

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2022/1542
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<b>Responsible Officer:</b>	Adam Croft
<b>Land to be developed (Address):</b>	Lot 52 DP 1237461, 80 - 82 Mona Vale Road MONA VALE NSW 2103
<b>Proposed Development:</b>	Alterations and additions to a Registered Club to enable the permanent use of an outdoor dining area
<b>Zoning:</b>	R2 Low Density Residential SP2 Infrastructure
<b>Development Permissible:</b>	Yes, under Schedule 1 Additional Permitted Uses
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Pittwater RSL Club Ltd
<b>Applicant:</b>	Paynter Dixon Construction Pty Ltd

<b>Application Lodged:</b>	06/10/2022
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Commercial/Retail/Office
<b>Notified:</b>	13/10/2022 to 27/10/2022
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	6
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 0.00
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### EXECUTIVE SUMMARY

This development application seeks consent for the use of an existing car park as an outdoor dining area with associated fit-out structures. No physical works are proposed as part of the application.

The application is referred to the Development Determination Panel (DDP) as the proposal attracted 6 submissions by way of objection.

The concerns raised in the objections predominantly relate to the noise impacts resulting from the use of the outdoor dining area, and are addressed in detail in this report.

Critical assessment issues included the noise impacts and reduction in car parking resulting from the proposal.

This report concludes with a recommendation that the DDP grant approval to the development application, subject to conditions.

## **PROPOSED DEVELOPMENT IN DETAIL**

The proposal seeks consent for the permanent use of an outdoor dining area located at the northern extent of the Pittwater RSL building, adjacent to Mona Vale Road. Consent for the use of the associated fit-out works described below is also sought.

DA2021/1724, granted by Council on 21 October 2021, approved the temporary use of a portion of the existing car park as an outdoor dining area with a maximum capacity of 250 patrons, for a period of 12 months.

DA2021/1724 also included the construction of 2.0m high acoustic barriers and fit-out of the area with synthetic turf, on-slab landscaping and seating.

The approved operating hours of this area were as follows:

- Friday - Saturday: 11am - 11pm
- Sunday: 2:30pm - 11pm
- Special Events (i.e. Calendar Events inc. Melbourne Cup, Anzac Day): 11am - 9:30pm

Despite DA2021/1724 being approved by Council, the use approved under that consent was never commenced. Instead, the subject outdoor dining area has operated in accordance with *Subdivision 20C Outdoor dining - registered clubs* of SEPP (Exempt and Complying Development Codes) 2008.

The physical works approved under DA2021/1724 were undertaken without the necessary Construction Certificate, and were subject to a Building Information Certificate, BC2022/0008, issued by Council on 6 June 2022.

The current application seeks consent for the permanent use of the outdoor dining area, rather than the previous temporary approval, with extended operating hours of 11am to 11pm on Sundays. The approved capacity of 250 patrons remains unchanged.

## **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 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.

## SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 2.5 Additional permitted uses for particular land  
 Pittwater Local Environmental Plan 2014 - Zone R2 Low Density Residential  
 Pittwater Local Environmental Plan 2014 - 5.10 Heritage conservation  
 Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements  
 Pittwater 21 Development Control Plan - C2.12 Protection of Residential Amenity  
 Pittwater 21 Development Control Plan - C5.20 Liquor Licensing Applications  
 Pittwater 21 Development Control Plan - D14.1 Character as viewed from a public place

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 52 DP 1237461 , 80 - 82 Mona Vale Road MONA VALE NSW 2103
<b>Detailed Site Description:</b>	<p>The subject site is legally identified as Lot 52 in DP 1237461 and is known as 80-82 Mona Vale Road, Mona Vale, commonly known as the Pittwater RSL.</p> <p>The site is generally triangular in shape and located on the corner of Mona Vale Road and Foley Street.</p> <p>The site accommodates an existing club building with a total public floor area of approximately 4155m<sup>2</sup> and 450 car parking spaces.</p> <p>The site is zoned R2 Low Density Residential pursuant to the Pittwater Local Environmental Plan 2014 but also benefits from an Additional Permitted Use as described later in this report.</p> <p><b>Adjoining and Surrounding Development</b></p> <p>Adjoining and surrounding land is characterised by commercial developments to the west and residential developments to the south, east and north.</p>

Map:



## SITE HISTORY

A search of Council's records has revealed the following relevant history:

**DA2021/1724** - Alterations and additions to a Registered Club to enable temporary outdoor dining - Approved 21 October 2021.

