

22<sup>nd</sup> December 2020

The General Manager  
Northern Beaches Council  
PO Box 82  
Manly NSW 1655

Dear Sir,

**Statement of Environmental Effects**  
**Modification of consent A212/63**  
**Alteration and additions to the existing motel, restaurant and shops**  
**Pasadena**  
**1858 Pittwater Road, Church Point**

**1.0 Introduction**

This document forms a component of a development application proposing the modification of the consent pursuant to Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 (the Act). Specifically, the modifications involve:

- The enclosure of the existing waste storage and empty keg collection handling areas,
- The relocation of the existing bathroom facilities to facilitate the reconfiguration of the existing shop tenancies,
- The consolidation of 3 shop tenancies to create 2 shop tenancies,
- The expansion of the existing general store and delicatessen to include a new pick up/ take away window, access doors and roofed deck orientated towards the adjacent reserve, and
- The replacement of the existing external fire egress stair at the rear of the property.

We are satisfied that the proposed modifications represent substantially the same development as that originally approved with the three-dimensional form of the existing building not significantly altered.

The new bin/ empty keg pickup enclosure will significantly improve the streetscape appearance of the development by screening what is currently an unattractive area as viewed from the street.

To that extent, Council can be satisfied that the modifications involve minimal environmental impact and the development as modified represents substantially the same development as originally approved. Accordingly, the application is appropriately dealt with by way of Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 (the Act)

## **2.0 Site description and location**

The application proposes works on the following sites:

- Lot 142, DP 752046, No. 1858 Pittwater Church Point having primary frontage to Pittwater Road of 32.685 metres, depth of between 19.27 and 19.595 metres, a northern boundary dimension, facing Pittwater Waterway, of 32.64 metres and a total site area of 634.4 square metres; and
- Lot 3, DP 1148738 is an irregular shaped allotment under lease from the Crown. This lot has recently been reduced in size and is located to the north of the primary allotment.

Lot 142, DP 752046 is occupied by a 3 storey masonry building known as “Pasadena” approved for use as a motel with licensed restaurant with both indoor and covered outdoor areas, general store/ delicatessen, real estate agent and motel accommodation comprising 14 rooms, including a caretaker’s flat, and roof level laundry and terrace area. A loading bay and garbage storage/ keg collection area is located to the east of the existing building and accessed over the adjacent Crown land.

The Pasadena operates pursuant to the 1961 development consent and subsequent 1963 building approval. The site and its immediate surrounds are depicted in Figure 1 over page. The sites are generally flat and contain no significant landscape elements.



Source: Google Maps

**Figure 1 - Aerial location/ context map**



Source: Google Maps

**Figure 2 – Photograph of existing bin and empty keg storage area**



Source: Google Maps

**Figure 3** – Photograph showing western end of the existing building and its relationship to Thomas Stephens Reserve

Sir Thomas Stephens Reserve and 2 adjacent commuter wharfs, the smaller of which is heritage listed, are located to the west of the site providing an important transport “gateway” and focal point for community interaction and recreation.

The property further to the east is occupied by a 2 storey heritage listed weatherboard building with metal roof known as the Church Point Post Office and Store from which light refreshments, groceries and alcohol is able to be purchased. The land to the east of the site is occupied by a public car park.

To the south of the subject site, and located at a higher elevation, are a number of residential properties oriented towards the prevailing views, Quarter Sessions Reserve and a heritage listed cemetery. Scotland Island and Elvina Bay are located 400 and 600 metres respectively from the site generally in a northerly direction.

### 3.0 Development Proposal

The proposed modifications are depicted on the following plans prepared by Quattro Architecture:

S4.55-A-000	COVER SHEET
S4.55-A-050	SITE PLAN
S4.55-A-099	EXISTING AND DEMOLITION GROUND PLAN
S4.55-A-100	GROUND FLOOR PLAN
S4.55-A-101	LEVEL 1 PLAN
S4.55-A-102	LEVEL 2 PLAN
S4.55-A-103	ROOF PLAN
S4.55-A-200	BUILDING EXISTING ELEVATIONS
S4.55-A-201	BUILDING PROPOSED ELEVATIONS

Specifically, the modifications involve:

- The enclosure of the existing waste storage and empty keg collection handling areas,
- The relocation of the existing bathroom facilities to facilitate the reconfiguration of the existing shop tenancies,
- The consolidation of 3 shop tenancies to create 2 shop tenancies,
- The expansion of the existing general store and delicatessen to include a new pick up/ take away window, access doors and roofed deck orientated towards the adjacent reserve, and
- The replacement of the existing external fire egress stair at the rear of the property.

The proposal does not represent an intensification of use on the subject site with no changes to the established hotel and ancillary restaurant land use.

