

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2019/1094
----------------------------	-------------

<b>Responsible Officer:</b>	Thomas Burns
<b>Land to be developed (Address):</b>	Lot 4 DP 601758, 4 / 0 Bennett Street CURL CURL NSW 2096
<b>Proposed Development:</b>	Alterations and additions to a registered club
<b>Zoning:</b>	Warringah LEP2011 - Land zoned RE2 Private Recreation
<b>Development Permissible:</b>	No
<b>Existing Use Rights:</b>	Yes
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Harbord Bowling Club
<b>Applicant:</b>	Harbord Bowling Club

<b>Application Lodged:</b>	03/10/2019
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Commercial/Retail/Office
<b>Notified:</b>	16/10/2019 to 30/10/2019
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	1
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 18,500.00
---------------------------------	--------------

### PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for alterations and additions to a registered club. Specifically, the proposed development comprises:

- The demolition of an existing BBQ structure and awning on the southern elevation of the registered club;
- The construction of a new awning over the existing paved area on the southern side of the registered club;
- Alterations to the southern facade of the registered club to create a new entry way with an access ramp; and
- The construction of a new servery window on the southern elevation of the kitchen.

## 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

Warringah Local Environmental Plan 2011 - 6.3 Flood planning  
 Warringah Development Control Plan - C8 Demolition and Construction  
 Warringah Development Control Plan - C9 Waste Management  
 Warringah Development Control Plan - E8 Waterways and Riparian Lands  
 Warringah Development Control Plan - E11 Flood Prone Land

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 4 DP 601758 , 4 / 0 Bennett Street CURL CURL NSW 2096
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the northern side of Bennett Street, Curl Curl. The eastern side boundary fronts Stirgess Avenue.</p> <p>The site is irregular in shape with nine (9) boundaries and has a frontage of 97.94m along Bennett Street. Furthermore, the site has a surveyed area of 17,534sqm.</p> <p>The site is located within the RE2 Private Recreation zone and accommodates the Harbord Bowling and Recreation Club. A food and drink premises (JC's Pizza) is also located on the site, in conjunction with a carpark, four (4) bowling greens and four (4) futsal courts.</p> <p>The site is generally flat and contains a minor fall towards the centre of the site from the front and rear boundaries.</p>

The northern rear portions of the site is mapped as containing 'Acid Sulfate Soils Class 4', whereas the rest of the site is mapped as containing 'Acid Sulfate Soils Class 5' under the provisions of the WLEP 2011.

The site is mapped as being located within the 'Landslip Risk Area A' precinct under the provisions of the WLEP 2011.

The majority of the site is mapped as being located within a 'High Risk' flood precinct under Council's provisions. A small area located within the northern rear portion of the site is mapped as being located within a 'Medium Risk' flood precinct, whilst a small area located within the southern front portion of the site is mapped as being located within a 'Low Risk' flood precinct under Council's provisions. The front portion of the site located along the entirety of the southern front boundary and a portion of the eastern side boundary is not flood prone.

The northern rear portion of the site is mapped as a 'High Aboriginal Potential Area' under Council's provisions.

The site is mapped as being located within the 'Coastal Environment Area' under the provisions of the SEPP (Coastal Management) 2018.

#### **Detailed Description of Adjoining and Surrounding Development**

Much of the site boundaries (front and side boundaries) adjoin residential development, which comprises one (1) and two (2) storey detached dwelling houses. The rear of the site adjoins public reserves (sports fields).

Map:



## SITE HISTORY

A search of Council's records has revealed the following relevant history:

- Development Application DA2009/0204 for the enclosure of an existing barbecue area within an existing club (Harbord Bowling & Recreation Club) approved by Council staff on 04 May 2009; and
- Development Application DA2012/0900 for the construction of an outbuilding and fencing to an existing outdoor recreation facility (Harbord Bowling Club) approved by Council staff on 07 September 2017.

A site visit was undertaken on 15 October 2019.

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under 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	Warringah Development Control Plan 2011 applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of

Section 4.15 Matters for Consideration'	Comments
Regulation 2000 (EP&A Regulation 2000)	<p>development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to owner's consent and a site survey.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;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 of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan 2011 section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> 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 suitable 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	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

- Does the existing use satisfy the definition of "existing use" under the Environmental planning and Assessment Act, 1979 (the 'Act')?

