
From: [REDACTED]
Sent: 25/08/2024 4:30:42 PM
To: Council Northernbeaches Mailbox
Subject: PEX2024/0005 - Planning Proposal 29-31 Moore Rd and 64 Undercliffe Rd Freshwater
Attachments: To NBC PEX2024-0005 JBembrick 27 Moore Rd Freshwater - 25Aug2024.pdf;

Hi

Thanks for notification of the Planning Proposal for Harbord Hotel

I attach my submission

– I Prefer that my personal details are **not** added to the submission for on-line documents, but appreciate its appropriate to add the address – 27 Moore Rd Freshwater

I have had limited time to respond but given closing time for submissions, I submit the attached For applications of this significance, there should be a longer time allowed

I can not support the proposal as proposed

Accordingly, I seek that it be rejected or at least deferred to a future time after the current development is completed and performance of the substantially intensified operations are evaluated
If proceeding to a DA, an accompanying EIS would be better than an SEE.

The proponent's grab for additional land (64 Undercliffe Rd) to include in Pub Lands is a worrying precedent that does not appear to be appropriate and should be rejected

Should you need to contact me in regard to this submission, please contact me as per details below

Kind regards,

[REDACTED]

M. + [REDACTED]

e-mail [REDACTED]

To Northern Beaches Council

PEX2024/0005

Submission opposing Planning Proposal 29-31 Moore Road & 64 Undercliff Rd Freshwater

1 – Details of Submission

This submission is prepared by the owner of a unit immediately adjacent the Harbord Hotel who has lived at the location for over 30 years and is well aware of the Hotel's recent series of applications for developments of the relatively small 'Pub' site completely surrounded by residential premises where neighbours (some with as little as 25 to 30 m setback) are regularly exposed to adverse impacts of the Hotel activities and face even greater impacts of increased numbers, the current construction works will, when completed, substantially add:

- approximately 74% additional floor space (2 extra service levels) (primarily swill areas – areas for alcohol consumption), that have a high probability of generating disturbance when patrons are discharged at night – those impacts are in the future – not yet realised or verified and due to misleading information in a prior DA were inadequately assessed.
- allow hundreds of extra patrons (up to 850 patrons) at a residential zone location. Discharge of significantly increased numbers of inebriated patrons late at nights has high probability of significant impact on the local residential amenity (yet inadequately assessed and not tested as yet). This location is highly unsuited to such impacts.

Misleading information was a feature of the previous application and associated exhibition, and all reviewers of the Hotel's documentation should not rely on the proponent's information and seek additional verification of statements that lack substantive detail or are interim documents that are likely to vary going forward, varying impacts substantially and not being re-tested.

My principal issues with the Planning Proposal are:

- Proponent seeks further intensification of Pub operations at this residential location
- The surrounding residential areas are set back as little as 25 metres from the Pub
- There is a long history of neighbour concerns re disturbance flowing to the residential area – Little attention has been given to neighbour concerns relative to concerted efforts of the well-financed legal and planning advisors that wear down objection.
- The Pub persists at a residential location only because of the WLEP Schedule 1 Item 14 that allowed for 6 lots defined in the WLEP. The new Proposal is for a **5 storey building and wants access to residential land, not previously part of Pub lands.**
- The Pub has already negotiated substantial intensifications of the Licensed Premises, the latest remains under construction (until later in 2024) – impacts still to come.
- Impacts of the current substantial expansion are not yet tested. Two extra floors for swill activities (replace prior accommodation area in the Pub).
- The existing construction is removing accommodation in the existing building.
- Now the Pub owners want further development including outside of the Schedule 1 Pub area allowance. (Following page shows my understanding of current WLEP Provisions that should not be changed by this proposal for reasons described in the following.
- I also include further information but seek that; No further planning approvals (such as PEX2024/0005) are given for the Harbord Hotel until outcome of performance of the current development (construction in progress) is known based on a minimum 12 months of full operation. This seems reasonable given previous inadequate assessment

2 - Extract from WLEP 2011 in force 25/08/2024 (download on 25/08/2024)

Zone Provisions - Zone R2 Low Density Residential

1 Objectives of zone

- To provide for the **housing needs of the community** within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the **day to day needs of residents**.
- To ensure that **low density residential environments** are characterised by landscaped settings that are in harmony with the natural environment of Warringah.

