



andrewmartin
PLANNING

DA No: DA2019/0278

**Section 4.55 (1A)
Modification of Development Consent**

***“Use of Premises as an indoor recreation
facility”***

***Lot 1 SP 23069, No. 1 Moore
Road, FRESHWATER***

May 2020

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1.0 INTRODUCTION

- 1.1 Reference is made to Development Approval DA2019/0278 (the 'consent') issued by Northern Beaches Council on 12 August 2019 as follows "*use of premises as an indoor recreation facility*", at Shop 1, No. 1 Moore Road, Freshwater.
- 1.2 Council, by letter dated 11 December 2019, advised that applicant of an enquiry and allegation of the intended use to serve coffee in the premises. The Council letter states that there is no approval for the intended use of part of the premises as a 'food and drink premises'.
- 1.3 Ancillary servicing of coffee to provide a welcoming, safe and comfortable place within the premises and for spectators was noted in the Statement of Environmental Effects which accompanied the DA application. However, it was not notated as part of the main body and description of the operation of the premises. Therefore, it has been overlooked in the assessment of the application and the landuse approval issued in August 2019.
- 1.4 The provision of a single coffee machine and provision of coffee for patrons of the Climbing Centre is a minor ancillary and incidental use within the premises. It is not intended to set up a food and drink premises like a café or restaurant to serve food and drink in a sit-down service or similar. It is to provide coffee to patrons in a similar manner that cool drinks are available. A cup of coffee will be able to be purchased from the main reception area, similar to that available at other indoor recreation centres like a gym, squash centre or the like. It is to serve patrons of the Centre only, providing a level of social support and interaction within the centre. Cold drinks will be available from a refrigerator or vending machine.
- 1.5 This modification application seeks to clarify and formalise this part of the landuse with Council. The application for modification is made pursuant to section 4.55(1A) of the Environmental Planning and Assessment Act 1979 (the 'Act') and seeks to amend Condition No. 1 (list of approved plans) – noting the location of the coffee machine and sink.
- 1.5 This application is not a review of the land use, rather a minor amendment to clarify the operation of the premises. The minor amendment does not result in any environmental impacts and is subject to the remaining conditions of consent (as amended) as they apply to the approved development.

2.0 PROPOSED AMENDMENT

- 2.1 Condition No. 1 includes a list of plans approved as part of the application. It is proposed to amend those plans by adding the submitted plan showing the location of the coffee machine and sink. Refer to Figure 1 below.
- 2.2 The remainder of the plans and conditions of consent do not change and remain relevant to the approval.