Section 4.65 of the Act defines an existing use as meaning:

*"(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or*



*Division 4 of this Part, have the effect of prohibiting that use, and*

*(b) the use of a building, work or land:*

- (i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
- (ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse."*

This necessarily requires the following questions to be answered.

1. Was the use of the building, work or land a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part 4 of the Act, have the effect of prohibiting that use?

Comment:

The applicant has provided evidence in the form of Development Consent 1391DA for alterations and additions to an existing single storey club, which reveals that the use of the land for the purposes of a registered club commenced as a lawful purpose prior to coming in force of Warringah Local Environmental Plan 2011 on 09 December 2011. It is noted that the Harbord Bowling and Recreation Club was established in 1946, however Council's records do not contain the original consent for the premises.

2. Was the use of the building granted development consent before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use?

Comment:

The application proposes alterations and additions to a registered club on land zoned RE2 Private Recreation under the provisions of the Warringah Local Environmental Plan 2011. As identified on the land use table of this instrument, development for the purposes of a registered club is prohibited in this zone. However, the use of the land was lawfully approved by Council under Development Consent 1391DA on 15 April 1999, prior to coming in force of Warringah Local Environmental Plan 2011 on 09 December 2011.

3. Has the use of the building been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse?

Comment:

Council approved Construction Certificate 1391CC1 on 10 June 1999, which enabled the commencement of works for the alterations and additions to an existing single storey club building. Subsequently, the Notice of Commencement of Building or Subdivision Work and Appointment of Principle Certifying Authority was received by Council on 06 July 1999.

- **What is "the land on which the existing use was carried out" for the purposes of cl 42(2) (b) of the Environmental Planning and Assessment Regulation 2000 ("the Regulation")?**

Meagher JA in *Steedman v Baulkham Hills Shire Council* [No. 1] (1991) 87 LGERA 26 stated (at 27) the rule to be applied as follows: “that if the land is rightly regarded as a unit and it is found that part of its area was physically used for the purpose in question it follows that the land was used for that purpose”.

Comment:

Having regard to the above case law, it is noted that a part of the area of the land was physically used for the purpose in question and therefore, it is considered that the land was used for that purpose and that existing use rights apply to the whole of the subject site.

- **What are the planning principles that should be adopted in dealing with an application to alter enlarge or rebuild and existing use?**

The judgement in *Fodor Investments v Hornsby Shire Council* (2005) NSWLEC 71, sets out the planning principles which should be applied in dealing with development applications seeking to carry out development on the basis of existing use rights.

The following four principles adopted by the court in this case will have general application in dealing with Development Applications that rely on existing use rights:

**1. How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?**

*While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessments.*

Comment:

The proposed awning would be constructed to a maximum height of 3.51m above the existing ground level, therefore is compliant by virtue of the 8.5m maximum building height development standard prescribed within the Warringah Local Environmental Plan 2011. The wall height, building envelope, and setback controls prescribed within the Warringah Development Control Plan 2011 do not apply to the subject site. The landscaped open space numerical control applies to the subject site, which requires at least 40% of the site area to be landscaped open space. The application proposes no changes to the existing provisions for landscaped open space on the subject site.

**2. What is the relevance of the building in which the existing use takes place?**

*Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists. However, where the existing building is proposed for demolition, while its bulk is clearly an important consideration, there is no automatic entitlement to another building of the same floor space ratio, height or parking provision.*

Comment:

The application proposes no changes to the existing building footprint, with the minor exception of a new entry way. The application at large proposes an awning over an existing outdoor paved area.

### 3. What are the impacts on adjoining land?

*The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.*

Comment:

The proposed awning would be constructed to a maximum height of 3.51m above the existing ground level. Furthermore, the proposed awning would maintain a setback greater than 39m from all site boundaries. As such, the proposed awning will not give rise to any unreasonable amenity impacts to surrounding properties, specifically in relation to a loss of solar access, view loss and a loss of privacy.

### 4. What is the internal amenity?

*Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.*

Comment:

The proposed development will provide an acceptable level of internal amenity within the subject site.

### Conclusion

The use has been approved under a previous EPI (Warringah Local Environmental Plan 1985) and therefore, is a lawful use. Subsequently, the use can be retained under the current EPI (Warringah Local Environmental Plan 2011).

