

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1620
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Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot 13 DP 7022, 31 Moore Road FRESHWATER NSW 2096 Lot 1 DP 7022, 29 Moore Road FRESHWATER NSW 2096 Lot 2 DP 7022, 29 Moore Road FRESHWATER NSW 2096 Lot 3 DP 7022, 29 Moore Road FRESHWATER NSW 2096 Lot 4 DP 7022, 29 Moore Road FRESHWATER NSW 2096 Lot 5 DP 7022, 29 Moore Road FRESHWATER NSW 2096
Proposed Development:	Alterations and additions to an existing pub (Harbord Hotel)
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential WLEP Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Harbord Hotel Holdings Pty Ltd
Applicant:	Harbord Hotel Holdings Pty Ltd

Application Lodged:	21/09/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	28/09/2021 to 12/10/2021
Advertised:	Not Advertised
Submissions Received:	131
Clause 4.6 Variation:	4.3 Height of buildings: 25.9%
Recommendation:	Approval

Estimated Cost of Works:	\$ 2,836,472.76
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EXECUTIVE SUMMARY

The application seeks consent for alterations and additions to the existing hotel (pub), including the change of use of the first floor area to accommodate a bar/function area and a new recording studio at the attic level.

The key planning issues addressed in this report are the compatibility of the development with the surrounding area; the resulting traffic, parking and noise impacts; and the visual impact of the proposed additions that breach the building height control. Further concerns in relation to privacy and view impacts are also considered.

130 submissions were received in response to the notification of the application, with 101 in objection to the development and 29 in support. The primary concerns raised in the submissions objecting to the development relate to intensification of the use of the existing pub, the suitability of the development within the R2 zone, noise, traffic and parking impacts, and the potential anti-social behaviour of patrons. The concerns raised in the submissions are addressed within the assessment.

Based on the number of submissions received, the application is referred to the Northern Beaches Local Planning Panel for determination.

No further assessment issues are raised and the proposal is recommended for approval based on the detailed assessment within this report.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for alterations and additions to the existing hotel (pub) to accommodate bar/function and ancillary recording studio space at the first floor and attic levels, as follows:

First floor

- Change of use from back of house facilities to bar and function area.
- Demolish internal walls and ceiling.
- New floor plan to comprise bar, kitchen, office, storage and sanitary facilities.
- New rear external storage addition.
- Replace existing aluminium windows with timber framed windows.
- Reconfigure stair and lift access at south-eastern corner.
- New reflected ceiling plan to interpret former layout.
- New sound insulation to ceiling.
- New acoustic airlock access to existing balcony.
- New fixed acoustic glass panels to existing balcony - 1.7m to 2m high.

Attic

- Alter southern wing roof form with dormer window to accommodate new attic addition.
- New recording studio, lounge area, bar, storage and sanitary facilities.

Ground floor

- Remove existing acoustic glazing and replace with new fixed acoustic glass panels - 2.1m high (200mm higher than existing).
- New glazing above existing entry stair walls.

Patron Numbers

The application proposes a total of 870 patrons, representing an increase of 50 patrons (6%) beyond the current operational capacity of the existing premises.

Car Parking

The application proposed an additional eight car parking spaces, resulting in a total of 31 spaces on the site. The provision of a shuttle bus service operated by the premises is also proposed.

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 - 4.3 Height of buildings
Warringah Local Environmental Plan 2011 - Zone R2 Low Density Residential
Warringah Local Environmental Plan 2011 - 5.10 Heritage conservation
Warringah Development Control Plan - B1 Wall Heights
Warringah Development Control Plan - B5 Side Boundary Setbacks
Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - C2 Traffic, Access and Safety
Warringah Development Control Plan - C3 Parking Facilities
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
Warringah Development Control Plan - D3 Noise
Warringah Development Control Plan - D7 Views
Warringah Development Control Plan - D8 Privacy
Warringah Development Control Plan - D9 Building Bulk
Warringah Development Control Plan - E10 Landslip Risk

SITE DESCRIPTION

Property Description:	Lot 13 DP 7022 , 31 Moore Road FRESHWATER NSW 2096 Lot 1 DP 7022 , 29 Moore Road FRESHWATER NSW 2096 Lot 2 DP 7022 , 29 Moore Road FRESHWATER NSW 2096 Lot 3 DP 7022 , 29 Moore Road FRESHWATER NSW 2096 Lot 4 DP 7022 , 29 Moore Road FRESHWATER NSW 2096 Lot 5 DP 7022 , 29 Moore Road FRESHWATER NSW 2096
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Detailed Site Description:

The subject site consists of six (6) allotments located on the south-eastern corner of Moore Road and Charles Street.