### 4.0 Statutory Planning Framework

#### 4.1 Section 4.55(1A) of the Environmental Planning and Assessment Act 1979

*Section 4.55(1A) of the Act provides that:*

- (1) *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*

- (b) *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*
  - (c) *it has notified the application in accordance with:*
    - (i) *the regulations, if the regulations so require, and*
    - (ii) *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.*
- (3) *In determining an application for modification of a consent under this section, 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 consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.*

In answering the threshold question as to whether the proposed modifications are of minimal environmental impact, we note that the external works are limited to the replacement of the existing dilapidated rear fire egress stairs, the enclosure of the existing waste storage and empty keg collection handling areas and changes to the western façade of the building to include a new pick up/take away window, access doors and roofed deck orientated towards the adjacent reserve.

The proposal does not represent an intensification of use on the subject site with no changes to the established motel and ancillary restaurant land use. The proposed modifications maintain the established general store/ delicatessen land uses, do not increase publicly accessible floor space and maintain the established land uses such that there will be no additional traffic generation as a consequence of the modifications sought.

The modifications will not in any significant manner alter the 3-dimensional built form, residential amenity or heritage conservation outcomes (adjoining items) achieved through approval of the original scheme. To that extent, Council can be satisfied that the modifications involve minimal environmental impact.

In answering the above threshold question as to whether the proposal represents “substantially the same” development the proposal must be compared to the development for which consent was originally granted, and the applicable planning controls. In order for Council to be satisfied that the proposal is “substantially the same” there must be a finding that the modified development is “essentially” or “materially” the same as the (currently) approved development - *Moto Projects (no. 2) Pty Ltd v North Sydney Council* [1999] 106 LGERA 298 per Bignold J.

The above reference by Bignold J to “essentially” and “materially” the same is taken from Stein J in *Vacik Pty Ltd v Penrith City Council* (unreported), Land and Environment Court NSW, 24 February 1992, where his honour said in reference to Section 102 of the Environmental Planning and Assessment Act (the predecessor to Section 96):

*“Substantially when used in the Section means essentially or materially or having the same essence.”*

What the abovementioned authorities confirms is that in undertaking the comparative analysis the enquiry must focus on qualitative elements (numerical aspects such as heights, setbacks etc) and the general context in which the development was approved (including relationships to neighbouring properties and aspects of development that were of importance to the consent authority when granting the original approval).

When one undertakes the above analysis in respect of the subject application it is clear that the approved development remains, in its modified state, a development which will continue to relate to its surrounds and adjoining development in the same fashion as originally approved in terms of view sharing, height, side boundary setbacks and landscape outcomes. The modifications will not significantly alter the 3-dimensional built form, residential amenity or heritage conservation outcomes achieved through approval of the original scheme.

The Court in the authority of *Stavrides v Canada Bay City Council* [2007] NSWLEC 248 established general principles which should be considered in determining whether a modified proposal was “substantially the same” as that originally. A number of those general principles are relevant to the subject application, namely:

- The proposed uses do not change,

- The external building appearance, envelope and volume as perceived from adjoining properties and the public domain is not significantly altered, and
- The modifications maintain the previously approved residential amenity outcomes in terms of views, privacy, visual bulk and overshadowing.

On the basis of the above analysis we regard the proposed application as being “essentially or materially” the same as the approved development such that the application is appropriately categorised as being “substantially the same” and is appropriately dealt with by way of Section 4.55(1A) of the Act.

## 4.2 Pittwater Local Environmental Plan 2014

### 4.2.1 Zoning

The subject properties have the following zoning pursuant to Pittwater Local Environmental Plan 2014 (PLEP 2014):

Allotment	Zoning
Lot 142, DP 752046	B1 Neighbourhood Centre
Lot 3, DP 1148738	RE1 Public Recreation

The existing hotel and ancillary restaurant and shop uses, including the existing general store/ delicatessen, operate in accordance with consent A212/63 and pursuant to section 4.70 of the Environmental Planning and Assessment Act 1979 (the Act). In this regard, we refer to Council’s correspondence of 2<sup>nd</sup> August 2019 (Attachment 1) which states:

*Council’s Building Investigations Officer inspected the above property on 6 December 2018 and determined that the use of the shop front at The Pantry & Fresh is used as a general store and delicatessen.*

*Historical records “Church Point (NSW) History” revealed evidence of use of the shop front at the PASADENA as a grocery store, wine saloon and milk bar is consistent to how it is today and The Pantry & Fresh rely on their previous development consent 1963 Building approval to operate as a general store and delicatessen.*

In this regard, the application relies on the rights afforded to the ongoing operation of the premises pursuant to these provisions.

