

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2023/0415
<b>Responsible Officer:</b>	Danielle Deegan – Consultant Town Planner
<b>Land to be developed (Address):</b>	Lot 7002 and 7005 DP 1117451, 1193 Barrenjoey Road PALM BEACH NSW 2108 Lot 298 DP 721522, 1191 Barrenjoey Road PALM BEACH NSW 2108
<b>Proposed Development:</b>	Modification of Development Consent DA2021/0669 granted for Demolition works and construction of a new restaurant, carparking and associated uses
<b>Zoning:</b>	C2 Environmental Conservation RE1 Public Recreation
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	NSW Government - Department of Industry - Lands Island Getaway Pty Ltd Nitola Pty Ltd NBT Pty Ltd
<b>Applicant:</b>	The Trustee for BT London Lakes Trust Others

<b>Application Lodged:</b>	14/08/2023
<b>Integrated Development:</b>	Yes
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	21/08/2023 to 18/09/2023 and 16/11/2023 to 14/12/2023
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	Two (2)
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### EXECUTIVE SUMMARY

This application seeks approval for a modification of the existing consent DA2021/0669 which approved 'Demolition works and construction of a new restaurant, carparking and associated uses' at the site known as the 'Boathouse Palm Beach'. The associated uses approved with the redevelopment of the boathouse include a boat hire business and a seaplane charter business (permitted with consent under Schedule 1 Additional Permitted Uses of the Pittwater LEP 2014 and approved under DA2021/0669).

The modifications proposed in the current application comprise a number of external and internal changes to the Boathouse building. They do not affect the approved building height or propose any changes to ancillary buildings, landscaping or car parking provision.

The proposed external changes include the addition of ventilation and satellite equipment on the roof, changes to external window/door openings and changes to awning details on the eastern facade. The proposed internal changes include minor internal reconfiguration and minor floor level changes to incorporate a slight slope for drainage.

The application was exhibited between 21/08/2023 to 18/09/2023. Two (2) submissions relating to opening hours were received.

The Manager review process for this application identified that the requirements of the Council-related Development Applications Policy, which applies to the development, were not satisfied on lodgement of the application. Specifically, the Policy requires referral to the Executive Manager Development Assessment for a conflict-of-interest assessment and preparation of a Management Statement. This Statement must then be publicly exhibited for 28 days.

The Management Statement was consequently prepared on 9/11/2023 and re-advertising of the application was undertaken between 16/11/2023 to 14/12/2023. No further submissions were received.

The Local Planning Panels Direction made on 1 November 2023 means that Council is the determining authority for the determination of the subject 4.55(1A) modification application.

Given that the proposed modifications are acceptable in terms of heritage, visual and environmental impacts, it is recommended that Council grant approval to the modification application, subject to conditions.

## **PROPOSED DEVELOPMENT IN DETAIL**

This Section 4.55(1A) application seeks the following modifications;

### External changes:

- Installation of two (2) small satellite dishes on main roof
- Addition of an air intake opening for ventilation of the kitchen on the northern skillion roof.
- Installation of a 'whirly bird' for air extraction to void around cool room
- Replacement of three (3) fixed awnings on the eastern elevation with one continuous awning, 1.25m wide at the southern end, increasing to 1.65m wide above deck adjacent to the kitchen, for weather protection
- Reduction in size of two (2) kitchen windows with sills increasing from 900mm to 1.1m
- Replacement of a kitchen door in east elevation with a window (sill height of 1.1m)
- Outside servery to take away on eastern side, 300mm wide

### Internal changes:

- New entry to kitchen to right of main entry doors
- Changes to front passes from kitchen
- Widening of opening to cold drinks area and deletion of freezer
- Removal of full height wall in takeaway food bar area
- Minor level changes to ground floor with slight slope of 1:800 or 1.25mm per metre, including:
  - Raise at entry by 10mm from RL 2930 to RL 2940

- Raise level at balcony door by 25mm from RL 2930 to RL 2955 to allow for drainage for kitchen and takeaway area.

