

**N0302/17 – 1191-1193 Barrenjoey Road, Palm Beach NSW 2107 (Lot 2 DP 595174)
Alterations and additions to 'The Boathouse Palm Beach' including change of use of the
first floor**

SUMMARY OF RECOMMENDATION: **REFUSAL**

APPLICATION SUBMITTED ON: 20 July 2017
APPLICATION SUBMITTED BY: London Lakes Partnership
OWNER: NSW Department of Industry - Crown Lands
COST OF WORKS: \$2,998,500.00
NO. OF SUBMISSIONS: 1
DEVELOPMENT TYPE: Integrated (DPI Water & Fisheries)
DETERMINATION LEVEL: Local Planning Panel

1.0 SITE DETAILS

The application proposes works over three separate land parcels, as follows:

- 1191 Barrenjoey Road, Palm Beach (Lot 298 DP 721522) Crown Land managed by Department of Industry – Crown Lands,
- 1193 Barrenjoey Road, Palm Beach (Lot 7005 DP 1117451) Crown Land part managed by Department of Industry – Crown Lands and part managed by Council, and
- 1193 Barrenjoey Road, Palm Beach (Lot 7002 DP 1117592) Crown Land managed by Council.



**Figure 1 - Aerial image of Site with approximate extent of works outlined in blue and MHWM in yellow
Source: NearMap**

3.0 LEGISLATION, PLANS AND POLICIES

The following planning legislation, environmental planning instruments, development control plans and policies are relevant to the subject application:

- Environmental Planning and Assessment Act 1979 (**'the EP&A Act'**)
- Environmental Planning and Assessment Act 1979 Amendments (**'Amending EP&A Act'**)
- Environmental Planning and Assessment Regulation 2000 (**'the Regulations'**)
- Crown Lands Act 1989
- Water Management Act 2000
- Fisheries Management Act 1994
- Pittwater Local Environmental Plan 2014 (**'PLEP 2014'**)
 - Zoning Map – E2 Environmental Conservation & RE1 Public Recreation
 - Height of Buildings Map – 4m and 8.5m
 - Acid Sulphate Soils – Classes 1, 3 and 5
 - Biodiversity Map
 - Additional Permitted Uses Map – Area 19
- Draft Pittwater Local Environmental Plan 2014 (**'Draft PLEP'**)
- Pittwater 21 Development Control Plan (**'P21 DCP'**)
 - Waterways Locality
 - Palm Beach Locality
- Governor Phillip Park Plan of Management (**'the POM'**)
- Draft Governor Phillip Park Conservation Management Plan (**'Draft CMP'**)
- Roads and Maritime Services Guide to Traffic Generating Development (**'RMS Guidelines'**)
- Crown Lands 'Food and Beverage Outlets on Crown Reserves – Policy Position' (**'Food and Beverage Policy Position'**)
- State Environmental Planning Policy No. 71 – Coastal Protection (**'SEPP 71'**)
- Draft State Environmental Planning Policy – Coastal Management (**'Draft Coastal SEPP'**)

5.0 PERMISSIBILITY

The site is subject to split zoning under the provisions of PLEP 2014; with the land below MHWM zoned E2 Environmental Conservation and the land above MHWM zoned RE1 Public Recreation, as shown on the Zoning Map of PLEP 2014.

The works to the existing building within the E2 zone, for the purpose of a café and boat hire business, are permissible with consent by virtue of clause 2.5 (Additional permitted uses for particular land) and clause 19 of Schedule 1 of PLEP 2014. The works proposed within the RE1 zone associated with the café use are permitted with consent by virtue of the land use table of PLEP 2014.

Note: there are minor components of the development that do not align with the applicable zone. This is discussed in more detail in the compliance table and in the discussion, below.

6.0 BACKGROUND

Background of Site

On 25 November 2008, Council's records reveal that the ground floor of the building was partly used as a café called 'Carmel's by the Sea'. A web search revealed that the café had indoor seating for 16 people and outdoor seating for 60 people.

On 15 January 2009, Council's Food Premises Inspection Notes indicate that the premises was renamed 'The Boathouse Palm Beach'.

On 11 February 2015, a prelodgement meeting was held with Council staff with regard to the redevelopment of the site to provide for an enlarged café with an open plan function space upstairs and a kiosk within the Licenced Area.

On 27 April 2015, Council's Compliance Department investigated alleged unauthorised pop up stalls and other structures within the Licenced Area.

Background of Application

On 20 July 2017, the application was lodged with Council and was subsequently referred to Council's Development Engineer, Natural Environment Officer, Property Team, Flood Engineers, Health Officer, Strategic Planning Department (Heritage) and Reserves and Recreation Team for comments and/or recommendations. The application was also externally referred to NSW DPI – Fisheries, NSW Police, NSW DPI – Water and Native Titles Office.

On 28 September 2017, correspondence was sent to the applicant identifying a number of issues preventing the approval of the application and requesting that the application be withdrawn. The issues included:

- Capacity,
- Hours of operation,
- Parking,
- Use of the upper floor,
- BCA compliance,
- Storage of hazardous materials,
- Boat storage and boat wash facilities,
- Inconsistency with Council's adopted policies,
- Inconsistent licence arrangements,
- Impacts upon canopy trees, and
- Landscaping.

On 31 October 2017, the applicant responded to Council's withdrawal request by providing amended plans and additional information.

On 2 November 2017, the applicant was contacted to discuss the additional information submitted.

On Friday 22 December 2017, further discussions were had between the assessing officer and the applicant with respect to concerns relating to the capacity of the venue.

On Monday 8 January 2018, Council received further correspondence from the applicant regarding capacity of the venue.

7.0 ADVERTISEMENT AND NOTIFICATION

The application was notified and advertised for a period of 31 days from 30 July through to 30 August 2017 in accordance with Council's Notification Policy and the Regulations. During this time, one (1) submission was received from a nearby property owner, raising concern with regard to pedestrian access along the foreshore.

8.0 KEY ASSESSMENT ISSUES

The key issues that arise as a result of the proposal relate to the following;

- **Capacity & Hours of Operation**
- **Parking**
- **Inconsistency with adopted Crown Lands and Council policies**

9.0 COMPLIANCE TABLE

T - Can the proposal satisfy the technical requirements of the control?

O - Can the proposal achieve the control outcomes?

N - Is the control free from objection?

Control	Standard	Proposal	T	O	N
Pittwater Local Environmental Plan 2014					
Zone RE1 Public Recreation		See discussion.	N	Y	Y
Zone E2 Environmental Conservation			Y	Y	Y
4.3 Height of Buildings	8.5m above ground	7.8m above ground	Y	Y	Y
	4m above HAT (5.17m AHD)	7.32m AHD See discussion.	N	Y	Y
4.6 Exceptions to development standards		See discussion.	Y	Y	Y
5.5 Development within the coastal zone		See discussion.	Y	Y	N
5.10 Heritage conservation		See discussion.	Y	Y	Y
7.1 Acid sulphate soils			Y	Y	Y
7.2 Earthworks			Y	Y	Y
7.6 Biodiversity			Y	Y	Y
7.10 Essential services		See discussion.	N	N	Y
Pittwater 21 Development Control Plan					
A1.7 Considerations before consent is granted		See discussion.	N	N	Y
A4.12 Palm Beach Locality		See discussion.	N	N	Y
A4.15 Waterways Locality			Y	Y	Y
B1.1 Heritage Conservation – Heritage Items		See discussion.	Y	Y	Y
B1.2 Heritage Conservation - Vicinity		See discussion.	Y	Y	Y
B1.4 Aboriginal Heritage Significance		See discussion.	Y	Y	Y
B3.2 Bushfire Hazard			Y	Y	Y
B3.6 Contaminated Land and Potentially Contaminated Land			Y	Y	Y
B3.9 Estuarine Hazard – Business, Light Industrial and Other Development		See discussion.	Y	Y	Y
B3.12 Climate Change (Sea Level Rise and Increased Rainfall Volume)			Y	Y	Y
B3.18 Flood Hazard – Flood Category 1 – High Hazard - Other Development		See discussion.	Y	Y	Y
B4.15 Saltmarsh Endangered Ecological Community			Y	Y	Y
B4.16 Seagrass Conservation			Y	Y	Y
B4.19 Estuarine Habitat			Y	Y	Y
B4.20 Protection of Estuarine Water Quality			Y	Y	Y
B4.22 Preservation of Trees and Bushland Vegetation		See discussion.	N	N	Y
B5.1 Water Management Plan			Y	Y	Y
B5.4 Stormwater Harvesting			Y	Y	Y
B5.5 Rainwater Tanks – Business, Light Industrial and Other Development			Y	Y	Y
B5.9 Stormwater Management – Water Quality			Y	Y	Y
B5.11 Stormwater Discharge into Waterways and Coastal Areas			Y	Y	Y
B5.13 Development on Waterfront Land			Y	Y	Y
B6.2 Internal Driveways			Y	Y	Y