The site is irregular in shape with a primary frontage of 53.945m along Moore Road, a secondary frontage of 56.225m to Charles Street. The site has a southern frontage of 40.235m adjacent to the existing car park. The site has a surveyed area of 2644.5m².

The site is located within the R2 Low Density Residential zone and accommodates an existing pub/hotel.

The site 5.7m from rear (south-west) to front (north-east).

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by residential development including detached and semi-detached dwellings, dual occupancies and residential flat buildings.

Map:



SITE HISTORY

The land has been used for commercial purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

- **DA1986/209** - Alterations to the Harbord Beach Hotel involving tiling of front entrance, additional driveway, games area, new bar and counter space - Approved 29 July 1986.
- **DA1997/286** - Alterations and additions to the hotel - Approved 21 October 1997. The proposal involved the relocation of the existing manager's residence from the first floor of the hotel to accommodate a restaurant, kitchen, function rooms and offices across the expanded first floor,

among other works to the existing development.

- **NSW LEC Case No. 10746 of 1997 [Mr John Brisby vs Warringah Council and Leffler Simes Pty Ltd]** - A subsequent appeal of the Council's approval of DA1997/286 was lodged to the NSW Land and Environment Court by an adjoining property owner and was upheld on the basis of insufficient car parking provision, despite the inclusion of an additional 8 spaces. While there are similarities between this development and the subject proposal, it is noted that the 1997 development proposed a maximum capacity of 150 people within the first floor restaurant and function rooms (in addition to ground floor patronage), whereas the subject proposal seeks an overall increase of only 50 patrons.
- **DA2001/0614** - Retractable awnings to garden area - Approved 16 October 2001.
- **DA2005/912** - Enclosed vergola over courtyard - Approved 26 July 2006.
- **DA2006/1130** - Addition of a Terrace - Approved 19 July 2007.
- **DA2015/0061** - Alterations and additions to existing commercial building (hotel) - Approved 6 May 2015.
- **DA2020/0468** - Alterations and additions to the hotel - Approved 24 June 2020.
- **MOD2020/0426** - Modification of Development Consent DA2020/0468 granted for alterations and additions to a Hotel - Approved 22 October 2020.
- **DA2020/1322** - Construction of signage - Approved 26 November 2020.

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	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause</p>

Section 4.15 Matters for Consideration	Comments
	<p>is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
<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>	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered suitable for the proposed development.</p>
<p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>See discussion on “Notification & Submissions Received” in this report.</p>
<p>Section 4.15 (1) (e) – the public interest</p>	<p>No matters have arisen in this assessment that would justify the refusal of the application in the public interest.</p>

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 28/09/2021 to 12/10/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 131 submission/s from:

Name:	Address:
Withheld	FRESHWATER NSW 2096
Mr John Matthew Brisby	2 / 10 Moore Road FRESHWATER NSW 2096
Ms Liz Xuereb	11 Moore Road FRESHWATER NSW 2096
Ms Merran Catriona Gillies	51 Lewis Street BALGOWLAH HEIGHTS NSW 2093
Andrew Dodenhoff	29 Oceanview Road FRESHWATER NSW 2096
Mr Joseph Farrugia	8 / 32 Undercliff Road FRESHWATER NSW 2096
Emily Katherine Andrews	37 Surfers Parade FRESHWATER NSW 2096
Alan Trevis Landon Margareth Christine Landon	12 A Charles Street FRESHWATER NSW 2096
Mr Michael Bowden Mead	61 Undercliff Road FRESHWATER NSW 2096
Mr Paul Robert Brisby	32 A Playfair Road NORTH CURL CURL NSW 2099
Katherine Anne McKenzie	PO Box 358 FRESHWATER NSW 2096
Mrs Janet Margaret Power	15 / 163 - 165 Pacific Parade DEE WHY NSW 2099
Mr Michael Desmond Avery	25 Oceanview Road FRESHWATER NSW 2096
Lynne Gordevich	2 / 69 Evans Street FRESHWATER NSW 2096
Carole Lorraine Cooper	4 / 21 Moore Road FRESHWATER NSW 2096
Angela Argueta	42 / 30 Moore Road FRESHWATER NSW 2096
Miss Maree Portanger	22 Undercliff Road FRESHWATER NSW 2096
Mr Glen Bernard Kelly	43 Wyuna Avenue FRESHWATER NSW 2096
Mr Lindsay Graeme Fietz	3 / 25 Moore Road FRESHWATER NSW 2096
Mrs Jennifer Mary Lawson	PO Box 676 FRESHWATER NSW 2096
Ms Vivienne Pearl Stewart	51 / 30 Moore Road FRESHWATER NSW 2096
Mrs Leonie Janice Phillips	11 / 32 Undercliff Road FRESHWATER NSW 2096
Cathy Bennett	33 / 30 Moore Road FRESHWATER NSW 2096
Abby Lois Bloom	3 Ryries Parade CREMORNE NSW 2090
Miss Sophie Rachel Watson	7 / 68 Albert Street FRESHWATER NSW 2096
Mr Ted Talbot	35 / 30 Moore Road FRESHWATER NSW 2096
Ms Diane Don	32 Oceanview Road FRESHWATER NSW 2096