## 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 – Clause 5.10 Heritage Conservation

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 7002 and 7005 DP 1117451, 1193 Barrenjoey Road PALM BEACH NSW 2108 Lot 298 DP 721522, 1191 Barrenjoey Road PALM BEACH NSW 2108
<b>Detailed Site Description:</b>	<p>The site containing the existing Boathouse Café building is located adjacent to Governor Phillip Park, at Nos. 1191 to 1193 Barrenjoey Road, Palm Beach on Station Beach and fronts Pittwater on the isthmus that links the Barrenjoey Headland and Palm Beach.</p> <p>The site of the Boathouse redevelopment extends over the following three (3) allotments and is subject to a split zoning:</p> <p>Lot 298, in DP 721522, (containing the existing Boathouse Café) is on the seaward side of Mean High Water Mark (MHWM) and is zoned C2 Environmental Conservation. Crown Land is managed by the Department of Industry – Crown Lands.</p> <p>Lot 7005, in DP1117451 extends from the MHWM easterly</p>

	<p>for approximately 25 metres, generally in line with Barrenjoey Beach and the foreshore and is zoned RE1 Public Recreation. Crown Land is part managed by the Department of Industry – Crown Lands and part managed by Council.</p> <p>Lot 7002, in DP1117592 is the most eastern portion of the site and generally covers street frontage of the site, the street and the adjacent access road car park, and is zoned RE1 Public Recreation. Crown Land is managed by Northern Beaches Council.</p> <p>The existing two-storey building and deck structure on the site is currently under construction. The previous building accommodated three businesses including the predominant use on site (being the Boathouse café), a boat hire business and the offices of a seaplane charter operator, Sydney by Seaplane. Seating associated with the use of the café was provided on the outdoor rear deck and into the front Licenced Area. A two-bedroom caretakers unit occupied the first floor.</p> <p>A wharf extends from the Boathouse building into Pittwater and is publicly accessible from Governor Phillip Park with mooring facilities for multiple boats and sea planes.</p> <p>Vehicular access to the site is via the Governor Phillip Park loop road extending from Barrenjoey Road. The site is predominantly flat with a slight fall from the east to the west. There is a landscaped area to the east of the Boatshed including 3 x Norfolk Pines.</p>
	<p><b>Description of Surrounding Development</b></p> <p>Directly to the west of the site is Pittwater, to the east of the site is the Barrenjoey Road accessway, providing vehicular access to Barrenjoey Head, and to Governor Phillip Park. To the north of the site is Station Beach which leads to Barrenjoey Head. To the south of the site Station Beach continues leading to Observation Point. Governor Phillip Park is characterised by natural areas, pathways, parking areas, cafes, recreational uses and community facilities.</p>

Map:



## SITE HISTORY

The land has been used for boat hire, sea plane charter and café use for an extended period. A search of Council's records has revealed the following relevant history:

- On 25 November 2008, the ground floor of the building was partly used as a café called 'Carmel's by the Sea'. 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 Pre-DA lodgement 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 Licensed Area.
- On 27 April 2015, the Council's Compliance Department investigated alleged unauthorised pop-up stalls and other structures within the Licensed Area.
- On 7 March 2018, Development Application N0302/17 for alterations and additions to 'The Boathouse' including change of use of first floor to a restaurant office, demolition of ancillary buildings, new external services building, seawall protection measures and an altered carpark with associated landscaping was refused by Council.
- On 10 December 2021, the applicant withdrew the Voluntary Planning Agreement (VPA) relating to the provision of 10 car parking spaces on public land.
- On 15 December 2021, Development Application (the subject of this modification application) DA2021/0669 was approved by the Northern Beaches Local Planning Panel. The development was approved for the demolition and reconstruction of the existing premises known as The Boathouse Palm Beach (the Boathouse). Specifically, the approved development comprises:

