

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2019/0547
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Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 27 DP 5055, 22 Jubilee Avenue WARRIEWOOD NSW 2102 Lot 120 DP 135512, 84 Mona Vale Road MONA VALE NSW 2103 Lot 26 DP 654262, 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
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:	07/11/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	26/11/2019 to 10/12/2019
Advertised:	Not Advertised
Submissions Received:	87
Clause 4.6 Variation:	Nil
Recommendation:	Refusal

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. 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 86 submissions, comprising of approximately 17% against (15), and 83% in support (71). 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.

The application has been assessed against the *Environmental Planning and Assessment Act 1979* (EP&A Act 1979), *Environmental Planning and Assessment Regulations 2000* (EP&A Regulations 2000), relevant environmental planning instruments (EPIs) and Council policies. Based on the detailed assessment contained in this report, it is recommended that the application be **refused**.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks to modify Development Consent DA2019/0123 to 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: 6:00am-7:30am*
- *Trading: 7:30am to 12:30pm*
- *Pack Down: 12:30pm-2:00pm*

Therefore, the proposal involves extending the hours to commence set up one hour earlier, and subsequently commence trading one hour earlier.

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 120 DP 135512 , 84 Mona Vale Road MONA VALE NSW 2103 Lot 26 DP 654262 , 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.

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	No The proposed modification is not of minimal environmental impact in relation to acoustic amenity. This is included as a recommended reason for refusal.
(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	Council is satisfied that the proposed works are substantially the same as those already approved under DA2019/0123.
(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 <i>Environmental Planning and Assessment Act 1979</i> , <i>Environmental Planning and Assessment Regulation 2000</i> , <i>Pittwater Local Environment Plan 2014</i> and <i>Pittwater 21 Development Control Plan</i> .
(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	None applicable.
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 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 clause is not relevant to this application.</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	(i) Environmental Impact

Section 4.15 'Matters for Consideration'	Comments
impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>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> <p>(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.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the proposed modification in relation to impacts on acoustic amenity.
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 to result in unreasonable impacts on acoustic amenity and may result in a development that creates an undesirable precedent, such that it would undermine the desired future character of the area and be 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 (to be modified by this application) sought consent for use of the subject site for the purpose of markets. DA2019/0123 proposed to operate the markets for the following hours on Sundays:

- Set Up: 6:00am-7:30am
- Trading: 7:30am to 12:30pm
- Pack Down: 12:30pm-2:00pm

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 conditions state:

- **7. Hours of Operation**
The hours of operation are to be restricted to:
 - *Sundays:*
 - *Set Up: 7:00am-8:30am*
 - *Trading: 8:30am 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.

- **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.

It can be established (given the inclusion of Condition 7) that the NBLPP were concerned with the potential impact on nearby residential properties with the proposed hours of set up commencing at 6.00am and the hours of operation commencing at 7:30am every Sunday morning. The Assessment Report for DA2019/0123 recommended set up from 7:00am and trading from 8:30am, in order to provide greater consistency with the NSW Environmental Protection Authority's Noise Policy for Industry 2017 "Daytime Trading Hours for Sundays", and in consideration of the fact that no acoustic assessment was provided by the Applicant to demonstrate that operation outside of the hours deemed 'daytime' by the NSW EPA is acceptable. This recommendation was acceptable to the NBLPP.

No further acoustic assessment has been provided for this modification application, other than written comment by the Applicant. Inadequate justification has been provided in this regard to demonstrate that the extended hours are suitable.

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. To modify the consent to include increased hours of operation after a relatively short period months is contrary to the intention of Condition 10. Given an insufficient period of operation has elapsed, and that sufficient justification for the extended hours has not been provided, the proposed modification is not demonstrated to be 'orderly' development as required by the Act.

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 87 submission/s from:

