

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2022/0153
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<b>Responsible Officer:</b>	Jordan Davies
<b>Land to be developed (Address):</b>	Lot 7005 DP 1117451, 1193 Barrenjoey Road PALM BEACH NSW 2108 Lot 7002 DP 1117592, 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
<b>Development Permissible:</b>	Yes, under Schedule 1 Additional Permitted Uses PLEP 2014, Clause 19
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<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>	London Lakes Partnership

<b>Application Lodged:</b>	05/04/2022
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	Not Notified
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### Executive Summary

The Section 4.55(1A) application seeks to amend two (2) development consent conditions (Conditions No. 28 and No.38) of DA2021/0669 which approved 'Demolition works and construction of a new

restaurant, carparking and associated uses' which is known as the 'Boathouse Palm Beach'. The associated uses approved with the redevelopment of the boathouse included 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 amendment to the two conditions relate 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. Both conditions are currently required to be completed prior to the issue of a construction certificate. The applicant has requested that the two conditions be moved prior to the issue of an Occupation Certificate *"due to the fact that the requested Plans of Management for both the operational aspects of the proposal and the management of dangerous goods are unable to be completed at this stage due to individual components, yet to be selected, will determine the content of these plans of management"*.

Council's Environmental Health Officer originally recommended the Condition 28 and supports moving the conditions prior to the issue of an Occupation Certificate. Council's EHO also supports amendment to Condition 38.

Council is of the opinion that a part of condition 38 is to be maintained prior to the issue of a Construction Certificate, this being the structural recommendations of the dangerous goods assessment with regards to the storage area for boat fuel and LPG. The requirement to update the Plan of Management with the recommendations of the handling of dangerous goods is supported to be moved to prior to the issue of an Occupation Certificate. A new condition has been added to reflect this.

There are no other changes proposed to the development and the development will remain unchanged apart from the amendments to the two above conditions.

The application was not required to be notified due to the minor nature of the changes and the changes are not considered to result in any additional environmental impacts.

The application is referred to the Northern Beaches Local Planning Panel for determination as the subject site is within Crown land (Governor Phillip Park) with a portion of the crown land managed by the Northern Beaches Council. The application is accompanied by a letter of owner's consent from Crown Lands consenting to the Lodgement of the modification application.

## **PROPOSED DEVELOPMENT IN DETAIL**

This Section 4.55(1A) application seeks to modify two (2) development consent conditions within DA2021/0669 which are in relation to the Environmental Management Plan and Dangerous Goods Storage. Both conditions are requirements that are to be fulfilled 'prior to the issue of a construction certificate'.

The first condition being:

### **28. Environmental Management Plan**

*An Environmental Management Plan (EMP) shall be prepared for the approved development. The plan shall be prepared by a suitably qualified person and shall be to the satisfaction of Council and shall address:*

*Risk assessment of all Environmental Aspects and impacts to site and other potentially impacted properties*

*The impacts must at minimum consider the following areas:*

- *Hazardous Substances.*
- *Water.*
- *Air.*
- *Noise.*
- *Vibration.*
- *Waste & Litter.*
- *Land.*
- *Community.*
- *Environmental Protection objectives and control strategies.*
- *Environmental conditions using measurable indicators and standards.*
- *Emergency Response Plan.*
- *Environmental monitoring and reporting plan.*

*Reason: To ensure the appropriate operation and management of the approved use.*

The applicant seeks to move the above condition from 'prior to the issue of a construction certificate' to 'prior to the issue of an occupation certificate'. The applicant has put forward the reasons for this timing change and stated:

*"The reasons for the support of the proposed Division 4.55 Modification are due to the fact that the requested Plans of Management for both the operational aspects of the proposal and the management of dangerous goods are unable to be completed at this stage due to individual components, yet to be selected, will determine the content of these plans of management.*

*It is therefore reasonable to require these Plans of Management to be completed to Council's satisfaction prior to the issue of the final Occupation Certificate"*

The applicant has also advised that the contents of the Environmental Management Plan is dependent on the future tenants of the sea plane charter business and boat hire business, which are unknown at this stage. The applicant has provided a draft copy of the EMP with this modification application.

