
Sent: 11/10/2021 3:14:35 PM
Subject: DA2021/1620 - 29-31 Moore Road, Freshwater - Objection Submission
Attachments: Objection Letter - 29 Moore Road, Freshwater.pdf;

Dear Sir/Madam,

Please accept the attached submission in regards to DA2021/1620 at 29-31 Moore Road, Freshwater on behalf of the owners and residents of 22 Moore Road, Freshwater.

Thank you,

Kind regards,
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11 October 2021

The General Manager
Northern Beaches Council
725 Pittwater Road
DEE WHY NSW 2099

Dear Sir/Madam,

**Submission in regards to DA2021/1620 Development Application
29 – 31 Moore Road, Freshwater**

“Alterations and additions to an existing pub.”

Corona Projects has been engaged by the property owners of 22 Moore Road, Freshwater to undertake an assessment of DA2021/1620 and provide a submission to Council on their behalf. 22 Moore Road lies directly opposite the development site at 29 – 31 Moore Road, Freshwater – known as the Harbord Hotel. This assessment is based on a review of the development application plans and documents available for inspection on Northern Beaches Council’s website and a site visit.

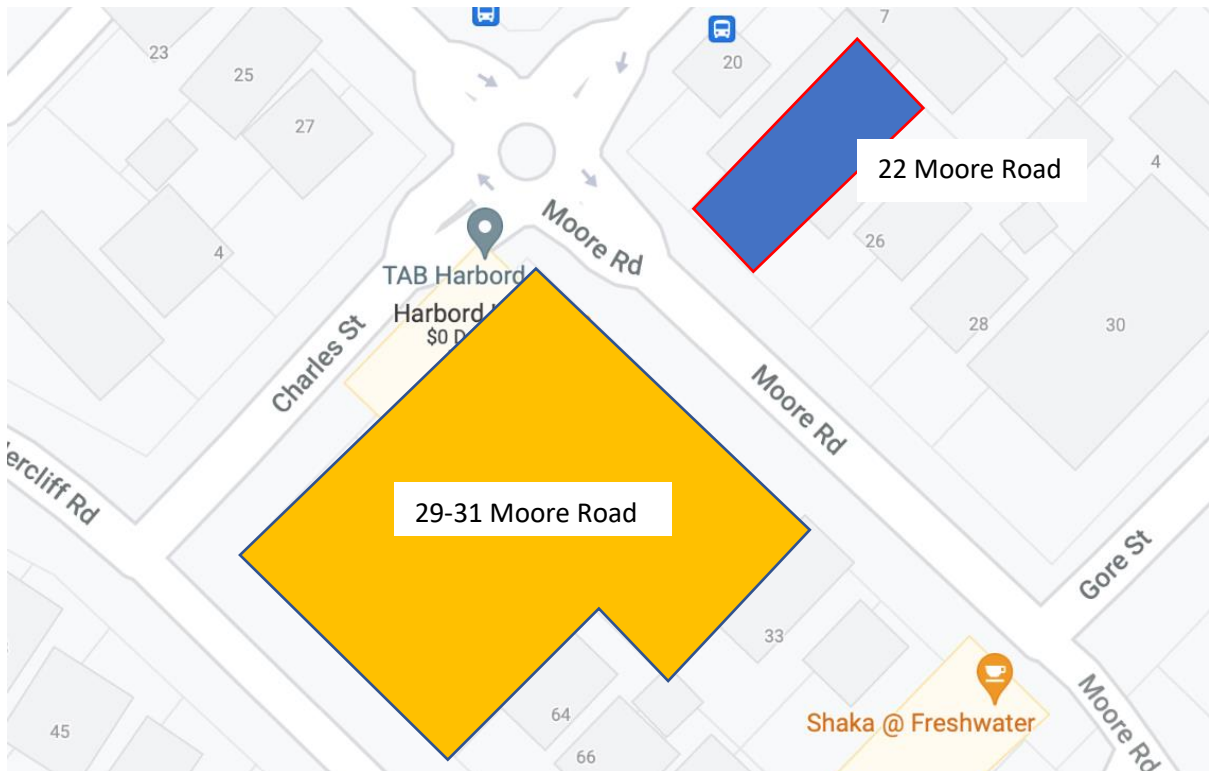


Figure 1 – Site Locality Map (Google Maps, 2021)

1. Introduction

The alterations and additions to existing pub proposal at 29-31 Moore Road, Freshwater raises considerable concerns regarding visual and acoustic privacy, heritage disruption, overdevelopment, and local character and safety. Consequently, it will pose an unacceptable impact on the residential amenity of neighbouring sites and the character of the locality.