Name:	Address:
Mrs Janice Elizabeth Pawlak	15 Evans Street FRESHWATER NSW 2096
Mrs Lauren Mary Richardson	29 Albert Street FRESHWATER NSW 2096
Mr Gary Bruce Munro	49 A Undercliff Road FRESHWATER NSW 2096
Barry Young Mrs Pamela Young	Address Unknown
Mr Paul Douglas Howison	1 / 13 Moore Road FRESHWATER NSW 2096
Dr Ian Munro Alexander Ms Louise Alexander	6 A Charles Street FRESHWATER NSW 2096
Paul Andrew Graham	PO Box 94 FRESHWATER NSW 2096
Mr Derek John Hanson	13 Charles Street FRESHWATER NSW 2096
Mr Kenny Jackman	6 Murray Road FRESHWATER NSW 2096
Mrs Tracey Elizabeth Oates	3 Highview Avenue QUEENSCLIFF NSW 2096
Withheld	MANLY NSW 2095
Louise Marie Bowman	6 / 6 Hill Street QUEENSCLIFF NSW 2096
Ms Glenda Rae Dunn	PO Box 655 FRESHWATER NSW 2096
Mr Talofa Ki Pangai Pouli	Owners Corporation Sp210 Lamb & Walters Po Box 95 GORDON NSW 2072
Kevin Macmillan	C/- T & M Pools T/As Narellan Pools Pty Ltd Po Box 667 ROUND CORNER NSW 2158
Amy Roche	Address Unknown
Erin Rolla	Address Unknown
James Anthony Walker-Powell Mrs Alison Walker-Powell	51 Griffin Road NORTH CURL CURL NSW 2099
Sean O'Dwyer	19 Moore Road FRESHWATER NSW 2096
Mr Thomas Ruane Baxter	20 Kooloora Avenue FRESHWATER NSW 2096
Mrs Helen Walton	8 Charles Street FRESHWATER NSW 2096
Kate Ivanoff	3/64 Undercliff Road FRESHWATER NSW 2096
Ms Jennifer Gaye Leete	5 / 32 Undercliff Road FRESHWATER NSW 2096
Kevin William Tuckey	15 Undercliff Road FRESHWATER NSW 2096
Withheld	FRESHWATER NSW 2096
Kris Krueger	Address Unknown
Chris Smyth	19 Moore Road FRESHWATER NSW 2096
Ms Gabrielle Maree Davidson	47 Undercliff Road FRESHWATER NSW 2096
Mrs Vivienne Ann Kissane	6 / 32 Undercliff Road FRESHWATER NSW 2096
Mia Gard	Address Unknown
Mr Daniel Thomas Allman	9 / 3 Evans Street FRESHWATER NSW 2096
Mr Kenneth Ernest Nichol	1 / 17 Kooloora Avenue FRESHWATER NSW 2096
Jude Mccrann	Address Unknown
Mr Angus Tommie Pragnell	90 Lawrence Street FRESHWATER NSW 2096
Mr Owen Brackenridge Hughes	18 / 3 Greenwood Place FRESHWATER NSW 2096