The condition was originally recommended by Council's Environmental Health Officer. This 4.55 application has been referred to Council's Environmental Health Officer and they have raised no objections to moving the condition to 'prior to the issue of an Occupation Certificate', see their referral response later in this report.

Council therefore supports moving condition 28 to prior to the occupation certificate.

The second condition which seeks amendment is:

### **38. Dangerous Goods Storage**

*Details shall be provided with the Occupation Certificate demonstrating that the recommendations of the report titled 'Assessment Report – DG Advice, Ref 20225, Revision 1, dated 4/08/2020' have been incorporated into the Plan of Management and Environmental Management Plan. The Plan of Management for the site and Environmental Management Plan is to be updated to include the recommendations of the above referenced report with regards to the handling and storage of dangerous goods.*

*Details demonstrating compliance are to be provided to the Principle Certifying Authority prior to the issue of a construction certificate.*

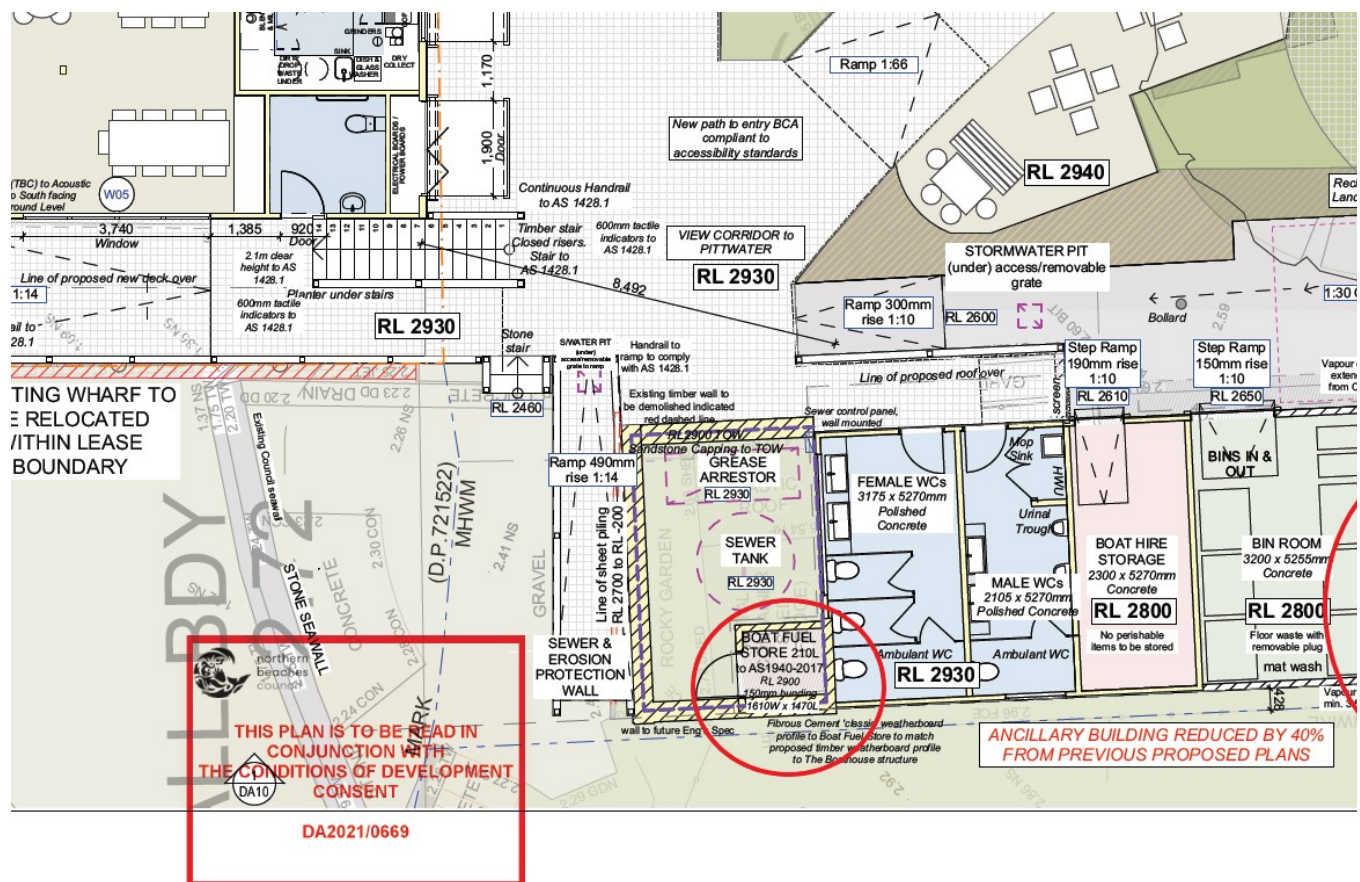
*Reason: To ensure the safe handling and storage of dangerous goods.*