2. Visual Privacy and Overlooking

At present the ground floor outdoor space and first floor north-east facing balcony of the pub facilitates direct, unobstructed and close views into most spaces of the dwelling house at 22 Moore Road including the:

- Principle private open space (PPOS) - rear garden and BBQ area;
- Primary habitable living areas;
- Primary (and only) site entrance, garage and internal entry foyer;
- Private bedrooms; and
- Study.



Figure 2 – Overlooking Diagram (Corona Projects, 2021)

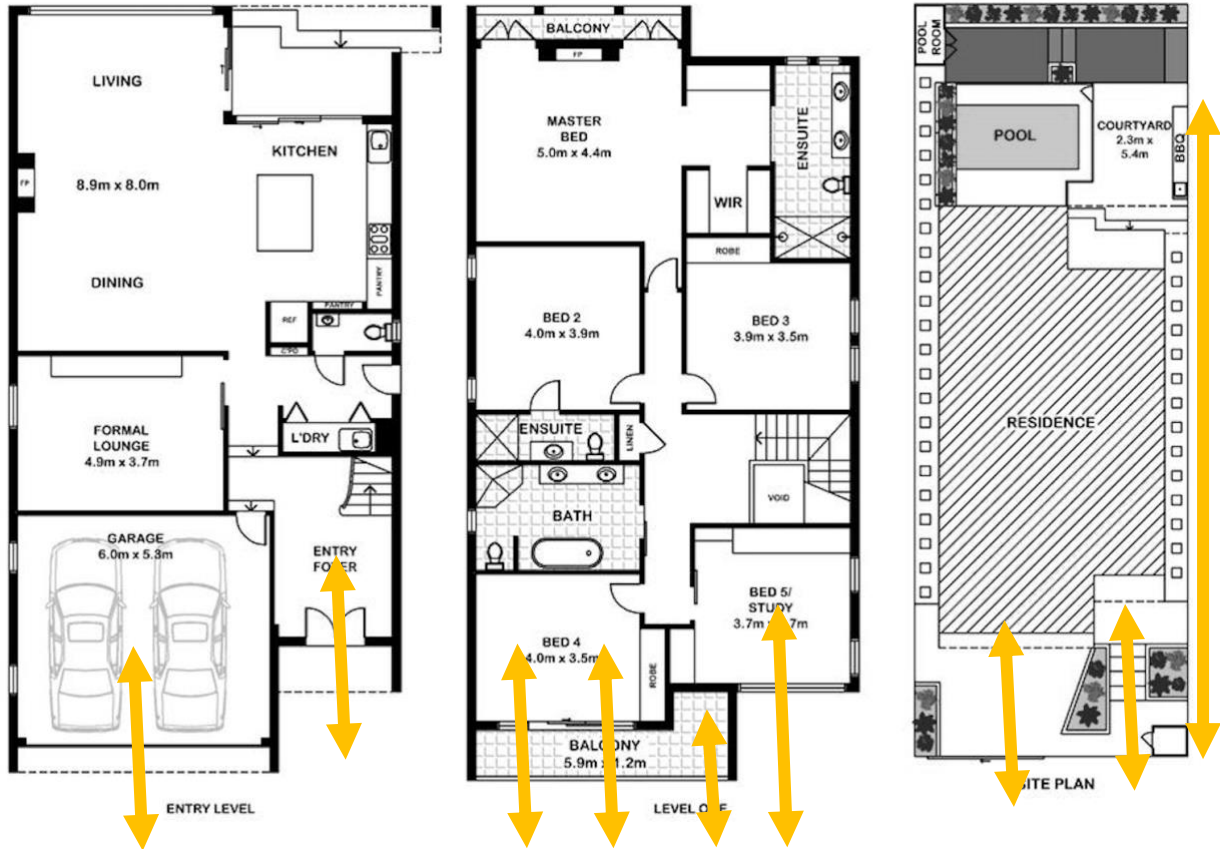


Figure 3 – Overlooking Diagram (Corona Projects, 2021)

