

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

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| Application Number: | Mod2020/0419 |
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| Responsible Officer: | Renee Ezzy |
| Land to be developed (Address): | Lot 307 DP 727043, 1710 Pittwater Road BAYVIEW NSW 2104 Lot 1 DP 112399, 1710 Pittwater Road BAYVIEW NSW 2104 |
| Proposed Development: | Modification of Development Consent DA2019/1279 granted for use of part of the marina as a cafe |
| Zoning: | IN4 Working Waterfront W2 Recreational Waterways |
| Development Permissible: | Yes - Zone IN4 Working Waterfront No - Zone W2 Recreational Waterways |
| Existing Use Rights: | No |
| Consent Authority: | Northern Beaches Council |
| Land and Environment Court Action: | No |
| Owner: | Gibson Marina Bayview Pty Ltd NSW Government - Department of Industry - Lands |
| Applicant: | Mandeep Singh |

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|----------------------------------|--------------------------|
| Application Lodged: | 01/09/2020 |
| Integrated Development: | No |
| Designated Development: | No |
| State Reporting Category: | Commercial/Retail/Office |
| Notified: | 10/09/2020 to 24/09/2020 |
| Advertised: | Not Advertised |
| Submissions Received: | 3 |
| Clause 4.6 Variation: | Nil |
| Recommendation: | Approval |

PROPOSED DEVELOPMENT IN DETAIL

The proposed modification originally sought to extend the approved operating hours on a Friday and Saturday from 3.30pm to 9pm.

As the cafe operation is an ancillary use of the marina which formally operates until 5pm, extension of hours beyond this time would not be supported. The applicant has formally amended the application and now seeks the following:

Proposed hours of operation:

| | Existing | Proposed |
|-----------|--------------|------------------|
| Monday | 7am – 3.30pm | 7am – 5pm |
| Tuesday | 7am – 3.30pm | 7am – 5pm |
| Wednesday | 7am – 3.30pm | 7am – 5pm |
| Thursday | 7am – 3.30pm | 7am – 5pm |
| Friday | 7am – 3.30pm | 7am – 5pm |
| Saturday | 7am – 3.30pm | 7am – 5pm |
| Sunday | 7am – 3.30pm | 7am – 5pm |

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 - Zone IN4 Working Waterfront
Pittwater Local Environmental Plan 2014 - 5.10 Heritage conservation

SITE DESCRIPTION

| | |
|-----------------------------------|---|
| Property Description: | Lot 307 DP 727043 , 1710 Pittwater Road BAYVIEW NSW 2104 Lot 1 DP 112399 , 1710 Pittwater Road BAYVIEW NSW 2104 |
| Detailed Site Description: | The site is known as 1710 Pittwater Road, Bayview and has a legal description of Lot 307 in Deposited Plan 727043. The site is irregular in shape and has a total area of approximately 4674.6m ² . Vehicular and pedestrian access is gained via the frontage of Pittwater Road and the site is located on the northern side of Pittwater Road. The front portion of the site is predominantly flat, with the front |

southern portion of the site being land and the rear portion of the site being Pittwater waterway, including approximately 50 berths. The site currently operates as "Gibson Marina" and is occupied by a single storey commercial building. Bayview Public Baths with lawn area, is located to the east of the site, and "Bakers Marina" is located to the west of the site. The site is adjacent to residential properties to the south on the southern side of Pittwater Road.

Map:



SITE HISTORY

N0258/14 - Change of Use

Application for a change of use from an office premises to a kiosk with internal fitout works, a new deck to the east and south and business signage was approved by Pittwater Council on 16 October 2014.

DA2019/1279 - Change of Use

Development Application No. DA2019/1279 for a change of use from a kiosk to a cafe was approved by Council on 5 March 2020.

MOD2020/0419 - Change of hours of operation

Modification Application MOD2020/0419 was lodged with Council on 1 September 2020 for the modification of the hours of operation approved under DA 2019/1279. This application is the subject of this assessment.

Following a review of Council's records, the applicant was advised that the proposed extension of hours till 9pm could not be supported as the cafe was an ancillary use to the Marina operation and the approved hours of operation ceased at 5pm. On 4 December 2020, the applicant formally amended their application to extend the trading hours to 5pm seven days a week. The application was not renotified in this instance as the additional hour and a half of trading from 3.30pm to 5.00pm is not considered to constitute a significant change and is considered to maintain minimal environmental and amenity impacts due to the distance from any surrounding neighbours.