The site has been the subject of numerous previous development applications pertaining to various elements of the RSL Club, however none of those applications are relevant to the assessment of this current development application.

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
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 21 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 Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&amp;A Regulation 2021 requires the</p>

Section 4.15 Matters for Consideration	Comments
	<p>submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to the parking impacts of the proposal.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 62 and/or 64</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</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) <b>Environmental Impact</b> 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) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</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 &amp; Submissions Received” in this report.</p>

<b>Section 4.15 Matters for Consideration</b>	<b>Comments</b>
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## **EXISTING USE RIGHTS**

Existing Use Rights are not applicable to this application.

## **BUSHFIRE PRONE LAND**

The site is not classified as bush fire prone land.

## **NOTIFICATION & SUBMISSIONS RECEIVED**

The subject development application has been publicly exhibited from 13/10/2022 to 27/10/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 6 submission/s from:

<b>Name:</b>	<b>Address:</b>
Mr Thomas Fernando Richard Roche	77 Mona Vale Road MONA VALE NSW 2103
Withheld	MONA VALE NSW 2103
Mr Simon Peter Gillespie	91 Mona Vale Road MONA VALE NSW 2103
Mrs Margaret Catherine Danswan Lee Danswan	48 Crescent Road NEWPORT NSW 2106
Mr Alan John Wiggins Ms Karin Vicki Dwyer	81 Mona Vale Road MONA VALE NSW 2103
Mrs Anna-Maree Lee Mr Kevin John Lee	89 Mona Vale Road MONA VALE NSW 2103

The issues raised in the submissions are addressed as follows:

- **Acoustic Impacts**

The submissions raised concerns that the operation of the outdoor dining area will adversely impact the acoustic privacy of nearby residential properties. Concern was also raised that the past operation of the area has not been in accordance with the previous approval, DA2021/1724.

Comment:

It is noted that several complaints regarding noise were received in the (3) month period immediately following the approval of DA2021/1724. However, no further complaints were received in the remainder of the 12 month approval period, or until the writing of this report (with the exception of submissions in response to DA notification).

The development includes physical and behavioural acoustic measures to minimise the noise levels generated by the premises, as outlined in this report. Council's Environmental Health Officer has reviewed the acoustic report prepared in relation to the development and raised no objection to the application, subject to the recommended conditions of consent.

The acoustic wall/barrier has been constructed and the subject application does not propose additional physical works. The submitted documentation indicates that the operation of the premises, in accordance with the recommendations of the Acoustic Report, can comply with the relevant noise levels. Any allegations of non-compliance are investigated by Council's Building Control team.

This matter is not considered to warrant refusal of the application.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p><b>Supported without conditions.</b></p> <p>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>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>
Environmental Health (Industrial)	<p><b>Supported with conditions.</b></p> <p><b>General Comments</b>            Proposal for a change of use of a temporary outdoor dining area to permanent use of the same outdoor dining area.            DA2021/1724 was approved by Council on 21 October 2021, being for 'alterations and additions to a Registered Club to enable temporary outdoor dining'. Condition 2 of that approval provided for a maximum period of twelve (12) months from the date of first commencement. With the anniversary date of the original approval upcoming in October 2022, this application seeks the approval of the same outdoor area on a permanent basis. That is, without any time limitation. This application refers to the same outdoor area as approved in DA2021/1724. There is no change to the size or location of the area, however the Sunday opening hours are proposed to be moved from 2.30pm to 11am. The DA plan set, and Landscape Plans remain valid for this application. The Operational Plan of Management and Acoustic Report are updated to account for the earlier Sunday opening hours.</p> <p>Environmental Health is concerned that the temporary trial period has been impacted by Covid 19 restrictions and recent poor weather conditions questioning whether this is a normal operating environment over the past year.</p>