- Demolition of the existing structures on Lot 298 (excluding the existing wharf).
  - Replacement of existing piles with taller supporting piles.
  - Construction of a two-storey building, with a raised floor level, for continued use of a café, boat hire and seaplane office. The café and boat hire business will be accommodated on the ground floor, with the seaplane booking office and café staff amenities located on the first floor.
  - Four (4) x building identification signage.
  - Construction of a new ancillary building, replacing the existing outbuildings south-east of the Boathouse building, for use as bathroom amenities (open to the public), storeroom and waste storage room.
  - Raise the upper level of the seaward decking.
  - Landscaping and associated works within the adjacent leased land within Governor Phillip Park.
  - Addition of further landscaping south of loading bay and north of parking bays, including dune stabilisation works.
  - Enlargement of parking bays to the north of the building to achieve compliance with the relevant Australian standards.
  - Install a pedestrian path running north from eastern side of Boat House to the Barrenjoey Beach.
  - The proposed hours of operation for in-house dining, takeaway meals and refreshments are 7.00am to 4.00pm, 7 days a week.
  - The proposed hours of operation for functions are 4.00pm to 10.00pm on Fridays and Saturdays during summer periods.
  - The proposed maximum number of patrons is 152.
- On 4 May 2022, Section 4.55(1A) Modification Application Mod 2022/0153 was approved by the Northern Beaches Local Planning Panel. Mod 2022/0153 modified two (2) development consent conditions within DA2021/0669 relating to the timing of the submission of the Environmental Management Plan and the Dangerous Goods Storage. Both conditions were requirements that were to be fulfilled prior to the issue of a construction certificate.
  - On 2 August 2023, Section 4.55(1A) Modification Application Mod 2023/0171 was approved by the Northern Beaches Local Planning Panel. Mod 2022/0153 made numerous minor design changes, including adjustments to fenestration (treatment, sill heights, size), door openings, internal reconfiguration, deletion of an external pedestrian ramp and the addition of solar panels to the roof.

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

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 DA 2021/0669 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:

<b>Section 4.55(1A) - Other Modifications</b>	<b>Comments</b>
<p>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:</p>	
<p>(a) it is satisfied that the proposed modification is of minimal environmental impact, and</p>	<p><b>Yes</b></p> <p>The modification, as proposed in this application, is of minimal environmental impact for the following reasons:</p> <ul style="list-style-type: none"> <li>• The modified proposal has the same building footprint, building envelope and height. The proposed minor changes will have minimal visual impacts.</li> <li>• The proposed modifications will have no amenity impacts to surrounding properties or the public domain.</li> <li>• The proposed modifications will not result in detrimental impacts on the heritage conservation area.</li> </ul>
<p>(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>	<p>The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2021/0669 for the following reasons:</p> <ul style="list-style-type: none"> <li>• The use, height, bulk and scale of the development is retained.</li> <li>• The minor design changes will have minimal visual impacts and no environmental impacts.</li> </ul>
<b>Section 4.55(1A) - Other Modifications</b>	<b>Comments</b>
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(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</p>	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.</p>

<b>Section 4.55(1A) - Other Modifications</b>	<b>Comments</b>
(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.	The two (2) submission have been received in relation to this application are addressed below.

**Section 4.15 Assessment**

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining a 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:

<b>Section 4.15 'Matters for Consideration'</b>	<b>Comments</b>
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	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via an existing condition of consent.



Section 4.15 'Matters for Consideration'	Comments
Regulation 2021 (EP&A Regulation 2021)	<p><u>Clause 29</u> of the EP&amp;A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</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 matter has been addressed via an existing condition of consent.</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 an existing 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 an existing condition of consent.</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) <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>
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	Two (2) submissions have been received in relation to this application.

Section 4.15 'Matters for Consideration'	Comments
EPA Regs	
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 modification application has been publicly exhibited for 28 Days from 21/08/2023 to 18/09/2023 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 of the application Council received two (2) submissions, both expressing support for the proposal but raising concerns about the 12pm finishing time on a Saturday night.

