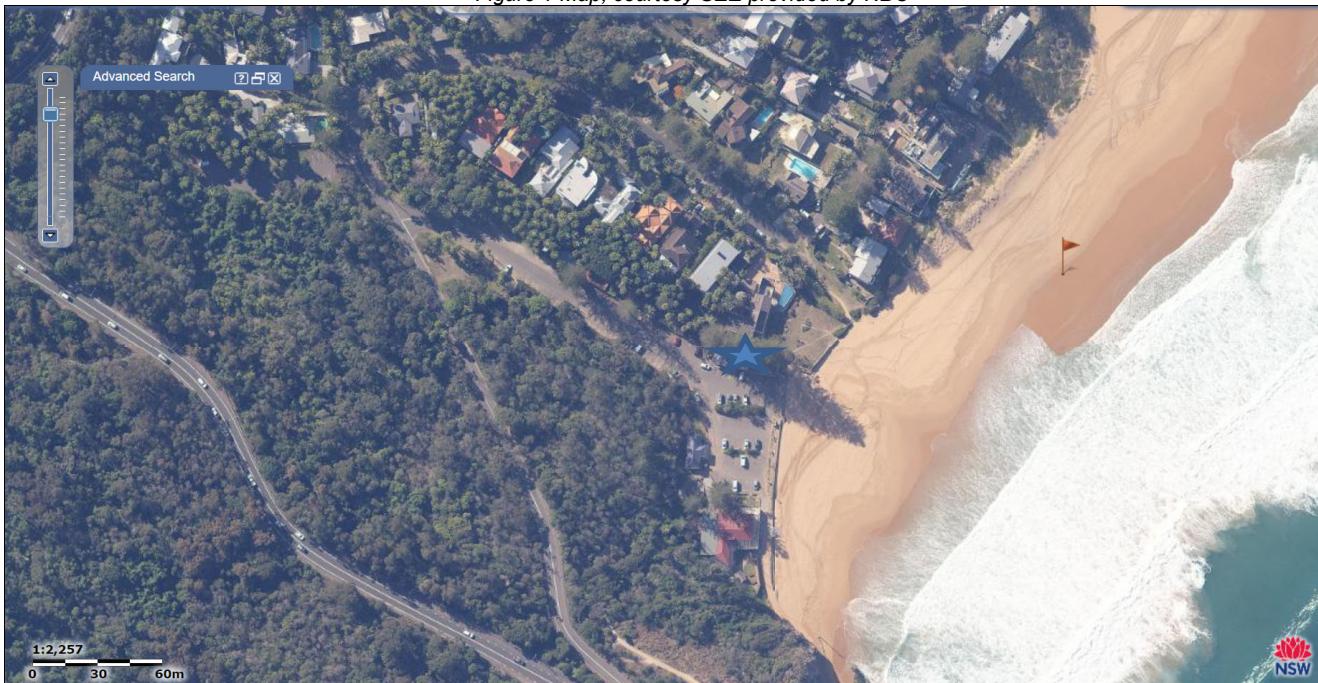


Figure 2 Map of the beach and context, courtesy Sixmaps, location of the existing kiosk noted with a star

Property Description:

The subject site consists of parts of 2 allotments known as Lot 7096 DP 1124092 and Part Lot 7327 DP 1164236 (400 Barrenjoey Road) and is Crown Reserve under reserve number 58243 gazetted in 1925 and is leased. The site is zone RE1 under the Pittwater Local Environmental Plan 2014

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| <p>Detailed Site Description:</p> | <p>The existing kiosk site is located to the north of the Bilgola Beach public carpark. The premises is directly accessed from it and faces the carpark, with easy access.</p> <p>The outdoor sitting area is located directly interfacing with the Bilgola Beach/coastline, to the west of the beach, looking out to it.</p> <p>The lease boundary/site is irregular in shape with a frontage of some 19.605m to the Bilgola Beach carpark and a depth of around 6.265m. According to the survey of the lease which has been provided with the DA, the site has a surveyed area of 125.7m².</p> <p>The site is located within the RE1 (Public Recreation) zone under the Pittwater LEP 2014.</p> <p>The site is essentially level, with a very slight slope to the east, toward the beach. The open area faces east.</p> <p>The site does not include any vegetation.</p> |
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Detailed Description of Adjoining/Surrounding Development

The low-density residential area to the direct north is zoned and C4 (Environmental Living). This zoning reflects the unique coastal/forest setting.

The areas to the west and south are designated as natural areas and classified road (refer to the following zoning extract).

The characteristics of the site and its context are shown in the following 3 photographs.



Photograph 1



Photograph 2



Photograph 3

The prevailing character of the broader area is as a quiet, leafy neighbourhood with large residential lots within an escarpment/landscaped setting. Other commercial uses are located at nearby Newport and Avalon Beaches.

SITE HISTORY

The land has been used for commercial purposes for an extended period of time as the Bilgola Kiosk. It is understood from the submitted SEE and some background application information from 2007, that a kiosk has existed on the subject site, at the edge of the public beach carpark since at least the early 1970s.

Development Application No. N0038/07 for: '*demolition of the existing site structure and redevelopment of the site to accommodate a new kiosk in accordance with the Plan of management adopted by Council on 12 December 2005*' was submitted on 01/02/2007.

This DA was determined with conditional approval on 08/11/2007. The consent allowed for demolition of the older style original kiosk and it's re-building to the standard which exists today (per the plans below).

It is noted that the approved plan is consistent with the concept plan which was envisaged in the Bilgola Beach POM document.

This approval was issued with conditions relating to the maximum height of the new roofing, hours of use (including preparation and close) between 6.30am and sunset for 7 days, noise management conditions/plant noise, limit of 40 chairs seating capacity, conditions relating to environmental matters and materials, and conditions relating to storage and management of garbage.

In accordance with the 2007 consent, the site is currently occupied by a small single storey building with low form, curved roofing and has a kitchen at the western side and a covered outdoor seating area to the east, facing the beach. The character shown in the above photographs. The plans of the existing structures are detailed in the following extracts, from the DA documents.

The previous plans have been reviewed and the proposed plans are consistent and have not been altered. No 'new' or proposed work is indicated on the submitted plans.

