

4 July 2018

Our Ref: 18-123

The General Manager
Northern Beaches Council
725 Pittwater Road
Dee Why NSW 2099

Dear Sir/Madam,

RE: S4.55(1A) MODIFICATION APPLICATION TO N0037/16 IN RELATION TO 1 KALINYA STREET, NEWPORT.

This report has been prepared for **Merivale** by City Plan Strategy and Development Pty Ltd to accompany an application under Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 (the Act).

1. THE APPROVED DEVELOPMENT

DA N0037/16 was granted by Northern Beaches Council on 17 March 2016 for:-

"The construction of a new pavilion structure within the existing outdoor terrace."

The consent applies to land in Lot 1 DP72587, known as 1 Kalinya Street, Newport.

2. PROPOSED MODIFICATION

The application is for modifications to the approved pavilion structure under DA N0037/16 to include an internal Bar and external walls with windows and glazed sliding doors to enclose the pavilion. In detail, the proposed external walls include the following elements:

- South east elevation: Eight (8) timber framed hinged windows;
- South west elevation: Two (2) timber framed hinged windows;
- North east elevation: Two (2) large timber framed windows; and,
- North west elevation: Timber framed glazed sliding doors.

The application seeks to modify the approved architectural plans and reference to these plans in the determination. It also seeks to modify Condition B.2. The details of and justification for the proposed modifications and an assessment of impacts, if any, are detailed below.

2.1 Architectural Plans

Condition	Proposed Modification
<p><i>The Development Application has been determined by the granting of consent based on information provided by the applicant in support of the application, including the Statement of Environmental Effects, and in accordance with:</i></p> <ul style="list-style-type: none"> Architectural drawings prepared by Akin Creative, DA D01 issue A dated 22 January 2016 and DA M01, issue B, dated 15 March 2016. 	<p>Amend condition to include amended plans:</p> <ul style="list-style-type: none"> Architectural drawings prepared by Akin Creative, DA D01 issue A dated 22 January 2016 and DA M01, issue B, dated 15 March 2016 s4.55-D01 issue B dated 01 June 2018 and s4.55-M01 issue C dated 01 June 2018.

Reason for modification:

The proposal involves modifications to the approved design of the pavilion structure, including the addition of an internal Bar and façade changes as discussed above. It is proposed to modify the development consent to refer to the amended plans. Refer to Figures 1 to 7 below detailing the proposed modifications and amended plans.

Elevations:

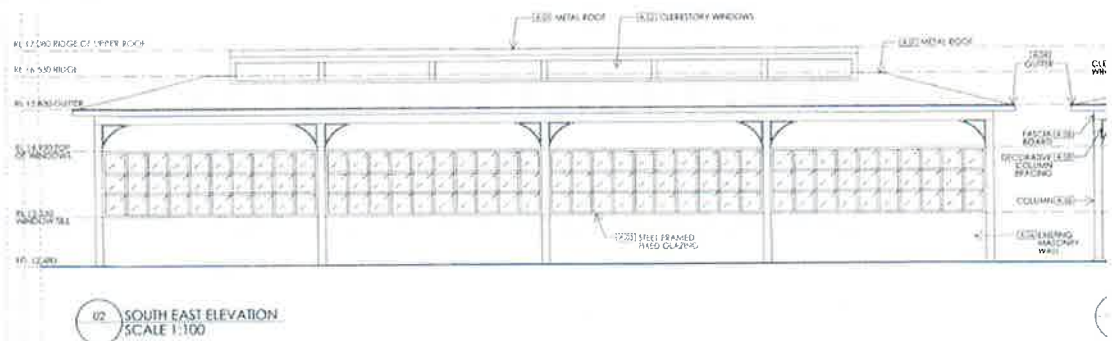


Figure 1. DA approved South East Elevation (Source: Akin Creative).