Response: The approved closing time is 10 pm on a Saturday and there are no changes proposed to the approved hours of operation under this application. The existing consent condition No. 97 requires service (and entertainment) to cease by 10 pm, at the latest, on a Saturday and all customers on the premises are required to leave within the following 30 minutes.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p><b>Supported</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</b></p> <p>Environmental Health supports the proposal without conditions.</p>
Environmental Health (Food Premises, Skin Pen.)	<p><b>Supported</b></p> <p>Continuing conditions from the DA will address compliance with AS4674-2004 matters.</p> <p>Environmental Health supports the proposed modifications without additional conditions.</p>

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	<p><b>Supported</b></p> <p>No tree removal is required as part of the modifications and as per previous Biodiversity Referral Response, the Biodiversity referral team defer to Council's Coast and Catchments referral team for comment on possible seagrass impacts. No new conditions of consent will apply. No native vegetation or fauna habitat will be impacted, and the development is designed, sited and will be managed to avoid any significant adverse environmental impact.</p> <p>Adherence to Natural Environment Consent Conditions All biodiversity-related conditions of consent under previous development applications are to be adhered to, including DA2021/0669, unless amended by these biodiversity-related conditions of consent.</p>
Property and Commercial Development	<p><b>Supported</b></p> <p>The proposal is a modification to an existing development consent for demolition works and construction of a new restaurant carparking and associated uses. Property has no comment to make regarding the proposed modification.</p>
Parks, Reserves and Foreshores	<p><b>Supported</b></p> <p>No external works are proposed, and the landscape and public domain outcomes remain unaltered.</p>
Engineering	<p><b>Supported</b></p> <p>No objections to the proposed modifications to the waterfront restaurant, no additional conditions required.</p>
Natural Environment (Coastal)	<p><b>Supported</b></p> <p>On internal assessment, the proposed modifications satisfy requirements under clauses 2.10, 2.11 and 2.12 of the State Environmental Planning Policy (Resilience and Hazards) 2021. As such, it is considered that the application does comply with the requirements of the SEPP (R&amp;H) 2021.</p> <p>The subject property has also 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.</p> <p>Modifications include, among others, RL Changes to Ground floor finished level which doesn't affect 1st floor or ridge height with level raised at entry by .010 from RL 2930 to RL 2940 and level at balcony door by .025 from RL 2.930 to RL 2.955.</p>

Internal Referral Body	Comments
	<p>On internal assessment, the ground floor level for the proposed modifications is above the applicable EPL for the site. The proposed development is therefore able to satisfy the relevant estuarine risk management requirements of P21 DCP.</p>
Heritage	<p><b>Supported</b></p> <p>This application proposes modifications to Consent DA2019/0669, which approved the demolition and rebuilding of the Boathouse restaurant, along with associated uses, carparking and landscaping. These modifications include a number of external and internal changes to the Boathouse building. They do not affect the overall height of the building nor propose any changes to ancillary buildings, landscaping or car parking provision.</p> <p>The application is accompanied by a Brief Statement of Heritage Impact by City Plan Heritage, dated 10 July 2023. This document has been reviewed and its conclusions agreed with.</p> <p>Heritage considerations with this application relate to how the building sits within the Barrenjoey Heritage Conservation Area and the visual impact of the building in this setting. As a result, there are no heritage concerns in relation to any of the proposed internal changes.</p> <p>External changes include the addition of structures on the roof, changes to external window/door openings and changes to awning details on the eastern facade. The additional roof structures (2 small satellite dishes, new air intake and a Whirly Bird) are considered to be minor additions to the roofscape and will not be a dominant intrusion. Changes to the windows and doors relate to minor changes, including increasing the sill height of a number of windows, replacing a door with a window and increasing the size of the outside servery windows. These changes are considered minor and will not impact upon the overall appearance on the Boathouse building when viewed from the Heritage Conservation Area. The only other external change is replacement of the individual fixed awnings on the eastern facade with a continuous and extended awning, providing a consistent look and better weather protection. It is considered that this awning change will have no visual impact upon the significance of the Heritage Conservation Area.</p> <p>Therefore, no objections are raised on heritage grounds and no conditions required.</p>
Building Assessment	<p><b>Supported</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>