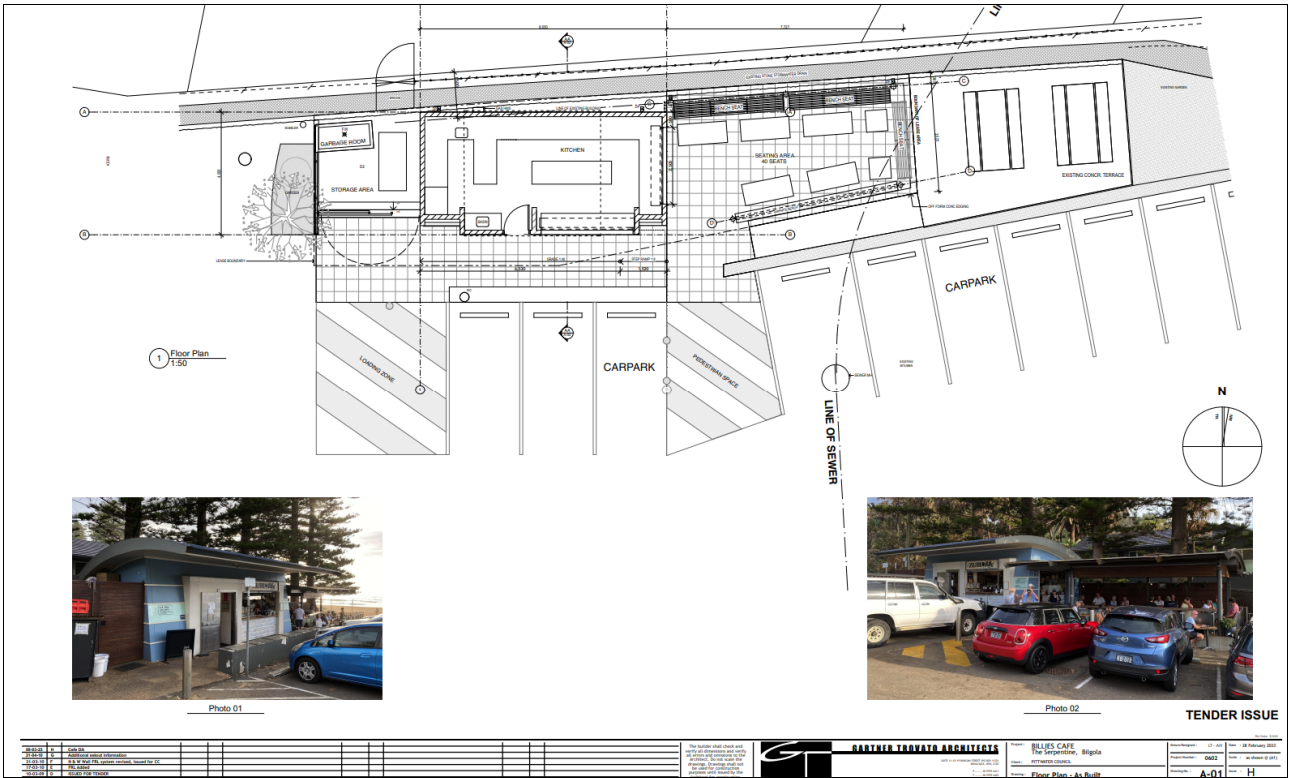


Figure 4 Site Plan showing existing kiosk/cafe

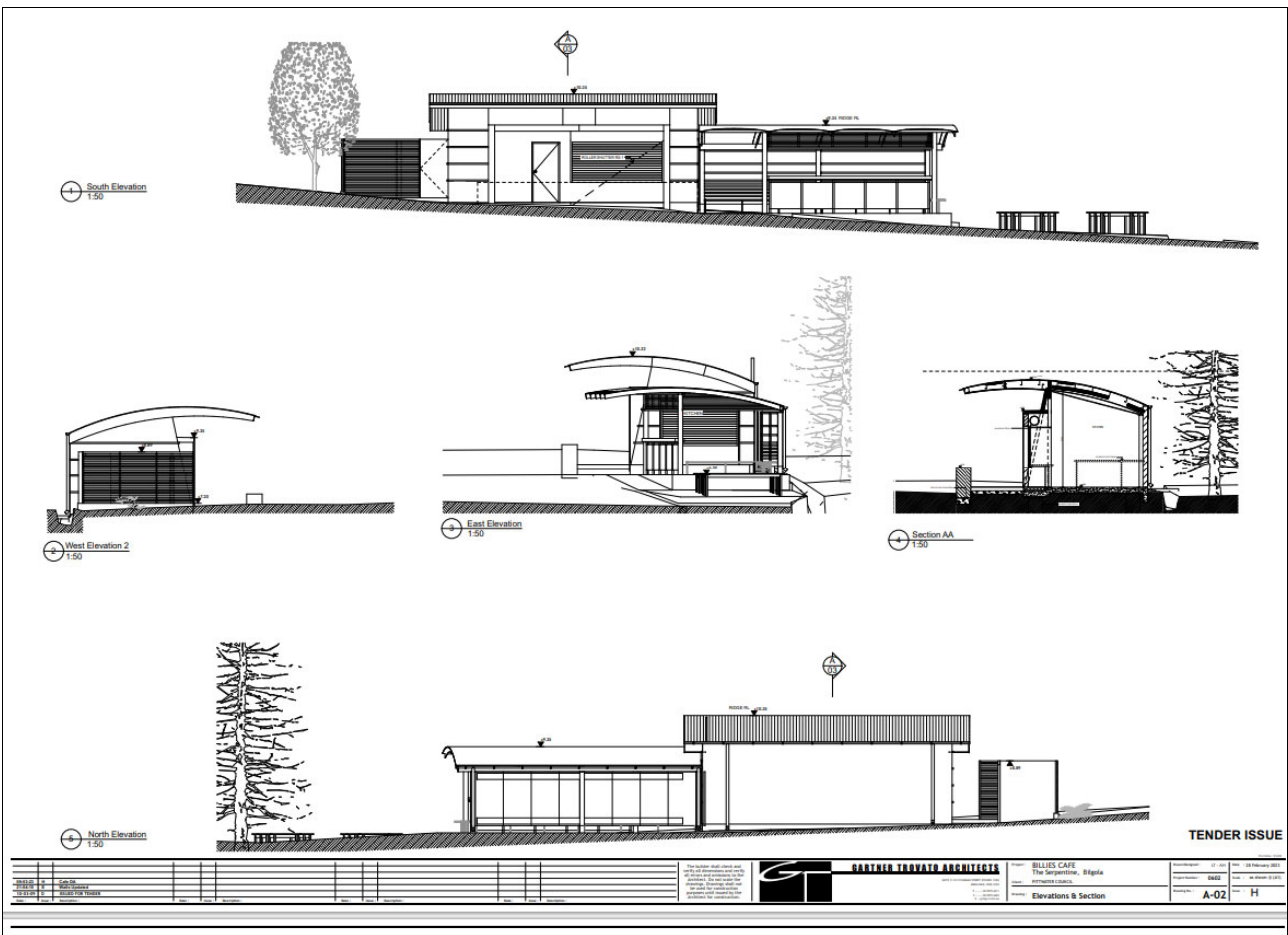


Figure 5 Elevations showing existing kiosk/cafe

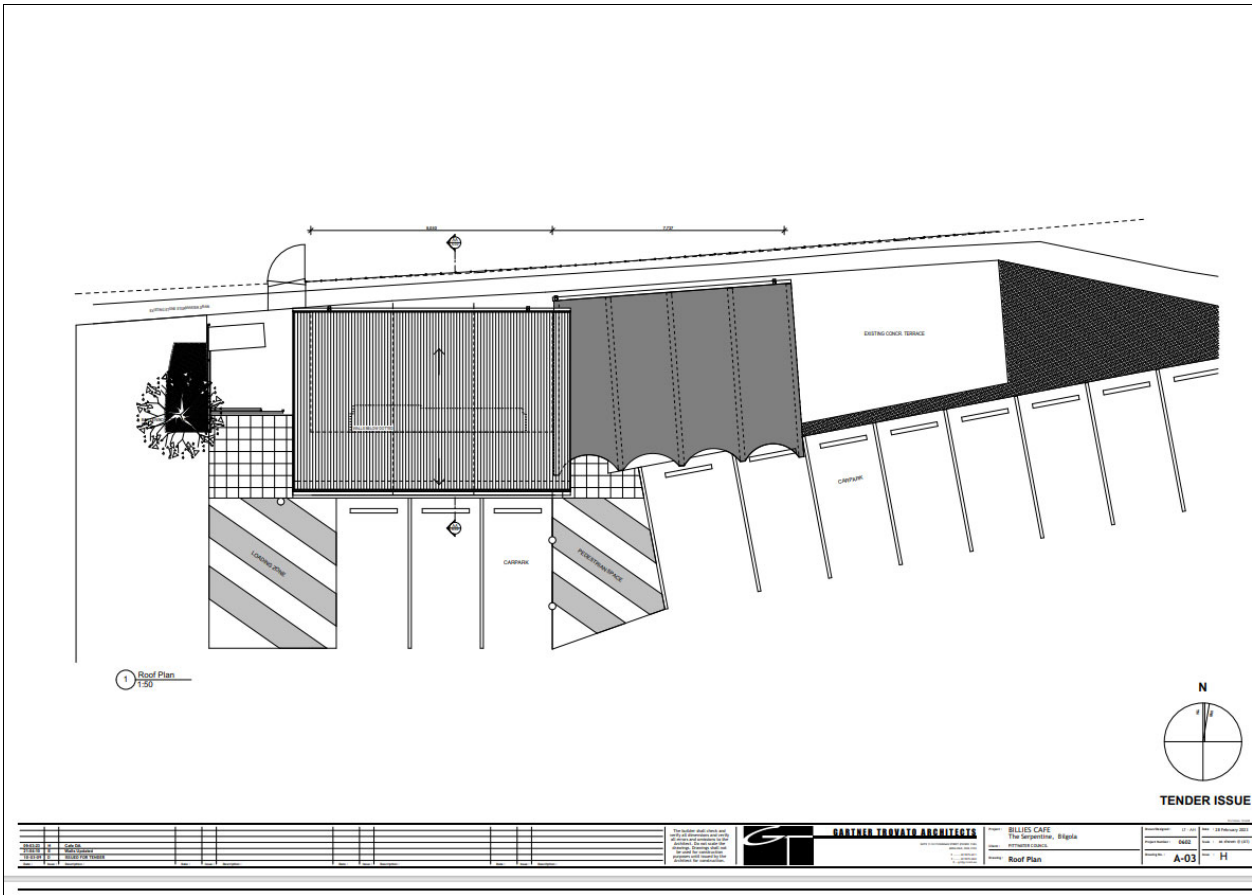


Figure 6 Roof Plan

The kiosk services local residents, the patrons and members of the Surf Club and visitors to the Beach given its close proximity/next to the beach.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Northern Beaches Community Participation Plan 2019.

As a result of the public exhibition process council is in receipt of one (1) submission from:

| Name: | Address: |
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| D Mallett & G Sloan (to both notification periods – April and July) | 19 Bilgola Avenue, Bilgola Beach |

The original submission was generally supportive of the application on the basis of no intensification of the proposed use and no service of alcohol in this location, to maintain the quiet residential amenity in this location.

A further submission from this objector was received and it acknowledged the renotification and expressed the view that the use should not be intensified or changed from the original conditions and frameworks. It was noted that a restaurant use would be prohibited under the Bilgola POM.

A request was made in terms of the sensitive consideration of timings for service deliveries and commercial rubbish collection to minimise noise impacts and disruption on residential neighbours.

Environmental Health and Protection conditions are recommended in relation to the hours of delivery and waste collection being within the approved operational hours and noise matters to address this submission. Refer to recommended Condition No. 13 in this regard.

The use is not intensified. The use is not for a restaurant and the café use is consistent with the zoning and no change is proposed to the conditions which are also endorsed within the recommendations.

REFERRALS

| Internal Referral Body | Comments |