The applicant seeks to move the entire condition prior to the issue of an Occupation Certificate, for the same reasons stated above regarding the future components or occupants of the development not being known at this stage with regards to the management of dangerous goods to be implemented in the plan of management.

Council's Environmental Health Team supports moving this condition to prior to an Occupation Certificate.

However, Council's Planner is of the opinion that this condition has two aspects, the first being construction requirements for the storage of the dangerous goods (LPG and Boat Fuel store) in accordance with the dangerous goods assessment and the second component being the management of dangerous goods.

The Dangerous Goods Assessment makes recommendations as to the structural requirements of the dangerous goods storage area, these areas identified on the following approved plan:



**Figure 1 - Extract of approved floor plan of storage area.**

Therefore, it is recommended that the condition is amended to remove the requirement to update the plan of management to deal with the storage of dangerous goods 'prior to an occupation certificate' and maintain the requirement for the recommendations of the dangerous goods assessment to be implemented into the construction certificate with regards to the structural recommendations of the storage areas.

The applicant has been advised of the recommended changes to the conditions and has raised no objections.

The condition is therefore recommended to be amended as follows:

### **38. Dangerous Goods Storage**

*Details shall be provided with the construction certificate demonstrating that the **structural** recommendations of the report titled 'Assessment Report – DG Advice, Ref 20225, Revision 1, dated 4/08/2020' with regard to the storage of Boat Fuel and LPG have been incorporated into the construction certificate plans and documentation.*

~~*The Plan of Management for the site is to be updated to include the recommendations of the above referenced report with regards to the handling of dangerous goods.*~~

*Details demonstrating compliance are to be provided to the Principle Certifying Authority prior to the issue of a construction certificate.*

*Reason: To ensure the safe handling and storage of dangerous goods.*

Add new condition as follows:

### **Dangerous Goods Storage and Management**

*Details shall be provided with the Occupation Certificate demonstrating that the recommendations of the report titled 'Assessment Report – DG Advice, Ref 20225, Revision 1, dated 4/08/2020' with regard to the storage of Boat Fuel and LPG have been incorporated into the Plan of Management and Environmental Management Plan. The Plan of Management for the site and Environmental Management Plan is to be updated to include the recommendations of the above referenced report with regards to the handling of dangerous goods.*

*Details demonstrating compliance are to be provided to the Principle Certifying Authority prior to the issue of an occupation certificate.*

*Reason: To ensure the safe handling and storage of dangerous goods.*

Council is satisfied that the amendment to the two above conditions will allow for the applicant to finalise the Environmental Management Plan and Plan of Management at the appropriate times once the future details of the tenants and operational requirements of the boat hire and sea plane charter business is finalised. It is noted that the fuel storage relates only to 210L of boat fuel and that no aircraft fuel is proposed to be stored on the site.

## **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 RE1 Public Recreation

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 7005 DP 1117451 , 1193 Barrenjoey Road PALM BEACH NSW 2108 Lot 7002 DP 1117592 , 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 structure 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 proposed works extends over the following three (3) allotments and is subject to a split zoning:</p> <p>Lot 298, in DP721522,(containing the existing Boathouse Café) is on the seaward side of Mean High Water Mark (MHWM) and is zoned E2 Environmental Conservation. Crown Land is managed by the Department of Industry – Crown Lands.</p> <p>Lot 7005, in DP1117451 (comprising the licenced area) extends from the MHWM easterly 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 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, accommodates three businesses including the predominant use on site (being the Boathouse café), a boat hire business and the offices of a seaplane charter operator,</p>



Sydney by Seaplane. Seating associated with the use of the café continues onto the outdoor rear deck and into the front Licenced Area. A two bedroom caretakers unit occupies the first floor.