Name:	Address:
Dr Kristina Svensdotter Vikman Mr Mattias Friberg	120 Queenscliff Road QUEENSCLIFF NSW 2096
Mr Jason Zsolt Hatvany	36 A Kooloora Avenue FRESHWATER NSW 2096
Mrs Julia Marti Jackson	43 / 25 Marshall Street MANLY NSW 2095
Mr Nicholas James Barth	8 / 20 Dowling Street QUEENSCLIFF NSW 2096
Mr David Gregory Lucas	1 / 38 Charles Street FRESHWATER NSW 2096
Mr Harry Kahla	55 Albert Street FRESHWATER NSW 2096
Margaret Carr	Invalid Address NSW
Allan Steven King	2 / 33 Moore Road FRESHWATER NSW 2096
Matt Hayes	1 / 20 Dowling Street QUEENSCLIFF NSW 2096
Ms Daini Louise Phillips	145 Crown Road QUEENSCLIFF NSW 2096
Mr Marcus Alexander Rosenberg Ms Charlotte Jane Ralph	2 / 25 Charles Street FRESHWATER NSW 2096
Tuan Van Luu	37 Undercliff Road FRESHWATER NSW 2096
Ms Judith Helene Therese Orr	2 / 46 Undercliff Road FRESHWATER NSW 2096
Ms Christina Dawn Knight	C/- Bradley Yates 3 Highgate Circuit KELLYVILLE NSW 2155
Mrs Gabrielle Peta Timbs	22 Moore Road FRESHWATER NSW 2096
Corona Projects Pty Ltd	PO Box 1749 BONDI JUNCTION NSW 1355
W J & J A Jeremiassie Holdings Pty Ltd	1 / 67 Undercliff Road FRESHWATER NSW 2096
Mark John Brisby	2 / 33 Moore Road FRESHWATER NSW 2096
Prof Christopher John Griffiths	2 / 67 Undercliff Road FRESHWATER NSW 2096
Mr Adam McLennan	17 / 94 Lawrence Street FRESHWATER NSW 2096
Mr Marc Ivan Carroll	17 B Smith Street MANLY NSW 2095
Mrs Ann Marie Skarratt	12 / 32 Undercliff Road FRESHWATER NSW 2096
Mrs Katherine Cameron Mr Angus Cameron	75 Undercliff Road FRESHWATER NSW 2096
Mr David John Hill Ms Gloria Sunnie Isabel Wright	20 Moore Road FRESHWATER NSW 2096
Mr Peter Robert De Monchaux	16 Highview Avenue QUEENSCLIFF NSW 2096
Mr Xingwei Wang	43 Undercliff Road FRESHWATER NSW 2096
Warwick Hutton	Address Unknown
Mr Richard Alfred Roberts	7 Undercliff Road FRESHWATER NSW 2096
Ms Ann Marie Duggan	19 Carrington Parade FRESHWATER NSW 2096
Mrs Ulrike Martina Brisby	32 A Playfair Road NORTH CURL CURL NSW 2099
Mr Ashwin David Field	53 Undercliff Road FRESHWATER NSW 2096
Rachel Ezzy	Address Unknown