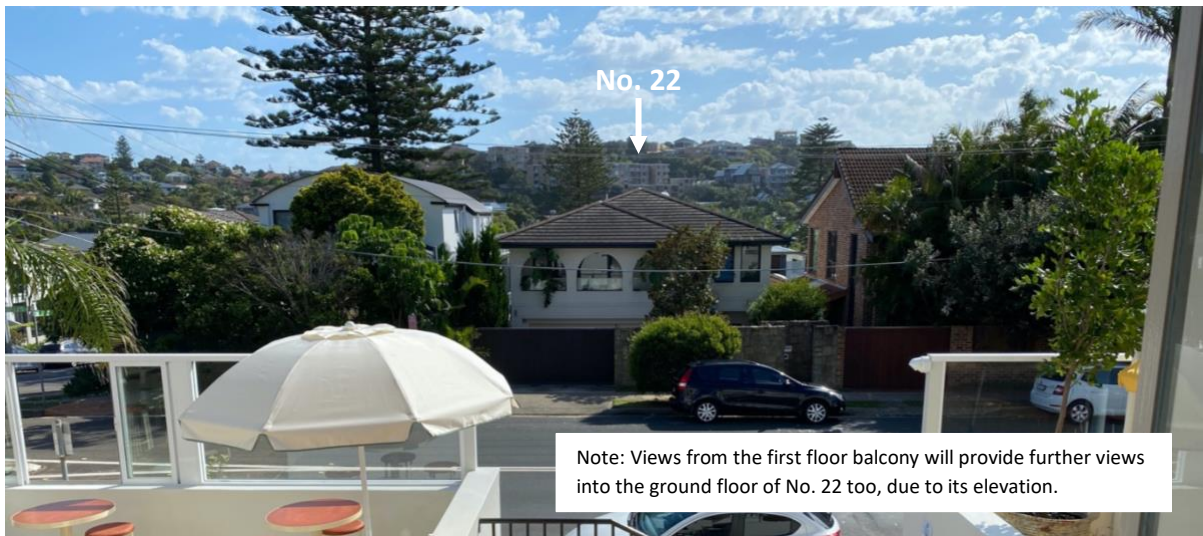


Figure 4 – View of No. 22 from existing pub foyer steps (G. Timbs, 2021)



Figure 5 – View of Harbord Hotel from No. 22 front-facing rooms (Corona Projects, 2021)



Figure 6 – View of Harbord Hotel from No. 22 rear garden/bbq area (Corona Projects, 2021)