2 Permitted without consent

Home-based child care; Home occupations

3 Permitted with consent

Bed and breakfast accommodation; Boat sheds; Building identification signs; Business identification signs; Centre-based child care facilities; Community facilities; Dwelling houses; Educational establishments; Emergency services facilities; Environmental protection works; Exhibition homes; Group homes; Health consulting rooms; Home businesses; Hospitals; Oyster aquaculture; Places of public worship; Pond-based aquaculture; Recreation areas; Respite day care centres; Roads; Secondary dwellings; Tank-based aquaculture; Veterinary hospitals

4 Prohibited

Any development not specified in item 2 or 3 (**Pubs not mentioned**)

Schedule 1 Clause 14 - Additional permitted uses – Current provision (at 25 August 2024)

14 - Use of certain land at 29 Moore Road, Freshwater (*allowed continuation of former Pub use*)

- (1) This clause applies to land at 29 Moore Road, Freshwater, being
**Lots 1–5, Section 1, DP 7022 and
Lot 13, Section 1, DP 7022,**
shown as “Area 14” on the Additional Permitted Uses Map. (*Had former use as a Pub*)
(The 6 lots do not include 64 Undercliffe Rd – Has always been Residential)
- (2) Development for the purposes of pubs is permitted with consent (only 6 listed lots)

Currently, 64 Undercliffe Lot 6 sec 1 DP7022 is not addressed by Schedule 1 of WLEP 2011 and should not be changed from its residential use, to be subsequently grouped with the Harbord Hotel which can in the future lead to much greater impacts on surrounding residential areas and, also takes away residential accommodation that is in short supply on Northern Beaches. Constantly people complain of difficulty securing rental homes.

Harbord Hotel used to have 15 rooms for accommodation – now trashed – replaced by swill

The pre-existing accommodation is currently being removed by current proponent at same time as setting up to seek new accommodation – cramming overdevelopment to suit the proponent’s personal objectives for profit – The proponent has not shown consideration of genuine neighbour concerns and may further trash the residential amenity.

3 – Specific Consideration of 64 Undercliffe Road

The Proponent’s Proposal for inclusion of 64 Undercliffe into the Pub lands is inappropriate

- It is couched in terms of being consistent with all sorts of policies (over-played)
- however, ignores the negatives of such a change. (doesn’t state whats not helpful)
- the proposal does not align with the Zone R2 objectives
- The Pub lands were only included in Schedule 1 to recognise a former use at time of formation of WLEP.
- 64 Undercliffe, has no such link to former use as a Pub
- 64 Undercliffe, is and has been, residential land for an extended period
- Insert below (from website shows property layout – includes 7 bedrooms) Residential!
- The Hotel would TAKE residential property and change it to short term accommodation
- Rental properties are in great demand and, I regularly hear of difficulties gaining residences – Not an issue that the Pub Proposal would want to acknowledge
- NB businesses need support staff and staff need longer term accommodation
- The Pub proposal reduces the net quantum of residential properties available for rent
- Even if 64 Undercliffe were excluded from Pub’s Plans for Hotel accommodation, it only slightly changes their plan for accommodation – 37 may reduce to 30 – that does not prevent accommodation on their Pub land (subject to suitable DA).
- The Hotel development including the accommodation and 64 Undercliffe represents a massive increase in bulk of building at the location – Appears very inconsistent with the 3rd dot-point of Zone R2 Residential objectives. The massive building (5 stories) will further block existing resident’s views toward the natural environment.
- The architecture of the existing building at 64 Undercliffe Rd aligns much closer with that of the Pub, than does the proposed accommodation.
- The character of the Pub developments existing and proposed are together reducing the heritage character of the existing Pub – mostly due to over-development.



In summary, the request to include 64 Undercliffe Rd in Pub Lands should be rejected as unjustified and contrary to Zone R2 objectives.

4 - History of DAs and reasons for caution with respect to current proposal

I urge caution for any Determining Authority in reviewing documents from the proponent. The track record is not good.

The DA 2021/1620 and SEE indicated 'only 50 extra patrons' based on development of two upper floors, mainly for bar service, increased *swill areas*. However, the reality is nothing like 50. The Exhibition of the DA was based on 'only 50 extra patrons'. Council in its assessment report simply followed the Hotel's lead and referred to only 6% increase in patron numbers. Council simply used this as a basis for the proposal not giving rise to increased anti-social behaviour, despite substantial complaints and majority of submissions being objections.

As a result, it appears that proper assessment of the discharge of significantly larger numbers of patrons late at night, was not fully assessed by the SEE or Council and was not adequately considered in reaching the determination. The process was entirely flawed and makes a mockery of the EP&A Act and those supposedly regulating or advising on its application. **This planning proposal PEX2024/0005 needs to demonstrate greater integrity and unbiased handling or the Act and its regulators are rendered not effective and stakeholders suffer.**

The results of the previous determination are as yet untested, as the construction for the new Hotel Facilities is still in progress and may not be completed until end of 2024.