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| Environmental Health | <p>Supported, subject to Conditions</p> <p><i>'This application seeks consent for one or more of the following: I <u>Food premises</u>, or I Backpackers/Boarding house, or I Mortuary, or I Skin penetration, acupuncture, tattoo, beauty salon, or I Public pool And as such, Council's Environmental Health and Protection officers are required to consider the likely impacts. Officer comments General Comments Environmental Health have reviewed the information provided and added the conditions required for a cafe. Recommendation Supported - subject to conditions. The proposal is therefore supported.'</i></p> <p>Recommended conditions are included in the recommendation.</p> |
| Parks, Reserves and Foreshores | <p>Supported, no Conditions required</p> <p><i>'The development is sited within RE1 Public Recreation land under Pittwater Local Environment Plan, and the use as a café is permitted with consent. No new physical works are proposed. Public access within and throughout the RE1 land is not impacted by the development and the development is not detrimental to the landscape character in terms of physical and visual impact within the RE1 land including the beach and reserve, and as such Parks, Reserves and Foreshores raise no concerns with the development. The proposal is therefore supported.'</i></p> <p>No specific conditions are recommended.</p> |
| Building Assessment | <p>Supported, no Conditions required</p> <p><i>'This application seeks consent for Class 2-9 Buildings (i.e. all buildings except a dwelling, garage, shed, gazebo or swimming pool/spa) which include: I Alterations and Additions; or I Change of Use And as such, Councils Building Assessment officers are required to consider the likely impacts. Officer comments Under the terms of Section 62 of the Environmental Planning and Assessment Regulation the proposal is not a change in building use and as such there is no objections to approval of the development. Note: An Occupation Certificate was applied for in 2010 but the private certifier required additional documents before the OC could be approved. To date no OC has been issued (Refer to Trim PW3581730). This matter should be followed up by the relevant section within Council. The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development. The proposal is therefore supported.'</i></p> |