Council's records do not identify any further relevant history for the site.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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 and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2019/1279, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

| Section 4.55(1A) - Other Modifications | Comments |
|---|---|
| A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if: | |
| (a) it is satisfied that the proposed modification is of minimal environmental impact, and | <p>Yes</p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <ul style="list-style-type: none"> • The proposed modification does not require any physical changes to the premises and involves a change in the hours of operation on a Friday and Saturday only. |
| (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and | <p>The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2019/1279 for the following reasons:</p> <ul style="list-style-type: none"> • The premises remains a cafe operating ancillary to the Marina. |
| (c) it has notified the application in accordance with: | The application has been publicly exhibited in accordance with the Environmental Planning and |

| Section 4.55(1A) - Other Modifications | Comments |
|--|--|
| (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and | Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Pittwater Local Environment Plan 2014 and Pittwater 21 Development Control Plan. |
| (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be. | See discussion on "Notification & Submissions Received" in this report. |

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of 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 | Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for the purpose of a marina and ancillary offices and cafe for an extended period of time. The proposed development retains the established uses on the site, and is not considered a contamination risk. |
| 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)(iia) – Provisions of any planning agreement | None applicable. |
| Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000) | <u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent. |

| Section 4.15 'Matters for Consideration' | Comments |
|--|---|
| | <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 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 93 and/or 94</u> of the EP&A Regulation 2000 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. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 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 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p> |
| 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>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p> |
| Section 4.15 (1) (c) – the suitability of the site for the development | The site is considered suitable for the proposed development. |
| Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs | See discussion on “Notification & Submissions Received” in this report. |

| Section 4.15 'Matters for Consideration' | Comments |
|--|---|
| 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.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 10/09/2020 to 24/09/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 3 submission/s from:

| Name: | Address: |
|--|--|
| Mrs Susan Louise Wilcox Mr Robert Lawrence Fraser | 25 / 1927 - 1931 Pittwater Road BAYVIEW NSW 2104 |
| Ms Rhonda Gai Daly | 58 / 2 Forest Road WARRIEWOOD NSW 2102 |
| Mr Phillip John Glasby | 6 Valley Close BAYVIEW NSW 2104 |

Notification of the application resulted in three (3) submissions. All submissions were in support of the application.

REFERRALS

| Internal Referral Body | Comments |
|--------------------------------------|--|
| Environmental Health (Industrial) | Environmental Health have considered the report prepared by Watermark Planning August 2020 regarding increased trading hours (9pm on Fridays and Saturdays). An onsite inspection was completed and community submissions were considered. Approval is recommended. |

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 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 Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the continued commercial land use.

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP 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 (Coastal Management) 2018

The subject site has been identified as being within the coastal zone and therefore SEPP (Coastal Management) 2018 is applicable to the development.

The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps. The site is not included on a Coastal Vulnerability Area Map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence Clauses 13, 14 and 15 of the CM SEPP apply for this application, noting that the application relates to a change in hours of operation with no building works proposed.

13 Development on land within the coastal environment area

(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:

- (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
- (b) coastal environmental values and natural coastal processes,*
- (c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
- (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
- (e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
- (f) Aboriginal cultural heritage, practices and places,*
- (g) the use of the surf zone.*

Comment: The proposal is unlikely to have an adverse impact on any of the above

(2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

- (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*
- (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment: The proposal design and siting will avoid any adverse impacts

14 Development on land within the coastal use area

(1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:

- (a) has considered whether the proposed development is likely to cause an adverse impact on the following:*

(i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,

(ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,

(iii) the visual amenity and scenic qualities of the coast, including coastal headlands,

(iv) Aboriginal cultural heritage, practices and places,

(v) cultural and built environment heritage, and

(b) is satisfied that:

(i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or

(ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or

(iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and

(c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment: The proposal is not likely to have adverse impact on the surrounding coastal environment.

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

hazards

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

Comment:

Comment: The development is unlikely to cause increased risk of coastal hazards on the subject site or other land.