Name:	Address:
Bambi Coleman	Address Unknown
Grant Jackson	Address Unknown
Mrs Jessica Drummond Wardlaw	15 Bergonia Street MONA VALE NSW 2103
Gwenda Miles	Address Unknown
Hilik Mirankar	Address Unknown
Michele Lyons	Address Unknown
Ann Margaret Burleigh Mr Neil Burleigh	5 Kay Close MONA VALE NSW 2103
Susannah Malyon	Address Unknown
Igor Kovacevic	Address Unknown
Sally Joann Woerndl	6 Kay Close MONA VALE NSW 2103
Naoko Konishi	Address Unknown
Mr Stephen Choularton	10 Chiltern Road INGLESIDE NSW 2101
Mrs Anne Marie McInnes	35 A Alameda Way WARRIEWOOD NSW 2102
Pod Cuisine	Attn: Clara Mason Po Box 1250 ROZELLE NSW 2039
Ms Rachel Crane	48 Prince Alfred Parade NEWPORT NSW 2106
Mr Geoffrey Russell Walsh	188 Warriewood Road WARRIEWOOD NSW 2102
Ms Ronda Lea Schweinsberg	5 / 6 Foley Street MONA VALE NSW 2103
Becci Watson	Address Unknown
Mr Mark William Gilbertson	73 Vineyard Street MONA VALE NSW 2103
Kate Berridge	Address Unknown
Mrs Janice Lynette Bilton	8 / 6 Foley Street MONA VALE NSW 2103
State Transit Authority Mona Vale Depot	58 Darley Street MONA VALE NSW 2103
Mrs Barbara Anna Hermann Laura Baierl	1 / 12 - 14 Angophora Circuit WARRIEWOOD NSW 2102
Ron Bode	19 Jubilee Avenue WARRIEWOOD NSW 2102
Mr Anthony Hilliger	11 Buena Vista Avenue MONA VALE NSW 2103
Mr Kevin John Lee	89 Mona Vale Road MONA VALE NSW 2103
Mrs Emily Jane Aquino	20 / 46 The Crescent DEE WHY NSW 2099
Michelle Phipps	Address Unknown
Karmen Sindermann	53 Elimatta Road MONA VALE NSW 2103
Elsa Jeppesen	Address Unknown
Mr Trevor Lindsay Ings Ms Courtney Mae Ings	88 Warriewood Road WARRIEWOOD NSW 2102
NICOLE GRUEL	Address Unknown
Mrs Linda Geraldine McWhirter	55 Mona Vale Road MONA VALE NSW 2103
Mr Robert Leeson	Address Unknown
Tony Batchelor	Address Unknown

Name:	Address:
Margit Batchelor	
Mr Norbert Blick Veronique Lydie Blick	42 Londonderry Drive KILLARNEY HEIGHTS NSW 2087
Paul Touma	Address Unknown
Mrs Clare Luchetti	28 Inglebar Avenue ALLAMBIE HEIGHTS NSW 2100
Sherree Lisa Maniks	9 Spring Road NORTH CURL CURL NSW 2099
Georgia Fletcher	77 Rednal Street MONA VALE NSW 2103
Mrs Lynda May Hensley	118 Plateau Road BILGOLA PLATEAU NSW 2107
Storme Elizabeth Paige Mirika Poutama	6 Marcus Place FRENCHS FOREST NSW 2086
Mrs Brenda Singleton	Address Unknown
Ms Kathleen Chapman	6 Yuruga Place ALLAMBIE HEIGHTS NSW 2100
Janene Taylor	Address Unknown
Dolfi Benesh	10 Windsor Place ST IVES CHASE NSW 2075
Golden Gozleme	7 Lawrence Street SEVEN HILLS NSW 2147
Jesmin Patel	Address Unknown
Naresh Patel	Address Unknown
Lyn Kirk	Address Unknown
Jeff Delaney	Address Unknown
Tania Elder T/A Newport Yoga Centre	93 A Myola Road NEWPORT NSW 2106
Mr Milan Debelak	67 Bungan Head Road NEWPORT NSW 2106
MS SHELLEY FARRISS	Address Unknown
Karen Elizabeth Oakley	19 Collaroy Street COLLAROY NSW 2097
Amanda Choularton	Address Unknown
Paul Christie	4 Sunrise Road PALM BEACH NSW 2108
Common Ground Bakery	1580 Remembrance Drive PICTON NSW 2571
Ms Belinda Brodie	Address Unknown
Mrs Louise Berkeley Edgley	30 / 5 Ponderosa Parade WARRIEWOOD NSW 2102
Martin Vella	16/117-119 Homer Street EARLWOOD NSW 2206
Mrs Linda Bennett	134 Pringle Avenue BELROSE NSW 2085
Angelique Tomkins	Address Unknown
Bobby Saini	Address Unknown
Julie Taylor	Address Unknown
Caitlin Haigh	Address Unknown
Eurolink Proprietary Ltd	2/78 Brighton Boulevard BONDI NSW 2026
Ms Anne Elizabeth Ohlback	125 Wyadra Avenue NORTH MANLY NSW 2100
Mr Daniel Glen Giles	80 Vineyard Street MONA VALE NSW 2103
Mrs Jane Elizabeth King	118 Cabarita Road AVALON BEACH NSW 2107
Ms Halyna Van Ewyk	16 Elphinstone Place DAVIDSON NSW 2085
Joshua Beck	Address Unknown