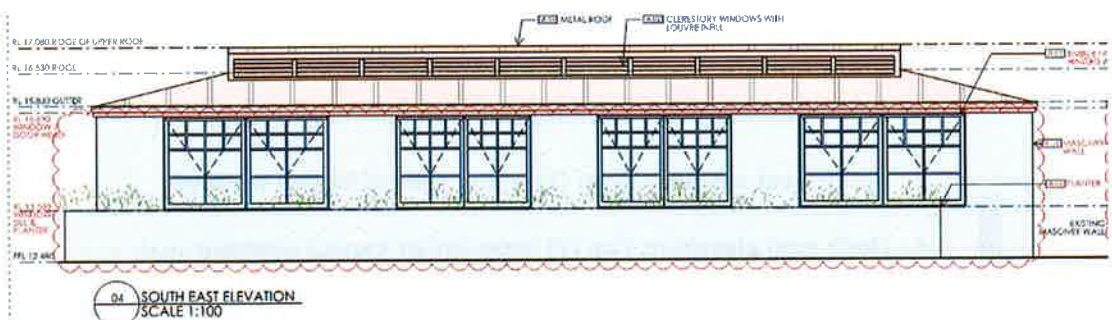


Figure 2. Proposed South East Elevation (Source: Akin Creative).

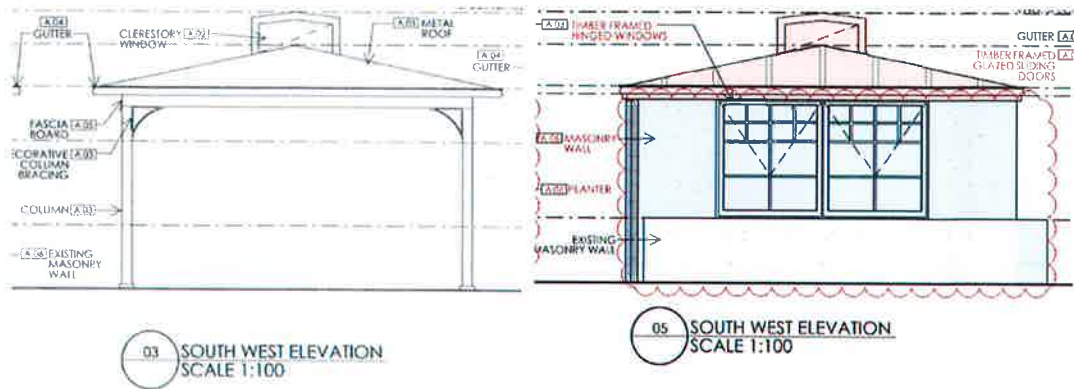


Figure 3. DA approved (left) and proposed (right) South West Elevation (Source: Akin Creative).

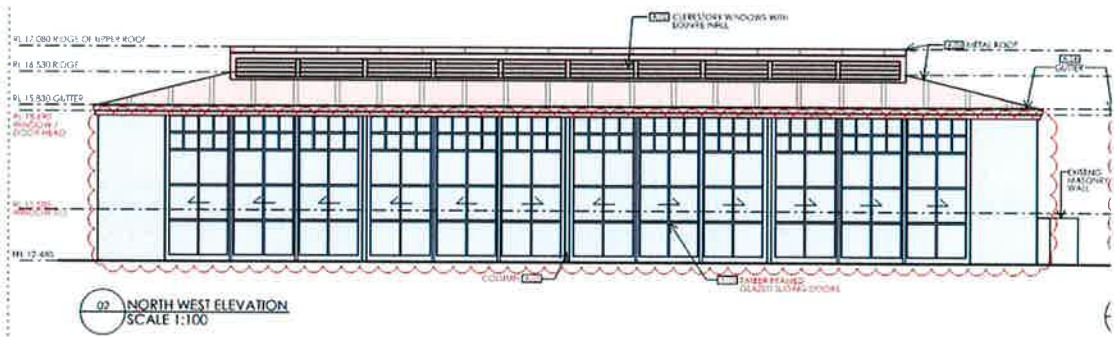


Figure 4. Proposed North West Elevation (Source: Akin Creative).

