

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2020/0175
Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 27 DP 5055, 22 Jubilee Avenue WARRIEWOOD NSW 2102 Lot 51 DP 1237461, 84 Mona Vale Road MONA VALE NSW 2103 Lot 52 DP 1237461, 80 - 82 Mona Vale Road MONA VALE NSW 2103
Proposed Development:	Modification of Development Consent DA2019/0123 granted for use of part of the carparking area associated with the Pittwater RSL Club for the purposes of an organic food market
Zoning:	B7 Business Park B7 Business Park R2 Low Density Residential SP2 Infrastructure
Development Permissible:	Yes, under Clause 2.8 Temporary Use of Land of the PLEP 2014
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Pittwater RSL Club Ltd
Applicant:	Organic Food Markets

Application Lodged:	08/05/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Other
Notified:	18/05/2020 to 01/06/2020
Advertised:	Not Advertised
Submissions Received:	16
Clause 4.6 Variation:	Nil
Recommendation:	Approval

EXECUTIVE SUMMARY

The Modification of Development Consent DA2019/0123 granted for use of part of the carparking area

associated with the Pittwater RSL Club for the purposes of an organic food market seeks an extension to the approved operating hours and extension of the consent period from 18 months to five years. DA2019/0123 was determined by the Northern Beaches Local Planning Panel (NBLPP). As such, MOD2019/0547 is also referred to the NBLPP for determination.

There are no built form controls to consider in relation to this application. The proposed development has received 16 submissions, comprising of 11 against and 5 in support. The issues raised in the objecting submissions included noise impacts, traffic impacts, inconsistency with the previous recommendations and trial period approval, and other market precedents. These matters are addressed throughout this report.

Based on the detailed assessment contained in this report, it is recommended that the application be conditionally **approved**.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks to modify Development Consent DA2019/0123 to:

- amend the trial period of 18 months to extend to five years; and
- amend hours of operation of the approved market events as follows:

Approved:

Sundays:

- Set Up: 7:00am-8:30am
- Trading: 8:30am to 12:30pm
- Pack Down: 12:30pm-2:00pm

Proposed:

Sundays:

- Set Up: 7:00am-8:00am
- Trading: 8:00am to 12:30pm
- Pack Down: 12:30pm-2:00pm

Therefore, the proposal involves extending the hours to commence trading half an hour earlier.

The markets commenced operation on 1 September 2019, temporarily ceased operation from 29 March 2020 in response to the current coronavirus pandemic, and recommenced operation on 3 May 2020.

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 - 2.8 Temporary use of land

SITE DESCRIPTION

<p>Property Description:</p>	<p>Lot 27 DP 5055 , 22 Jubilee Avenue WARRIEWOOD NSW 2102 Lot 51 DP 1237461 , 84 Mona Vale Road MONA VALE NSW 2103 Lot 52 DP 1237461 , 80 - 82 Mona Vale Road MONA VALE NSW 2103</p>
<p>Detailed Site Description:</p>	<p>The subject site consists of three (3) allotments located to the south-west of Mona Vale Road, north-west of Foley Street, and north of Jubilee Avenue.</p> <p>The site is irregular in shape with frontages of 267m along Mona Vale Road, 200m along Foley Street, and 100m along Jubilee Avenue. The site has an area of approximately 39,319m².</p> <p>The site is zoned part R2 Low Density Residential and part B7 Business Park and accommodates the Pittwater RSL Club development, comprised of the club, sportsfields, bowling club and associated parking.</p> <p>The site slopes approximately 20m from east to south-west, and contains significant vegetation around the existing buildings, facilities and parking areas.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by industrial, commercial and low-density residential development.</p>

Map:



SITE HISTORY

The land has been used for commercial purposes for an extended period of time. A search of Council's records has revealed the following relevant recent history:

DA2019/0123 for use of part of the carparking area associated with the Pittwater RSL Club for the purposes of an organic food market was approved on 19 June 2019 by the Northern Beaches Local Planning Panel.

The market comprises up to 100 stalls, and operates on up to 42 days per year and has the following operating hours:

- Sundays:
 - Set Up: 7:00am-8:30am
 - Trading: 8:30am to 12:30pm
 - Pack Down: 12:30pm-2:00pm

The markets were granted approval to commence on a trial period basis for up to 18 months from commencement, with the option to extend to 5 years with prior approval of Council. The markets commenced operation on 1 September 2019.