### 4.2.2 Height of buildings

Pursuant to clause 4.3 of PLEP 2014 the maximum height of development on the land shall not exceed 8.5 metres or 8.0 metres above the Flood Planning Level (FPL).

We confirm that all proposed works sit comfortably below the prescribed 8.5 metre height of building standard. As the development satisfies the numerical standard is also deemed to comply with the associated objectives.



### **4.2.3 Heritage Considerations – Statement of Heritage Impact**

Pursuant to Clause 5.10 of Pittwater LEP 2014 the consent authority may, before granting consent to any development on land within the vicinity of a heritage item, require a Heritage Impact Statement to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item concerned.

Whilst the subject property is not heritage listed or located within a heritage conservation area the property is located within the vicinity of a number of heritage items namely:

- Lot 318, DP 824048 – McCarrs Creek Road – Church Point Post Office and Store.
- Lot 319, DP 824048 – McCarrs Creek Road – Church Point Wharf.
- Lot C, DP 349212, former Methodist Church site, No. 1 McCarrs Creek Road – graveyard and site of former Methodist Church.

We have formed the opinion that the proposed works, which maintain the established built form relationship to the adjoining heritage items, will have a neutral impact on the surrounding heritage items and their setting.

### **4.2.4 Acid sulphate soils**

Pursuant to clause 7.1 PLEP 2014 the site is identified as Class 5 on the Acid Sulfate Soils Map. As the proposed works do not involve excavation to a depth exceeding 1 metre below existing ground level no further analysis is required in relation to these provisions.

### **4.2.5 Flood Planning**

Pursuant to clause 7.3 PLEP 2014 the site is identified as being affected by an Overland Flow Path – Minor and subject to tidal inundation. The established floor levels are unaltered with the minor works proposed not requiring/ justifying any particular flood mitigation measures.

### **4.2.6 Limited Development in Foreshore Area**

Pursuant to clause 7.8(2) PLEP 2014 Development consent must not be granted for development on land in the foreshore area except for the following purposes:

- (a) *the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, if the levels, depth or other exceptional features of the site make it appropriate to do so,*

- (b) *boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*

The following definitions are applicable:

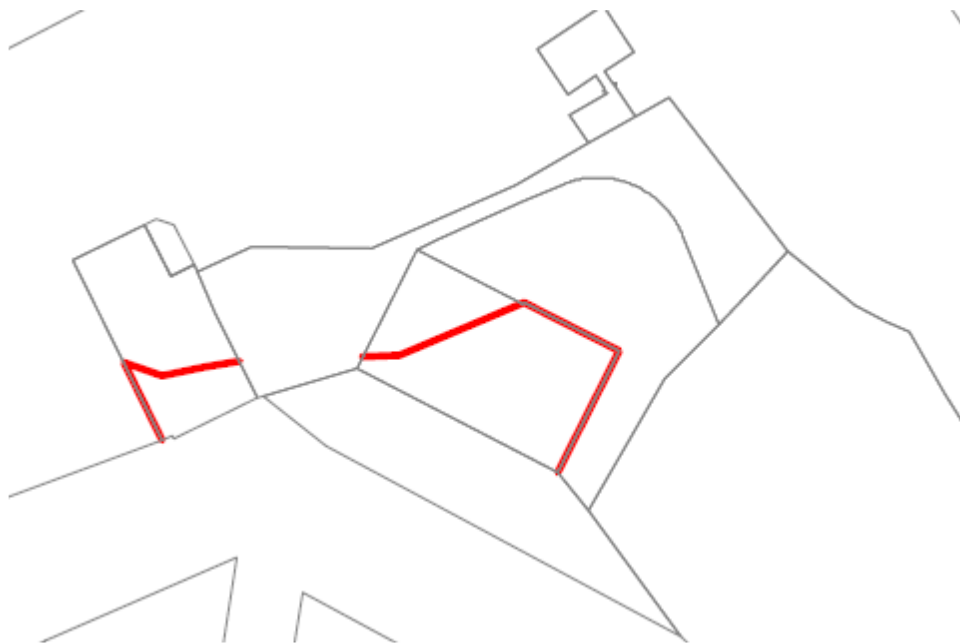
**Foreshore area** means the land between the foreshore building line and the mean high water mark of the nearest natural waterbody shown on the Foreshore Building Line Map.

**Foreshore building line** means the line shown as the foreshore building line on the Foreshore Building Line Map.

The property is subject to a Foreshore Building Line (FBL) the location of which is nominated in Figure 4 below. We note that the FBL cuts diagonally through the existing building on the property.

We note that the proposed garbage bin/empty keg storage enclosure, new external stairs and the works proposed to the existing general store including the adjacent roof deck are located within the FBL.