Internal Referral Body	Comments
	<p>Additionally significant roadworks are taking place adjacent to the proposal and the impact of these is not possible to assess with the current acoustic report; for example with road widening there may be additional hard surfaces and changes to traffic flow and noise or the Dept of Main Roads may put in place noise barriers.</p> <p>Also the acoustic review sets out multiple conditions, and some platitudes* of minimal impact for operation and these all rely on a robust management plan and diligence by site managers a formula which can lead to noise related issues then to be solved by Council and local residents.</p> <p>*12. Signage should be installed reminding patrons to be aware of their neighbours and to leave in a quiet manner.  13. Staff should be instructed to consider the neighbouring residents departing from the site in the late night period.  Who will be conducting accurate qualified sound level measuring tests and also setting music sound levels using an acoustic sound level meter at each performance raises questions for us. eg. Max LAeq 75 dB 1 metre from the speaker.</p> <p>However having said that it is acknowledged that the Mona Vale Road multi lane traffic flow is likely to increase and background sound levels raised.</p> <p>Further modifications to the acoustic recommendations are possible including operating hours if necessary which gives scope for a satisfactory outcome. We have also found generally Clubs as community organisations willing to comply for the betterment of the community. At the time of writing these comments we are not aware of any recent complaints or strong community objections to the proposal.</p> <p>Environmental Health therefore is prepared to support the proposal on the basis that a further acoustic assessment (and if necessary works) be carried out once the Mona Vale Road traffic work is completed rather than trying to rely on current assumptions.</p>
Traffic Engineer	<p><b>Supported without conditions.</b></p> <p><b>Additional comments - 3/2/22</b></p> <p>The applicant has now provided the requested post-Covid parking occupancy survey, This was undertaken on Friday 20/1/23 between 4pm and 1am. This survey has indicated that there was a peak occupancy of 126 of the 400 publicly available parking spaces on the site. This was at 7pm on the Friday evening i.e only 32% of the available parking spaces were occupied. Although the parking survey</p>



Internal Referral Body	Comments
	<p>was undertaken during school holidays when many potential clients may have been away it is never-the-less evident from both the pre-Covid parking surveys (conducted in 2015) and the post-Covid parking survey that there is adequate parking capacity on the site to cater for the Friday evening peak.</p> <p>The permanent operation of the outdoor dining area and associated loss of the 32 parking spaces is not therefore opposed on traffic or parking grounds.</p> <p><b>Original referral comments - 22/11/22</b></p> <p>The DA seeks approval for the permanent operation of the outdoor dining area given a 12 month temporary approval under DA2021/1724.</p> <p>The outdoor dining area occupies an area of the car park structure that previously provided parking for 32 vehicles. The Transport Network team supported the establishment of the temporary outdoor dining area on the basis that the approval was for a twelve month period to assist the business to re-establish and continue to operate and attract patronage during and following restrictions introduced as a result of the Covid-19 pandemic. At the time it was not anticipated that the outdoor dining area would continue to operate once business operations had returned to pre Covid-19 conditions.</p> <p>The traffic and parking impact report submitted to support the application for the temporary outdoor dining facility was supported by a parking survey conducted on a Friday evening in January 2015. It was noted in the report that this was the most recent pre-pandemic parking occupancy survey and that it demonstrated that there was a peak parking demand, at the time, of 293 of the 450 available parking spaces.</p> <p>No traffic and parking impact report has been lodged with the current DA and the Statement of Environmental Effects argues that parking assessment submitted with the application for the temporary outdoor dining area is still valid. This conclusion is not supported. Given the removal of 32 spaces associated with the operation of the temporary outdoor dining area there is now a reduced parking capacity of 418 parking spaces on the site. Given the reduction in parking capacity, the associated increase in seating area and having regard to the fact that the last off-street parking occupancy survey undertaken is now almost 8 years old it is considered that the application should be supported by a new parking occupancy survey conducted during times when peak patronage levels at the venue are evident and when the outdoor dining area is in operation, most likely a Friday or Saturday evening. The above data should be collected at 15 minute intervals between 5:30pm and 10pm on a typical Friday and Saturday evening and submitted for review prior to further consideration of the application.</p>