### **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 1 submission/s from:

Name:	Address:
Mr Gregory Allan Donaghey	42 Bennett Street CURL CURL NSW 2096

One (1) submission was received from the occupant of 42 Bennett Street, Curl Curl (southern side of Bennett Street).

The following issue were raised in the submission and each have been addressed below:



- Concerns that the proposed outdoor covered area will result in excessive noise generating activities that will impact the residential properties located to the south (38-44 Bennett Street). Furthermore, the submission requested that a condition be implemented to restrict the operational hours for the proposed outdoor covered area, in conjunction with a condition requiring the applicant to provide acoustic reports to inform further management strategies to alleviate excessive noise generating activities.

The matters raised within the submissions are addressed as follows:

- The application proposes the demolition of an existing awning and the construction of a new awning over an existing paved area. Given that the courtyard is an existing area, it is not anticipated that the proposed development will give rise to further noise generating activities. Furthermore, the proposed development is located 57.98m from the southern front boundary and approximately 80m from the northern front boundary of 42 Bennett Street. Having regard to the large spatial separation, in conjunction with the existing courtyard area that is used for recreational activities, the proposal is not likely to inflict unreasonable amenity impacts on the adjoining and nearby residential properties.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>
Environmental Health (Acid Sulphate)	<p><b>General Comments</b></p> <p>Councils records indicate the site is classified classes 4 and 5 for Acid Sulphate Soil. The application is advised that they have considered this in their application.</p> <p><b>Recommendation</b></p> <p>APPROVAL - subject to conditions</p>
Environmental Health (Industrial)	<p><b>General Comments</b></p> <p>Environmental Health has considered the impacts of the proposed upgrade of an existing Alfresco Area on the Southern Side of the Club with regard to noise, light and other construction/demolition and use aspects. We conclude on a recommendation to approve these changes given there is no significant change to the use of the site.</p> <p><b>Recommendation</b></p>

Internal Referral Body	Comments
	APPROVAL - no conditions
Environmental Health (Food Premises, Skin Pen.)	<p><b>General Comments</b></p> <p>The applicant proposes to insert a servery window in the southern wall of the kitchen. Environmental Health has some concern about how the kitchen will manage an opening with regard to insect ingress and contact with food being displayed - protection of food from contamination. We've concluded to recommend approval without conditions due to the fact that the food business operations will be regulated under the <i>Food Act 2003</i> during routine food inspections.</p> <p><b>Recommendation</b></p> <p>APPROVAL - no conditions</p>
NECC (Bushland and Biodiversity)	<p>Council's Natural Environment - Biodiversity section raises no objections to the proposed development.</p> <p>This application was assessed against E2 Prescribed vegetation, and E6 Retaining unique environmental features.</p> <p>The proposal is for the upgrade of the existing alfresco dining and minor alterations to the southern facade of the building. The proposal will not impact on biodiversity values and therefore is consistent with natural environment controls.</p>
NECC (Coast and Catchments)	<p>The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps but not been included on the Coastal Vulnerability Area Map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13, 14 and 15 of the CM SEPP apply for this DA.</p> <p>As assessed in the submitted Statement of Environmental Effects (SEE) report, the DA satisfies the requirements under clauses 13, 14 and 15 of the CM SEPP. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018 and is supported without condition.</p>
NECC (Development Engineering)	No change to floor space area. No Objections. No conditions
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>The proposed upgrade of the existing alfresco area, including the demolition of a BBQ structure and provision of a new awning, and new direct entry to the club house, are not considered to increase flood risk and generally comply with the flood requirements of the DCP and LEP.</p> <p>No flood related objection.</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.
Aboriginal Heritage Office	<p>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>Should any Aboriginal sites be uncovered during earthworks, works should cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council should be contacted.</p>

## 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.

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

The site is mapped as being located within the 'Coastal Environment Area' under the provisions of the SEPP (Coastal Management) 2018. Accordingly, the application is assessed against the provisions entailed within Clause 13 and 15 of the SEPP (Coastal Management) 2018.

#### **13 Development on land within the coastal environment area**

*(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*

- (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
- (b) coastal environmental values and natural coastal processes,*
- (c) the water quality of the marine estate (within the meaning of the [Marine Estate Management Act 2014](#)), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
- (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
- (e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
- (f) Aboriginal cultural heritage, practices and places,*
- (g) the use of the surf zone.*

*(2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*

- (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*

(b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or

(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

(3) This clause does not apply to land within the Foreshores and Waterways Area within the meaning of [Sydney Regional Environmental Plan \(Sydney Harbour Catchment\) 2005](#).