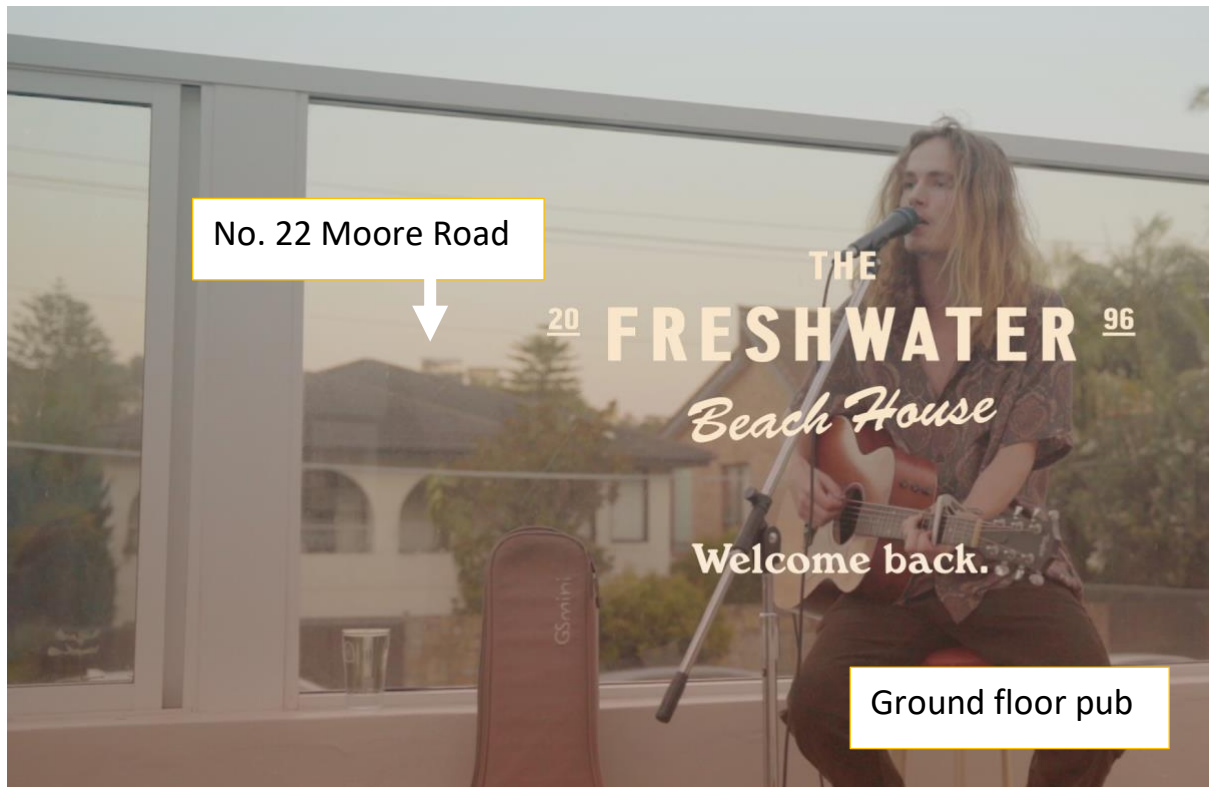


Figure 7 – Proximity diagram from No. 22 and ground floor pub (HardbordHotel.com.au, 2021)

As shown in figures 4 -7 , the sightlines are substantial and demonstrate a severe breach of visual privacy for the current and future residents of 22 Moore Road.

Northern Beaches Council has acknowledged the severe nature of the breach in the past, ensuring that the upper floor balcony has not been permitted as trafficable space for patrons, and requiring a opaque treatment of glass around the ground floor beer garden/courtyard area as a Condition of Consent for the property under DA2015/0061.

The previously provided images show that the opaque treatment required under DA2015/0061 was never applied, instead a completely transparent and operable glass balustrade allows for direct sightlines into the private recreation, living and sleeping areas of 22 Moore Road. The lack of enforcement of this Condition is concerning for residents.

This Development Application DA2021/1620 will further worsen the existing extent of overlooking by facilitating elevated and unobstructed views for up to 100 new patrons into these same spaces of 22 Moore Road from the upper floor balcony.

Not only does this result in an unjust and unacceptable planning outcome for north-easterly neighbours, it also directly conflicts with the following Warringah Local Environmental Plan (LEP) 2011 objectives and Warringah Development Control Plan (DCP) 2011 controls:



Objective/Control	Comment
R2 Low Density Residential Zone objective “To provide for the housing needs of the community within a low density residential environment.”.	High levels of residential privacy are required for the housing needs of residents in this low density area to be met.
Part D8, WDCP 2011 privacy objective: To ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.	The pub at present breaches this objective, and severely worsens the breach with the proposal to use the upper floor balcony as a trafficable area.
Part D8, WDCP 2011 privacy objective: To encourage innovative design solutions to improve the urban environment.	The proposal does not demonstrate innovation as privacy screening devices have been applied.
Part D8, WDCP 2011 privacy objective: To provide personal and property security for occupants and visitors.	The proposal will allow for clearer views from patrons of the pub into private rooms, and the only entry and exit of No. 22 Moore Road. This is a breach of personal and property security.
Part D8, WDCP 2011 privacy control: Building layout should be designed to optimise privacy for occupants of the development and occupants of adjoining properties.	The pub at present breaches this control, and severely worsens the breach with the proposal to use the upper floor balcony as a trafficable area.

Furthermore, under *Meriton v Sydney City Council [2004] NSWLEC 313* SC Roseth concludes that;

“Generalised numerical guidelines such as above [Council DCP Privacy controls], need to be applied with a great deal of judgment, taking into consideration **density, separation, use and design**”.

Roseth states that the principles discussed below may be applied when assessing privacy:

Assessment Principle	Comment
<p>1. Ease of Privacy Retainment</p> <p>The ease with which privacy can be protected is inversely proportional to the density of development. At low-densities there is a reasonable expectation that a dwelling and some of its private open space will remain private. At high-densities it is more difficult to protect privacy.</p>	As the development site and the site subject to privacy loss contain detached structures in a low density land use zone it remains a reasonable expectation that the PPOS and primary living and sleeping spaces of 22 Moore Road should retain their privacy.
<p>2. Separation</p> <p>Privacy can be achieved by separation. The required distance depends upon density and whether windows are at the same level and directly facing each other. Privacy is hardest to achieve in developments that face each other at the same level. Even in high-density development it is unacceptable to have windows at the same level close to each other. Conversely, in a low-density area, the <i>objective</i> should be to achieve separation between windows that exceed the numerical standards above. (Objectives are, of course, not always achievable.)</p>	DA2021/1620 should improve the physical separation between the position of overlooking and the living spaces of 22 Moore Road. The prohibition of foot traffic on the upper floor balcony can assist to achieve this.