Internal Referral Body	Comments

External Referral Body	Comments
NSW Police - Licensing (Clubs, Hotels, Pubs)	<p><b>No objection, subject to conditions.</b></p> <p>The application was referred to the Northern Beaches Police Area Command Licensing Unit of the NSW Police, with the following comments received:</p> <p><i>"In relation to noise according to data accessed on the 3rd of February 2023 I was unable to locate any Noise complaints recorded in the NSW Police Computer Aided Dispatch system during the trial period. Police have considered the submissions made and the concerns raised by residents.</i></p> <p><i>Police have reviewed the acoustic report issued by Acoustic Dynamics and offer the following comments:</i></p> <p><i>If the modification is to be permitted, then the recommendations listed on page 16 of the report must be implemented by the applicant prior to the area being used / continue to be used. That the recommendations of the acoustic report form conditions on the development consent which includes:</i></p> <ol style="list-style-type: none"> <li><i>1. Live music must be located adjacent to the acoustic barrier (within 3m) and must be orientated away from the receivers on Mona Vale Road</i></li> <li><i>2. Speakers must not be positioned higher than the adjacent barrier</i></li> <li><i>3. No elevated stages or platforms are permitted in the outdoor areas</i></li> <li><i>4. Music levels must not exceed LAeq 75db at 1 metre from the speaker or prevent conversations to require effort to be heard over the music</i></li> <li><i>5. Music shall be restricted to solo acoustic guitar or vocalist or similar type</i></li> <li><i>6. Sound limiters are to be installed to comply with condition 4. The limiters must be able to process multiple frequency and bands and be able to limit these to remain compliant.</i></li> <li><i>7. Sound limits must be explained to performers and ensure they are aware of backline sound level restrictions. Performers must be made aware of the requirements for noise prior to their performance and must comply with these conditions</i></li> <li><i>8. All music must cease by 10:00pm</i></li> <li><i>9. Signage must be installed reminding patrons to be aware of neighbours and leave in a quiet manner</i></li> </ol> <p><i>Police also request that the Club maintain a Complaints register that records all complaints and what action the management took to address the complaint. This register must be completed within 6 hours of receiving the complaint.</i></p> <p><i>Police have reviewed the application and <b>do not object</b> to the</i></p>

External Referral Body	Comments
	<i>application being granted with the imposition of the above mention conditions."</i>

## **ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\***

All, Environmental Planning Instruments (SEPPs 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 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)**

#### **SEPP (Transport and Infrastructure) 2021**

##### Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

##### Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

#### **SEPP (Resilience and Hazards) 2021**

##### **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. 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 commercial land use.

## Pittwater Local Environmental Plan 2014

Is the development permissible?	No
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

### Principal Development Standards

The acoustic wall indicated on the plans was approved and constructed under DA2021/1724 and no further physical works are proposed through this application. Accordingly, there are no Principal Development Standards under Part 4 of the PLEP to consider as part of this assessment.

### Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.5 Additional permitted uses for particular land	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.10 Essential services	Yes

### Detailed Assessment

#### **2.5 Additional permitted uses for particular land**

Schedule 1 Additional Permitted Uses (11) permits the use of land identified as "Area 9" being 80-82 and 84 Mona Vale Road, Mona Vale and 22 Jubilee Avenue, Warriewood for the purpose of a registered club, subject to development consent. A registered club means a club that holds a license under the Liquor Act 2007. Pittwater RSL holds such a license and seeks to extend that license to the subject development area (under a separate application to the office of NSW Liquor and Gaming).

Accordingly, pursuant to the existing use of the site and subclause (11) of Schedule 1, the development is permitted with consent.