Control	Standard	Proposal	T	O	N
B6.3 Off-Street Vehicle Parking Requirements		See discussion.	N	N	Y
B8.1 Construction and Demolition - Excavation and Landfill			Y	Y	Y
B8.2 Construction and Demolition - Erosion and Sediment Management			Y	Y	Y
B8.3 Construction and Demolition - Waste Minimisation			Y	Y	Y
B8.4 Construction and Demolition - Site Fencing and Security			Y	Y	Y
B8.5 Construction and Demolition - Works in the Public Domain			Y	Y	Y
B8.6 Construction and Demolition - Traffic Management			Y	Y	Y
C2.1 Landscaping		See discussion.	N	Y	Y
C2.2 Safety and Security		See discussion.	N	Y	Y
C2.5 View Sharing			Y	Y	Y
C2.6 Adaptable Housing and Accessibility			Y	Y	Y
C2.7 Building Facades			Y	Y	Y
C2.8 Energy and Water Conservation			Y	Y	Y
C2.9 Waste and Recycling Facilities			Y	Y	Y
C2.10 Pollution Control		See discussion.	Y	Y	Y
C2.11 Signage		No signage proposed.	-	-	-
C2.12 Protection of Residential Amenity			Y	Y	Y
C2.15 Car/Vehicle/Boat Wash Bays		Boat wash bay proposed at lodgement now deleted.	-	-	-
C2.16 Undergrounding of Utility Services		See discussion.	N	Y	Y
C2.20 Public Road Reserve – Landscaping and Infrastructure			-	-	-
C2.21 Food Premises Design Standards			Y	Y	Y
C2.22 Plant, Equipment Boxes and Lift Over-runs			Y	Y	Y
C2.24 Takeaway Food Premises			Y	Y	Y
D12.1 Character as viewed from a public place			Y	Y	Y
D12.2 Scenic Protection - General			Y	Y	Y
D12.3 Building Colours and Materials			Y	Y	Y
D12.5 Front Building Line			-	-	-
D12.6 Side and Rear Building Line			-	-	-
D15.1 Character as viewed from a public place			Y	Y	Y
D15.2 Scenic Protection – General			Y	Y	Y
D15.3 Building colours and materials			Y	Y	Y
D15.6 Front Building Line			-	-	-
D15.7 Side and Rear Building Line			-	-	-
D15.11 Waterfront lighting			Y	Y	Y
D15.12 Development seaward of MHWM		See discussion.	Y	Y	N
D15.13 Lateral limits to development seaward of MHWM			Y	Y	Y
D15.14 Minimum frontage for waterfront development			Y	Y	Y
D15.15 Waterfront development			Y	Y	Y
D15.18 Seawalls		See discussion.	N	Y	N
D15.20 Commercial waterfront development – pollution prevention			Y	Y	Y

10.0 DISCUSSION OF ISSUES

Public Recreation Zoning

- **Zone RE1 Public Recreation of PLEP 2014**
- **Draft PLEP (Planning Proposal PP0002/15)**

The MHWM dissects the existing building at the site, with the portion above MHWM zoned RE1 Public Recreation. The application seeks consent for differing purposes within this zone, including the café, the office, bathrooms and storage associated with the café, the seaplane office, a portion of the boat hire business, and elements associated with the boat hire business including permanent boat storage and a wash down bay.

Whilst cafes are permitted with consent within this zone, development associated with a business premises or a charter and tourism boating facility is prohibited under the current instrument. However, noting that this is inconsistent with the historical use of the site and the future intent for the site, this apparent error has been corrected by Strategic Planning in the Draft PLEP, which includes an amendment to the Additional Permitted Uses Map to allow business premises (but only those associated with the use of the waterway) within this specific part of the RE1 zone.

The Draft PLEP, which has gone through a full public exhibition and consultation process, is imminent and certain, and as such, Council can issue consent in this regard. Furthermore, despite the current provisions of PLEP 2014, the site would otherwise likely benefit from existing use rights, such that the development could otherwise proceed.

Building Height

- **Clause 4.3 (Height of buildings) of PLEP 2014**
- **Clause 4.6 (Exceptions to development standards) of PLEP 2014**

The site is subject to two different height limits, with development above MHWM limited to 8.5m above existing ground level and development below MHWM limited to 4m above Highest Astronomical Tide (HAT) (1.17m AHD). As the existing building is dissected by the MHWM, half of the building is already non-compliant with the building height limit, and the proposal to raise the existing roof height will intensify this non-compliance.

The maximum building height prescribed by clause 4.3 of PLEP 2014 is a development standard as defined by the Act, and may be varied under the provisions of clause 4.6 of PLEP 2014. A submission made pursuant to clause 4.6 of PLEP 2014 has been provided by the applicant in this regard and the reasonableness of the requested variation is considered as follows:

Extent of variations:

The portion of the proposed development below MHWM has a maximum height of 7.32m AHD, exceeding the relevant building height development standard by 3.32m, representative of an 83% variation of the development standard.

Pursuant to clause 4.6(2) of PLEP 2014, consent may be granted for development even though the development would contravene a development standard prescribed by an environmental planning instrument. However, in accordance with the provisions of clause 4.6(4) of PLEP 2014, consent can only be granted if Council is satisfied that the applicant's written submission on the matter is well founded and if the proposal is in the public's interest by being consistent with the objectives of the specific development standard and the relevant zoning.

The applicant has provided a written submission which puts forward that strict compliance with the building height development standard is unnecessary in the circumstances of this application, as the proposal is both consistent with the objectives of the building height development standard and the objectives of the E2 Environmental Conservation zone.

Is compliance unreasonable or unnecessary in the circumstances of the case?

In accordance with the NSWLEC decision in *Wehbe v Pittwater Council*, one way in which strict compliance can be seen to be unreasonable or unnecessary is if it can be demonstrated that the objectives of the standard are otherwise achieved, despite non-compliance with the height limit. The objectives of the building height development standard are individually considered in respect of the proposed development, as follows;

- a. *to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*

Comment: The desired future character for the Waterways Locality is prescribed by clause A4.15 (Waterways Locality) of P21 DCP, and aims to ensure that future development is maintained below the tree canopy, utilising façade modulation and shade elements to minimise bulk and scale. Whilst the height of the existing building is proposed to be increased by up to 0.9m, the scale of the existing building remains the same, with the balcony to the waterway retained. The height and scale of the building is consistent with the existing built form, and the desired character of the locality.

- b. *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*

Comment: The site is somewhat isolated, and is not readily viewed in conjunction with other buildings. However, when viewed from afar and seen in conjunction with residential development to the south, the proposal is compatible with the height and scale of nearby development.

- c. *to minimise any overshadowing of neighbouring properties,*

Comment: The proposal does not result in any unreasonable overshadowing.

- d. *to allow for the reasonable sharing of views,*

Comment: The proposal does not impact upon views enjoyed from nearby properties or the public domain.

- e. *to encourage buildings that are designed to respond sensitively to the natural topography,*

Comment: The proposal seeks to raise the roof of the existing building, which is generally constructed on piers above the waterway and foreshore.

- f. *to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*

Comment: The existing building is located within Governor Phillip Park, which is located with the Barrenjoey Heritage Conservation Area and covered by the Draft CMP. The building is also in the vicinity of individual items of heritage significance. The proposal has been reviewed by Council's Heritage Architect, who provided the following comments in this regard:

When considering this change in roof height, consideration must be given to the recommendations of the draft CMP. However in this case the raised roof is not considered to substantially detract either from the buildings value, or the overall park or conservation area.

The proposed development is considered to be consistent with the objectives of the building height development standard, despite non-compliance with the 4m height limit.

Are there sufficient environmental planning grounds to justify the proposed contravention of the development standard?