Internal Referral Body	Comments
	<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> <p>The proposal is therefore supported.</p>
External Referral Body	Comments
<p>Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48</p>	<p><b>Supported, no additional or modified conditions required</b></p> <p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations have been included as a condition of consent.</p>
<p>Aboriginal Heritage Office</p>	<p><b>Supported, no additional or modified conditions required</b></p> <p>Reference is made to the proposed development at the above area and Aboriginal heritage.</p> <p>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>Under the <i>National Parks and Wildlife Act 1974</i> (NPW Act) all Aboriginal objects are protected. Should anything thought to be Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office be contacted. In line with our normal advice for sandy areas, the Aboriginal Heritage Office recommends that the development conditions should provide for stop work provisions (unexpected discovery protocol) in the unlikely event that human remains are uncovered. Should human remains be uncovered, works must cease, and the NSW Police must be contacted.</p>
<p>DPI Fisheries</p>	<p><b>Supported, subject to the General Terms of Approval relating to DA2021/0669.</b></p> <p><i>DPI Fisheries is responsible for ensuring that fish stocks are conserved and that there is no net loss of key fish habitats upon which they depend. To achieve this, DPI Fisheries ensures that developments comply with the requirements of the Fisheries Management Act (FM Act) (namely the aquatic habitat protection and threatened species conservation provisions in Parts 7 and 7A of the Act, respectively), and the associated Policy and Guidelines for Fish Habitat Conservation and Management (2013). DPI Fisheries is also responsible for ensuring the sustainable management of commercial, recreational and Aboriginal cultural fishing, aquaculture, marine parks</i></p>

External Referral Body	Comments
	<p><i>and aquatic reserves in NSW.</i></p> <p><i>DPI Fisheries has reviewed the proposal in light of those provisions and has no objections, subject to the proponent meeting the General Terms of Approval (GTAs) in relation to the original Development Application DA2021/0669 (our ref IDA21/68 and IDA23/39), and those that follow. As per s.4.47(3) of the Environmental Planning and Assessment Act 1979, any consent issued by Council must be consistent with these GTAs.</i></p> <ol style="list-style-type: none"> <li data-bbox="523 667 1437 842">1. <i>The proponent must apply for and obtain a Part 7 permit for dredging and reclamation under the FM Act from DPI Fisheries prior to any works on site. Permit application forms are available from the DPI Fisheries website at: <a href="https://www.dpi.nsw.gov.au/fishing/habitat/help/permit">https://www.dpi.nsw.gov.au/fishing/habitat/help/permit</a>; and</i></li> <li data-bbox="523 891 1437 1066">2. <i>Environmental safeguards (silt curtains, booms etc.) are to be used during construction to ensure that there is no escape of turbid plumes into the aquatic environment. Turbid plumes have the potential to smother aquatic vegetation and have a deleterious effect on benthic organisms.</i></li> </ol>

## **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 who raised no objections.

**SEPP (Resilience and Hazards) 2021**

**Chapter 2 – Coastal Management**

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

***Division 3 Coastal environment area***

***2.7 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 original application was considered against the matters listed (a)-(g) and was supported by numerous expert reports relating to the construction adjacent and within the foreshore area. The original application was found to be acceptable against the SEPP. The minor modifications to the building design do not give rise to any new environmental or coastal issues.

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

Comment:

The proposed amendments will not give rise to any new environmental or coastal issues.