| Internal Referral Body | Comments |
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| | No specific conditions recommended in relation to the use change. Original BCA conditions in place/2007 consent for the building. |
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| External Referral Body | Comments |
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| | No external referrals sent/necessary |

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EP&A Act)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

| Section 4.15 'Matters for Consideration' | Comments |
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| Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument | See discussion on “Environmental Planning Instruments” in this report. The proposed use, with no change to the building or the intensity is considered to support the community without adverse impact. The proposal is acceptable/consistent subject to conditions. |
| Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument | There are no current draft environmental planning instruments. |
| Section 4.15 (1) (a)(iii) – Provisions of any development control plan | Pittwater 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 regulations | <u>Division 8A</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 50(1A)</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 54 and 109</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case. <u>Clause 92</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application as no demolition is required. <u>Clauses 93 and/or 94</u> of the EP&A Regulation 2021 requires |

| Section 4.15 'Matters for Consideration' | Comments |
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| | <p>the consent authority to consider the upgrading of a building (including fire safety upgrade of development). The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p><u>Clause 98</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been assessed and no additional conditions are required/no additional building works proposed.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p> |
| <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> | <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. The proposed use is considered to bring about positive aspects in relation to the residential and beach setting.</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. The proposed use is considered to bring about positive aspects in relation to the residential and beach setting, providing a low scale and supportive commercial/employment/economic opportunity.</p> |
| <p>Section 4.15 (1) (c) – the suitability of the site for the development</p> | <p>The site is considered suitable for the proposed development.</p> |
| <p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p> | <p>See discussion on “Notification & Submissions Received” in this report.</p> |
| <p>Section 4.15 (1) (e) – the public interest</p> | <p>No matters have arisen in this assessment that would justify the refusal of the application in the public interest.</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)

State Environmental Planning Policy Resilience and Hazards (Coastal Management).

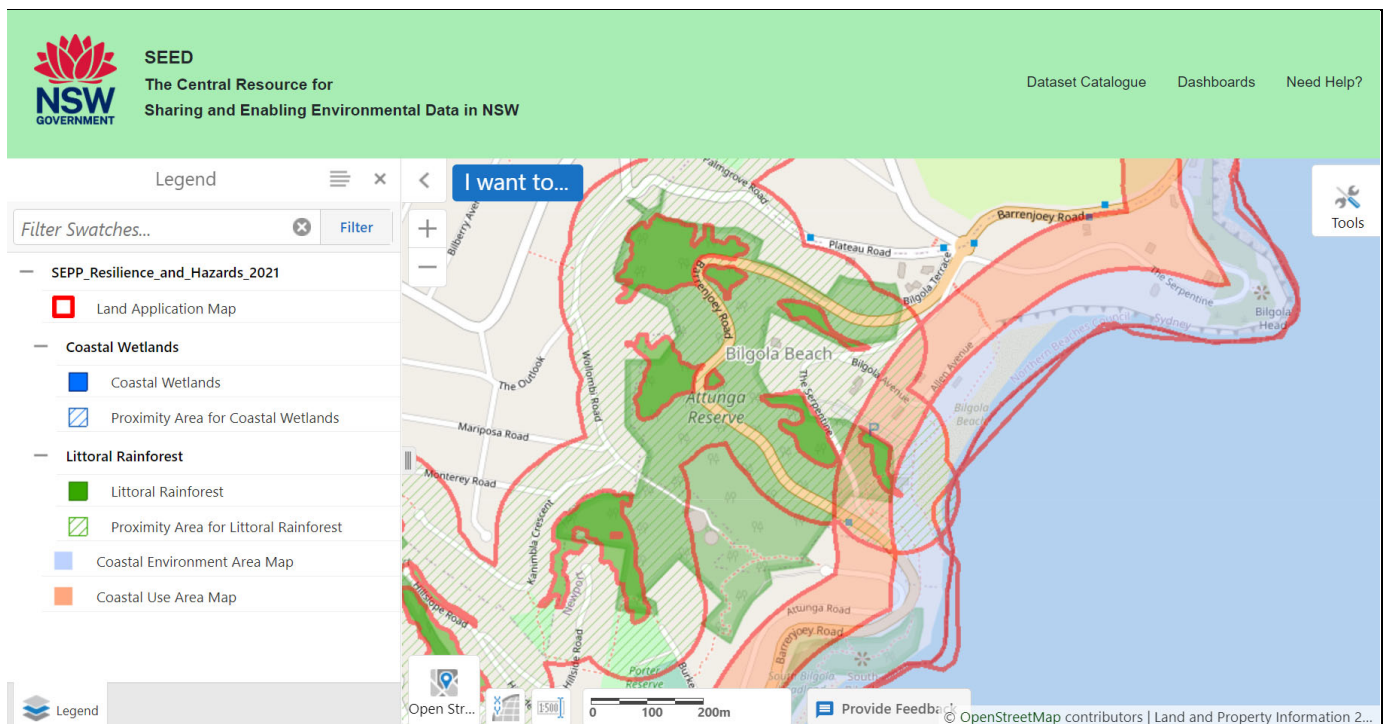
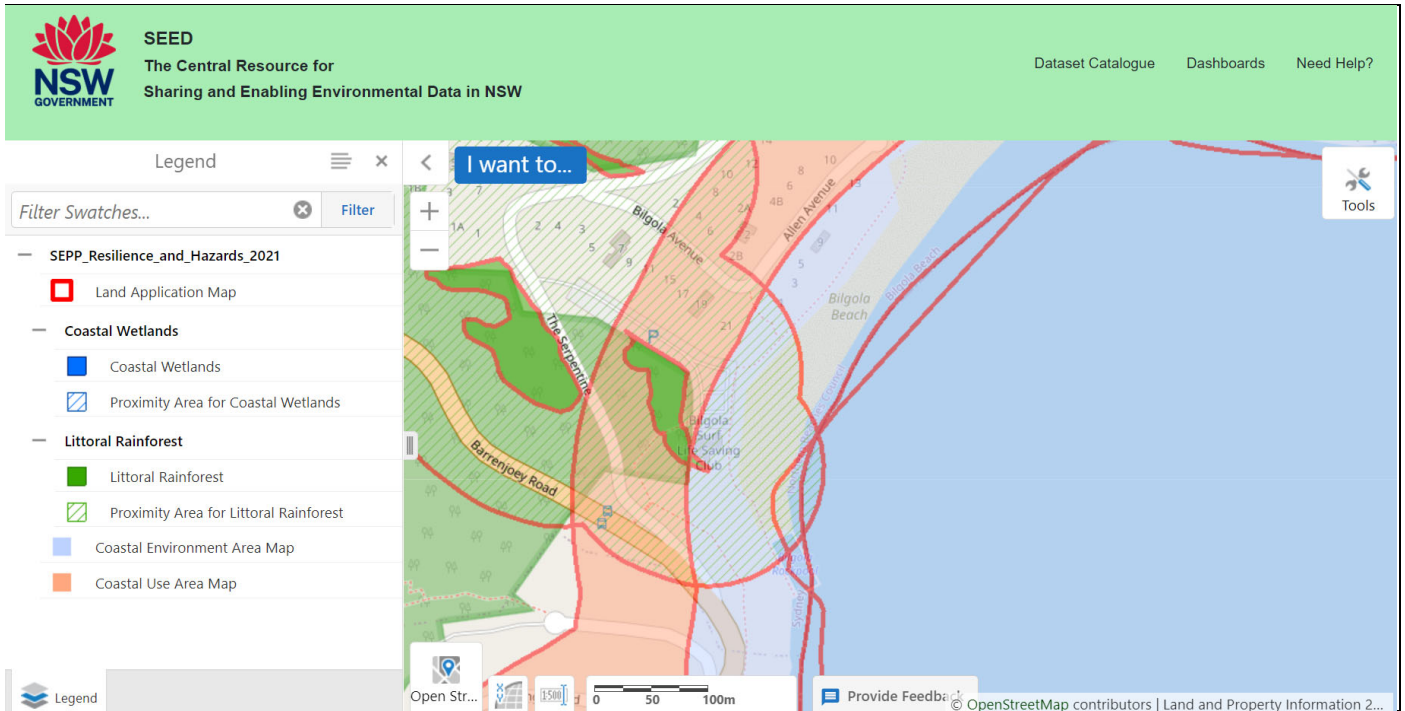