MOD2019/0547 for modification of Development Consent DA2019/0123 sought to amend hours of operation, to allow set up from 6:00am and trading from 7:30am. MOD2019/0547 was refused for the following reasons:

1. Pursuant to Section 1.3(c) of the Environmental Planning and Assessment Act 1979, the proposed extension of operating hours does not represent an orderly development of land.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed modification does not demonstrate that the proposed temporary use will not adversely impact on any adjoining land or the amenity of the neighbourhood, as required by Clause 2.8 Temporary Use of Land of the Pittwater Local Environmental Plan 2014, particularly in relation to noise impacts.

3. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest in relation to acoustic amenity.
4. Pursuant to Section 4.55(1A) of the Environmental Planning and Assessment Act 1979, the proposed development is not of minimal environmental impact in relation to acoustic amenity.
5. Insufficient information was submitted with the application in relation to the acoustic impact of the proposed extended operating hours on the adjoining residential area. In this regard, no acoustic report was lodged that addresses the proposal.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

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

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2019/0123, 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	The modification, as proposed in this application, is considered to be of minimal environmental impact in relation to the extension of hours, as the hours are in accordance with the NSW Environmental Protection Authority's Noise Policy for Industry 2017 daytime trading hours for Sundays, and is supported by a Noise Emission Compliance Report and Council's Environmental Health Officer. However, the proposed extension of the consent period to five years is not yet considered to be of certainly minimal environmental impact, as the markets have not been in operation for the length of time intended by the Northern Beaches Local Planning Panel upon conditional approval of the original application.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2019/0123, as the proposal remains for the operation of the markets of the same

Section 4.55(1A) - Other Modifications	Comments
development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	intensity on Sundays.
(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, Pittwater Local Environment Plan 2014 and Pittwater 21 Development Control Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on “Notification & Submissions Received” in this report.

Section 4.15 Assessment

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

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for commercial purposes for an extended period of time. The proposed development retains the commercial use of the site, and is not considered a contamination risk.

Section 4.15 'Matters for Consideration'	Comments
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)(iiiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p>

Section 4.15 'Matters for Consideration'	Comments
	(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal is not orderly development of land in relation to the extension of the consent period, which is contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest. This is included as a reason for refusal.

Section 1.3 Objects of the Act

Section 1.3 of the Environmental Planning and Assessment Act 1979 stipulates the Objects (or intentions) of the Act. Subclause 1.3(c) details that one of the Objects of the Act is 'to promote the orderly and economic use and development of land'. The following matters are relevant in establishing whether the proposed modification is 'orderly' development.

DA2019/0123 was granted conditional approval by the Northern Beaches Local Planning Panel (NBLPP), on the basis that reduced hours of operation and a trial period of 18 months applied. The relevant condition states:

10. Trial Period

This consent expires in 18 months from the date of commencement of operation of the market on site unless, by no later than 13 months after the date of commencement, the applicant lodges a modification application to extend the expiry date to 5 years and Council thereafter approves the modification.
Reason: To monitor the operation of the consent to ensure no adverse impact on any adjoining land or the amenity of the neighbourhood and the temporary use of the land in accordance with the consent.

The intention of Condition 10 is to monitor the impacts of the operation of the site for the purpose of markets in its approved state for an extended period of time, being approximately 12 months (as discussed by the NBLPP when deliberating the original application). To modify the consent period to five years after approximately nine months of operation is contrary to the intention of Condition 10.

Note: the markets commenced operation on 1 September 2019, temporarily ceased operation from 29 March 2020 in response to the current coronavirus pandemic, and recommenced operation on 3 May 2020.

While the extended hours of operation are assessed as acceptable, the extension of the consent period from an 18-month trial to a five-year period is not yet considered suitable, and that element of the proposed modification is not demonstrated to be 'orderly' development as required by the Act. An application to extend the consent period from 18 months to five years is likely more appropriate after a longer period of operation.

In consideration of the recommended approval of extended trading hours, Condition 10 is recommended to be amended to allow a further 3 months of trading under the trial period (to account for a loss of trading due to COVID-19 restrictions), in order for the impacts of the additional half hour of

trading to be recorded and assessed.