<p>3. Use of Space</p> <p>The use of a space determines the importance of its privacy. Within a dwelling, the privacy of living areas, including kitchens, is more important than that of bedrooms. Conversely, overlooking from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time.</p>	<p>The proposal will facilitate views into highly used areas of the dwelling at 22 Moore Road during all hours of the day.</p> <p>The front-facing study, entry foyer and bbq area are used by residents during the day at the same time as the ground and upper floor external pub areas are proposed to be used.</p> <p>The front-facing bedroom and bb1 area are used by residents during the evening, when the ground and upper floor external pub areas will also be used.</p> <p>There will not be privacy relief for the residents of 22 Moore Road during any time of pub operation.</p>
<p>4. Poor Design</p> <p>Overlooking of neighbours that arises out of poor design is not acceptable. A poor design is demonstrated where an alternative design, that provides the same amenity to the applicant at no additional cost, has a reduced impact on privacy.</p>	<p>An alternative design which does not further sacrifice the amenity of 22 Moore can be very reasonably achieved – see Recommendations of this submission.</p>
<p>5. Hierarchy of Space</p> <p>Where the whole or most of a private open space cannot be protected from overlooking, the part adjoining the living area of a dwelling should be given the highest level of protection.</p>	<p>Highly used spaces are subject of overlooking, including the rear bbq area directly adjacent to the living room.</p>
<p>6. Additional Solutions</p> <p>Apart from adequate separation, the most effective way to protect privacy is by the skewed arrangement of windows and the use of devices such as fixed louvres, high and/or deep sills and planter boxes. The use of obscure glass and privacy screens, while sometimes being the only solution, is less desirable.</p>	<p>Fixed solid screening for the ground floor external area is considered suitable, whereas the additional bulk produced by screening for the first floor balcony would render this unsuitable.</p>
<p>7. Landscaping</p> <p>Landscaping should not be relied on as the sole protection against overlooking. While existing dense vegetation within a development is valuable, planting proposed in a landscaping plan should be given little weight.</p>	<p>The first floor balcony should remain non-trafficable, and an opaque fixed screen should be applied to the ground floor.</p>



8. Change

In areas undergoing change, the impact on what is likely to be built on adjoining sites, as well as the existing development, should be considered.

The area surrounding the development site is not undergoing considerable change. In fact, future development should retain the established character of the area and the Heritage Item at 29-31 Moore Road and in doing so, retain visual and acoustic privacy for its surroundings.

In accordance with *Meriton v Sydney City Council [2004] NSWLEC 313*, more skilful design including a non-trafficable upper floor outdoor area and fixed solid screening to the ground floor would assist to reasonably mitigate overlooking concerns between the two properties. Without the changes proposed in the Recommendations part of this letter, the development cannot be supported in its current form.

3. Acoustic Privacy

The proposal to convert the upper floor north-easterly balcony of the Harbord Hotel under this Development Application, and the lack of ground floor fixed screening at present despite the Conditions of Consent requiring one under DA2021/1620 will also pose an acoustic privacy issue for its north-easterly neighbours.

The proposed unobstructed first floor balcony allows for patron noise to flow directly to the bedrooms and living rooms of residents less than 25 metres away.

The increase in capacity of these areas will further worsen the issue, also adding to an increase in noisy patrons congregating outside the premises and waiting for taxi/uber lifts directly outside 22 Moore Road, 5 metres from the bed of residents trying to sleep inside. Patrons queueing up along Moore Road primary entrance to the pub also contributes to noise for the area, which will be further worsened by the additional 50 patron capacity proposed under this Development Application.

Whilst an Acoustic Report prepared by AKA Acoustics dated 27 July 2021 has been submitted alongside the Development Application, there is concern that the assessment is misunderstanding the expected noise impact.

The Acoustic Report has not explicitly considered the cumulative impact of the noise from the existing ground floor outdoor space, internal pub area with windows open plus the addition of the proposed first floor balcony with extra patronage. There is also concern that the noise recording timing and receiver recording device locations are inaccurate and skewing the expected noise impact.

The base recording does not capture the existing noise during the busiest time – Saturday evening 6pm – 10pm, nor from the receivers affected most – those to the north-east along Moore Road of which the outdoor patron areas are facing. The noise logger was located away from the site and sensitive receivers, on the opposite side from where the balconies and outdoor areas front. Recording from the



noise logger should be taken from the most affected area (resident premises along Moore Road), measuring the accumulative noise from the main entrance of the pub, existing beer garden and proposed level 1 balcony outdoor space which will accommodate for 100 patrons.