Comment:

The proposed development would occur over an existing impervious area on a previously disturbed site. As such, it is considered that the proposed development will have negligible impacts on the environmental, heritage, cultural and amenity values of the 'Coastal Environment Area'.

**15 Development in coastal zone generally—development not to increase risk of coastal hazards**

*Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.*

Comment:

The proposed development is of a minor scale, of which is not likely to increase the risks of coastal hazards on the subject site and adjoining properties.

**Warringah Local Environmental Plan 2011**

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	3.51m	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.5 Development within the coastal zone	Yes
6.1 Acid sulfate soils	Yes



Clause	Compliance with Requirements
6.3 Flood planning	Yes
6.4 Development on sloping land	Yes

#### Detailed Assessment

### 6.3 Flood planning

Council's Natural Environment Officer - Flood has assessed the application against the requirements of this Control and raised no objections, subject to conditions. Subject to compliance with the recommended conditions of consent, the proposal will comply with the requirements of this Control.

### Warringah Development Control Plan

#### Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	No enclosed wall	N/A	N/A
B3 Side Boundary Envelope	N/A	N/A	N/A	N/A
	N/A	N/A	N/A	N/A
B5 Side Boundary Setbacks	N/A	39.79m (East)	N/A	N/A
	N/A	49.51m (West)	N/A	N/A
B7 Front Boundary Setbacks	N/A	57.98m (South)	N/A	N/A
B9 Rear Boundary Setbacks	6m	No Change	N/A	N/A
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (7013.6sqm)	52% (9171.1sqm) - No Change	-	Yes

**\*Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example:  $38/40 \times 100 = 95$  then  $100 - 95 = 5\%$  variation)

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C8 Demolition and Construction	No	Yes
C9 Waste Management	No	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D18 Accessibility and Adaptability	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E8 Waterways and Riparian Lands	Yes	Yes
E10 Landslip Risk	Yes	Yes
E11 Flood Prone Land	Yes	Yes

#### Detailed Assessment

#### **C8 Demolition and Construction**

A Waste Management Plan was not submitted with this application. To ensure proper disposal of demolition and builder's waste, a condition has been recommended with this consent requiring a Waste Management Plan to be prepared and submitted to the Certifying Authority prior to the issue of any Construction Certificate. Subject to compliance with the recommended condition of consent, the proposal would comply with the requirements of this Control.

#### **C9 Waste Management**

A Waste Management Plan was not submitted with this application. To ensure proper disposal of demolition and builder's waste, a condition has been recommended with this consent requiring a Waste Management Plan to be prepared and submitted to the Certifying Authority prior to the issue of any Construction Certificate. Subject to compliance with the recommended condition of consent, the proposal would comply with the requirements of this Control.

#### **E8 Waterways and Riparian Lands**

A small area within the northern portion of the site is mapped as being located within the 'Waterways and Riparian Lands' area under the provisions of the WDCP 2011. It is noted that the proposed works are not located within this area. As such, it is considered that the proposed development is unlikely to have adverse impacts on the ecology and biodiversity of the adjacent waterway and riparian land.

#### **E11 Flood Prone Land**

Council's Natural Environment Officer - Flood has assessed the application against the requirements of this Control and raised no objections, subject to conditions. Subject to compliance with the recommended conditions of consent, the proposal will comply with the requirements of this Control.

## **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.

## **POLICY CONTROLS**

### **Northern Beaches Section 7.12 Contributions Plan 2019**

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this application.

## **CONCLUSION**

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah 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

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

## **RECOMMENDATION**

THAT Council as the consent authority grant Development Consent to DA2019/1094 for Alterations and additions to a registered club on land at Lot 4 DP 601758, 4 / 0 Bennett Street, CURL CURL, subject to

the conditions printed below:

## DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

### 1. Approved Plans and Supporting Documentation

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

#### a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA 00-01 Revision 03 - Site Plan & Soil & Erosion Control Plan	25 September 2019	GROUPN
DA 01-01 Revision 03 - Proposed Ground Floor Plan, Demolition Plan	25 September 2019	GROUPN
DA 02-01 Revision 02 - Proposed Elevations & Sections	19 September 2019	GROUPN

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

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

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

### 2. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
  - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the

following information:

- (i) in the case of work for which a principal contractor is required to be appointed:
  - A. the name and licence number of the principal contractor, and
  - B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
  - A. the name of the owner-builder, and
  - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
  - (i) protect and support the adjoining premises from possible damage from the excavation, and
  - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
  - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
  - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative requirement.