Figure 7 – Coastal use area



As indicated in the map extract above, the site is located in the coastal use area and on the coastal environment map. The site is located within the mapped littoral rainforest area.

Chapter 2 – Coastal Management

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

Division 1 Coastal Wetlands and littoral rainforest area

2.7 Development on certain land within coastal wetlands and littoral rainforests area

Comment:

No change is proposed to drainage or earthworks and the proposed development would not adversely impact on sensitive coastal areas accordingly.

Existing water management conditions are in place due to the 2007 development consent for the kiosk building.

No physical or landscaping/tree work is proposed.

2.8 Development on land in proximity to coastal wetlands or littoral rainforest

Comment:

The site is within a proximity area. No change or work is proposed to the site and no change is proposed to the existing scale or style of the land use.

This land use is considered to be non-impacting and involves an existing altered area. Access and parking is via the existing carport and garbage collection via the existing storage area. Therefore, no further or changed impact would be created by the proposed use application and the proposal is consistent with this clause.

Division 2 Coastal Vulnerability Area

2.9 Development on land within the coastal vulnerability area

Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that—

- (a) if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and*
- (b) the proposed development—*
 - (i) is not likely to alter coastal processes to the detriment of the natural environment or other land, and*
 - (ii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and*
 - (iii) incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and*
- (c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.*

Comment:

The subject site is not mapped as being located within a coastal vulnerability area. The proposal is assessed as acceptable in relation to this clause.

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

- 1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
 - a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
 - b) coastal environmental values and natural coastal processes,*
 - c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
 - d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
 - e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - f) Aboriginal cultural heritage, practices and places,*
 - g) the use of the surf zone.*

Comment:

The site is mapped as being within the coastal environment area under the SEPP.

The proposal:

- Has been assessed as acceptable in relation to water management and quality and coastal processes and land stability. No change proposed.
- Does not involve any physical or built work.
- Does not involve any vegetation removal.
- Is not within a surf zone and would not impact on marine or native vegetation.
- Is not considered to impact on aboriginal cultural heritage, practices and places as the site has been used and developed as a kiosk/commercial use for some time.
- Does not impact upon public open space, headlands, beach areas, rock platforms or foreshore access.

- 2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
- a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or*
 - b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - c) if that impact*

Comment:

The proposed development is considered acceptable in relation to impacts relevant to the coastal environment area within the SEPP, as addressed above. No work is proposed, and management/environmental conditions are in place.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

- 1) *Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:*
- a) has considered whether the proposed development is likely to cause an adverse impact on the following:*
 - i) existing, safe access to and along the foreshore, beach, headland or rock*
 - ii) platform for members of the public, including persons with a disability,*
 - iii) overshadowing, wind funnelling and the loss of views from public places to foreshores,*
 - iv) the visual amenity and scenic qualities of the coast, including coastal headlands,*
 - v) Aboriginal cultural heritage, practices and places, cultural and built environment heritage, and*
 - b) is satisfied that:*
 - i) the development is designed, sited and will be managed to avoid an adverse*
 - ii) impact referred to in paragraph (a), or*
 - iii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
if that impact cannot be minimised—the development will be managed to mitigate that impact, and
 - c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*

Comment:

The site is mapped as being within the coastal use area. The proposed development/use is considered acceptable with no altered impacts to the coastal use area within the SEPP, as addressed above. No work is proposed, and management/environmental conditions are in place.

Division 5 General

2.12 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

No work is proposed and as such a Geotechnical Report is not required to addresses stability and landslip aspects.

Therefore, the proposed development is not assessed as creating increased risk of coastal hazards on the subject land or adjoining land.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

2.13 Development in coastal zone generally—coastal management programs to be considered

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

Comment:

No certified coastal management program applies at the subject site.