Pittwater Local Environmental Plan 2014

| | |
|--|--------------------------------|
| Is the development permissible? | Zone IN4: Yes Zone W2 : No |
| After consideration of the merits of the proposal, is the development consistent with: | |
| aims of the LEP? | Yes |
| zone objectives of the LEP? | Zone IN4: Yes Zone W2 : Yes |

Principal Development Standards

The proposed development seeks a change in operating hours only with no building works. Accordingly, the the Principal Development Standards are not applicable to this application.

Compliance Assessment

| Clause | Compliance with Requirements |
|--|------------------------------|
| 1.9A Suspension of covenants, agreements and instruments | Yes |
| 4.3 Height of buildings | Yes |
| 5.10 Heritage conservation | Yes |
| 7.1 Acid sulfate soils | Yes |
| 7.3 Flood planning | Yes |
| 7.8 Limited development on foreshore area | Yes |
| 7.10 Essential services | Yes |

Detailed Assessment

Zone IN4 Working Waterfront

Permissibility

The site was previously approved as a 'kiosk' approved under DA258/14 by Pittwater Council. A kiosk is permissible with consent in the IN4 Working Waterfront Zone and is defined as follows:

"Kiosk means premises that are used for the purposes of selling food, light refreshments and other small convenience items such as newspapers, films and the like. Kiosks are a type of retail premises."

The subject application seeks consent to change the use of the kiosk to a cafe. A restaurant or cafe is not listed as a permissible use within the land use table and is therefore prohibited in the zone. A restaurant/cafe is defined as:

"A restaurant or cafe means a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, takeaway meals and drinks or entertainment are also provided. Restaurants or cafes are a type of food and drink premises."

DA2019/1279, approved the 'cafe' use as an ancillary use to the dominant marina use.

The key operational hours for the Marina Offices is 7am to 5pm Monday to Sunday. While the application originally sought to extend the proposed hours of operation beyond 5pm, to 9pm on a Friday and Saturday evening to service returning marine craft operators who are permitted to return to the

marina and secure their vessels after the offices are closed. As this fails to adequately satisfy the 'ancillary' use of the marina, the application was amended to align with the approved hours of operation of the marina to 5pm seven days a week.

5.10 Heritage conservation

The subject site adjoins three street trees which are located within the Pittwater Road road reserve listed within PLEP 2014 as:

Street trees—1 Bunya Pine (Araucaria bidwillii) and 2 Norfolk Island Pines (Araucaria heterophylla)

The street trees have local heritage significance and are not impacted by the proposed change of use.

The proposed development is considered satisfactory in terms of heritage conservation.

Pittwater 21 Development Control Plan

Built Form Controls

The proposed development seeks a change in operating hours only with no building works. Accordingly, the the Built Form Controls are not applicable to this application.

Compliance Assessment

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|---|------------------------------|-----------------------------|
| A1.7 Considerations before consent is granted | Yes | Yes |
| A4.15 Waterways Locality | Yes | Yes |
| B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites | Yes | Yes |
| B3.1 Landslip Hazard | Yes | Yes |
| C2.10 Pollution Control | Yes | Yes |
| C2.12 Protection of Residential Amenity | Yes | Yes |
| D15.2 Scenic protection - General | Yes | Yes |
| D15.11 Waterfront lighting | Yes | Yes |
| D15.20 Commercial waterfront development - pollution prevention | Yes | Yes |

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.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

Section 7.12 contributions were levied on the Development Application.

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 2000;
- 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

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 approval to Modification Application No. Mod2020/0419 for Modification of Development Consent DA2019/1279 granted for use of part of the marina as a cafe on land at Lot 307 DP 727043, 1710 Pittwater Road, BAYVIEW, Lot 1 DP 112399, 1710 Pittwater Road, BAYVIEW, subject to the conditions printed below:

A. Modify Condition 11. Hours of Operation to read as follows:

The hours of operation are to be restricted to:

MONDAY 7.00am - **5.00pm**

| | |
|-----------|------------------------|
| TUESDAY | 7.00am - 5.00pm |
| WEDNESDAY | 7.00am - 5.00pm |
| THURSDAY | 7.00am - 5.00pm |
| FRIDAY | 7.00am - 5.00pm |
| SATURDAY | 7.00am - 5.00pm |
| SUNDAY | 7.00am - 5.00pm |

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

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

In signing this report, I declare that I do not have a Conflict of Interest.

Signed

Renee Ezzy, Planner

The application is determined on 07/12/2020, under the delegated authority of:



Lashta Haidari, Acting Development Assessment Manager