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.

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.

### **Description of Surrounding Development**

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.

Map:



### **SITE HISTORY**

The land has been used for boat hire, sea plane charter and café use for an extended period of time. 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-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 Licenced Area.
- On 27 April 2015, Council's Compliance Department investigated alleged unauthorised pop-up stalls and other structures within the Licenced 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 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) as well as external works on adjoining public land. Specifically, the proposal consisting of:
  - 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 as follows:
  - 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), store room 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.

## 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 DA2021/0669, 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:

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><b>Yes</b></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"> <li>- The modification application seeks only for the two conditions with regards to the timing of an environmental management plan. The proposal does not involve any other changes to the development.</li> </ul> <p>The changes to the timing of the environmental management plan are considered to not raise any new environmental issues and the finalisation of the EMP will still be carried out prior to the occupation certificate, when the final tenants of the building and business operation is more certain, with the EMP being finalised at this time.</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	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 DA2021/0669 for the following reasons:

Section 4.55(1A) - Other Modifications	Comments
as originally granted was modified (if at all), and	No physical changes are proposed to the development and the form of the development is unchanged.
(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	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation 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.	In accordance with Council's Community Participation Plan (CPP), the application was not required to be notified due to the minor nature of the changes and it being a Section 4.55(1A) application. The CPP provides that:  'Circumstances where a DA exhibition is not required:  modification of consent to correct a minor error, misdescription, miscalculation (e.g. section 4.55(1) applications); <b>or</b> <b><i>where, in the opinion of Council, such changes would not unreasonably cause an environmental impact, or which result in a lesser or reduction of, environmental impacts (e.g section 4.55(1A) applications)</i></b> '

### 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 original development application was considered under the Draft SEPP and found

Section 4.15 'Matters for Consideration'	Comments
	to be satisfactory.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&amp;A Regulation 2021 requires the 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 a 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 a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
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></p>

Section 4.15 'Matters for Consideration'	Comments
	The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
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	<p>In accordance with Council's Community Participation Plan (CPP), the application was not required to be notified due to the minor nature of the changes and it being a Section 4.55 (1A) application. The CPP provides that:</p> <p>'Circumstances where a DA exhibition is not required:</p> <p>modification of consent to correct a minor error, misdescription, miscalculation (e.g. section 4.55(1) applications); <b>or</b></p> <p><b><i>where, in the opinion of Council, such changes would not unreasonably cause an environmental impact, or which result in a lesser or reduction of, environmental impacts (e.g section 4.55(1A) applications)</i></b>'</p>
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application was not notified.

## REFERRALS

Internal Referral Body	Comments
Environmental Health (Industrial)	<p><b>General Comments</b></p> <p>Applicant has requested to finalise an Environmental Management Plan and Dangerous Goods Storage Plan of Management prior to "OC" as opposed to prior to "CC". In the applicants own words, condition 28 and 38 of DA 2021/0669 "are unable to be satisfied at this stage as the Management Plans rely upon the operation of equipment to be installed during future construction". Environmental Health wholly understands that this is a matter of logistical reasonability and practicability, and support the proposal to shift those conditions to be under a 'prior to occupation certificate' category.</p>

Internal Referral Body	Comments
	See conditions below.

## **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 recreational and restaurant purposes for a significant period of time with no prior land uses. Adjacent to the Boatshed (adjacent to the southern boundary) are several ancillary buildings. A small central building is 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 concludes 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.

### **SEPP (Coastal Management) 2018**

The site is classified as land within the coastal environment area and land within the coastal use area under the State Environmental Planning Policy (Coastal Management) 2018. Accordingly, an assessment under the SEPP has been carried out as follows:

### **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 original application was considered against the matters listed (a)-(g) and was supported by a number of expert reports relating to the construction adjacent and within the foreshore area. The original application was found to be acceptable against the SEPP. The amendment to the consent involving changing to the timing of two conditions is not considered to 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 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 original application was considered against the above matters was supported by a number of expert reports relating to the construction adjacent and within the foreshore area. The original application was found to be acceptable against the SEPP and found to be designed to minimise and avoid impacts. The amendment to the consent involving changing to the timing of two conditions is not considered to give rise to any new environmental or coastal issues.