**Division 4 Coastal use area**

**2.8 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,*
    - iv) *foreshores,*
    - v) *the visual amenity and scenic qualities of the coast, including coastal headlands, Aboriginal cultural heritage, practices and places, cultural and built environment heritage, and*
    - vi) *is satisfied that: the development is designed, sited and will be managed to avoid an adverse*
    - vii) *impact referred to in paragraph (a), or*
    - viii) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or if that impact cannot be minimised—the development will be managed to mitigate that impact, and*
  - b) *has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*

Comment:

The original application was considered against the matters listed (a)-(b) and was supported by numerous expert reports relating to the construction adjacent and within the foreshore area. The original application was found to be acceptable against the SEPP. The proposed modifications do not give rise to any new environmental or coastal issues.

**Division 5 General**

**2.9 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:

The proposed modifications do not give rise to any new coastal hazards.

The modified proposal complies with the requirements of Chapter 2 of the State Environmental Planning Policy (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 recreational and restaurant purposes for a significant period of time with no prior land uses.

Adjacent to the southern boundary are several ancillary buildings. A small central building was used to store petroleum products. A Stage 2 Detailed Site Investigation, prepared by EBG Environmental Geoscience accompanied the original development application and was prepared in support of the proposal. The report concluded that the site is suitable for the proposed development, subject to the recommendations of the report which is referenced within the original consent. In granting the original consent, Council was satisfied that the land is suitable for the purpose for which the development is proposed to be carried out and the recommended conditions continue to apply to the development.

**Pittwater Local Environmental Plan 2014**

Is the development permissible?	Zone RE1: Yes Zone C2: Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Zone RE1: Yes Zone C2: Yes

**Principal Development Standards**

Development Standard	Requirement	Approved	Proposed	Complies
Height of Buildings	4m + HAT* = RL 5.17m	RL 10.296 (Or 5.126m above requirement)	No change to building height	No, however unchanged from approved development

\* Highest Astronomical Tide (HAT) + 1.17m ADH

**Compliance Assessment**

Clause	Compliance with Requirements
2.5 Additional permitted uses for particular land	Yes
4.3 Height of buildings	N/A
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.10 Essential services	Yes
19 Use of certain land at 1191 Barrenjoey Road, Palm Beach	Yes
Schedule 5 Environmental heritage	Yes

## Zoning and Permissibility

The site is zoned part RE1 Public Recreation and part C2 Environmental Conservation under PLEP 2014.

The approved Boathouse building is below MHW and within the C2 zone. The proposed uses, for a café, boat hire business and sea plane charter 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.

The RE1 Public Recreation zone allows for the following uses:

*Centre-based child care facilities; Community facilities; Environmental facilities; Information and education facilities; Kiosks; Public administration buildings; Recreation areas; Recreation facilities (indoor); Recreation facilities (outdoor); Respite day care centres; Restaurants or cafes; Signage; Take away food and drink premises; Water recreation structures*

Restaurants and cafes are permissible with consent in the RE1 zone.

## Clause 5.10 Heritage Conservation

The site is within the C1 - Barrenjoey Heritage Conservation Area (local significance) which is listed within Schedule 5 of the Pittwater Local Environmental Plan 2014. The Boathouse is not a heritage item.

Council's Heritage Advisor supports the proposed modifications (refer to detailed comments above).

## **Pittwater 21 Development Control Plan**

### Compliance Assessment:

<b>Clause</b>	<b>Compliance with Requirements</b>	<b>Consistency Aims/Objectives</b>
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
A4.15 Waterways Locality	Yes	Yes
B1.1 Heritage Conservation - Heritage items, heritage conservation areas and archaeological sites listed in Pittwater Local Environmental Plan 2014	Yes	Yes
B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.9 Estuarine Hazard - Business, Light Industrial and Other Development	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B3.12 Climate Change (Sea Level Rise and Increased Rainfall Volume)	Yes	Yes
B4.15 Saltmarsh Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes

<b>Clause</b>	<b>Compliance with Requirements</b>	<b>Consistency Aims/Objectives</b>
B4.19 Estuarine Habitat	Yes	Yes
B5.5 Rainwater Tanks - Business, Light Industrial and Other Development	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.6 On-Street Parking Facilities	Yes	Yes
B6.7 Transport and Traffic Management	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
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	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
C2.11 Signage	Yes	Yes
C2.12 Protection of Residential Amenity	Yes	Yes
C2.16 Undergrounding of Utility Services	Yes	Yes
C2.20 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C2.21 Food Premises Design Standards	Yes	Yes
C2.22 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
C2.24 Take-away Food Premises	Yes	Yes
C5.22 Environmental Sustainability	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.2 Scenic protection - General	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	Yes	Yes
D12.6 Side and rear building line	Yes	Yes
D12.12 Fences - Flora and Fauna Conservation Areas	Yes	Yes
D15.1 Character as viewed from a public place	Yes	Yes
D15.2 Scenic protection - General	Yes	Yes
D15.3 Building colours and materials	Yes	Yes
D15.11 Waterfront lighting	Yes	Yes
D15.12 Development seaward of mean high water mark	Yes	Yes
D15.13 Lateral limits to development seaward of mean high water mark	Yes	Yes
D15.14 Minimum frontage for waterfront development	Yes	Yes
D15.15 Waterfront development	Yes	Yes
D15.18 Seawalls	Yes	Yes
D15.19 Dredging	Yes	Yes
D15.20 Commercial waterfront development - pollution prevention	Yes	Yes

### **CROWN LAND MANAGEMENT ACT 2016 AND LOCAL GOVERNMENT ACT 1993**

The land is owned by the Crown and is part managed by Council and part managed by the Department of Industries - Crown Lands.

Under section 3.21 of the *Crown Land Management Act 2016*, Council, as Crown Land Manager, is authorised to classify and manage the land as if it were public land within the meaning of the Local Government Act 1993.

Section 35 of the *Local Government Act 1993* identifies that Community land is required to be used and managed in accordance with:

- The plan of management applying to the land;
- Any law permitting the use of the land for a specified purpose or otherwise regulating the use of the land; and
- Division 2 of the *Local Government Act 1993*.

The *Governor Phillip Park Plan of Management* ('the POM') and the *Governor Phillip Park Conservation Management Plan* ('CMP') apply to the RE1 zoned land.

While the Boathouse building is on land zoned C2 Environmental Conservation and not within the Governor Phillip Park boundary, the Boathouse activities and operations extend into the RE1 Public Recreation zone. Access to the Boatshed building is over public Reserve land. The POM includes the key objective to "*conserve and enhance the Park's natural, historical and cultural environment whilst providing a diverse range of quality informal passive recreational opportunities in a unique and relatively undeveloped setting.*"

The POM requires future uses within Governor Phillip Park to satisfy Section 2.8.1 'Permissible uses', which include to: *encourage public use and enjoyment of appropriate Crown land; encourage public use and enjoyment of appropriate Crown land; optimise public access and use of coastal Crown lands; and*

*encourage the rehabilitation of degraded coastal Crown lands.*

Given the status of the approval and that this application seeks to amend the development in a minor way, the development as to be modified it is considered to be consistent with the POM and CMP.

### **Assessment of Application on Crown Land**

- Is the land a Crown Reserve?

Response: The land is part of a Crown Reserve

- Is Council the Crown land manager?

Response: Northern Beaches Council is currently the Crown Land Manager under the *Crown Lands Management Act 2016*.

- Can it be taken that the Minister has given consent on behalf of the Crown for its Crown land manager to sign as landowner? (what section of the Act applies?)

Response: Owners consent from Crown Lands has been granted in accordance with Section 2.23 of the Crown Lands Management Act 2016.

- Is the land classified as community land?

Response: The land is classified as community land under the Local Government Act 1993.

- Is there a Plan of Management and if so, are the proposed works consistent with that Plan?