The proposed increase to the height of the existing building is to enable BCA compliant ceiling heights on the upper floor and facilitates the adaptive reuse of the existing building. As identified in the Draft CMP, the building and its ongoing use as a daytime café, seaplane office and boat hire business contributes to the overall identity of the conservation area, and the heritage significance of the locality. As the proposed height increase maintains consistency with the objectives of the building height development control, and is supported by Council's Heritage Architect, there are considered to be sufficient planning grounds to justify the proposed contravention.

Is the proposed development in the public interest?

A development is seen to be in the public's interest if it is consistent with the objectives of the development standard and the zone in which the particular development is carried out, despite non-compliance with a development standard. Whilst there are fundamental concerns regarding whether the development is in the public's interest with regard to inconsistency with the adopted POM and licence agreement, the height non-compliance does not contribute to these concerns and is not considered to attribute to inconsistency with the E2 Environmental Conservation zone, as follows:

- *To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.*

Comment: Whilst located within a heritage conservation area, the zoning objective is considered to more appropriately relate to the environmental significance of the waterway and the foreshore area. In this respect, the proposal is considered to protect, manage and restore the visual and ecological values of the foreshore, despite non-compliance with the 4m building height development standard.

- *To prevent development that could destroy, damage or otherwise have an adverse effect on those values.*

Comment: The proposed height of the development is not considered to unreasonably impact upon the significance of the waterway or the foreshore.

- *To ensure the continued viability of ecological communities and threatened species.*

Comment: The proposal does not unreasonably impact upon aquatic ecology, and the height non-compliance does not attribute to impacts upon the surrounding vegetation.

- *To protect, manage, restore and enhance the ecology, hydrology and scenic values of riparian corridors and waterways, groundwater resources, biodiversity corridors, areas of remnant native vegetation and dependent ecosystems.*

Comment: The height non-compliance does not result in any unreasonable impacts upon ecology, hydrology and the scenic values of the waterway.

Concurrence:

In accordance with the direction from the Department of Planning and Environment in Planning Circular PS 17-006, the Secretary's concurrence cannot be assumed for a variation to a numerical standard that is greater than 10%, and the determination of such applications can only be made by a 'full council'. However, under the provisions of clause 23I of the EP&A Act and clause 4.8 of the Amending EP&A Act, a local planning panel constituted by a council has the function of a council as a consent authority, and not the councillors or a 'full council'. As such, the application has been referred to the local planning panel for determination.

Conclusion:

A written submission has been provided by the applicant, and the submission is considered to be well founded, as it reasonably demonstrates that strict compliance with the building height development standard is unnecessary in the circumstances of the application and that there are sufficient environmental planning grounds to justify contravention of the development standard. Furthermore, the variation to the development standard is seen to be in the public's interest, as the proposal is consistent with both the objectives of the building height development standard and the E2 Environmental Conservation zone. As such, the consent authority can be satisfied that the proposal can be approved, despite contravention of a development standard.

Foreshore Development

- **Clause 5.5 (Development within the coastal zone) of PLEP 2014**
- **State Environmental Planning Policy No. 71 – Coastal Protection**
- **Draft State Environmental Planning Policy – Coastal Management**
- **Clause D15.15 (Development seaward of MHWM) of P21 DCP**

The proposal has been considered in accordance with the provisions of clause 5.5 of PLEP 2014, SEPP 71 and the Draft Coastal Management SEPP. The proposal is generally consistent with the outcomes and objectives of these policies; however concern has been raised by a member of the public with regard to access along the foreshore.

The enhancement of public foreshore access is a key objective of the provisions of clause 5.5 of PLEP 2014, SEPP 71 and the Draft Coastal Management SEPP, in addition to clause D15.15 of P21 DCP. Pedestrian access is currently available between the waterway and the site by means of an informal walking path at the south of the existing building. Whilst a seawall is proposed in this vicinity, it is not in a location that would restrict pedestrian access along the foreshore and the informal access arrangement will continue despite the works proposed.

In the event that the application is approved, a condition is recommended to ensure that the proposed seawall does not restrict public access between the beach and the site.

Heritage Conservation

- **Clause 5.10 (Heritage conservation) of PLEP 2014**
- **Clause B1.1 (Heritage Conservation – Heritage Items) of P21 DCP**
- **Clause B1.2 (Heritage Conservation – Vicinity) of P21 DCP**
- **Clause B1.4 (Aboriginal Heritage Significance) of P21 DCP**

Council's Strategic Planning Team provided the following comments with respect to the heritage significance of the site:

Barrenjoey Boathouse is a two storey weatherboard clad building constructed partially over land and partially over the water. Downstairs is currently used for the Boathouse restaurant

and café while upstairs there is a caretaker's dwelling and a yoga studio. Contained within the site are the offices for the boat hire and seaplane business that operate from the site. To the rear sits an extended deck and jetty. To the front are a formal pedestrian entryway with garden and an informal storage area with take away kiosk. There are three large and mature Norfolk Island pines in the front of the site. To the rear of the site sits Pittwater. To the south is Station Beach and Palm Beach golf course. To the north and east is Governor Phillip Park. Semi-formal parking is located alongside the park's access loop road.

The application seeks to make a number of changes to the boathouse. In brief, the relevant changes are:

- An increase in the roof height to increase the floor to ceiling heights in the second floor.*
- Internal reconfiguration of downstairs and upstairs*
- Change the upstairs into restaurant/office space.*
- Seawall to the southern boundary*
- Replacing informal storage area and kiosk with new storage areas and bathroom facilities*

In late 2009 through to early 2010, then Pittwater Council publically exhibited a draft conservation management plan (CMP) for Governor Phillip Park which includes the heritage conservation areas. As part of the exhibition materials, a draft plan to conserve and manage the heritage values of the site was prepared. Included within the plan was an appendix of particular and significant items in the park for which the boathouse and jetty was included as number L07.

Sheet L07 indicates that the boathouse was constructed in the late 1940s but has been subsequently altered and amended over its lifetime. Significant changes have occurred to the western side of the building. When assessed for individual value the building was considered to have local significance for its historic character and its overall contribution to the park. However the building itself has not been listed as an item.

Council's external heritage advisor comments made a number of similar points. The building '...is a much altered, prosaic structure of an informal, irregular character, and while this makes some contribution to the 'image' and identity it has and must enjoy with the public, there is not an obvious and demanding connection between it and the significance of the place and its use'.

The advisor further commented that if there are concerns of planning and design nature, that they would arise from the increased scale, bulk and visual complexities of the building, in particular the rear upper level verandah. On these points, the draft CMP made a number of recommendations.

- The building footprint, scale and height is currently consistent and balanced with other site uses and values. Public access around the building and along Station Beach needs to be improved and maintained.*
- Any future built works associated with the Barrenjoey Boathouse is to be designed with a sympathetic architectural form to the existing boathouse, and not present an obtrusive visual form or bulk in the site, be no higher than the existing structure, and use colours sympathetic to the site character.*

The proposed works includes alteration to the building heights by raising the roof height by approximately 1m. The pitched roof form is to be retained however it will see the removal of the two dormer windows to the eastern elevation. The removal of the dormers is supported as it simplifies the building. The increase in building height will also see subsequent amendments to other windows. When considering this change in roof height, consideration must be given to the recommendations of the draft CMP. However in this case the raised

roof is not considered to substantially detract either from the buildings value, or the overall park or conservation area.

It is important to note that the major view lines to the boathouse come from the north and east. Pittwater to the west and the golf course to the south decrease opportunities for people to readily view the building from the land. However, the site is prominent from the west when viewed from the water which is an important aspect of the site.

When viewed from the east, the three Norfolk island Pines form a distinctive character that dwarfs the boathouse. The increase in roof height is not considered to change this impression. There will be a readily seen change on the northern elevation, however the retention of the pitched roof form will minimise this impact and it is considered to not substantially detract from the building's significance.

The raised roof will also see an improvement to the upper floor's internal areas. This change is considered to improve the likelihood of the retention of the seaplane business which meets the draft CMP's goals for the retention of recreational facilities on site. Further, a private dwelling within the site is considered to be an exclusive use of the site that is not necessarily in line with the parks intended use for public recreation.