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for commercial purposes for a significant period of time with no prior land uses.

No change is proposed to the site which has historically been used as a low scale kiosk serving refreshments and snacks in association with the beach and surf club.

In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the proposed minor change of land use description from 'kiosk' to 'café'.

Rural Fires Act, 1997 and Planning for Bushfire Protection, 2019

Part of the reserve is mapped as bushfire prone. However, no change is proposed to the buildings or the type or scale of use (just the definition of the use). Therefore, no additional risk is posed, and the DA was not considered to need referral to the RFS form comment. The fire aspect was also assessed at the time that the new building and use was approved in November 2007.

PITTWATER LOCAL ENVIRONMENTAL PLAN 2014

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| <p>Is the development permissible?</p> | <p>Yes. 'kiosks' and 'cafes and restaurants'/food and drink/retail premises are permissible with consent in the RE1 zone.</p> <p>The application seeks to change the wording from 'kiosk' to 'café' in accordance with the character and conditions which apply to the site.</p> |
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| | <p>The distinct definitions taken from the PLEP are:</p> <p>'kiosk means premises that are used for the purposes of <u>selling food, light refreshments and other small convenience items.</u></p> <p>Note— See clause 5.4 for controls relating to the gross floor area of a kiosk. Kiosks are a type of retail premises—see the definition of that term in this Dictionary.'</p> <p>Food and drink premises means premises that are used for the preparation and retail sale of food or drink (or both) for immediate consumption on or off the premises, and includes any of the following— a restaurant or <u>cafe,</u> take away food and drink premises, a pub, a small bar.</p> <p>Note— Food and drink premises are a type of retail premises—see the definition of that term in this Dictionary.'</p> <p>AND</p> <p>'restaurant or cafe means a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, takeaway meals and drinks or entertainment are also provided, but does not include the preparation and serving of food and drink to people that occurs as part of— an artisan food and drink industry, or arm gate premises.</p> <p>Note— Restaurants or cafes are a type of food and drink premises—see the definition of that term in this Dictionary'</p> |
| <p>After consideration of the merits of the proposal, is the development consistent with:</p> | |
| <p>aims of the LEP? The proposal is consistent with the sustainable and environmentally appropriate development of land in Pittwater, allowing the preservation of natural, social and economic values.</p> | <p>Yes</p> |
| <p>zone objectives of the LEP? These are: <i>To enable land to be used for public open space or recreational purposes.</i> <i>To provide a range of recreational settings and activities and compatible land uses.</i> <i>To protect and enhance the natural environment for recreational purposes.</i></p> | <p>Yes</p> |

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| <p>To allow development that does not substantially diminish public use of, or access to, public open space resources.</p> <p>To provide passive and active public open space resources, and ancillary development, to meet the needs of the community.</p> | |
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Compliance Assessment

| Clause | Compliance with Requirements | | | | | | | | | | | | | | | | | | | | | | | | |
|--|---|---|--|--|---------------|---|---------------------------------|--------------|---------------|---------------------|------------------|---------------------------------------|---------------|--|---|--|---------------|-----------------------|------------------|-------------------|-----------------|--------------------|-----------------|-------------------|------------|
| <p>Clause 5.10 Heritage conservation. The following items in the locality are listed as items under Part 1/Schedule 5 of the Pittwater LEP:</p> <table border="0"> <tr> <td>Bilgola Beach</td> <td>Ocean rock pool</td> <td></td> <td></td> </tr> <tr> <td>Bilgola Beach</td> <td>Street trees—Norfolk Island Pines (<i>Araucaria heterophylla</i>) and Canary Island Date Palms (<i>Phoenix canariensis</i>)</td> <td>Bilgola Avenue and Allen Avenue</td> <td>Road reserve</td> </tr> <tr> <td>Bilgola Beach</td> <td>“The Palms” (house)</td> <td>3 Bilgola Avenue</td> <td>Lot 53, DP 517038; Lot 133, DP 752046</td> </tr> <tr> <td>Bilgola Beach</td> <td>Grove of Cabbage Tree Palms (<i>Livistona australis</i>)</td> <td>The Serpentine and Barrenjoey Road (Bilgola Valley)</td> <td>Lots 139–144, 336–338, 547–557, 566 and 569, DP 16902; Lots 1–4, DP 395158; Lot 3, DP 511677; Lot 4C, DP 413781; Lot 300, DP 1035587; Lot 7327, DP 1164236</td> </tr> <tr> <td>Bilgola Beach</td> <td>Palm House and garden</td> <td>4 The Serpentine</td> <td>Lot 52, DP 517038</td> </tr> <tr> <td>Bilgola Plateau</td> <td>House called Trees</td> <td>36 Plateau Road</td> <td>Lot 1, DP 1214257</td> </tr> </table> <p>The site is not heritage listed however is near to the above listed items and an item of archaeological heritage under Part 3/Schedule 5 (the drainage and bridge structures at 15-21 Bilgola Ave). These structures are located to the north of the carpark, behind the existing kiosk.</p> <p>The site is not located within a Heritage Conservation Area.</p> <p>As the proposal involves no building work and the site is well separated visually, there is not considered to be any detrimental impact on the heritage elements.</p> <p>The minor proposal to regularise the use/wording is consistent with Clause 5.10 of the LEP.</p> | Bilgola Beach | Ocean rock pool | | | Bilgola Beach | Street trees—Norfolk Island Pines (<i>Araucaria heterophylla</i>) and Canary Island Date Palms (<i>Phoenix canariensis</i>) | Bilgola Avenue and Allen Avenue | Road reserve | Bilgola Beach | “The Palms” (house) | 3 Bilgola Avenue | Lot 53, DP 517038; Lot 133, DP 752046 | Bilgola Beach | Grove of Cabbage Tree Palms (<i>Livistona australis</i>) | The Serpentine and Barrenjoey Road (Bilgola Valley) | Lots 139–144, 336–338, 547–557, 566 and 569, DP 16902; Lots 1–4, DP 395158; Lot 3, DP 511677; Lot 4C, DP 413781; Lot 300, DP 1035587; Lot 7327, DP 1164236 | Bilgola Beach | Palm House and garden | 4 The Serpentine | Lot 52, DP 517038 | Bilgola Plateau | House called Trees | 36 Plateau Road | Lot 1, DP 1214257 | <p>Yes</p> |
| Bilgola Beach | Ocean rock pool | | | | | | | | | | | | | | | | | | | | | | | | |
| Bilgola Beach | Street trees—Norfolk Island Pines (<i>Araucaria heterophylla</i>) and Canary Island Date Palms (<i>Phoenix canariensis</i>) | Bilgola Avenue and Allen Avenue | Road reserve | | | | | | | | | | | | | | | | | | | | | | |
| Bilgola Beach | “The Palms” (house) | 3 Bilgola Avenue | Lot 53, DP 517038; Lot 133, DP 752046 | | | | | | | | | | | | | | | | | | | | | | |
| Bilgola Beach | Grove of Cabbage Tree Palms (<i>Livistona australis</i>) | The Serpentine and Barrenjoey Road (Bilgola Valley) | Lots 139–144, 336–338, 547–557, 566 and 569, DP 16902; Lots 1–4, DP 395158; Lot 3, DP 511677; Lot 4C, DP 413781; Lot 300, DP 1035587; Lot 7327, DP 1164236 | | | | | | | | | | | | | | | | | | | | | | |
| Bilgola Beach | Palm House and garden | 4 The Serpentine | Lot 52, DP 517038 | | | | | | | | | | | | | | | | | | | | | | |
| Bilgola Plateau | House called Trees | 36 Plateau Road | Lot 1, DP 1214257 | | | | | | | | | | | | | | | | | | | | | | |
| <p>Clause 7.1 Acid sulfate soils The site is located within the acid sulfate soil level 4 however as no building works are being undertaken as part of this application, the proposal will not impact on acid sulfate soil issues and the proposal is satisfactory in relation to this clause and does not raise concern or need for conditions.</p> | <p>Yes</p> | | | | | | | | | | | | | | | | | | | | | | | | |
| <p>Clause 7.7 Geotechnical hazards The larger site is listed as being affected by geotechnical hazards. However, this is noted not extend to the location of the existing Consequently, there are no issues regarding geotechnical hazards on the site which would require referral or condition.</p> | <p>Yes</p> | | | | | | | | | | | | | | | | | | | | | | | | |