Despite the Acoustic Report, at present the residents of 22 Moore Road can clearly hear discussions and music from the ground floor balcony of the Harbord Hotel in their living room and rear garden. Council staff are invited to attend a site inspection at 22 Moore Road during pub operating hours to understand the current unacceptable noise impact. Any additional capacity and operation of the upper floor balcony will only significantly worsen this, regardless of what an Acoustic Report predicts given the lack of other background noise in the otherwise quiet low residential area of Freshwater.

4. Destruction of Heritage Significance

The existing pub at 29-31 Moore Road contains a Heritage Item listed under Schedule 5 of the WLEP 2011, the 'Harbord Hotel'.

The Hotel has historically accommodated for patrons on the ground floor and "in its original form the building would have provided hotel accommodation for holiday makers" (Heritage Impact Statement, Weir Phillips) on the first floor. Whilst the practice of residing above such a pub today is less common, allowing 100 patrons to use the upper floor balcony for as an entertaining area is in conflict with the historical nature of all activity on the ground floor.

Original and/or largely preserved balcony features on the first floor are furthermore at risk of being destructed by the additional patronage, conflicting with the aesthetic heritage significance of the site.

5. LEP Non-compliances

DA2021/1620 exhibits major non-compliance with the objectives and controls of the WLEP 2011 as per the below table. In its current form, the proposal can therefore not be supported as it does not contain planning merit.

5.1 LEP

Permissible uses in the R2 zone	Comment
A recording studio is proposed to be an introduced use under this Development Application.	<p>Non-Compliance –</p> <p>Whilst the pub use is permitted under clause 14 of Schedule 1 of the WLEP 2011, this use does not include recording studios which fall under a general commercial premises which is prohibited within the R2 zone.</p> <p>A recording studio is not considered to be "ancillary" nor "incidental" to the existing pub use as it will function as a separate use, with its users staying on the premises longer than typical patrons</p>



	<p>and undertaking commercial recording functions rather than typical recreational functions of a pub.</p> <p>The recording studio further poses an additional noise risk.</p>
Clause 4.3 Maximum Building Height	Comment
<p>Pursuant to Clause 4.3 of Warringah Local Environmental Plan 2011 (WLEP) the height of a building on the subject land is not to exceed 8.5 metres in height.</p> <p>Portions of the development will exceed the maximum 8.5m by up to 2.2metres (25% variance).</p>	<p>Non-Compliance –</p> <p>The 2.2 metre (25%) non-compliance cannot be accepted as the structure creates unnecessarily additional bulk on a site that already offers adequate patron space for the pub to feasibly and reasonably function in an R2 low density zone.</p> <p>The additional visual mass will create an adverse bulk impact on such a highly visible site, and detract from the distinct heritage features on the external facades.</p> <p>A Clause 4.6 report can therefore not be accepted to vary this maximum building height control.</p>

6. Against the Public Interest

The proposal is not considered to be in the public interest.

Additional patronage and an expansion of open patron areas with inadequate environmental impact mitigation measures threatens the low density character of the Freshwater area, which is already disrupted by the current pub operations which allow for views into neighbouring living and sleeping area, produce parking and traffic issues and noise concerns throughout the evenings.

At the time of writing this, at least 55 submissions from adjoining neighbours have been uploaded onto the Northern Beaches DA tracker for this Application. The large majority of submissions describe the issues caused at present day and the way in which these will be worsened by the proposal.

As such, the proposal under DA2021/1620 in its current form is not in the public interest, and cannot reasonably be supported as the “public interest” is a key consideration that consent authorities such as Council must consider under Clause 4.15(1) of the *Environmental Planning and Assessment Act 1979*.

7. Local Character and Strategic Vision Non-Compliance

The low density residential area of Freshwater holds a unique character, acknowledged by the existence of the residential development with high expectations of adequate residential amenity – privacy, noise protection, vehicle and pedestrian safety.



Northern Beaches Council has identified the development site and its neighbouring properties to be an R2 Low Density Residential zone. The intent of land use zoning is to direct future development towards the subject objectives – which in the case of the R2 zone are to allow development to meet the housing needs of the area.

The expectation for someone living in a detached dwelling in an R2 Low Density Residential zone to have a high level of residential amenity needs to be upheld and protected. The amenity changes for neighbours proposed under DA2021/1620 reflect the expectation of an R3 or R4 land use zone instead and cannot be supported.