In this regard, we note that in accordance with the clause 7.8(2) PLEP 2014 FBL exception provisions that the proposed breaching elements *will not result in the footprint of the building extending further into the foreshore area than the existing buildings/ hardstand/ paved areas on the site.*



**Figure 4** – Foreshore Building Line Map Extract PLEP 2014

The foreshore building line encroaching elements will not give rise to any inappropriate or jarring visual bulk impacts as viewed from Pittwater waterway. Accordingly, the encroaching elements satisfy the FBL exemption provisions at Clause 7.8(2) PLEP 2014 and are acceptable on merit.

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

Having regard to the applicable DCP provisions we note the following:

- The proposed works comply with the building height provisions with the proposed works maintaining complimentary and compatible setbacks to the surrounding public domain,
- The proposed works will not give rise to any adverse residential amenity impacts in terms of privacy, solar access, views or noise,
- The proposed works will not give rise to any adverse streetscape or heritage conservation impacts with the works determined to have a neutral impact on the surrounding heritage items,
- The enclosure of the existing bin storage and keg collection areas will significantly enhance the streetscape appearance of the development,
- The introduction of additional fenestration and visual interest to the western façade will improve the aesthetic appearance and visual/ physical connectivity between the existing building and the adjacent public reserve,
- All stormwater will be connected to the existing stormwater disposal system which drains to Pittwater waterway,
- The proposed kitchen facilities will be fitted out in accordance with Council's food handling requirements,
- Excavation is limited to that required to accommodate the proposed footings, and
- The proposed works do not require the removal of any trees or vegetation.

The proposal satisfies the relevant DCP provisions.

## 5.0 Conclusion

The proposal does not represent an intensification of use on the subject site with no changes to the established motel and ancillary restaurant land use. The proposed modifications maintain the established general store/ delicatessen land uses, do not increase publicly accessible floor space and maintain the established land uses such that there will be no additional traffic generation as a consequence of the modifications sought.

The proposed external works are limited to the replacement of the existing dilapidated rear fire egress stairs, the enclosure of the existing waste storage and empty keg collection handling areas and changes to the western façade of the building to include a new pick up/take away window, access doors and roofed deck orientated towards the adjacent reserve.

The modifications will not in any significant manner alter the 3-dimensional built form, residential amenity or heritage conservation outcomes (adjoining items) achieved through approval of the original scheme. To that extent, Council can be satisfied that the modifications involve minimal environmental impact.

The proposed works will not give rise to any adverse streetscape or heritage conservation impacts with the works determined to have a neutral impact on the surrounding heritage items. The enclosure of the existing bin storage and keg collection areas will significantly enhance the streetscape appearance of the development with the introduction of additional fenestration and visual interest to the western façade will improve the aesthetic appearance and visual/ physical connectivity between the existing building and the adjacent public reserve,

To that extent, Council can be satisfied that the modifications involve minimal environmental impact and the development as modified represents substantially the same development as originally approved. Accordingly, the application is appropriately dealt with by way of Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 (the Act)

Yours sincerely

**BOSTON BLYTH FLEMING PTY LTD**



**Greg Boston**

B Urb & Reg Plan (UNE) MPIA

**Director**

**Attachment 1** Council correspondence confirming established lawful land use of the existing shop



2 August 2019

Altius Pty Ltd  
1858 Pittwater Road  
CHURCH POINT NSW 2105

Dear Sir/Madam,

**BLD2018/02109 – Alleged Use of Shop Front at the PASADENA as a General Store/ Delicatessen for The Pantry & Fresh of 1858 Pittwater Road, CHURCH POINT.**

I refer to a recent enquiry received by Council on 8 October 2018 concerning the above matter.

Council's Building Investigations Officer inspected the above property on 6 December 2018 and determined that the use of the shop front at The Pantry & Fresh is used as a general store and delicatessen.

Historical records "Church Point (NSW) History" revealed evidence of use of the shop front at the PASADENA as a grocery store, wine saloon and milk bar is consistent to how it is today and The Pantry & Fresh rely on their previous development consent 1963 Building approval to operate as a general store and delicatessen.

You are advised that Council has now completed its investigation of the allegations raised and considered the impacts on all affected parties. Council has determined, in accordance with provisions of Council's Regulation & Enforcement Policy, to **take no further action** regarding this issue, provided compliance is maintained.

Thank you for your cooperation in this matter.

For any further information about this matter, please contact me weekdays on 9976 1575 or via [council@northernbeaches.nsw.gov.au](mailto:council@northernbeaches.nsw.gov.au)

Yours faithfully



Johnny Eid  
Building Control Officer

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