The footprint of the boathouse itself appears to not be increased by this proposal. However the new building to the south will increase the footprint. When considered against the current use of the space, it appears to be a better outcome than the mix of formal and informal uses that current operate from this area. They appear as an unjointed mix which detracts from the value of the boathouse itself. The new building appears restrained and is single storey. It defers to the boathouse while the inclusion of horizontal cladding painted in similar colours still allows it to be reads as part of the site.

Council's external advisor also commented that the services building is 'appropriately simple and low scale, and will achieve a merit worthy improvement of the prevailing character and conditions of its functional areas of the property. The main building overall, is very much a "stand-alone".

The point of contention for the site relates to pedestrian access. Currently there is informal access from the southern side of the boathouse down to Station Beach. Walking along this beach is an important recreational activity however the boathouse's deck and jetty can interrupt this walk. The application proposes a new seawall to southern boundary, likely to prevent damage from erosion to the new toilet and storage block. The plans do not appear to allow for pedestrian access. The CMP recommended that pedestrian access in and around the boathouse actually be increased. While balancing the need for protection and access, it is considered that if a sea wall is approved in this area, it can be stepped to allow safe pedestrian access from the site to the beach and vice versa. The southern passageway between the boathouse and new toilet/storage block must also allow for pedestrian access in and around the site.

In summary, the proposed works are considered to represent a significant change to the site, but they are not without merit. The increase in roof height is considered modest while it allows for the retention of recreational activities on the site. This will impact on the building's significance, and the park, but is considered to be overall neutral. The proposal can be supported by Strategic Planning (Heritage).

The following conditions of consent are recommended:

- Archival recording of the building before works begin in accordance with Heritage Council NSW Guidelines (2006)*
- Pedestrian access to be retained along the southern boundary of the site between Station Beach, the boathouse and the park either through a stepped seawall or staircase.*

In response to advice from Crown Lands in the owner's consent letter provided to support the application, a referral was initiated with respect to the Native Title Act. However, no response was received in this regard.

Capacity

- **Clause A1.7 (Considerations before consent is granted) of P21 DCP**

The SOEE provided to support the application states that the existing café *"has a capacity of 300 patrons with seating inside, outdoor covered seating, outdoor seating on a rear deck and in the front landscaped area"*. The applicant has subsequently provided two separate letters to confirm that the application does not seek to change the operation of the cafe, nor the size, capacity or area for patrons inside or outside the building.

However, upon review of Council records, there is no evidence of development consent for the café use at the site, and no records relating to the use of the site by the current owners. A web search found that the previous café on the site, known as 'Carmel's by the Sea', had indoor seating for 16 patrons and outdoor seating on the rear deck for 60 patrons. The café served small meals and snacks, with a takeaway component, and was open for breakfast and lunch service. This is consistent with statements in relevant polices, including the Draft CMP, which identifies the use of the boathouse as a "daytime café".

The capacity of the previous café is somewhat reflected by the limited facilities on the site; whereby there are only two bathrooms shared by both the public and staff (and no facilities for people with a disability), the ceiling heights are low (and non-compliant with current BCA provisions), and onsite parking is limited to 12 spaces shared between all 3 businesses and the existing residence on site. Based on the provision of bathrooms alone, the capacity of the existing café is limited to 50 people.

Since the ownership of the property changed in 2009, it appears that there has been ongoing development creep at the site, generally reflective of the surge in popularity of 'The Boathouse' as a go-to destination on the Northern Beaches. The capacity of the premises has notably increased, the footprint of the seating space has increased into the front Licenced Area, a number of structures associated with the café have been erected within the front Licenced Area, and the amount of parking spaces within the Licenced Area has been reduced.

These changes to the premises, to which there are no records of approval, authorisation or owners consent, are reflected in the plans provided to support the application as the "existing" situation, which demonstrate that the premises currently provide seating for approximately 213 people, as follows:

- 51 people internally,
- 34 people on the covered deck,
- 74 people on the uncovered deck, and
- 54 people within the front landscaped area.

Although, as specifically expressed by the applicant in subsequent correspondence, the application does not seek consent for designated use of the front landscaped area with the Licenced Area, and this seating is *"for public use on a first come first served basis by visitors to Governor Phillip Park"*. As such, the current capacity for seated patrons as reflected in the application is approximately 159 people.

In response to Council's concern regarding the capacity of the venue, the applicant provided a further statement to confirm that the proposed development *"can accommodate 253 persons under the BCA"*. Despite this confirmation, the applicant subsequently reiterated that the application does not seek to change the capacity of the existing venue, being the 300 patrons originally specified in the SOEE.

Noting that the site does not have the capacity to physically seat 300 patrons, it appears that the application also seeks consent for the use of the site for evening cocktail-style functions. The applicant has advised that the site is currently used for events until 11:00pm, with generally up to 2 events per week over the 7 months (October-April) of daylight savings. In this respect, the applicant has once again reiterated that the application does not seek to change the use or capacity of the venue. However, it is noted that the café advertises a maximum capacity of 200 people for functions on their website, and as such, whether or not the advertised capacity for functions is to increase to 300 people as a result of the proposal has not been communicated by the applicant.

The capacity of the venue alters the impacts of the proposal, particularly with respect to traffic, parking and wastewater/effluent management. However, as the entire application has been framed around the assumption that the capacity of the venue remains unchanged at 300 people, the application fails to appropriately consider the impacts associated with the capacity of the site. This is despite the fact that the application is yet to demonstrate how 300 people can be accommodated by the existing or proposed configuration of the site.

In the absence of any development consent for the use of the site as a café with a capacity for 300 patrons, and by relying on unauthorised works to justify the works proposed in the subject application, the application is essentially seeking retrospective consent for the development creep that has occurred on the site since 2009, resulting in a significant increase in the capacity of the venue from 50 to 300 patrons. Without adequate consideration of this change and the associated impacts, the proposed physical works that enable this increase to the capacity of the venue are unable to be supported.

Alternatively, if a position was to be taken that the application did not seek consent for a change to the capacity of the venue, a condition could be imposed to limit the capacity to 50 people, being that which can currently be accommodated on the site under the provisions of the BCA.

Hours of Operation

- **Clause A1.7 (Considerations before consent is granted) of P21 DCP**

The SOEE provided a statement that confirmed that the café operates between 7am and 4pm daily. However, concern was raised in this regard, noting that the same statement also confirmed that the café will operate under existing capacity and hours, and it is widely publicised that the café is used for night time functions through to 11pm.

When questioned, the applicant subsequently provided the following statement:

“The trading hours for the café is advertised by the operator as 7am to 4pm, daily with the premises being available for events until 11pm, generally up to 2 events per week over the months (October-April) of daylight saving... the ‘core trading hours’ is defined in a sublease to the café operator as 7am to 9pm. The boathouse liquor license enables the sale of alcohol between 10am and 10pm. The DA does not seek to amend the existing operating hours of the café.”

However, similar to the issue of capacity, the applicant is seemingly reliant upon an incorrect (and unauthorised) baseline, as conditions in a sublease or liquor licence do not override any development consent, or lack thereof.

In the absence of development consent for the site, a review of the relevant Crown Land and Council policies has been undertaken. The Draft CMP for Governor Phillip Park includes multiple references to the boathouse building, and the use of the site for a ‘daytime café’. Furthermore, it is also noted that the Food and Beverage Policy Position for Crown Land prescribes that food and beverage outlets on Crown Land must not be used for functions.

This inconsistency has been raised with Crown Lands who provided the following comments in this regard:

The department raises no objection to the proposed change of operating hours... The Food and Beverage Outlets policy adopted years ago has not kept pace with the moves towards more flexible tenure management, consistent with the aims of the 2012 Crown Land Management Review that will culminate early in 2018 with commencement of the Crown Land Management Act 2016.

Whilst Crown Lands have no objection to the extended operating hours or the use of the premises for functions, conditions limiting the operation of the café to 7am to 4pm daily are recommended in the absence of any consideration of the impacts associated with the evening/night time use of the site, particularly with regard to acoustics and traffic/parking.

Acoustic Impacts

- **Clause C2.10 (Pollution Control) of P21 DCP**

The trading hours and capacity of the café have the potential to impact the acoustic amenity of the locality, with concerns regarding noise levels in the evening/night, particularly on a still night or when the wind is blowing in the direction of the nearest residential receivers. Whilst the nearest residence is approximately 600m away, the background noise level in the vicinity of the site would be comparably low and Council has records of noise complaints from nearby residences regarding bands and amplified music at the subject site.