8. Overdevelopment

The existing Harbord Hotel already contains two large outdoor beer gardens/courtyards and internal patron areas which adequately hold large group numbers. The conversion of a large existing accommodation space on the first floor with adjoining 147sqm outdoor terrace, and the addition of new works above under this proposal is considered to substantially increase the floor area available for patrons above the already substantial area available for this use.

In addition to this, Freshwater contains two wine bars and the Harbord Diggers. The wider locality including adjoining suburbs of Manly, Brookvale, Dee Why, Collaroy and Narrabeen provide further licensed premises – noting that pubs in these areas are located in more suitable business land use zones unlike the Harbord Hotel.

There is therefore no need or demand for additional bar offerings and bar capacity in the small Freshwater locality, rendering the proposal **an overdevelopment for its site and context**.

Commissioner Moore and Commissioner Tuor explore the impacts of Development Applications seeking to intensify the operation of licensed premises under *Vinson v Randwick Council [2005] NSWLEC 142* and *Randall Pty Ltd v Leichhardt Council [2004] NSWLEC 277* respectively. The following Planning Principles have been established by both, and should be applied when assessing the suitability of DA2021/1620.

Principle	Comment
<i>First, is the impact of the operation of the existing use on residential amenity acceptable?</i>	No – the numerous formal complaints to Council and personal documented recounts (many included in the submission provided to this DA from neighbours) show that the current operations detrimentally impact the amenity of surrounding neighbours. As such, an extension of intensification as proposed is unacceptable.
<i>If the answer is no, then an extension or intensification, would be unacceptable unless there is no overall increase in impact or there are measures proposed which would mitigate the existing impact.</i>	
<i>In answering the first question, it is not sufficient to assume that a use operating in compliance with its approval has an acceptable impact.</i>	



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<p><i>Second, if the answer is yes, is the impact of the proposed extension or intensification still acceptable?</i></p>	<p>N/A as current impact is unacceptable.</p>
<p><i>What are the adverse impacts of the present trading hours, permitted number of patrons and permitted activities?</i></p> <p><i>Evidence of anti-social behaviour at or linked to the premises taken from records such as the police COPS system and/or other police records and/or diaries kept by local residents is preferable to generalised anecdotal evidence that cannot be tested by the applicant against any records kept by the operator of the premises.</i></p> <p><i>A similar position applies to complaints about other amenity impacting behaviour such as noise from people on the premises or its plant and equipment; noise from entertainment provided on the premises or the noise necessarily arising from patrons such as car doors, engines starting or late-night conversations in residential streets in the vicinity. Demand for on-street parking may also be relevant.</i></p>	<p>The adverse impacts of the present trading hours, patron numbers and permitted outdoor entertainment areas are detailed within this submission and those already submitted to Council from other neighbour include noise, overlooking, anti-social behaviours and parking.</p> <p>These adverse impacts are documented by numerous formal complaints with Council, and within accounts from adjoining neighbours submitted in response to this DA.</p>
<p><i>What measures are in place to address those impacts?</i></p> <p><i>Measures include the number and times of engagement of security personnel, designated duties performed by them together with patrolling patterns. Identification of and responses to specific trouble spots should be considered. The method and timing of street litter collection are also relevant. For premises that provide entertainment, noise control measures that do not require intervention by an operator may also be relevant.</i></p>	<p>Measures to mitigate the current adverse impacts of the Harbord Hotel are inadequate and not complied with nor enforced.</p> <p>An example includes the requirement to apply an opaque glass treatment to the ground floor Moore Road-facing outdoor patron area to mitigate views into nearby homes. This was applied as a Condition of Consent under DA2015/0061 but was never actually physically undertaken on site – leaving transparent glass along its façade which facilitates direct and unobstructed views into bedrooms and private living areas.</p> <p>Other measures that are complied with are inadequate, demonstrated by the extent of complaint and concern that surrounding residents have had.</p>
<p><i>How are those measures documented?</i></p> <p><i>A well-documented management plan for the premises and its availability to local residents is a positive factor. The measures that are currently in place to record and respond to complaints made by residents are also relevant.</i></p>	<p>The Plan of Management in place is not expected to adequately mitigate neighbours' concerns given the history of non-compliance and lack of enforcement in the past, despite numerous follow ups from residents with Council and the business owners.</p>