### 3. **General Requirements**

- (a) Unless authorised by Council:  
Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are



breaking up/removing materials from the site).

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (j) Prior to the commencement of any development onsite for:
  - i) Building/s that are to be erected
  - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
  - iii) Building/s that are to be demolished
  - iv) For any work/s that is to be carried out
  - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

- (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
  - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including

but not limited) to:

- (i) Swimming Pools Act 1992
  - (ii) Swimming Pools Amendment Act 2009
  - (iii) Swimming Pools Regulation 2008
  - (iv) Australian Standard AS1926 Swimming Pool Safety
  - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
  - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
  - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
  - (4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

## FEES / CHARGES / CONTRIBUTIONS

### 4. **Security Bond**

A bond (determined from cost of works) of \$1,000 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au)).

Reason: To ensure adequate protection of Council's infrastructure.

## CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

### 5. **Flooding**

In order to protect property and occupants from flood risk the following is required:

Building Components and Structural Soundness – C3

All new electrical equipment, power points, wiring, or any other service pipes and connections must be waterproofed and/or located above the Flood Planning Level of 5.3m AHD. All existing electrical equipment and power points located below the Flood Planning Level must have residual current devices installed cut electricity supply during flood events.

Storage of Goods – D1

Hazardous or potentially polluting materials shall not be stored below the Flood Planning Level of 5.3m AHD unless adequately protected from floodwaters in accordance with industry standards.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

**Reason:** To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

6. **Compliance with Standards**

The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure the development is constructed in accordance with appropriate standards.

7. **Sydney Water "Tap In"**

The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifying Authority demonstrating the works are in compliance with Sydney Water requirements.

Please refer to the website [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

- "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- Guidelines for Building Over/Adjacent to Sydney Water Assets.

Or telephone 13 000 TAP IN (1300 082 746).

Reason: To ensure compliance with the statutory requirements of Sydney Water.

8. **Waste Management Plan**

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Warringah Development Control Plan and Northern Beaches Council's Waste Management Guidelines.

Details demonstrating compliance must be provided to the Certifying Authority prior to the issue

of the Construction Certificate.

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

## CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

### 9. **Acid Sulfate Soil Management**

- Acid Sulfate Soil Management

Any new information which comes to light during excavation or construction works which has the potential to alter previous conclusions about the uncovering of Acid Sulfate Soil must be notified to the Certifier as soon as reasonably practicable. This will also require an Acid Sulfate Soil Management Plan, including disposal of affected soil to an approved facility, to be submitted to the certifier, before work continues.

### 10. **Aboriginal Heritage**

If in undertaking excavations or works any Aboriginal site or object is, or is thought to have been found, all works are to cease immediately and the applicant is to contact the Aboriginal Heritage Officer for Northern Beaches Council, and the Cultural Heritage Division of the Department of Environment and Climate Change (DECC).

Any work to a site that is discovered to be the location of an Aboriginal object, within the meaning of the National Parks and Wildlife Act 1974, requires a permit from the Director of the DECC.

Reason: Aboriginal Heritage Protection. (DACAHE01)

### 11. **Installation and Maintenance of Sediment Control**

Measures used for erosion and sediment control on building sites are to be adequately maintained at all times and must be installed in accordance with Council's Specifications for Erosion and Sediment Control. All measures shall remain in proper operation until all development activities have been completed and the site fully stabilised.

Details demonstrating compliance are to be submitted to the Certifying Authority.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

## CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE

### 12. **Removal of All Temporary Structures/Material and Construction Rubbish**

Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of any Interim / Final Occupation Certificate.

Reason: To ensure bushland management. (DACPLF01)

13. **Waste Management Confirmation**

Prior to the issue of a Final Occupation Certificate, evidence / documentation must be submitted to the Certifying Authority that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

In signing this report, I declare that I do not have a Conflict of Interest.

**Signed**



**Thomas Burns, Planner**

The application is determined on 15/11/2019, under the delegated authority of:



**Matthew Edmonds, Manager Development Assessments**