Neighbours have little doubt that disturbance already associated with the Hotel will significantly increase and it **appears fair to the community, to give time for the Hotel performance to be gauged for at least 12 months before launching into further substantive development where details of that development remain unclear and would require extending the 'Pub' use to residential area not currently included in the lands for the current Pub premises.**

To date little assessment or consideration has been given to neighbour concerns and neighbours can easily believe there is one rule for Pubs and little attention to neighbour concerns.

5 - Reference to Vibrant Economy - The applicant and planning advisor may go on about a Vibrant economy, however, please advise if; Council and/or NSW Government intend that a Vibrant economy is one immersed in close residential surrounds where the residential community is repetitively disturbed and sleep deprived due to overdevelopment pushed by the self-interest of 'Pubs'. **I hope not.** Can Council please ask NSW Govt. if that was the Govt intention?

As I have previously pointed out with relevant details, Harbord Hotel is the worst location of any Northern Beaches Hotel for intensification of the Hotel's licensed swill services. If the Vibrant economy locations were selected by a proper consideration of proximity to residential zones and protection of residential amenity, Harbord Hotel would not be a preferred site.

In other areas of development planning, such processes (based on proper consideration of planning factors and genuine impact assessment) are applied and I encourage Council and NSW Government not to be swayed by a self-interested property developer to further degrade Freshwater residential amenity, rather suggesting that the Developer focus on a more suitable area. The impacted residential community seeks the Determining Authority to deliver on its obligation to protect residential amenity consistent with WLEP objectives (not an aspect the Pub owners or their planning advisors would give attention to or care for).

6 – Credibility of documents supplied and examples of sub-standard planning advice

I note the planning advisor is 'Boston, Blyth and Fleming (BBF)' who prepared a Statement of Environmental Effects (SEE) for the HH and the redevelopment to include additional floors (DA 2021/1620).

That SEE was misleading. BBF stated that the development would lead to an additional 50 patrons (despite presenting a development that added about 74% in floor space). They indicated where the total patron numbers would end up (the target was about 870) but, did not state the starting point (very convenient). A little mathematics indicated the HH would need to have 820 patrons already (back in 2021). However, there was no data to back that up and when questioned, neighbours could not remember anything like that.

Submissions raised the matter and the proponent was further tested on it at the Panel Hearing and was unable to answer the question from the Panel's Chair. Greg Boston the author of the SEE (*who should have been across the detail as an 'experienced' planner*), was unable to explain and declined the Chair's invitation and just passed the request to the proponent Glenn Piper. Glenn was no more help, he just went on about the great price he had come up with for food and alcohol on the upper floors – either just didn't understand the question and its significance, or, was dodging the issue. The Panel were very considerate and allowed time to respond.

I never saw a satisfactory credible response to the misleading information in the SEE (that was the Public Exhibition reference) and I'm left with the belief that "the extra 50 patrons" was deliberate ploy to downplay the scale of the development. Council in one of its responses stated that with only 6% increase in patrons (based on the 50) there wasn't a need to assess anti-social impacts on neighbours (such things as increased discharge volumes late at night are critical elements of disturbance to the residential amenity). By chance the Transport study had done a patron count (on what they described as a busier night) which indicated Patron count of 459 on a busier night), well below the figure of 820 which would have been needed to justify the "additional 50" statement. Subsequent deliberations never fully contemplated realistic discharge impacts.

Hence, I believe the current development has proceeded without adequate assessment and as the works are only in progress now, the impacts of the development are untested. It is premature to be pushing the next stage of development. Time is required after completion of current upgrades to assess actual performance. Not an unreasonable request from the local community to defer determination of this proposal to assess the actual Hotel performance and acceptability.

In summary, I would be dubious as to the quality of BBF planning documents for this proponent where the documents are framed to do the proponent's bidding rather than an objective assessment of the relevant matters for consideration. I remain appalled that the previous SEE with its statement of, "additional 50 extra patrons" formed the basis of the public exhibition for the significant expansion (two extra levels of Swill activities at HH), and for a development at the least suitable Hotel location for such an expansion on the Northern Beaches due to the tight residential area surrounds.

7. Series of Applications – Remove Accommodation – then Add Accommodation

If the previous application was based on removing accommodation (originally allowed 15 rooms) and proponent knew they would be seeking extra accommodation, why were the two matters not arranged at the same time? Proponent's convenience or games?

Could it be the proponent didn't want one application combining two significant changes (expansions to the intensity of pub activities) at the same time and avoided having to justify the scale of expansion of this small site surrounded by residential development in one application.