The application was supported by correspondence from an Environmental Scientist, which states that as the operation of the premises remains unchanged, no further acoustic assessment is required. Furthermore, it suggests that noise associated with the use will be mitigated by “enclosed walls”, and seems to assume that the acoustic impact is limited to “customers talking moderately to each other at the restaurant”.

The application was referred to Council’s Environmental Health team who have advised that an acoustic assessment is required, as:

- The proposal essentially seeks retrospective consent for its current operations, with the capacity to be further expanded to 300 people (noting that the applicant has not demonstrated that the current cafe has ever accommodated 300 people), with trading until 11pm (noting that even the current liquor licence ceases at 10pm).
- The café and function use extends beyond “enclosed walls” and out onto the rear deck and into the front landscaped area.
- The café promotes the incorporation of bands and DJ’s for events, which are frequently located outside on the rear deck.

The application has not demonstrated that the use of the site will not result in unreasonable noise levels, or that the use of the site can achieve compliance with the NSW Environment Protection Authority Industrial Noise Policy.

Use of Upper Floor

- **Clause A1.7 (Considerations before consent is granted) of P21 DCP**

The application seeks consent for a change of use of the upper floor, from a residence to offices associated with both the seaplane business and the café. Whilst concern is not raised with the use per se, the true intent of the large open plan office space associated with the café is questioned, as it is conveniently similar to the design of the function room that was proposed in this space in the plans provided to support the prelodgement application. The use of this space is also challenged by the proposed capacity, noting that the applicant seeks consent for a capacity of 300 people and only 159 seats are provided on the ground floor. The

space is also generously proportioned for the 18 staff that are said to be at work on a typical day, the majority of which would be on the floor downstairs, and when compared to the size of the office for the seaplane business with 2 staff members.

The lengths that the applicant is going to in upgrading the office space also seems to be at odds with the intended use, particularly when the application seeks to rely upon alternate solution to retain non-compliant ceiling heights in the cafe and commercial kitchen downstairs. However, the upgraded space with its cathedral ceilings and significant views would be very appealing for functions, which would provide a significant economic return to the business.

Should the application be approved, conditions of consent are recommended to restrict the use of the upper floor open plan space and deck.

Use of the Front Licenced Area

- **Clause A1.7 (Considerations before consent is granted) of P21 DCP**

As discussed with respect to capacity, the applicant has provided an amended statement to confirm that the application does not seek consent for the use of the front Licenced Area for seating associated with the café. However, the application seeks to endorse architectural drawings which demonstrate an existing seating area, with fixed seating for approximately 54 people. When visiting the site, the “existing” area is furnished in the same furniture as the remainder of the café, with the same lighting and decorations, and is located behind “The Boathouse” signage. The area is divided from the park by dense landscaping that is once again notably different from the character of the rest of the park, and despite written assurances from the applicant that the area is a public area that can be used by anyone visiting the park; the area obviously serves as a dedicated extension of the café use.

If the application was to be approved based on the comments from the applicant, it is recommended that conditions be imposed to require the removal of all furniture, signage, lighting and decoration from the Licenced Area, in addition to a requirement for a revised landscape plan, to open up the space, and increase visibility through to the building beyond. Alternatively, the applicant should acknowledge the use of the area, and genuinely address all associated impacts.

Parking

- **Clause B6.3 (Off-Street Vehicle Parking Requirements) of P21 DCP**

The ground floor of the existing building is currently used as a café, with two separate offices associated with boat hire and seaplane businesses. The upper floor contains a dwelling. Under the provisions of clause B6.3 of P21 DCP, the current use of the building generates the need for a minimum of 9 spaces, as follows:

- Café (112m² GFA): 3.7 spaces
- Boat Hire Office and store (59m² GFA): 2 spaces
- Seaplane Office (16m² GFA): 1 space (rounded up)
- Dwelling (2 Bedroom): 2 spaces

The licence arrangement and the POM for Governor Phillip Park identifies that there are 12 dedicated spaces within the Licenced Area associated with the use of the building. Based upon the provisions of P21 DCP, the existing use of the building is adequately addressed by the parking provided “on site”.

Note: The unauthorised structures within erected within the licenced area since 2009, including the bin store area and the “pop up kiosk”, have not been included as “existing” GFA for the purposes of these calculations.

Under the provisions of clause B6.3 of P21 DCP, the proposed development, which changes the use of the upper floor to that associated with the café and seaplane business and includes a new ancillary outbuilding (additional GFA), generates the need for a minimum of 17 spaces, as follows:

- Café (412m² GFA): 13.8 spaces
- Boat Hire Office (59m² GFA): 2 spaces
- Seaplane Office (9m² GFA): 1 space (rounded up)

Under the provisions of B6.3 of P21 DCP, the parking required within the Licenced Area no longer meets the demand generated by the proposed development, with a short fall of 5 spaces. The proposal also fails to provide an accessible parking space, which is required under the provisions of this control.

However, the provisions of clause B6.3 of P21 DCP relate to internal GFA and do not provide a mechanism to consider the impact associated with the outdoor (both covered and uncovered) component of the premises. Furthermore, the buildings GFA calculation appears at odds with the Applicant's claims that the capacity of the café is 300 persons.

The RMS Guidelines recommend that the parking provision for a café/restaurant with a GFA greater than 100m² should be 15 spaces per 100m² GFA or 1 space per 3 seats, whichever is the greater. With this in mind, the demand associated with the existing café could be as much as 17 spaces (based on both 112m² GFA and a capacity of 50 people). Furthermore, the demand associated with the proposal could be as much as 62 spaces (based on 412m² GFA), 52 spaces (based on 159 physical seats inside and on rear deck), or 100 spaces (based on applicant's nominated capacity of 300 persons).

At the time of lodgement, the application was supported by plans demonstrating a reduction of carparking (from 12 spaces to 7 spaces) and a traffic report which stipulated that the proposal did not generate any additional parking demand, that there was no change to floor space, and that the proposal resulted in an increased provision of parking from 5 to 7 spaces. The traffic report has not considered the parking requirements of clause B6.3 of P21 DCP or the RMS Guidelines, has not considered the changes to GFA, and has not acknowledged the existing or proposed capacity of the building. Furthermore, it appears to be based upon incorrect assumption regarding existing approved parking arrangements and the use of the site, the survey data relied upon was undertaken outside the peak summer season, and does not provide any assessment of the demand for parking associated with the use of the site for functions.

Concerns regarding the provision of parking were highlighted to the applicant, who subsequently provided an amended landscape plan showing 12 "on site" parking spaces, consistent with the number nominated in the existing licence. However, the rearrangement of these spaces does not appear to comply with AS2890.1, there is still no accessible parking space, and the additional demand associated with the proposed works has still not been addressed.

There is also an unresolved issue regarding the storage of boats associated with the boat hire business. Following numerous site inspections and upon review of aerial images of the site, up to 7 of the "on site" parking spaces are used for permanent boat storage, with additional boat and trailer storage spilling down onto the beach. Given the scope of development occurring on the site, it is considered that the ongoing management of the boat hire business, and in particular the impacts upon parking, should also be addressed as part of the application.

The POM identifies that parking associated with visitors to the site is an issue, and that the demand for parking generated by the premises must be managed within the licence boundary (being those 12 spaces in the front landscaped area). The POM also specifies that public parking in the greater park may be used as overflow in off-peak periods, but this is to be monitored to avoid impacts during peak periods. Furthermore, upon review of the demand for

parking within Governor Phillip Park, the POM advises that the “demand for parking spaces exceeds supply, particularly on summer weekend”.

However, it is appreciated that the redeveloped site is a popular destination for locals and tourists alike, and that it has been operating with a greater capacity over the past few years. With the exception of the summer peak, parking is generally readily available in the public carpark in close proximity to the site. Whilst reliance upon the public carpark is not encouraged by the POM or specifically authorised in any way, it must be acknowledged that the sites reliance upon the public carpark has been steadily increasing since 2009, and as such, the impact associated with the proposed development has somewhat already been realised on the site.

Although, having said that, the proposed works will result in an increase to the GFA of the site and the application remains unclear as to whether the capacity of the venue is increasing (as the applicant has not demonstrated that the existing site has a capacity for or has ever accommodated 300 persons). Furthermore, the impact during the summer peak has not been assessed or considered. The application has not demonstrated that there is sufficient “on site” parking to meet the demands of the proposed development, and unreasonably relies upon public parking in the adjoining reserve, which is inconsistent with the POM.