<p><i>Have those measures been successful? The period during which the control measures (for the current trading hours, permitted number of patrons and permitted activities) have been operating is relevant to enable assessment of the likely success of their being applied to extended hours. If the present management regime has been in operation for a relatively short period, or has been unsuccessful or not fully implemented, less weight can be given to it than to a management regime which has succeeded in reducing antisocial behaviour.</i></p>	<p>No – as adverse impacts are occurring at present, and have been for a long time.</p>
<p><i>What additional measures are proposed by the applicant or might otherwise be required? If any extension of hours, numbers or activities is likely to be acceptable but only subject to additional measures to reduce noise or anti-social behaviour, a trial period may be appropriate to test those measures.</i></p>	<p>The actions detailed within Part 10 of this submission would assist to mitigate issues being further worsened..</p>

In accordance with an assessment of the subject Development Application in accordance with the Principles established under *Vinson v Randwick Council [2005] NSWLEC 142* and *Randall Pty Ltd v Leichhardt Council [2004] NSWLEC 277*, the intensification of use of the Habord Hotel – including an increase in patron numbers and trafficable outdoor patron space in such close proximity to low density and sensitive residential properties is considered unacceptable, and would be an adverse overdevelopment.

9. Additional Issues

The issues raised within this submission are shared by many neighbours, particularly those along Moore Road. Other concerns also raised by the Development Application include:

- Additional lighting provided for the upper floor balcony space will pose an adverse visual impact for the living and sleeping spaces that lie less than 25 metres from the balcony area within dwellings along Moore Road. Whilst a reduction in lighting would mitigate this issue, it would pose a patron safety risk, rendering the use of the balcony space for patronage unsuitable.
- Parking and traffic issues as inadequate on-site parking is being provided for patrons and longer-term visitors of the proposed recording studio.
- Management measures to ensure that patrons enter and exit in a quiet manner are furthermore inadequate, resulting in a continuation of uber/taxi drop off/pick-up issues for neighbours who find groups congregating loudly in their driveways. Uber/taxi vehicle waiting in residential driveways is also a concern.

- The Statement of Environmental Effects report submitted with the Development Application states that the “waste management arrangements are not altered”. This is concerning considering the expected additional waste produced by the increase in patrons.
- The historical shift away from previously higher degrees of residential amenity protection is a concern for surrounding residents. As per figure 8, the Harbord Hotel used to feature lattice screening and vegetation along the ground floor to protect neighbours along Moore Road from overlooking and noise from this area. Today the Harbord Hotel features negligible ground floor screening, despite Council applying Conditions of Consent to protect the amenity of neighbours. The importance of the residential amenity for surrounding neighbours should be restored, by way of the recommendations in Part 10 of this submission.



Figure 8 – Previous ground floor privacy screening treatment

10. Recommendations

A more skilful design by way of physical and operational scale reduction can allow the north-east-facing neighbours to retain their amenity, whilst allowing the development site to increase their operation. Actions a to d provide a suitable scheme which solves all concerns raised within this letter and allow for alterations and additions at 29-31 Moore Road, Freshwater.

- Action:** An opaque treatment should be applied to the proposed screening along the ground floor north-east facing outdoor eating space.
Outcome: This results in increase visual and acoustic privacy for north-easterly neighbours, and allows for compliance with the Conditions of Consent established under DA2015/0061.
- Action:** Prohibit the use of the first floor north-easterly balcony as trafficable space. The use of internal first floor spaces are acceptable if openings are shut during use.



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Outcome: This will allow the north-easterly neighbours to mitigate additional visual and acoustic privacy concerns.

- c) **Action:** Establish a designated drop-off/pick-up area on site.

Outcome: This will reduce the likelihood of patrons using neighbouring residential driveways as taxi/uber ride-share waiting zones. The pub has a car park and drive through facility to adequately and safely manage patron arrival and drop off away from properties and passing traffic.

- d) **Action:** No additional patronage numbers.

Outcome: This will reduce noise and concerns regarding patron behaviour before and after visiting the premises.

Conclusion

We have strong concerns about the proposed development at 29-31 Moore Road, Freshwater and believe it cannot be supported in its current form.

The development will have an adverse impact on the residential amenity of neighbouring sites and the character. A development of this physical and operational scale cannot be supported on this site.

It is therefore requested that the proposed development in its current form be refused. Any future development on the site should ensure compatibility with the local area and address the issues raised in this submission.

The owners of 22 Moore Road, Freshwater invite Council to conduct a site inspection on their property to best understand the perspective of the discussed concerns. Please contact Ms Gabrielle Timbs (0418 437 814) to arrange a visit.

Kind regards,

Emma Rogerson
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