#### **14 Development on land within the coastal use area**

- (1) (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 original application was considered against the matters listed (a)-(c) and was supported by a number of expert reports relating to the construction adjacent and within the foreshore area. The original application was found to be acceptable against the SEPP. The amendment to the consent involving changing to the timing of two conditions is not considered to give rise to any new environmental or coastal issues.

**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:

The modification to the consent is not considered to give rise to any new coastal hazards.

As such, it is considered that the application complies with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

**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 : No

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	Complies
4.3 Height of Buildings	4m + HAT* = RL 5.17m	RL 10.296 (or 5.126 above requirement)	Unchanged No changes to built form	No However, unchanged from original proposal

\* 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



Clause	Compliance with Requirements
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

#### Detailed Assessment

### **Zone RE1 Public Recreation**

#### RE1 Public Recreation

The original proposal granted consent for the construction of a separate building (for storage and amenities) on the RE1 zoned land. These uses are 'ancillary' facilities for the café and are therefore permissible with consent. Restaurants and cafes are permissible with consent in the RE1 zone.

### **Pittwater 21 Development Control Plan**

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
A4.15 Waterways Locality	Yes	Yes
B3.9 Estuarine Hazard - Business, Light Industrial and Other Development	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 2021**

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

### Conclusion

The amendment to the two conditions to move the requirement for an updated Environmental Management Plan and recommendations of the Dangerous Goods Storage Assessment into the plan of management prior to the Issue of an Occupation Certificate is supported by Council and is considered reasonable given the final details of the future tenants of the boat hire and sea plane charter business are yet to be determined.

The application remains substantially the same as originally approved under DA2021/0669 and therefore the modification to the two conditions are supported and the application recommended for approval to the NBLPP.

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## **RECOMMENDATION**

THAT Northern Beaches Local Planning Panel as the consent authority grant approval to Modification Application No. Mod2022/0153 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, PALM BEACH, Lot 7002 DP 1117592, 1193 Barrenjoey Road, PALM BEACH, Lot 298 DP 721522, 1191 Barrenjoey Road, PALM BEACH, subject to the conditions printed below:

### **A. Modify Condition 28 to read as follows and move 'Prior to the Issue of an Occupation Certificate':**

#### **28. Environmental Management Plan**

An Environmental Management Plan (EMP) shall be prepared for the approved development. The plan shall be prepared by a suitably qualified person and shall be to the satisfaction of Council prior to the issue of any occupation certificate and shall address:

Risk assessment of all Environmental Aspects and impacts to site and other potentially impacted properties

The impacts must at minimum consider the following areas:

- Hazardous Substances.
- Water
- Air.
- Noise.
- Vibration.
- Waste & Litter.
- Land.
- Community.
- Environmental Protection objectives and control strategies.
- Environmental conditions using measurable indicators and standards.
- Emergency Response Plan.
- Environmental monitoring and reporting plan.

Reason: To ensure the appropriate operation and management of the approved use.

### **B. Amend Condition 38 'Dangerous Goods Assessment' prior to the issue of a construction certificate to read as follows:**

#### **38. Dangerous Goods Storage**

Details shall be provided with the construction certificate demonstrating that the structural recommendations of the report titled 'Assessment Report – DG Advice, Ref 20225, Revision 1, dated 4/08/2020' with regard to the storage of Boat Fuel and LPG have been incorporated into the construction certificate plans and documentation.

Details demonstrating compliance are to be provided to the Principle Certifying Authority prior to the issue of a construction certificate.

Reason: To ensure the safe handling and storage of dangerous goods.

**C. Add Condition 'Dangerous Goods Storage and Management' prior to the issue of an Occupation Certificate to read as follows:**

Details shall be provided with the Occupation Certificate demonstrating that the recommendations of the report titled 'Assessment Report – DG Advice, Ref 20225, Revision 1, dated 4/08/2020' have been incorporated into the Plan of Management and Environmental Management Plan. The Plan of Management for the site and Environmental Management Plan is to be updated to include the recommendations of the above referenced report with regards to the handling and storage of dangerous goods.

Details demonstrating compliance are to be provided to the Principle Certifying Authority prior to the issue of an occupation certificate.

Reason: To ensure the safe handling and storage of dangerous goods.