Has it just been jockeying around applications to suit proponent's purpose and avoid proper assessment under the EP&A Act. Is it manipulating the system for self-interest? Does the EP&A Act provide any protection to residential amenity if it can be manipulated by an aggressive developer who has no interest in neighbour concerns for the residential amenity, something that is supposed to be protected by the WLEP 2011 (certainly objectives of WLEP and particularly for Zone R2). The significant intensification of Harbord Hotel at this residential location seems contrary to the WLEP where Council should be ensuring consistency and amenity protection.

8 – Conclusions

I do not believe the proponent's application to include 64 Undercliffe Rd in its Pub Lands has been justified. Information I have reviewed indicates quite the contrary and objectives of the WLEP 20211 appear to support exclusion of 64 Undercliffe Rd from Pub Lands. But for the existing provisions of the WLEP (Schedule 1), development of a Hotel would not be permissible. I would expect that a proposal for a pub on 64 Undercliffe Road would not be permissible, yet the proponent seeks to draw the land in with the pub site.

I have glanced through the transport study and I have concerns that there would need to be a substantially different plan and much more detailed study to support a DA. Given short comings in what I saw, I suggest it is given little weight in this matter and not relied on.

The Hotel is currently undergoing a substantial upgrade adding two floors and with potential to significantly increase patron numbers that will likely add to disturbance of the residential amenity. Due to lack of relevant assessment for the scale of intensification and the unknown impacts that will arise from the current development, it appears logical to defer the consideration of the Planning Proposal until the current upgrade of the Hotel has been completed and a reasonable period (say 12 months of operation of the new facility) has elapsed to assess its performance and whether any further upgrade can be supported.

A deferral should not be an issue for the proponent who had the opportunity to include most of the current proposal with the previous DA 2021/1620, but chose not to, most likely to avoid having such extensive changes appearing in one basket and having to justify the scale of change (appears to prefer to do creeping development). If the matter does get to a DA, an EIS would be the appropriate path and should incorporate much more detailed environmental assessments.

The community has only had limited time to review the proposal, and it appears reasonable to give greater attention to the impacted residential community from the series of increased bulk of licensed premises and patronage within the already heavily impacted residential community.

The amendment sought to WLEP is a worrying precedent that many in the community would be concerned by and requires much more scrutiny before a determination of the Proposal. I believe this application/Planning Proposal is in conflict with protection of residential area amenity.

Appendix – Additional notes

a. Proposal for accommodation after removal of accommodation from existing building

The Hotel (Piper and Cottee) and its advisor's Boston, Blyth, Fleming (BBF) knew exactly that the accommodation proposal was likely but held back on it until existing accommodation has been gutted to make way for extra swill areas. Having removed accommodation from the Hotel they now seek to develop at the rear. Had they combined the previous DA and the accommodation proposal that would have meant a scale of development that faced greater risk of refusal and perhaps more onerous assessment than the token effort that was supplied for previous DA.

It appears a common tactic by aggressive developers representing development by stealth, sneaking incremental changes to create a very substantial change to the scale of premises (piecemeal) with disregard for surrounding stakeholders. Does NSW Government or Council advocate this approach?

b. Extent of Legal Challenge by proponent may exceed Council resources

A very valid question is whether a cashed-up developer is able to wear Council down until it has limited resources to properly deliver on its Determining Authority Role. The previous DA was followed by a series of closed-door meetings between Council and the Developer potentially leading to an outcome where Council resources are exhausted by the process and the process is just settled whether or not a justified outcome. The integrity of processes needs more openness and less of the closed-door style.

c. Transport and Traffic – Previous DA said there would be no significant impacts

Neighbours and beachgoers have recently lost the east side of Charles Street to the Hotel's 10 minute parking which is largely not available to residents that were previously able to rely on it. I don't recall the parking requirement being alluded to by the DA and SEE, I thought transport issues for the previous DA, were indicated as all fine (until the end of the process).

As I indicated above, utility of parking is really in question with this proposal – Currently the site needs to be accessed by waste vehicles, delivery vehicles, Bottle shop drive-through customers, patrons if they can get in, staff (and there will be need to be more given to the accommodation). The parking diagram for the previous DA was never realistic with vehicles potentially obstructing driveways.

d. Vibrant night Life

The throw way line is a joy to this developer, greasing the wheels for him to exploit the location which is wholly unsuited to the notion. Brookvale is much more appropriate and there are numerous bars that have sprung up in Brookvale in the last year or two. Much more suitable.

The Vibrant night life is not appropriate to this location. It's the worst possible location for upscaling of Licensed Premises in Northern Beaches. The NSW Government will need to review application of the Vibrant economy as I expect there will be increased opposition to rolling it out wherever the Licensees wish. – Needs much better vetting of sites for this to occur.