Section:

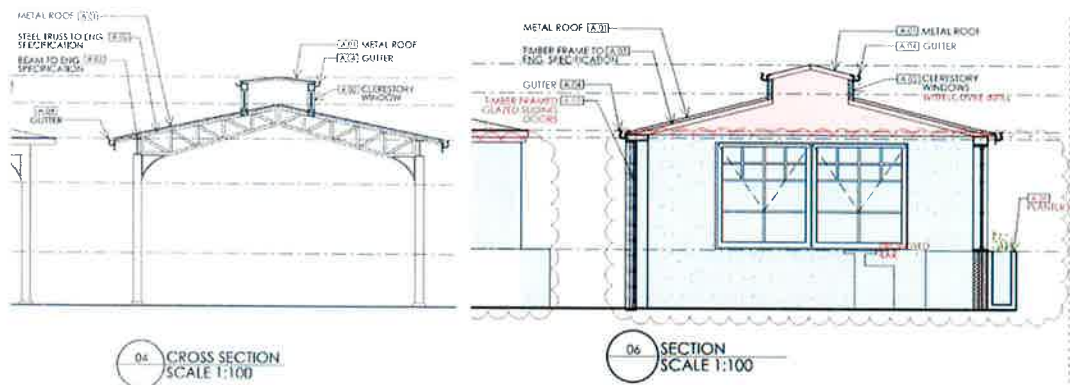


Figure 5. DA approved (left) and proposed (right) Section (Source: Akin Creative).

Site Plan:

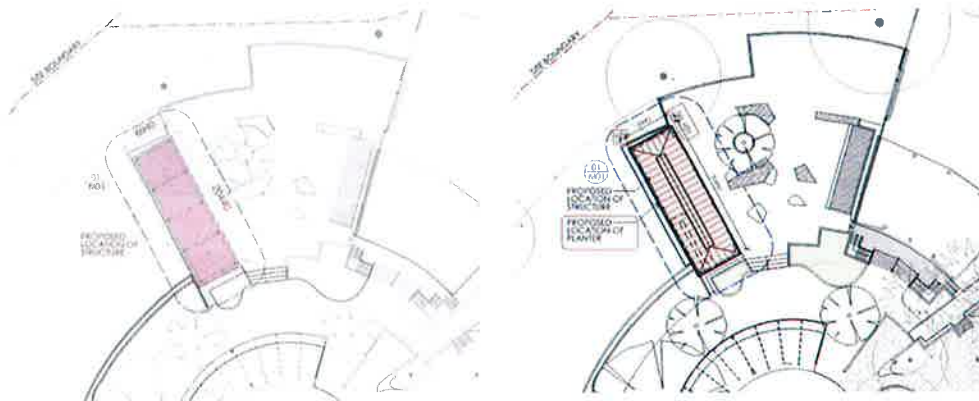


Figure 6. DA approved (left) and proposed (right) Site Plan (Source: Akin Creative).

Floor Plan:

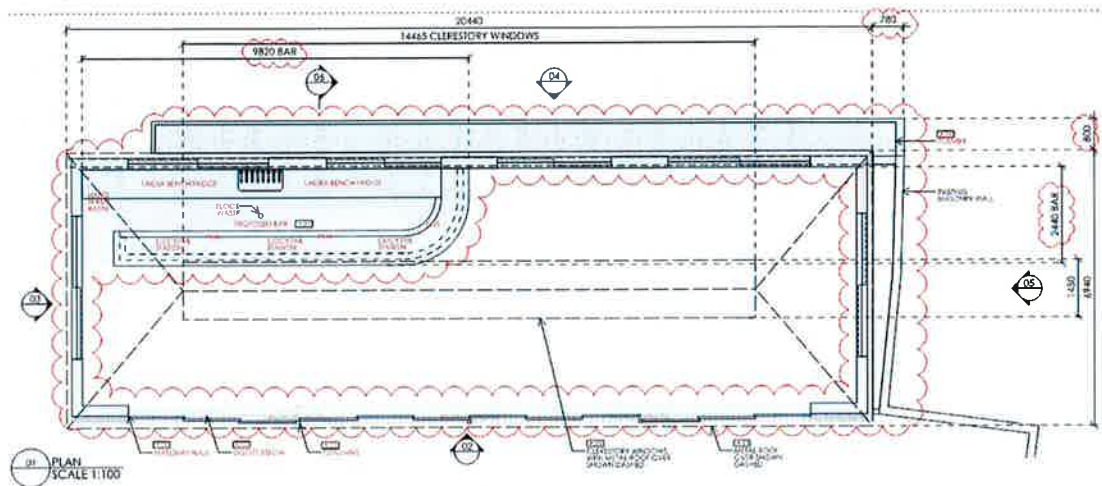


Figure 7. Proposed Floor Plan including internal modifications (Source: Akin Creative).

2.2 Condition B.2

Condition B.2.	Proposed Modification
<p><i>This consent does not authorise any change or intensification of use. Specifically, this consent does not authorise the use of the pavilion structure for the purpose of a Bar, Seafood Bar or any other sort of service area or food preparation area.</i></p>	<p>Delete condition. We note it is proposed to include a Bar area within the pavilion structure and this condition is inconsistent with the proposed modification.</p>

Reason for modification:

The proposed modification includes the addition of a Bar area within the southern part of the approved pavilion structure. Condition B.2 does not authorise the use of the pavilion structure for the purpose of a Bar and is proposed to be deleted as it is inconsistent with the modification. We note that no food preparation is proposed within the pavilion structure.

3. MATTERS FOR CONSIDERATION UNDER SECTION 96

3.1 Overview

Section 4.55 of the Environmental Planning and Assessment Act, 1979 (the Act) confers on a consent authority the power and discretion to modify a consent granted under the Act.

The relevant provisions of the Act state:

“Modification of consents

(1A) Modifications involving minimal environmental impact. 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*
- b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all) under this section, and*
- c) it has notified the application in accordance with:*
 - 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*
- 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.*

Subsections 4.55 (3) states as follows;

“(3) In determining an application for modification of a consent under this section, 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 matters prescribed under Section 4.55 are addressed below.

3.2 Minimal Environmental Impact (Section 4.55(1A)(a))

The proposed modifications do not involve any substantial change to the approved development that was assessed as having acceptable environmental impact pursuant to the approval of DA N0037/16. As described in Sections 3.3 and 3.4 below, the proposed modifications result in minimal to no additional or adverse impacts on the site or the surrounding locality.

The proposal will not increase patron numbers or capacity at the site and therefore will not change the intensification of use. The proposed modifications are therefore appropriate to characterise as having “minimal environmental impact”.

3.3 Substantially the Same Development (Section 4.55(1A)(b))

As stated, the proposed modifications do not seek to change the nature and substance of the approved development in any way.

In our view, “substantially the same development” means “essentially or materially or having the same essence” as defined by Pearlman C.J. in *Schroders Australian Property Management Ltd v Shoalhaven City Council and Anor* (1999) NSWLEC 251. Accordingly, it is the substance of the proposal relative to the substance of the development as originally approved. The proposed development is essentially, and materially, the same as the approved development for the following reasons:

- The proposed modification relates to an approved existing structure and will not increase the floor area. There will be no adverse visual impact that will result from the design modifications and introduction of an internal Bar as it will not be visible from the surrounding public domain; and,
- There will be no intensification of the use of the premises.

Further, the proposed modification will not result in any of the following:

- Any change to the relationship to adjoining properties;
- Any adverse impact on neighbouring properties from the changes (overshadowing; visual and acoustic privacy; traffic generation, visual impact etc.).