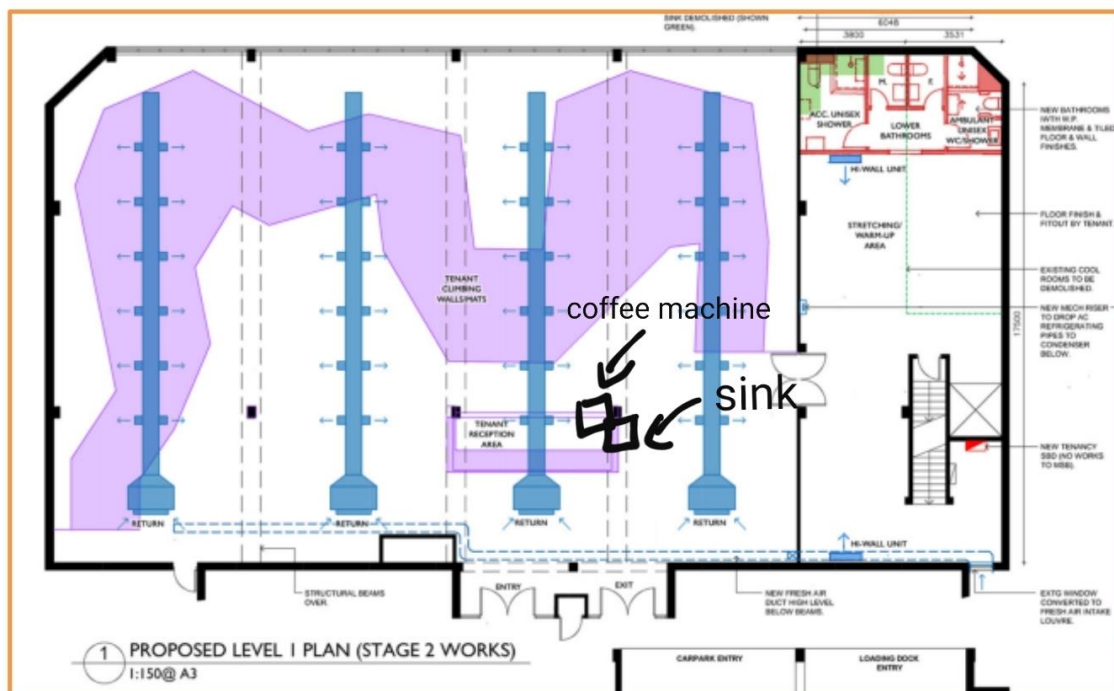


Figure 1: location of proposed coffee

3.0 ASSESSMENT – ‘SUBSTANTIALLY THE SAME’

- 3.1 The requirement for an amended development application to be ‘*substantially the same*’ as the original development arises from the requirements of s.4.55 of the *EP&A Act 1979*. The installation of a coffee machine to sell coffee to patrons within the premises is a minor ancillary use within the approved centre. It does not alter the landuse or its general operation at all. Therefore, the approved use is substantially the same from a land use perspective.
- 3.2 Accordingly, Council may proceed to a merit assessment so as to satisfy s.4.55(3) of the Act given the amended development results in a development that is substantially the same as the original approval.

4.0 SECTION 4.55(1A) ASSESSMENT – ‘MINOR IMPACT’

- 4.1 Section 4.55(1A) states that:

“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:

- it is satisfied that the proposed modification is of minimal environmental impact, and
- it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and
- it has notified the application in accordance with:
 - the regulations, if the regulations so require, or
 - a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be."

- 4.2 The proposed modification of the condition of consent – involving the sale of coffee from a coffee machine - has no significant environmental impact and the Climbing Centre is the same development approved by Council.
- 4.3 The conditions of approval will remain substantially the same and these conditions have been imposed to ensure that the Centre complies with the relevant standards and requirements and address the amenity of the surrounding area via adopted acoustic measures.
- 4.4 Accordingly, Council may proceed to a merit assessment so as to satisfy S.4.55(3) of the Act - consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application.

5.0 ASSESSMENT – SECTION 4.15 OF THE EP&A ACT 1979

5.1 Section 4.15 Heads of Consideration

The relevant heads of consideration under Section 4.15 of the *EP&A Act 1979* were considered as part of the assessment of the original application. This Section 4.55 application establishes that the development is the same as that approved by Council in DA2019/0278.

4.15 Evaluation

(1) Matters for consideration—general

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

(a) the provisions of:

(i) any environmental planning instrument, and

(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and

(iii) any development control plan, and

(iiia) any planning agreement that has been entered into under section 4.7, or any draft planning agreement that a developer has offered to enter into under section 4.7, and

(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and

(v) any coastal zone management plan (within the meaning of the Coastal Protection Act 1979), that apply to the land to which the development application relates,

(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,

(c) the suitability of the site for the development,

(d) any submissions made in accordance with this Act or the regulations,

(e) the public interest.

Comment: The proposed amendment of DA2019/0278 does not involve any changes to the approved landuse that require assessment under the provisions of any statutory or non-statutory planning legislation. That is, there are no specific provisions of any SEPP, LEP or DCP to be addressed by this

application. Any requirements for the sale of the coffee in the manner proposed will be subject to the relevant provisions of the *Food Act 2003* and *Food Regulation 2015*.

6.0 CONCLUSION

The proposed modification of the consent seeks to clarify and formalise the sale of coffee with the Climbing Centre, as an ancillary and incidental use of the premises. It is minor in scale and is not intended to be operated as a 'food and drink' premises per se. The sale of coffee is limited to patrons of the Centre only. This application results in a development which is the same as the original approval granted by Council under Development Approval No. **DA2019/0278**.

The existing conditions of consent will continue to ensure that an adequate level of environmental performance is achieved.

the subject Section 4.55(1A) application as described in this statement will result in no environmental impact and is the same development as originally approved by Council.

On this basis Council should support the application to make minor changes to the approved plans, as described.



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