#### **Zone R2 Low Density Residential**

Despite not being a permissible use in the R2 zone, development for the purpose of a registered club is permitted on the subject site pursuant to Schedule 1 (11) of the PLEP.

#### **5.10 Heritage conservation**

The proposal is for a change of use of an area within the existing premises. Accordingly, there will be no impact to any aboriginal or built heritage values in the locality.

## **Pittwater 21 Development Control Plan**

### Built Form Controls

The acoustic wall indicated on the plans was approved and constructed under DA2021/1724 and no further physical works are proposed through this application. Accordingly, there are no built form controls under Section D of the P21 DCP to consider as part of this assessment.

Compliance Assessment

<b>Clause</b>	<b>Compliance with Requirements</b>	<b>Consistency Aims/Objectives</b>
A1.7 Considerations before consent is granted	Yes	Yes
A4.14 Warriewood Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
C2.1 Landscaping	Yes	Yes
C2.2 Safety and Security	Yes	Yes
C2.5 View Sharing	Yes	Yes
C2.7 Building Facades	Yes	Yes
C2.8 Energy and Water Conservation	Yes	Yes
C2.9 Waste and Recycling Facilities	Yes	Yes
C2.10 Pollution Control	Yes	Yes
C2.12 Protection of Residential Amenity	Yes	Yes
C2.20 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C5.20 Liquor Licensing Applications	Yes	Yes
D14.1 Character as viewed from a public place	Yes	Yes
D14.2 Scenic protection - General	Yes	Yes

Detailed Assessment

**B6.3 Off-Street Vehicle Parking Requirements**

The proposal results in the removal of 32 of the previously existing 450 car parking spaces on the site.

Council's Traffic Engineer requested and reviewed an updated parking occupancy survey. The survey, undertaken on Friday 20 January 2023, indicated a peak occupancy of 126 of the 400 publicly available parking spaces. Based on the parking survey information, it is apparent that adequate car parking will be maintained on the site and no objection was raised by Council's Traffic Engineer.

**C2.12 Protection of Residential Amenity**

Noise Impacts

The existing outdoor dining area incorporates acoustic attenuation measures at the northern edge in the form of a 2m high acoustic wall with planter landscaping, as approved under DA2021/1724 and BC2022/0008. This outer edge of the outdoor area is set back 10m from the site boundary, providing a

minimum separation distance of approximately 43m to the boundary of the nearest residential property on the northern side of Mona Vale Road. Mona Vale Road is a multi-lane state road and is anticipated to impact the background noise levels of the site and the nearby residential properties, as identified in the Environmental Health referral response.

In addition to the constructed acoustic barrier and physical separation distances, the submitted acoustic report includes various recommendations to minimise the noise levels generated by the use of the outdoor area. These recommendations are incorporated into the conditions of consent, and include the following requirements:

1. *Live music performer should be located adjacent to the acoustic barrier (i.e. within 3 metres), and should be orientated away from the receivers on Mona Vale Road;*
2. *Speakers for the live performers must not be positioned higher than the adjacent barrier (i.e. > 2 metres high);*
3. *Live music performances should not be conducted on an elevated stage or platform;*
4. *The music levels must be monitored to not exceed LAeq 75db at 1 metre from a speaker (i.e. conversation should not require effort to be heard over the music);*
5. *Live music should be restricted to solo acoustic guitar and vocalist (or similar type of accompaniment). Percussive instrumentation should be avoided;*
6. *The use of sound system noise limiters/compressors and equalizers should be employed to reduce the level of low frequencies (bass) being broadcast by the system as this is what often causes the most disturbance to nearby residents;*
7. *To assist in the monitoring and control of music, a sound system limiter (capable of processing multiple frequency bands) should be installed;*
8. *The venue must ensure performers and sound engineers are made aware of "backline" sound level restrictions. Sound levels should be set so that performers can hear themselves without increasing the overall level of music in the carpark dining area;*
9. *The venue must ensure performers are made aware of the potential for noise problems prior to their appearance and their performance must adhere to any noise level restrictions that are in place;*
10. *Speakers should be orientated away from the neighbouring sensitive receiver properties;*
11. *All music associated with the use of the carpark dining area should cease prior to 10:00pm. **No music** should be played after 10pm;*
12. *Signage should be installed reminding patrons to be aware of their neighbours and to leave in a quiet manner; and*
13. *Staff should be instructed to consider the neighbouring residents departing from the site in the late-night period.*

The acoustic report also recommends the completion of further post-approval compliance monitoring.