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 has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 16 submission/s from:

Name:	Address:
Ron Bode	19 Jubilee Avenue WARRIEWOOD NSW 2102
Mr Peter William McDonald	10 / 6 Foley Street MONA VALE NSW 2103
Mr Deepak Damji Wadher Mrs Hansa Wadher	83 Mona Vale Road MONA VALE NSW 2103
Shanti Burn	Address Unknown
Mr Stephen Choularton	10 Chiltern Road INGLESIDE NSW 2101
Grant Jackson Jessica Jackson	Address Unknown
Mrs Janice Lynette Bilton	8 / 6 Foley Street MONA VALE NSW 2103
Ric Simpson	Address Unknown
Kim Osborne	Address Unknown
Mr Philip Charles Walker	184 Warriewood Road WARRIEWOOD NSW 2102
Mr Geoffrey Russell Walsh	188 Warriewood Road WARRIEWOOD NSW 2102
Ms Valerie Jensen Ms Mary Phillips	185 Warriewood Road WARRIEWOOD NSW 2102
Mr Daniel Glen Giles	80 Vineyard Street MONA VALE NSW 2103
Mr Neil Burleigh	5 Kay Close MONA VALE NSW 2103
Mr David Norman Edgley	30 / 5 Ponderosa Parade WARRIEWOOD NSW 2102
Ms Courtney Mae Ings	88 Warriewood Road WARRIEWOOD NSW 2102

The application received 16 submissions, comprised of 11 against and 5 in support. The issues raised in the submissions are addressed as follows:

ISSUES RAISED AGAINST THE APPLICATION

Noise

Objections raised concern that the proposed hours set up hours and noise levels are not compliant with NSW Environmental Protection Authority's Noise Policy for Industry 2017 "Daytime Trading Hours for Sundays". Noise levels have disrupted sleeping of nearby residents.

Comment:

While the setting up of the market is not technically classified as operation, it could be argued that set up is equivalent. However, it should be noted that set up will not commence any earlier than as approved. In this way, the modification application does not lead to any additional inconsistency with the Policy. The extended hours of trading are supported by Council's Environmental Health Officer, who has reviewed this application and the supporting Noise Emissions Compliance Report. Further, it is noted that, while submissions raise noise as a concern, Council is not in receipt of any noise complaints as a result of the markets. It is recommended the consent remain as a trial (though extended to allow for an additional three months of trading in lieu of time lost as a result of coronavirus-related restrictions). As such, the markets will continue to be monitored in relation to its impacts.

Traffic and Parking

Objections raised concern that the extended trading hours are not appropriate, as there is not enough parking on site under current circumstances.

Comment:

Council's Traffic Engineer has reviewed the original proposal, and the current modification, and is supportive of the proposal.

ISSUES RAISED IN SUPPORT OF THE APPLICATION

Extended Hours

Submissions in support raised that earlier trading hours would allow people to access the site in times of less congested local traffic, and would allow more time to sell items.

Comment:

The extended hours of operation are supported.

OBJECTION UNRELATED TO PROPOSED MODIFICATIONS

Site Location / Suitability

A small number of submissions raised concern with the location of the markets and the location of toilets on site, indicating that more suitable sites exist elsewhere.

Comment:

This modification application does not propose a new location for the markets, nor make any amendment to approved toilet locations. Hypothetical consideration of other land for suitability is not a relevant planning matter for consideration under the *Environmental Planning and Assessment Act 1979*.

Changes to the Entries, Exits and Stall Locations

One objection raised concern about changes to the approved market entry and exit points, and stall locations.

Comment:

No changes to the physical markets operations are proposed.

Regulation

Objections raised concern that the operation of the markets leads to illegal parking on surrounding streets, damage and trespassing on private property, and littering. Concern was also raised that the markets are not being operated in accordance with restrictions relating to the current coronavirus pandemic.

Comment:

These matters are not related to the proposed extended hours of operation and extended period of consent. These matters are reportable to Council's Environmental Compliance team for investigation.

Footpath Construction

Objections raised concern that the original application recommended construction of a footpath along Foley Street, which has not yet been carried out.