Response: There is a Plan of Management and the development as to be modified is consistent with that POM.

### **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 2022**

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 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**

The proposed modifications are to the external facades of the main boathouse building involving minor changes to the sill heights of the windows and replacing the three separate eastern awnings with one continuous awning along the southern façade for weather protection.

The proposal also includes the addition of two (2) x small satellite dishes and ventilation equipment to the roof. Minor internal changes to the layout are also included to improve the functionality of restaurant use. The proposed modifications are sympathetic from a heritage perspective and the minor external re-arrangement will create a more visually balanced and consistent eastern elevation.

The application remains substantially the same as originally approved under DA2021/0669. The minor modifications to the design of the building are supported and the application recommended for approval. The proposed development satisfies the appropriate controls and all processes and assessments have been satisfactorily addressed.

## **RECOMMENDATION**

THAT Council as the consent authority grant approval to Modification Application No. Mod2023/0415 for Modification of Development Consent DA2021/0669 granted for Demolition works and construction of a new restaurant, carparking and associated uses on land at Lot 7005 DP 1117451, 1193 Barrenjoey Road, Lot 7002 DP 1117592, 1193 Barrenjoey Road and Lot 298 DP 721522, 1191 Barrenjoey Road, PALM BEACH, subject to the conditions below:

## **Modification Summary**

The development consent is modified as follows:

## **MODIFICATION SUMMARY TABLE**

<b>Application Number</b>	<b>Determination Date</b>	<b>Modification description</b>
PAN- 318758 MOD 2023/0415	The date of this notice of determination	Minor design modifications including adjustments to fenestration, additional doors, upgrade of external wood decking, internal configuration and the addition of solar panels.  Insert additional condition 1B (Approved plans and documentation).
PAN-206791 MOD 2022/0153	04/05/2023	The amendment to two conditions (28 and 38) relating to the timing of the submission of an Environmental Management Plan and the timing of the implementation of the recommendation of the dangerous goods assessment into the Management Plan for the site.
PAN-318758 MOD 2023/0171	02/08/2023	Minor design modifications including adjustments to fenestration, additional doors, upgrade of external wood decking, internal configuration and the addition of solar panels.

### **Modified Conditions**

#### **A. Add Condition 1B – Modification of Consent – Approved plans and supporting Documentation, to read as follows:**

##### **1B - Approved Plans and supporting Documentation.**

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

##### a) Modification Approved Plans

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
CC02-B, Site Plan	11.05.2023	Canvas Architecture and Design
CC04-B, Site and Ground Plan	11.05.2023	Canvas Architecture and Design
CC05-B, Site and Ground Plan 1:200	11.05.2023	Canvas Architecture and Design
CC06-B, Proposed Ground Floor Plan	11.05.2023	Canvas Architecture and Design
CC07-B, Proposed Ancillary Building	11.05.2023	Canvas Architecture and Design
CC08-B, Proposed First Floor Plan	11.05.2023	Canvas Architecture and Design
CC09-B, North/East Elevations	11.05.2023	Canvas Architecture and Design
CC10-B, South/West Elevations	11.05.2023	Canvas Architecture and Design
CC11-B, Long and Cross Section	11.05.2023	Canvas Architecture and Design
CC15-A, Ancillary building sections	26.08.2023	Canvas Architecture and Design
CC18, Ground floor minor internal changes	11.05.2023	Canvas Architecture and Design

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Access Statement	10.08.2023	MGAC
Statement of Heritage Impact	10.07.2023	City Plan

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

## FINAL DECLARATIONS



Consultant Name: Danielle Deegan, DM Planning

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



Delegated Officers Name: Steve Findlay, Manager Development Assessment

In determining this application, I declare that the management controls contained in the Conflict of Interest Management Strategy have been satisfied, and as per those controls the application can be determined under delegation, as the modification application (being a s4.55(1A), is not triggered to go to the Northern Beaches Local Planning Panel under the relevant Ministerial Direction.