Conditions are recommended by Council's Environmental Health team requiring the above matters be incorporated into the Plan of Management, and the undertaking of a further acoustic review, either on completion of the roadworks on Mona Vale Road or 1 calendar year from approval of the application.

Council's records indicate that several complaints were received in late-2021 from neighbouring residents in relation to noise disturbance caused by the operation of the outdoor dining area. However, it appears that no such complaints were received throughout 2022 until the lodgement of the subject application.

Based on the above considerations and lack of objection from Council's Environmental Health team, the operation of the outdoor area in accordance with the relevant acoustic mitigation measures is not anticipated to unreasonably impact the amenity of nearby properties.

## **PLEP 2014 Clause 5.20 Standards that cannot be used to refuse consent—playing and performing music**

Clause 5.20 of the PLEP includes the following provisions:

*(1) The consent authority must not refuse consent to development in relation to licensed premises on the following grounds—*

*(a) the playing or performance of music, including the following—*

*(i) the genre of music played or performed, or*

*(ii) whether the music played or performed is live or amplified, or*

*(iii) whether the music played or performed is original music, or*

*(iv) the number of musicians or live entertainment acts playing or performing, or*

*(v) the type of instruments played,*

*(b) whether dancing occurs,*

*(c) the presence or use of a dance floor or another area ordinarily used for dancing,*

*(d) the direction in which a stage for players or performers faces,*

*(e) the decorations to be used, including, for example, mirror balls, or lighting used by players*

*(2) The consent authority must not refuse consent to development in relation to licensed premises on the grounds of noise caused by the playing or performance of music, if the consent authority is satisfied the noise may be managed and minimised to an acceptable level.*

In relation to the above provisions of the PLEP, the application is not recommended for refusal and includes conditions to ensure that noise generated by the proposed development can be managed and minimised to an acceptable level.

## **C5.20 Liquor Licensing Applications**

The proposed/continued use of the outdoor area is intended to be licensed to permit alcohol consumption by patrons. The application indicates that there will be no change to the existing liquor licensing requirements. Any such changes must be applied for and approved through NSW Liquor and Gaming.

## **D14.1 Character as viewed from a public place**

No physical works are proposed as part of this applicant and there will be no impact to the character of the development as viewed from surrounding public places.

## **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

## **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

## **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.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

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 use of an existing car park as an outdoor dining area has been referred to the Development Determination Panel (DDP) as the proposal attracted 6 submissions by way of objection.

The concerns raised in the objections have been addressed through the recommendation of conditions requiring the implementation of appropriate acoustic mitigation measures.

The critical assessment issues relate to the noise and parking impacts of the proposal.

Overall, the development performs appropriately against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties. 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.

## **RECOMMENDATION**

THAT Council as the consent authority grant Development Consent to DA2022/1542 for Alterations and additions to a Registered Club to enable the permanent use of an outdoor dining area on land at Lot 52 DP 1237461, 80 - 82 Mona Vale Road, MONA VALE, subject to the conditions printed below:

### **DEVELOPMENT CONSENT OPERATIONAL CONDITIONS**

1. **Acoustic Review required- 1 year maximum**  
On completion of the roadworks in Mona Vale Road (immediately adjacent the Club) or at 12 months from the date of this consent, whichever occurs first, an Acoustic Review is to be carried out by a suitably qualified person to determine if any adjustments are required to the venue's operations. This is to ensure the use continues to meet the assumptions and recommendations



contained in the report by Acoustic Dynamics, dated 5 September 2022 for the life of the use.