We therefore consider that the development (as modified) will remain substantially the same as the development that was originally approved, under DA N0037/16.

3.4 Section 4.15(1) Considerations (Section 4.55(3))

The environmental assessment matters relevant to the proposed modified development under Section 4.15(1) (a), (b), (c), (d) and (e) of the Act are addressed below.

- *Environmental planning controls*

The principal planning controls applying to the development are contained in:

- Pittwater Local Environmental Plan 2014 (PLEP)
- Pittwater 21 Development Control Plan 2014 (PDCP)

Since there are no substantive changes to the development proposed, the modified proposal remains consistent with the relevant provisions of those controls as detailed in the original application and as subsequently assessed by Council in granting the consent. However, further consideration of the relevant controls in the context of this modification are provided below.

PLEP Clause 4.3 Height of Buildings

Clause 4.3 of the Pittwater Local Environmental Plan 2014 indicates a maximum Height of Buildings development standard of 8.5 metres at the site. No change is proposed to the height of the approved pavilion structure.

PLEP Clause 5.10 Heritage conservation

The site is a local Heritage Item, known as "Newport Arms Hotel" (Item 2270476), listed under Schedule 5 of the Pittwater Local Environmental Plan 2014 (PLEP). The Heritage Impact Statement submitted under DA N0037/16 details that *"the Newport Arms is of high local historic and social significance due to its continuous operation as a pub in the Pittwater area since 1880 and as it is the oldest pub in the area. It hosted royal visitors touring the area in 1881, and was part of the recreational activities of day-trippers in the 1890s. It is also significant for its association with Sydney pioneer Edward Jeanerett, and its aesthetic contribution to the street and maritime landscape."*

It concluded that the works are considered *"acceptable from a heritage perspective and are consistent with the Statement of Significance and Recommended Management guidelines set out in the State Heritage Inventory form for the site"*.

The proposed design changes to the approved pavilion structure and the addition of an internal Bar will not adversely impact the heritage significance of the site or Heritage Item and will remain consistent with the above conclusion.

■ Environmental impacts and site suitability

There is nothing with respect to the modifications that would result in any environmental impact, or affect the suitability of the site for the development as approved or as proposed to be modified. The pavilion structure will not result in any adverse visual impacts, noting that the modifications relate to an existing structure and complement its architectural style.

The pavilion structure is located toward the rear of the beer garden and adjacent to the onsite open car park. The works will be a significant distance from the nearest residential uses close by as illustrated on the map in Figure 8.



Figure 8. Annotated aerial photograph of the proposed works and relationship to residential land uses (Source: SixMaps).

The proposed design modifications and addition of an internal Bar will not change the intensity of use of the overall site and there will be negligible if any amenity associated impacts on residential land uses.

- *The public interest*

No public interest issues arise as a consequence of the proposed modifications. There are no substantial changes proposed to the overall development approval and no public disbenefit.

The Newport Hotel is something of a social institution in the area. This proposal will enhance the hotel facilities on the site and assist in maintaining this role into the future.

4. CONCLUSION

The proposal relates to modifications to the approved pavilion structure under DA N0037/16 to include an internal Bar and external walls with window and glazed sliding doors to enclose the structure.

The impacts of the modification are minor and the development will remain substantially the same as approved under DA N0037/16. The changes, being an amendment that maintains the integrity of the approved development and the intent of the conditions, will have no adverse environmental impacts. Accordingly, the modification is within the ambit of Section 4.55(1A) of the Act.

Further, the assessment of the modified proposal pursuant to the relevant Section 4.15(1) evaluation criteria does not alter the assessment undertaken in the SEE and Council's assessment of the original development application. We see no reason therefore why the modifications should not be approved.

Should you require any further clarification or information in respect to this application, please contact the undersigned on (02) 8270 3500.

Yours Sincerely,



Stephen Kerr
Executive Director