PITTWATER DEVELOPMENT CONTROL PLAN

Compliance Assessment – Merit Assessment against Relevant DCP Clauses

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|--|------------------------------|-----------------------------|
| <p>Part A – What Shapes Development in Pittwater The proposed use is consistent with the zone objectives, is permissible and is envisaged for Bilgola under the locality plans. The proposal is consistent with Part A of the DCP. The proposal is consistent with the ESD, social, environmental and economic objectives of the DCP, providing a facility which supports the community, is consistent with the nature and attributes of the area, and encourages local economy.</p> | Yes | Yes |
| <p>A4.3 Bilgola Locality The proposal does not result in any physical or scale changes to what was approved and encouraged under the Bilgola Beach POM. The existing building was designed to be deliberately modest and low-scale, to suit the low density and natural coastal visual quality. No change is proposed to the form. The proposal is consistent with the desired natural and low density character. The proposal protects the environment and the littoral rainforest, being well separated and with no physical work or change to conditions proposed. No change is involved in terms of any other natural or built elements.</p> | Yes | Yes |
| <p>B1.2 Heritage Conservation – Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites. As detailed above, the site is not classified as a heritage item nor within a conservation however is within proximity of a number of heritage items and is adjacent to an item of archaeological heritage (the drainage and bridge structures at 15-21 Bilgola Avenue). As the current proposal does not involve any building works, the proposal will not impact on the archaeological value of the drain or any of the other items in the locality. No work is proposed, and the site is well separated from the items physically and visually.</p> | Yes | Yes |
| <p>B1.4 Aboriginal Heritage Significance Mapping indicates that there is an Aboriginal midden located on the larger site over 100 metres from the existing building. No site alteration or physical building works are proposed and as such, the proposal will not impact on Aboriginal heritage in the area.</p> | Yes | Yes |
| <p>B3.1 Landslip Hazard The geotechnical hazard shown on the broader site context does not extend to this portion of the site and no site alteration is proposed. This matter was addressed with the 2007 DA which involved the demolition of the original kiosk and the construction of the new kiosk in place, in line with the Bilgola Masterplan/POM.</p> | Yes | Yes |

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|--|------------------------------|-----------------------------|
| <p>B3.2 Bushfire Hazard The building is shown in Council's mapping system as being partially located within the vegetation buffer for bushfire hazard. As there is no building work occurring as part of this application, the proposal satisfies the requirements of Section 3.2. This matter was addressed in detail as part of the 2007 re-building of the structure.</p> | Yes | Yes |
| <p>B3.6 Contaminated Land and Potentially Contaminated Land The proposal is for a change of use of an existing building constructed in 2008 with no additional building work being proposed or site disturbance. This matter was addressed in detail previously and there is no reason to believe that the proposal as submitted will be at risk from potential land contamination. The proposal is for a change in technical reference/definition of the use only.</p> | Yes | Yes |
| <p>B4.17 Littoral Rainforest – Endangered Ecological Community The site is mapped as being part of the Littoral Rainforest Endangered Ecological Community. The existing building is not proposed to change and is located on an existing hardstand carpark. As such, there will be no impact on the littoral rainforest from this proposal. The intensity and type of use and impacts associated with the existing kiosk/cafe remain essentially the same with no further generation of garbage, impact or disturbance to the surrounding area.</p> | Yes | Yes |
| <p>B6.6 On-Street Vehicle Parking Requirements The proposal does not seek any increase to the existing footprint or number of patrons approved under the previous development consent. There has historically been no parking associated with the building (from the 1970s). It was always envisaged that the refreshment area would be connected with the carpark, club and beach and would only be used by people visiting the beach and who are parked in the parking area in association with the beach (in addition to residents who can be accessible on foot). The Council assessment report for the 2007 DA which supported the development, noted at the time that no additional usable floor space was being created as part of that DA but that parking demand in the beach car park is greater than parking supply (due to the location away from main roads and the popularity of the beach). Given the nature of the area, the merits and discussions provided on this matter as part of the previous assessment for the redevelopment of the kiosk, and the fact that this proposal does not alter or extend the approved use in any</p> | Yes | Yes |

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|--|------------------------------|-----------------------------|
| <p>way, providing additional parking is not considered to be warranted. Given there is no increase in approved patron numbers or footprint, the currently available parking arrangement is appropriate in this instance to support the proposed technical wording/change of use description.</p> | | |
| <p>D Locality Controls – Bilgola Locality The DA does not involve any change to the building or form character or surrounds. These controls are not therefore strictly applicable to the subject application.</p> | Yes | Yes |

OCEAN BEACHES PLAN OF MANAGEMENT ('POM') – BILGOLA BEACH

The site is located within Crown Land covered by the Bilgola Beach POM which has been reviewed as part of the DA assessment.