Name:	Address:
Miss Jessica Marie Carrier	12 / 31 Seaview Avenue NEWPORT NSW 2106
Michael Min	Address Unknown
Mr Ian Ivor Littleton	PO Box 418 STUBBO NSW 2852
Anonymous	N/A
Mr John Michael O'Neill	10 C Ponderosa Parade WARRIEWOOD NSW 2102
Mr Grant Tomkins	22 B Heath Street MONA VALE NSW 2103
Vicky Pantelas	1 Rosella Street PRESTONS NSW 2170
Alison Clinch	3 Orlando Road CROMER NSW 2099
Mr Timothy Charles Clarke	63 Powderworks Road NORTH NARRABEEN NSW 2101
Peter McDonald Mr Peter William McDonald	6 Foley Street MONA VALE NSW 2103
Lauren Sharma	Address Unknown
Durga Devi	Address Unknown
Ms Valerie Jensen Ms Mary Phillips	185 Warriewood Road WARRIEWOOD NSW 2102
Cheese On Wheels	6 Macmahon Street NORTH WILLOUGHBY NSW 2068
Hannah Clark	Address Unknown

The application received 87 submissions, comprised of 15 against and 72 in support. The issues raised in the submissions are addressed as follows:

ISSUES RAISED AGAINST EXTENSION OF HOURS

Previous Application Recommendations

One submission raised concern that the recommendations from the previous Assessment Report and Memorandum in relation to formalisation of the footpath along Foley Street and have not been enforced.

Comment:

The previous Assessment Report and Memorandum in relation to the original development application made recommendations for the consideration of the Northern Beaches Local Planning Panel (NBLPP). Recommendations in an Assessment Report and/or Memorandum may or may not be accepted by the NBLPP. The NBLPP considered a trial period of 18 months to be suitable for the proposal, so that the operation of the markets could be monitored in relation to its impacts, with the intention of the consent being extended to a maximum period of five years, if proven to be acceptable. Given a trial period was issued, the NBLPP considered the recommendation for upgraded footpath works to be onerous, and that this matter could be reconsidered at such time an extension of the trial period to five years was sought.

Traffic, Parking, and Safety

Submissions raised concern that the current use of the markets makes parking for RSL patrons difficult, and leads to several traffic impacts, including increased cars on the road, increased noise, illegal parking, and increased risk to pedestrian safety. The submission from the State Transit Authority raised concern that the bus stop on Foley Street is impacted by illegal parking and that issuance of infringements has not resolved this matter.

Comment:

The Applicant provided a suitable Parking & Traffic Impact Assessment Report and traffic modelling with the original development application to the satisfaction of Council's Traffic Engineer. If the modification were to be approved, the increased hour of trading is not anticipated to alter traffic generation in an unreasonable manner. However, the modification to hours of operation is not supported in relation to acoustic amenity, and are recommended to remain trading between 8:30am and 12:30pm. Concerns regarding traffic issues will need to be addressed in any future modification application to extend the trial period with the submission of a traffic report based on actual observations, rather than traffic modelling.

Amenity - Noise

Many submissions raised concern that earlier trading hours would impact on amenity of nearby residential properties in relation to noise from traffic and set up.

Comment:

The proposed modification application is not supported in relation to noise, as the extended hours are not consistent with the NSW Environmental Protection Authority's Noise Policy for Industry 2017 "Daytime Trading Hours for Sundays", whereas the current hours are, and the new proposed hours present an unreasonable impact on the acoustic amenity of nearby residential properties. Furthermore, the application is not supported by an acoustic assessment to justify the change of hours.

Precedent

Submissions raised that other markets have been approved with later trading hours.

Comment:

Other market uses/operations cannot be considered a precedent in relation to hours of operation for the subject market, as the hours applied are most suitable to the relevant site, and the context of other sites may differ to that under this application.

Trial Period

Several submissions objected to the 'overturning' of the trial period. Concern was also raised that the trial period was specifically for 18 months, so no change to the consent should occur earlier than 18 months.

Comment:

As detailed earlier in this report, the proposed extension of hours at this early stage of the trial period is not considered orderly development, as the intention of the trial period (being to operate as approved for an extended period of time) has not yet been met. However, the relevant condition regarding the trial period indicates that to extend the consent period from 18 months to five years, an application shall be submitted by 13 months from the date of consent, so modification may occur prior to 18 months.

ISSUES RAISED SUPPORTING EXTENSION OF HOURS

Impact on Stallholders

Many submissions raised concern that the current hours of operation negatively impacted upon (reduced) income for stallholders, and that the current hours of operation do not allow stallholders to cover expenses. Submissions also raised that the current hours of operation stifled the markets' atmosphere. A number of submissions noted that extended hours of operation would lead to a more effective set up process for stallholders. One submission raised that extended hours would reduce food wastage.

Comment:

Financial impact for stallholders or other persons, atmosphere of the markets, convenience of market set up, and excess stall stock/food wastage are not relevant planning matters for consideration under

the *Environmental Planning and Assessment Act 1979*.

Amenity - Noise

A number of submissions raised that there have been no complaints or unreasonable noise issues from the current operation of the markets, other than those created by objecting parties.