The Acoustic Review (including its recommendations) is to be submitted to the Manager of Environmental Health at Council for the necessary review and response.

Note: Physical works identified/recommended as part of this Acoustic Review may require further consent from Council. You will need to consult with Council to determine whether any approval is required.

Reason: To review the acoustic environment once major roadworks are completed and post Covid 19 operating conditions return to ensure the protection of nearby residential amenity.

## 2. **Approved Plans and Supporting Documentation**

The development must be carried out in compliance with the endorsed stamped plans and documentation listed below, except as amended by any other condition of consent:

### a) Approved Plans

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
DA-01 Site Plan	Issue A, 18 August 2022	Curtin Architects
DA-02 Lower Ground Floor Plan	Issue A, 18 August 2022	Curtin Architects

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
Operational Plan of Management	As Amended	JSF Consulting
Noise Emission Assessment	Rev. 1, 5 September 2022	Acoustic Dynamics
Traffic and Parking Assessment	Issue C, January 2023	Transport and Traffic Planning Associates

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

c) The development is to be undertaken generally in accordance with the following:

<b>Landscape Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
DA-04 Landscaping Concept	Issue A, 18 August 2022	Curtin Architects

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.

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

### 3. **Landscape Maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan and any conditions of consent.

All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: to maintain local environmental amenity.

**4. Number of Patrons - Outdoor Dining Area**

The number of patrons within the outdoor dining area shall be limited to a maximum of 250 at any time.

Reason: To ensure that the operation of the premises is consistent with the proposed development.

**5. Noise reduction measures -Plan of Management**

A. The Plan of Management shall include all measures contained in the assessment by Acoustic Dynamics dated 5 September 2022 and include specifically :

- i. Live music performers should be located adjacent to the acoustic barrier (i.e. within 3 metres), and should be orientated away from the receivers on Mona Vale Road;
- ii. Speakers for the live performers must not be positioned higher than the adjacent barrier (i.e. < 2 metres high);
- iii. Live music performances should not be conducted on an elevated stage or platform;
- iv. The music levels must be monitored to not exceed LAeq 75 dB at 1 metre from a speaker (i.e. conversation should not require effort to be heard over the music);
- v. Live music should be restricted to solo acoustic guitar and vocalist (or similar type of accompaniment). Percussive instrumentation should be avoided;
- vi. The use of sound system noise limiters/compressors and equalizers must be employed to reduce the level of low frequencies (bass) being broadcast by the system as this is what often causes the most disturbance to nearby residents;
- vii. To assist in the monitoring and control of music, a sound system limiter (capable of processing multiple frequency bands) must be installed on any sound system;
- viii. The venue must ensure performers and sound engineers are made aware of "backline" sound level restrictions. Sound levels should be set so that performers can hear themselves without increasing the overall level of music in the carpark dining area;
- ix. The venue must ensure performers are made aware of the potential for noise problems prior to their appearance and their performance must adhere to any noise level restrictions that are in place;
- x. Speakers should be orientated away from the neighboring sensitive receiver properties;
- xi. All music associated with the use of the carpark dining area should cease prior to 10:00pm. No music should be played after 10:00pm;
- xii. Signage should be installed reminding patrons to be aware of their neighbors and to leave in a quiet manner.
- xiii. Staff should be instructed to consider the neighboring residents departing from the site in the late night period.

B. The Plan of Management is to be kept on site and is to be included in any staff's induction training.

C. A register of any complaints and action taken to address complaints is to be maintained on site and available for inspection by Council officers upon request.

Reason: To manage the risk of offensive noise to residential receivers and to assist in maintaining residential amenity.

6. **Approved Hours of Operation - Outdoor Dining Area**

The approved hours of operation of the outdoor dining area are as follows:

- Friday - Sunday – 11:00am to 11:00pm
- Special Events – 11:00am to 9:30pm

There is to be no use of the outdoor dining area outside the approved days/hours.

Any music or other entertainment within the outdoor dining area shall cease prior to 10:00pm.

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers shall be required to leave the area within the following 15 minutes.

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