Council’s Manager, Transport Network provided the following comments in this regard:

*I am unable to support the application due to parking provision.
The applicant needs to (at least) provide 12 spaces as a minimum as per the plan of management*

The applicant is required to demonstrate that the proposal does not have an undue impact on the provision of public parking within the Governor Philip Park area and is to include an assessment of the impact in peak periods of use and not just during a quiet period of the year to avoid the impact during periods of high use.

The applicant should be requested to provide a detailed Traffic report based on the peak demand within the Governor Philip reserve precinct, demonstrate compliance with AS 2890 for the internal car parking spaces, or where there is an issue with compliance provide a detailed assessment for a suitably qualified Traffic engineer as to why the solution provided is acceptable on a deemed to comply solution basis. This may need to be a deferred commencement condition, however it should be submitted to and assessed prior to any consent being issued.

My concerns are that the development, if approved, will further add to the parking deficiency within the Palm Beach area during peak use periods impacting on the overall parking and access viability within Govern Philip Park.

Overall, the proposal is non-compliant with both the technical requirements and outcomes of clause B6.3 of P21 DCP and warrants refusal in this regard.

Public Interest

- **Clause A1.7 (Considerations before consent is granted) of P21 DCP**

There are a series of site specific policies that are of relevance to the subject application. These are considered as follows:

Palm Beach POM

Whilst the building itself is not located within the scope of the POM, the area to the east of the building is addressed by the POM and covered by an existing licence that is managed by Council. The POM provides the following comments with regard to the Licenced Area:

As recommended by DLWC a commercial lease is to be developed between the lessee of Barrenjoey Boathouse and Council for an initial five year period for the area of land to the frontage of the building canopy. Any lease entered into should include:

- Specific on-site parking for 12 vehicles related to businesses within the Barrenjoey premises.
- Location of areas related to storage of equipment or services related to the operation and maintenance of the building to be specified by the lessee.
- Maintenance of picnic tables, fencing, turfing and the like used specifically by the patrons of the businesses within the boathouse to be undertaken by the lessee.
- The current lessees of the building have submitted a landscape plan for the area which council has adopted in this plan. And costs associated with the construction of works should be credited against the agreed lease fee.
- Scale of the proposed operation.
- Area that the operation will occupy.
- Area must be accessible to the general public at all times.
- 15 % of the rental is to be allocated to the Public Reserve Management Fund State Government Fund to assist other reserve trust throughout the state.

Whilst no parking for patrons of businesses within the boathouse is allocated within the park, Council has agreed to some temporary overflow parking during peak summer periods. This use will be monitored by Council in relation to its impact on the recreational use of the area.

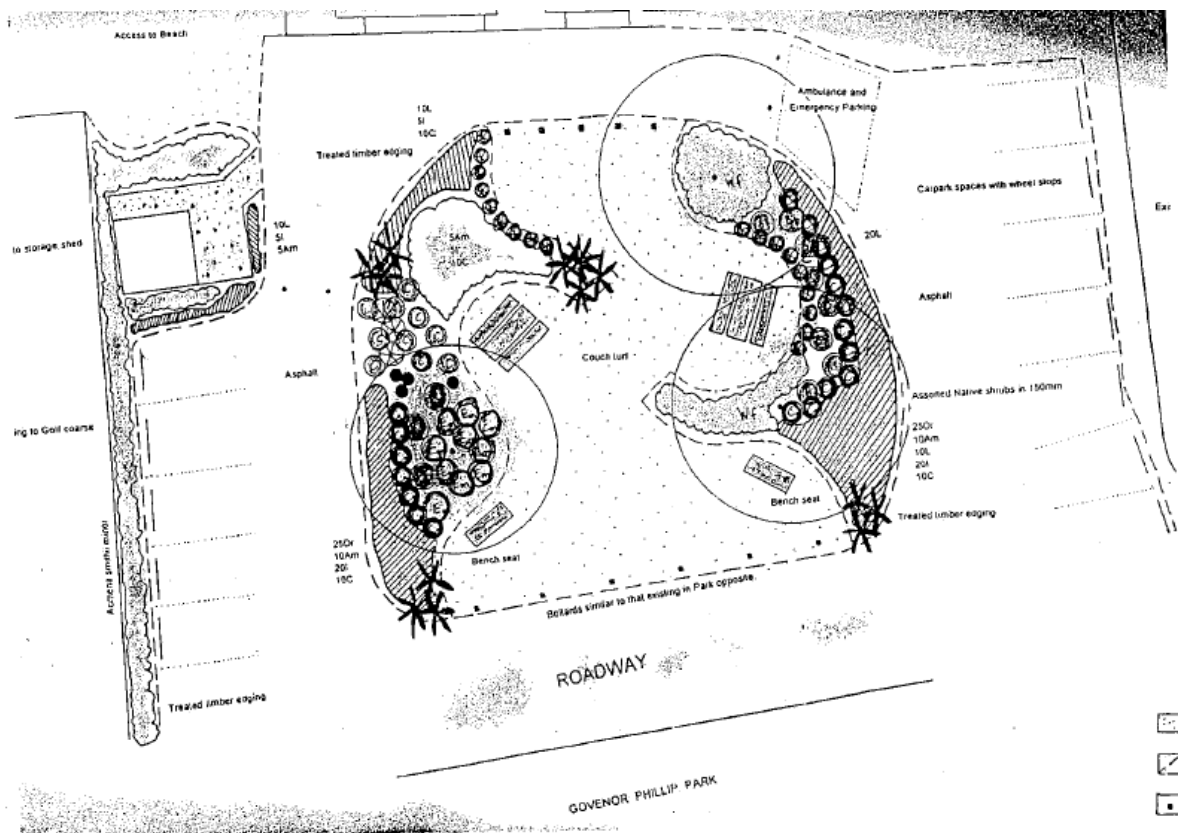


Figure 3 - Landscape Plan endorsed in Licence Agreement

The current licence includes the adopted landscape plan, which clearly demonstrates 12 parking spaces, one minor store area, and a large open turfed area with 2 picnic tables and 2 park benches, as shown in **Figure 3**. This differs from the current arrangement on site, and the proposed arrangement for the front Licenced Area, with respect to the arrangement and provision of parking, the dominance of seating associated with the café, and the

amount of storage and amenities associated with the café. Furthermore, whilst the adopted landscape plan is quite open and presents as an area that could be used by the general public, the existing and proposed scenarios appear remarkably different, with a distinctly private and enclosed sense of arrival to a private business.

It is noted that the POM identifies the potential alienation of the public reserve as a key issue with a strategy identified to “*restrict the alienation of public recreational open space in the vicinity of the Boathouse, kiosk and Aquatic Airways facility*”.

Whilst the applicant has confirmed that the front landscaped area is for “public use”, and that no changes are proposed to this area, the plans provided to support the application reflect the current layout of the area and as such, the application essentially seeks retrospective consent for the unauthorised works that have occurred in this area since 2009. Furthermore, despite assurances from the applicant, the as-built nature of the space does not appear as a public space and is perceived (and used) as an extension of the café use.

If the applicant intends to maintain the area as it currently exists, the use of this area should be included in the application before council, so that the impacts can be appropriately considered and addressed. Alternatively, the application should be amended to show a landscaped treatment consistent with the adopted Landscape Plan in the existing licence agreement, and the area should be reverted to have an appearance in keeping with the remainder of Governor Phillip Park.

The application was referred to Council’s Property Team, who provided the following comments in this regard:

The existing proposal does not comply with the Governor Phillip Park Plan of Management (POM). The permitted use for the area fronting the Barrenjoey Boathouse under the POM is for parking and landscaping only, and this will need to be amended to allow for additional uses such as outdoor dining, storage and public amenities. Further, the POM requires the area fronting the boathouse to include specific on-site parking for 12 vehicles, and for the area to be accessible to the general public at all times.

Over time, the licensee has breached the conditions of operation stated in the POM through the installation of permanent structures in the carpark and landscaped area (including storage facilities for gas, aviation fuel, bins, a pizza oven and kiosk) and the installation of landscaping contrary to that endorsed in the POM. In order to achieve compliance, the POM would need to be amended and a new licence agreement for the area entered into with Northern Beaches Council.