Comment:

The Assessment Report for the original application (DA2019/0123) recommended construction of a footpath along Foley Street. However, the consent authority (Northern Beaches Local Planning Panel) did not see this as necessary and did not apply the recommended condition of consent requiring the works.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Industrial)	<p>Application for a 5 year-long trial period of modified market operations at Pittwater RSL carpark, with a minor change to patron trading times, allowing for an 8 am start.</p> <p>Environmental Health object to the 5 year approval as it is not commensurate the intention of the 18 month trial period approved in 2019.</p> <p>Council requires a formal plan of management of noise with refined definitions that can be used as an enforcement tool. It is understood that the applicant is in the best position to provide fair and just clauses that appropriately reflect the complexities of operations, in balance with community amenity and State guidelines such as the Noise Policy for Industry.</p> <p>This would include rules that stall operators are required to follow which are reasonable, practical and measurable. Keeping in mind, any breach of these rules would be considered a breach of consent.</p> <p>We suggest the applicant implements the noise control management recommendations in the acoustic report prior to deciding on a formal plan of management that can be effectively regulated. Recommendations such as 'stall operator arrivals staggered equally between gates', 'truck idling for extended periods', 'trucks with reverse alarms should avoid reversing' and 'patrons are directed to park in the covered RSL parking or as further away from the residential receivers as possible' are not well defined or practical, therefore, not able to be enforced or used by Council as conditions of consent.</p> <p>Environmental Health do not object to trading from 8 am - the noise issues are related to stall operators and vehicles during setup.</p>
Traffic Engineer	<p>The application seeks modification of the commencement of trading hours from 8.30am to 8.00am, 30 minutes earlier than the currently approved time.</p> <p>In terms of Traffic Impacts, there is no unreasonable impacts envisaged.</p> <p>Council's Traffic Team raise no objection to the modification of the</p>

Internal Referral Body	Comments
	start time, provided all other conditions, previously imposed, remain.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for commercial purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the commercial land use.

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was not referred to Ausgrid, as no physical works are proposed.

Pittwater Local Environmental Plan 2014

Is the development permissible?	Zone R2 : No
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	Zone B7 : No Zone SP2: No
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Zone R2 : Yes Zone B7 : Yes Zone SP2: Yes

Principal Development Standards

There are no principal development standards under Part 4 of the PLEP 2014 to consider as part of this assessment.

Compliance Assessment

Clause	Compliance with Requirements
2.8 Temporary use of land	No

Detailed Assessment

2.8 Temporary use of land

The subject site is zoned R2 Low Density Residential, B7 Business Park and SP2 Infrastructure (Classified Road). The proposal is wholly contained within the R2 and B7 zoned land, and does not impact upon the SP2 zoned portion of land. The proposed development is not permissible in the R2 or B7 zones. The proposal relies on Clause 2.8 Temporary Use of Land of the PLEP 2014 for permissibility. Clause 2.8 requires that development consent must not be granted unless the consent authority is satisfied that:

(a) the temporary use will not prejudice the subsequent carrying out of development on the land in accordance with this Plan and any other applicable environmental planning instrument, and

Comment:

The proposed modification does not alter the approved development's compliance with this clause.

(b) the temporary use will not adversely impact on any adjoining land or the amenity of the neighbourhood, and

Comment:

As per the previous assessment, the proposed temporary use is acceptable in relation to neighbourhood amenity, subject to adherence to conditions of consent and the Plan of Management. Unlike the previous modification application (MOD2019/0574), the current proposed increase in hours of operation is consistent with the NSW Environmental Protection Authority's Noise Policy for Industry 2017 daytime trading hours for Sundays (being 8am to 6pm). The current modification application is supported by a Noise Emission Compliance Report, which demonstrates the additional half hour of trading does not result in any unreasonable acoustic impacts to nearby residential properties. This element of the proposal is supported. However, the proposed extension of the consent from a trial period to five years is not considered suitable, as the markets have not been in operation for the length of time intended by the Northern Beaches Local Planning Panel upon conditional approval of the original application for the markets (DA2019/0123). As such, the extension of the consent period to five years is not yet considered appropriate in terms of making a full assessment of amenity, and is not yet demonstrative of orderly development.

(c) the temporary use and location of any structures related to the use will not adversely impact on environmental attributes or features of the land, or increase the risk of natural hazards that may affect the land, and

Comment:

The proposed modification does not alter the approved development's compliance with this clause.