Comment:

A number of submissions raised that the development results in unreasonable noise impacts. The proposed modification application is not supported in relation to noise, as the extended hours are not consistent with the NSW Environmental Protection Authority's Noise Policy for Industry 2017 "Daytime Trading Hours for Sundays", whereas the current hours are, and the new proposed hours present an unreasonable impact on the acoustic amenity of nearby residential properties. Furthermore, the application is not supported by an acoustic assessment to justify the change of hours.

Health

Several submissions raised that earlier hours would assist in reducing health impacts resulting from trading later in hour summer months.

Comment:

Council's Environmental Health Officer has reviewed this application and has not raised concern about the current hours in relation to health.

Precedent

Submissions raised that other markets on the Northern Beaches have been approved with earlier trading hours.

Comment:

Other market operations cannot be considered a precedent in relation to hours of operation, as the hours applied are most suitable to the relevant site, and the context of other sites may differ to that under this application.

Regulation

Submissions raised that the markets are well-regulated and consistently patrolled by Council's Rangers to ensure adherence to requirements.

Comment:

It is noted that Rangers do patrol the markets. However, this is insufficient in justifying extended hours of operation.

Traffic and Parking

One submission raised that the bus stop is only impacted by illegal market-goer parking because it is not effectively marked.

Comment:

This has been reported to Council's Traffic Engineer for consideration.

OBJECTION UNRELATED TO PROPOSAL

Site Location / Suitability

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

Comment:

This modification application does not propose a new location for the markets. Hypothetical consideration of other land for suitability is not a relevant planning matter for consideration under the *Environmental Planning and Assessment Act 1979*.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Industrial)	<p>Original Comments: Changes proposed by the Mona Vale Organic Markets are for time extensions to bump-in (from 6 am) and trading (from 7:30 am). This moves the current operational times forward by one hour. Environmental Health is cautious in recommending approval due to lengthy noise investigations that have occurred in this particular area (albeit relating to other commercial activities). However, in the absence of any noise-related complaints about the market operations thus far, we recommend approval and request consideration of a trial period of one year.</p> <p>Updated Comments: Environmental Health has been asked to review the previous recommendation provided for this modification with regard to noise. Since the recommendation was made on 21 November 2019, more concerns have been raised about noise issues associated with the current operations (bump-in from 07:00 and trading from 08:30). The most relevant guidelines, <i>Noise Policy for Industry and Protection of Environmental Operations (Noise Control) Regulation 2017</i> do not permit vehicle noise: (i) before 8 am or after 8 pm on any Saturday, Sunday or public holiday, or (ii) before 7 am or after 8 pm on any other day. Further investigation into noise found that, in fact, the current 'bump-in' from 07:00 has allegedly interfered with the repose and comfort of nearby residents. In considering absolute noise reduction conditions on operations, that both reflect guidelines and are practical, we find a conflict between the actions of vehicles and workers arriving, unloading materials and setting up and the associated noise being audible from habitable rooms before 08:00. Therefore, Environmental Health is recommending refusal.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.
NSW Police – Crime Prevention Office (Local Command matters)	The proposal was referred to NSW Police. No response has been received and therefore, it is assumed that no objections are raised and no conditions are recommended.

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 referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

Pittwater Local Environmental Plan 2014

Is the development permissible?	Zone R2 : No 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. The proposed increase in hours of operation presents an inconsistency with the NSW Environmental Protection Authority's Noise Policy for Industry 2017 daytime trading hours for Sundays. As such, the proposal is not considered to adequately retain amenity for the neighbourhood in terms of noise impacts, particularly in consideration that no acoustic assessment has been provided to indicate that operation outside daytime hours is acceptable. The temporary use remains acceptable as approved under DA2019/0123, but not as modified under this application.

(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
A4.14 Warriewood 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, in this regard the application is not considered to be acceptable and is recommended for refusal.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Inconsistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Inconsistent with the aims of the LEP

- Consistent with the objectives of the relevant EPIs
- Inconsistent 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 in an unchanged manner for an extended period of time (18 months). The reduced trial period does not provide for orderly development in accordance with the objects of the *Environmental Planning and Assessment Act 1979*.

Acoustic Amenity

The proposed modification includes works outside the NSW Environmental Protection Authority's Noise Policy for Industry 2017 "Daytime Trading Hours for Sundays", presenting 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 hours of operation will not result in adverse impact on the amenity of the neighbourhood.

Based on the above assessment, the proposed extension of the operating hours and effective elimination of the 18-month trial period is not supported.

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council, as the consent authority REFUSE Modification Application No. Mod2019/0547 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 120 DP 135512,84 Mona Vale Road, MONA VALE, Lot 26 DP 654262,80 - 82 Mona Vale Road, MONA VALE, subject to the reasons outlined as follows:

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.