However, whilst Council’s Property team appear to be willing to go initiate the process to amend the POM, the amendment process requires public exhibition and consultation with key stakeholders, and may not result in the outcome currently before Council. As Council’s Property team have also advised that a new licence cannot be inconsistent with the relevant POM, there is concern that even if the subject application was to be approved, it may not be able to be acted upon if the POM is not changed in a manner contemplated by this application. Ideally, the process of amending the POM should have occurred prior to the lodgement of the subject application.

Furthermore, whilst there is no mechanism to prevent Council from issuing development consent that is inconsistent with the POM, doing so may not be in the public’s interest, as there would be a reasonable expectation that Council would manage public land in accordance with the adopted POM, particularly given the level of public consultation that went into the production of the POM in the first instance.

Draft CMP

The boathouse building and the park as a whole are identified as items of heritage significance, and are addressed in the Draft Governor Phillip Park Conservation Management Plan. The Draft CMP specifically categorises the existing use of the building as that associated with a daytime café, seaplane business operations and boat hire. The Draft CPM also advises that:

The daytime cafe in the Boathouse building is popular and contributes to the enjoyment of the recreational reserve. Any future expansion of this use would need to be carefully considered in relation to the support services such as car parking provided along with impact on the capacity of recreational uses in the reserve.

The current use of the site and the proposed use of the site is inconsistent with this policy document, with respect to the use of the site in the evenings for functions and as the impacts upon parking associated with the intensification of use has not been adequately considered.

Food and Beverage Policy

The Food and Beverage Outlets on Crown Reserves – Policy Position was developed by Crown Lands in recognition of the need to maintain the integrity of the special nature of public purpose reserves and a consistent approach to the establishment of these facilities across the state. The policy provides that:

Any lease or licence for food and beverage outlets that comply with the public purpose of the reserve must sufficiently protect the public in their right to use the land for the public purpose of the reserve. Food and beverage outlets may not be established for special interest groups or used for functions...

Any proposal for the establishment of a food and beverage outlet on a public reserve should be contained in a plan of management made under the Crown Lands Act 1989, to ensure that it is evaluated by the community and stakeholders and its scope defined by the plan...

Where Plans of Management are to make provision for the leasing or licensing of facilities to commercial operators of special interest groups, they need to address the following issues:

- *The sustainable use and management of the reserve,*
- *The size and scale of the proposed area or facility in relation to the size of the reserve,*
- *The relationship of the proposal to development on adjoining land or on other land in the locality,*
- *Landscaping provisions that provide for the preservation of trees and other vegetation including threatened species habitat and enhancement of the visual experience of the reserve,*
- *Provision of adequate infrastructure, water, electricity and sewerage,*
- *Provision for adequate protection of environmental features/hazards such as landform stability, drainage and flooding, buffer zones, bushfire hazards, waste control and noise and lighting,*
- *The social and economic effect of the proposal on the reserve and the locality,*
- *The character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of the proposal,*
- *Provisions for the protection and maintenance of any heritage building, archaeological, aboriginal sites or other items of cultural heritage,*
- *Criteria for the erection of signs,*

- *The amount of traffic, parking, loading, unloading and manoeuvring likely to be generated by the proposal and how it can be provided without compromising other users of the reserve.*

Both the current use and the proposed use as shown nominated in the application are inconsistent with the Food and Beverage Policy with regards to the use of the site for functions. Whilst Crown Lands have since communicated that the Food and Beverage Policy is outdated and in the process of amendment, it is still required to be considered in the assessment of the application and the POM would still require amendment to address any new licence arrangement.

Overall, the proposed development is not considered to be in the public's interest, in so far as it is inconsistent with the adopted policy position for the management of the Crown Land on which the proposal is located upon.

Essential Services

- **Clause 7.10 (Essential services) of PLEP 2014**

Clause 7.10 of PLEP 2014 prescribes that consent must not be granted unless the consent authority is satisfied that all essential services are available, or can be available when required, to service the development. As the site does not directly connect to Sydney Water mains systems, pump out devices and macerators are required on site to manage wastewater collected in association with the kitchen, garbage store and bathrooms. Whilst the wastewater management report provided to support the application goes some way in addressing the proposal, it appears to be outdated and does not appropriately relate to the application proposed.

At this stage, the application has not demonstrated that the intensified development can be appropriately managed, or that the new service buildings can be connected to the mains water, without impacting upon the roots of existing trees. The conclusions of the report, which are reliant upon a capacity of up to 150 people per day and 12 staff, are inconsistent with the proposed capacity of 300 people at one time and the location of the necessary systems are also inconsistent with the current proposal before Council.

It is likely that this issue can be readily resolved with the production of additional information; however the applicant will be required to accurately identify the true intended capacity of the venue, and the overall maximum patronage anticipated on any one day.

Note: Whilst the plan in the wastewater management plan does not relate to the proposal, the in-ground holding tanks, pumps, and grease traps are likely to be located within the Licenced Area and will need to form part of any licence arrangement with Council. Furthermore, the essential infrastructure is not shown on the architectural plans, and the existing location appears to be in conflict with the proposed parking arrangement and is inconsistent with the recommendations of the report.

Estuarine Hazard

- **Clause B3.9 (Estuarine Hazard – Business, Light Industrial and Other Development) of P21 DCP**

Council's Principal Officer, Coast and Estuary provided the following comments in this regard:

Subject to the specific integrated development requirements of the Department of Primary Industries and the Crown Lands Division, the following comments regarding the abovementioned development application are provided. The property at 1191-1193 Barrenjoey Road, Palm Beach, has been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk

Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to any proposed development of the site.

An estuarine risk management report has been prepared by Cardno (NSW/ACT) Pty Ltd for the subject site and Council will rely upon the advice contained in the Estuarine Risk Management Report for the Boathouse, Palm Beach (Ref. No. 59916081) dated 21 March 2016, as the basis for ensuring that the coastal risk management aspects of the proposal have been adequately addressed to achieve an acceptable risk level for the design life of the development. Relevant matters in SEPP 71 – Coastal Protection and all relevant controls under B3.7, D15.12 as well as D15.18 in P21 DCP will also need to be considered in the assessment of this DA.

It is noted that Council's Principal Officer, Coast and Estuary has recommended conditions requiring waterproofing of all internal electrical fittings and fixtures below 3.0m AHD, being 1.01m above the internal floor level. Furthermore, exterior electrical fittings and fixtures are to be waterproofed to 3.5m AHD. These conditions may prevent the use of under bench appliances such as bar fridges and dishwashers, commonly used in the type of development proposed.

These conditions would also impact upon the proposed underground infrastructure generally associated with a café use, such as a grease pump, and the in-ground holding tanks required as the site does not directly connect to the mains sewer system. As such, additional information would be required prior to any approval, to demonstrate that the systems can be accommodated in accordance with these conditions, and to ensure that the systems will not overflow in flood events, resulting in the pollution of the waterway and surrounding locality.

Flood Hazard

- **Clause B3.18 (Flood Hazard – Flood Category 1 – High Hazard - Other Development) of P21 DCP**

Council's Specialist Floodplain Engineer provided the following comments in this regard:

The property is partially affected by low depth 1% AEP flooding, within the existing car park. However there is a significant estuarine risk for this property, with the Estuarine Planning Level being much higher than the Flood Planning Level. The DA should be referred so that estuarine controls can be applied, and these will more than cover the minor flood risk.

Impacts upon Vegetation

- **Clause B4.22 (Preservation of Trees and Bushland Vegetation) of P21 DCP**

Council's Landscape Architect raised concern regarding potential impacts upon the 3 significant Norfolk Island Pines at the frontage of the site, noting that there are works proposed within 5m of the structural root zone. In response to these concerns, the applicant provided an arboricultural impact assessment report, dated May 2016. However, the supplementary report is based upon 'sketch design plans' dated 2016 of an unknown concept, and whilst the arborist has considered a pathway in the vicinity of Tree 1 (the southern-most tree), the footings for the structure above the path has not been addressed. Furthermore, the arborist has not considered any underground infrastructure such as the pumps for the grease trap that are located within the root zone of Tree 3 (the western-most tree), or necessary underground connections to essential infrastructure including water and wastewater, or the new underground electrical connections required pursuant to clause C2.16 (Undergrounding of Utility Services) of P21 DCP.