(d) at the end of the temporary use period the land will, as far as is practicable, be restored to the condition in which it was before the commencement of the use.

Comment:

The proposed modification does not alter the approved development's compliance with this clause.

Given the above in relation to (b) above, the consent authority cannot be satisfied that the temporary use will not adversely impact on any adjoining land or the amenity of the neighbourhood, and consent to the modification application cannot be granted.

Pittwater 21 Development Control Plan

Built Form Controls

There are no built form controls under Part D14 Warriewood Locality of the P21 DCP to consider as part of this assessment.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.15 Waterways Locality	Yes	Yes
A4.16 Warriewood Valley Locality	Yes	Yes

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect 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.

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

In summary, a detailed assessment has been undertaken in relation to following:

Orderly Development of Land

The proposed modification is inconsistent with the approved trial period, which intends for the markets to operate for an extended period of time (12-18 months). A trial period of approximately nine months at the time of writing this report amounts to a reduced trial period, and does not provide for orderly development in accordance with the objects of the *Environmental Planning and Assessment Act 1979*.

Acoustic Amenity

The proposed extension of trading hours is acceptable in relation to the NSW Environmental Protection Authority's Noise Policy for Industry 2017 "Daytime Trading Hours for Sundays", and is not considered to present an unreasonable acoustic impact on nearby residential properties.

Temporary Use of Land

The proposed modification does not provide the consent authority with sufficient satisfaction that the extended consent period will not result in adverse impact on the amenity of the neighbourhood.

Based on the above assessment, the proposed extension of the operating hours is supported, but the proposed extension of the consent period is not supported.

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. Mod2020/0175 for Modification of Development Consent DA2019/0123 granted for use of part of the carparking area associated with the Pittwater RSL Club for the purposes of an organic food market on land at Lot 27 DP 5055,22 Jubilee Avenue, WARRIEWOOD, Lot 51 DP 1237461,84 Mona Vale Road, MONA VALE, Lot 52 DP 1237461,80 - 82 Mona Vale Road, MONA VALE, subject to the conditions printed below:

A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

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

a) Modification Approved Reports

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Operational Management Plan	June 2020	M A Choularton
Noise Emission Compliance Report	28 May 2020	Rodney Stevens Acoustics

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

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

B. Modify Condition 4 Amendment to Plan of Management to read as follows:

The submitted Operational Management Plan is to be amended to include:

- Hours of Operation, being:
 - Access for stall traders: 7:00am-2:00pm; and
 - Trading hours: 8:00am-12:30pm.
- Methods for restricting access to the site prior to 7am and in relation to trading hours;
- Complaints Register: A complaints register is to be kept up to date at all times, logging complaints received, and action taken;
- Complaints Contact: A contact person is to be nominated in the Operational Management Plan along with a phone number;
- Stall Numbers: Market events are not to exceed 100 stalls at any time; and
- Market events must not exceed 42 days in 12 months.

Reason: To ensure appropriate amenity, complaints resolution and consistency with the consent.

C. Modify Condition 7 Hours of Operation to read as follows:

The hours of operation are to be restricted to:

- Sundays:
 - Set Up: 7:00am-8:00am
 - Trading: 8:00am to 12:30pm
 - Pack Down: 12:30pm-2:00pm

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises for the purpose of the markets shall be required to leave. Stallholders and site managers may commence set up from 7:00am and must vacate the site by 2:00pm. No access to the site for the purpose of market stall set up is permitted before 7:00am.

Reason: Information to ensure that amenity of the surrounding locality is maintained. At the public meeting, the applicant indicated that approval was only being sought to operate the market on Sundays.

D. Modify Condition 10 Trial Period to read as follows:

This consent expires in 21 months from the date of commencement of operation of the market on site unless, by no later than 16 months after the date of commencement, the applicant lodges a modification application to extend the expiry date to 5 years and Council thereafter approves the modification.

Reason: To monitor the operation of the consent to ensure no adverse impact on any adjoining land or the amenity of the neighbourhood and the temporary use of the land in accordance with the consent.

E. Add Condition 11 Operation to read as follows:

Operation of the markets is to be in accordance with the approved Operational Management Plan and Noise Emissions Compliance Report.

Reason: To ensure operation of the markets does not result in unreasonable impacts to the amenity of surrounding residential properties.