The site is within the care, control and management of Northern Beaches Council (previous Pittwater Council LGA).



Figure 9 Boundary map, Bilgola POM

The site is designated under the plan for 'general community use' in association with the surf club, amenities, car park and rock/swimming pool.

The application does not change the existing scale or nature of the use or the building.

The proposal is considered consistent with the POM in that the use maintains:

*'The conservation, economic, recreation and social values of the reserve are recognised, protected and enhanced for public enjoyment by current and future generations; and
The public's right of choice, access and equity is recognised and preserved.'*

The proposal does not change the size, intensity or hours of the outlined/existing kiosk. As detailed in the submitted SEE, the proposal remains consistent with the specifications of the POM which dictate:
'The new lease for the Bilgola Kiosk shall include the following conditions: - - Outdoor seating numbers within leased area – 40 Chairs - Hours of operation – 6:30a.m. till Sunset - Alcohol prohibited from sale or supply.'

This accords with public expectations for the intensity/small nature of the use.

It is noted that a 'restaurant' would be prohibited under the acceptable uses within the POM however the proposal involves a subtle wording change from 'kiosk' to a 'café'. As discussed in the zoning assessment, a café is an alternative to a 'restaurant'. The current nature and service aligns with a café and not restaurant use. A café is not a prohibited land use character under the POM. The LEP would allow both as permissible.

The proposal does not change the 5 year lease arrangements.

7.12 CONTRIBUTIONS PLAN

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022. As there is no development cost for this change of use, a monetary contribution is not required in this instance.

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 2021;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council, including the relevant POM.

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

PLANNING CONCLUSION

This proposal, for a change of use of an existing kiosk to a cafe, has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to a conflict of interest, being that the applicant and landowner is Northern Beaches Council.

The submissions received during the notification period have been considered.

Overall, the development complies with all numerical LEP and DCP controls. The proposal will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, as the consent authority on behalf of Northern Beaches Council, APPROVE Development Consent to Development Application No DA2023/0376 for the use of an existing kiosk as a café on land 400 Barrenjoey Road, Bilgola Beach (Lot 7096 DP 1124092 Part Lot 7327 DP 1164236) at subject to the following conditions:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Approved Plans

| Architectural Plans - Endorsed with Council's stamp | | |
|--|------------------|----------------------------|
| Drawing No. | Dated | Prepared By |
| A-01 H | 28 February 2023 | Gartner Trovato Architects |
| A-02 H | 28 February 2023 | Gartner Trovato Architects |
| A-03 H | 28 February 2023 | Gartner Trovato Architects |
| | 28 February 2023 | Gartner Trovato Architects |
| A-04 H | 28 February 2023 | Gartner Trovato Architects |

| Reports / Documentation – All recommendations and requirements contained within: | | |
|---|--------------|--|
| Report No. / Page No. / Section No. | Dated | Prepared By |
| Statement of Environmental Effects | March 2023 | Prepared by Gina Hay Principal Planner Property Northern Beaches Council |
| Sketch of Lease of Premises | August 2011 | Steve Davey Registered Surveyor |

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

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

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

2. **Approved Land Use**

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a cafe, in accordance with the Dictionary of the Pittwater Local Environmental Plan 2014, as follows:

restaurant or cafe means a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, takeaway meals and drinks or entertainment are also provided, but does not include the preparation and serving of food and drink to people that occurs as part of—

- (a) an artisan food and drink industry, or
- (b) farm gate premises.

Note—

*Restaurants or cafes are a type of **food and drink premises**—see the definition of that term in this Dictionary.*

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

Reason: To ensure compliance with the terms of this consent.

3. **No Approval for any Signage**

No approval is granted under this Development Consent for signs (as defined under Pittwater Local Environment Plan 2014 and State Environmental Planning Policy (Transport and Infrastructure) 2021. A separate Development Application for any signs (other than exempt and signs permitted under Complying Development) must be submitted for the approval prior to the erection or display of any such signs.

Reason: Control of signage.

4. **Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be

carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative requirement.

5. General Requirements

- (a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

 - 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 8.00 am to 1.00 pm inclusive on Saturday,
 - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not

commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming

pools.

- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

6. **Amenity**

The implementation of this development shall not adversely affect the amenity of the neighbourhood or interfere unreasonably with the comfort or repose of a person who is outside the premises by reason of the emission or discharge of noise, fumes, vapour, odour, steam, soot, ash, dust, waste water, waste products, grit, oil or other harmful products.

Plant and equipment are to be designed, located and operated to ensure that noise levels at adjoining residential properties does not exceed more than 5dBA above background noise.

Reason: To ensure the surrounding area and people within the neighbourhood are not affected adversely and to ensure compliance with the Protection of the Environment Operations Act 1997.

7. **Deliveries and Waste Service Collections**

Deliveries and waste service collections shall only occur during the approved operational hours.

Reason: To minimise the impacts of noise on neighbouring premises

8. **Hours of Operation**

The hours of operation, including all preparation, set up and closure activities, shall be confined to between 6:30am until sunset, seven (7) days per week.

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

Reason: Information to ensure that amenity of the surrounding locality is maintained.

9. **Capacity**

The seating capacity of the cafe is to remain at 40 chairs.

Reason: To ensure compliance with the terms of this consent.

10. **Service of Alcohol**

The sale, supply and consumption of alcohol is not permitted, without the prior written approval of the Council.

Reason: To ensure that the safety and amenity of the surrounding locality is maintained.

11. **Landscaping**

In accordance with the conditions of the original kiosk building and use Development Consent No.0038/07, existing landscaping is to be retained and approved/established landscaping is to be maintained. Noxious weeds are to be managed and removed.

Natural landscape features, including natural rock outcrops, bush rock, natural vegetation soil and watercourses are to remain undisturbed and protected.

Reason: To ensure that amenity and environmental quality of the surrounding locality is maintained.

12. **Use of roofing**

Any plastic membranes used across the northern façade of the outdoor dining shade are only to be open in inclement weather. The structure is generally to remain open.

Reason: To ensure that amenity of the surrounding locality is maintained.

FINAL DECLARATION

In submitting this report to Council, I declare that I do not have a conflict of interest in making this recommendation.



Consultant Name:
Natalie Richter, Independent Town Planner
27 July 2023