Landscaping

- **Clause C2.1 (Landscaping) of P21 DCP**
- **Clause C2.2 (Safety and Security) of P21 DCP**

The application seeks to maintain the “existing outdoor seating area (paved)” to the east of the existing building, which is inconsistent with the landscape plan adopted in the Licence and the POM. Whilst there are fundamental concerns in this regard, further specific concerns are also raised with regard to the provisions of clause C2.2 of P21 DCP and the territorial reinforcement of the existing landscaping, as it acts to enclose and segregate a portion of public land for a commercial entity, in contrast to the approved landscape concept that opens onto the public reserve. Furthermore, concern is also raised with the design of the existing landscaping, and the way that the existing landscaping restricts the line of sight between pedestrians exiting the existing garden area and vehicles passing along the roadway.

Underground Utilities

- **Clause C2.16 (Undergrounding of Utility Services) of P21 DCP**

Clause C2.16 of P21 DCP requires any existing or proposed utility services to be placed underground or encapsulated within the building. With this in mind, the existing overhead power connection that crosses the internal access roadway, the Licenced Area and connects to the eastern façade of the building will be required to be relocated underground. This control has not been addressed in the SOEE provided to support the application and the necessary undergrounding is not proposed in the architectural plans. If the application was to be approved, these works could be conditioned subject to further arboricultural assessment of the 3 existing mature Norfolk Island Pines within the front landscaped area.

Seawalls

- **Clause D15.18 (Seawalls) of P21 DCP**

Clause D15.18 of P21 DCP states that seawalls shall not be permitted. However, under the variations provisions of this clause, Council may consider the construction of a seawall where there is potential for erosion from coastal processes and protection of property is necessary. The application was supported by an Estuarine Risk Management Report, which recommends the proposed seawall due to existing erosion that is impacting upon the stability of the building. Council’s Principal Officer, Coast and Estuary has reviewed this information and endorses the proposed seawall subject to conditions of consent.

11.0 EXTERNAL REFERRAL RESPONSES

NSW DPI – Fisheries

The application was referred to DPI Fisheries in accordance with the provisions of clause 91 of the EP&A Act. General Terms of Approval were received from DPI Fisheries on 27 July 2017, and should be incorporated into any consent issued.

NSW DPI – Water

The application was referred to DPI Water in accordance with the provisions of clause 91 of the EP&A Act. Correspondence was subsequently provided from DPI Water to confirm that the development is exempt from the requirement for controlled activities approval.

NSW Police

The application was referred to the Licensing division of NSW Police - Northern Beaches who provided the following comments in regards to the proposal:

Currently the location has a liquor licence from 10am to 10pm. At this time I am yet to obtain a copy of their authorised plans to determine as to whether they are permitted to supply alcohol to patrons on the deck / outdoor area.

Regarding hours of trade, should the premises obtain consent to trade until 12 midnight, and provide service to 300 patrons, Police have concern regarding the impact on amenity, and also the provision of transport options to those patrons who have consumed alcohol. Traditionally the Northern Beaches has high rates of drink driving and for 2017, we have double the rate of drink driving offences prosecuted on the Northern Beaches as compared to Kuring Gai and North Sydney/ Willoughby LGAs.

Police would submit that should the operator hold functions/ weddings for patrons they should provide a transport management plan, shuttle service for those patrons to be transported from the venue safely. This venue is one of the most isolated licensed premises within the Northern Beaches Local Area Command.

To date we do not have records of incidents of alcohol related violence linked to this premises.

CONCLUSION

The application alleges to be limited to minor physical works, with no changes to the operation or capacity of the existing building. However, the application is ill-founded in that it is reliant upon development creep that has occurred since 2009, which lacks any formal authorisation or development consent and is in breach of the licence arrangement issued for the site. Whilst the applicant may be able to address the comparably minor concerns relating to supporting documentation for wastewater management and impacts upon canopy trees, the application is fundamentally flawed as it ignores the additional impacts associated with a capacity of 300 people and an extension to trading to allow for the use of functions into the evening and night.

The physical works, particularly the change in the amount of bathrooms, will enable a considerable increase in the capacity of the venue, the impact of which has not been considered in the application. Concern is raised in regards to the associated impacts upon parking within Governor Phillip Park, particularly when Council's adopted position stipulates that the premises must be serviced only by those 12 car spaces provided on site within the Licenced Area, and when demand for parking in the area already exceeds supply during the summer peak period.

The resultant reliance upon parking throughout the greater park and the proposed amendments to the Licenced Area are inconsistent with the POM for Governor Phillip Park, and the use of the site for functions and events is inconsistent with the Draft CMP and the Crown Lands Food and Beverage Policy Position. This is in addition to non-compliance with a range of provisions of PLEP 2014 and P21 DCP, as outlined in the report.

Aside from the issues relating to capacity and parking, the works to the existing boathouse building are otherwise supported, and Council can be satisfied that if approved, the request to vary the building height development standard prescribed by clause 4.3 of PLEP 2014 is well-founded and warranted in the circumstances of the site.

However, until the true impacts associated with the proposal are adequately identified and addressed, the inadequacies in the application and the level of inconsistency with Council's adopted policies results in a development that is not in the public's interest, and is recommended for refusal.

RECOMMENDATION

That Council as the consent authority pursuant to Section 80 of the Environmental Planning and Assessment Act 1979 refuse Development Application N0302/17 for alterations and additions to the 'The Boathouse Palm Beach' including change of use of the first floor at 1191-1193 Barrenjoey Road, Palm Beach, for the reasons outlined in the draft determination attached.

DRAFT DETERMINATION

CONSENT NO: N0302/17 ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979 (AS AMENDED) NOTICE TO APPLICANT OF DETERMINATION OF A DEVELOPMENT APPLICATION

Applicants Name and Address:

Niki Paramour
London Lakes Partnership
Level 10, 60 Carrington Street
Sydney NSW 2000

Being the Applicant in respect of Development Application **N0302/17**

Pursuant to section 80(1) of the Act, notice is hereby given of the determination by Northern Beaches Council, as the consent authority, of Development Application **N0302/17** for:

Alterations and additions to 'The Boathouse Palm Beach' including change of use of the first floor

At: **1191-1193 Barrenjoey Road, Palm Beach NSW 2107**

Decision:

The Development Application has been refused for the following reasons:

1. The proposal is not in the public's interest, as it is inconsistent with the adopted Plan of Management for Governor Phillip Park, the Draft Conservation Management Plan for Governor Phillip Park, and Crown Lands 'Food and Beverage Outlets on Crown Reserves – Policy Position'.
2. The proposal facilitates an increase in the GFA and capacity of the café, attributing to a significant intensification on the demand for parking that has not been adequately considered and is not satisfied by the proposed development. The proposal is non-compliant with the numerical requirements and outcomes of clause B6.3 (Off-street Parking Facilities) of P21 DCP and places an unreasonable level of reliance upon parking within the adjacent public reserve.
3. The proposal is supported by conflicting and insufficient information, particularly with respect to:
 - a. All necessary works within the Licenced Area and the potential impacts upon the significant Norfolk Island Pines to the east of the Boathouse building,
 - b. The existing capacity of the building, in consideration of the provision of on-site amenities,
 - c. The capacity of the proposal in consideration of wastewater management,
 - d. The design and management of the facility with respect to the estuarine hazard,
 - e. The design of car parking within the Licenced Area and compliance with AS2890.1 and AS2890.6,
 - f. Acoustic impacts associated with an intensified capacity, extended trading hours and the use of the site for functions and events, and
 - g. The design of the front Licenced Area and the adopted Landscape Plan, referenced in the Licence and the adopted Plan of Management for Governor Phillip Park.

Notes:

1. This determination was taken under delegated authority on behalf of the elected Council pursuant to Section 377 of the Local Government Act 1993.
2. Section 97 of the Act confers on the applicant who is dissatisfied with the determination of a consent authority a right of appeal to the Land & Environment Court exercisable within 6 months after receipt of this notice.
3. Any person who contravenes this notice of determination of the abovementioned development application shall be guilty of a breach of the Environmental Planning & Assessment Act, 1979, and shall be liable to a monetary penalty and for a restraining order which may be imposed by the Land and Environment Court.

Mark Ferguson
CHIEF EXECUTIVE OFFICER