Name:	Address:
Mr Warren Langley	13 / 63 Crown Road QUEENSCLIFF NSW 2096
Mrs Julie Margaret Sheer	70 Undercliff Road FRESHWATER NSW 2096
Sarah Davis	43 B Albert Street FRESHWATER NSW 2096
Mrs Delwyn Ann Bishop	1/2 Spruson Street NEUTRAL BAY NSW 2089
Mrs Karen Jennene Horlyck	40 Kooloora Avenue FRESHWATER NSW 2096
Mr Sean Douglas King	2 / 3 Evans Street FRESHWATER NSW 2096
Duncan Armour	15 Winbourne Street WEST RYDE NSW 2114
Andrew Jacovides	61 / 30 Moore Road FRESHWATER NSW 2096
John Aiello Mrs Carina Lizeet Aiello	35 Undercliff Road FRESHWATER NSW 2096
Katrina Helene	20 / 16 Moore Road FRESHWATER NSW 2096
Mrs Deborah Louisa Ashman	PO Box 369 FRESHWATER NSW 2096
James Horner	52 / 30 Moore Road FRESHWATER NSW 2096
Ms Lisa Maree Reizes	39 Undercliff Road FRESHWATER NSW 2096
Alison Joy Firth	42 Kooloora Avenue FRESHWATER NSW 2096
Janet Marie Taylor	30 Moore Road FRESHWATER NSW 2096
Myles Lowe	69 Lane Cove Road INGLESIDE NSW 2101
Anna Supierz	Address Unknown
Joaquin Ferreira	7 / 30 Charles Street FRESHWATER NSW 2096
Mrs Caroline Wendy Barnett	45 Undercliff Road FRESHWATER NSW 2096
Mr Michael Cooper	PO Box 4073 NORTH CURL CURL NSW 2099
Mrs Elizabeth Anne Larner	9 / 41 Oceanview Road FRESHWATER NSW 2096
Taru Tuohiniemi	Address Unknown
Yolanda Grana	3 / 19 Moore Road FRESHWATER NSW 2096
Mrs Elva Adeline Gilmore	29 Kooloora Avenue FRESHWATER NSW 2096
Mr Robert Brian Howard	10 Charles Street FRESHWATER NSW 2096
Mr Geoffrey Charles Lowe	49 Undercliff Road FRESHWATER NSW 2096
Mr Julian Michel Callebaut	9 Charles Street FRESHWATER NSW 2096
Mr Timothy Neale Trumper	77 Undercliff Road FRESHWATER NSW 2096
Mrs Joanna Theresia Maria Kapp-Cales	63 Undercliff Road FRESHWATER NSW 2096
Mr David Malcolm Oliver	12 Loch Street FRESHWATER NSW 2096
Joanne Torta	203 / 11 Lawrence Street FRESHWATER NSW 2096
Mr William Rhodes Kugler Jr	14 / 69 Evans Street FRESHWATER NSW 2096
Ms Suzanne Claire Cooper	31 Oceanview Road FRESHWATER NSW 2096
Mr Robert John Garner	34 Oceanview Road FRESHWATER NSW 2096
Mr Anthony Peter Yeates	5 Kooloora Avenue FRESHWATER NSW 2096
Mrs Evelyn Erna Adams	PO Box 33 AVALON BEACH NSW 2107
Ms Kerry Downes	3 / 43 Oceanview Road FRESHWATER NSW 2096

The submissions raised the following issues:

- **Use of the premises and patronage**
- **Permissibility and compatibility with the R2 Low Density Residential zone**
- **Traffic impact, car parking and drop off/pick-up**
- **Acoustic impact**
- **Bulk and scale, height non-compliance and heritage impact**
- **Patron behaviour**
- **Visual privacy**
- **View loss**
- **Comparison to NSW LEC case (No. 10746 of 1997)**

The matters raised within the submissions are addressed as follows:

- **Use of the premises and patronage**

Concerns were raised regarding the change from a local pub to a larger commercial operation, the associated intensification of use and change in the demographic of patrons.

Comment:

The proposed inclusion of the first floor bar and ancillary attic space will not result in a significant change in the nature or intensification of the existing use of the premises. The proposal includes a minor overall increase in patron numbers from 820 to 870 and the intention of the additional internal areas is to provide a greater variety of facilities for use by patrons. The development also specifies a maximum number of patrons, which is currently not limited by the operational conditions of the premises, and will be enforceable by Council.

This matter is not considered to warrant refusal of the application.

- **Permissibility and compatibility with the R2 Low Density Residential zone**

Concerns were raised regarding the permissibility of the development and its incompatibility with the surrounding R2 zone.

Comment:

Clause 2.5 of the WLEP recognizes the historical use of the site and permits the ongoing use as a pub despite its R2 Low Density Residential zoning. The potential for conflict between the premises and surrounding residential properties is acknowledged, and consideration has been given to minimise and manage impacts resulting from this development through the imposition of conditions of consent. The proposed sound recording studio is considered to be ancillary to the primary use, taking up a relatively small proportion of the total GFA, and being available for hire through the hotel.

This matter is not considered to warrant refusal of the application.

- **Traffic impact, car parking and drop off/pick-up**

Concerns were raised regarding the impacts on the development on traffic, car parking and the lack of a suitable drop-off/pick-up location for taxis and ride share services.

Comment:

The proposal seeks consent for a total of 870 patrons, representing an increase of 50 patrons

beyond the existing operational capacity of the premises. The high demand for on-street car parking in the vicinity of the site is acknowledged, however this demand is also due to the proximity to Freshwater Village and Freshwater Beach. The 8 additional car parking spaces proposed will result in an overall improvement to the existing premises' patron to parking ratio, and the additional patron numbers are not considered to result in any unreasonable impacts to traffic and parking in the vicinity of the site.

This matter is not considered to warrant refusal of the application.

- **Acoustic impact**

Concerns were raised regarding the noise impacts resulting from the development, specifically due to the increased number of patrons, additional outdoor area and speakers at the first floor level, the performance of live music at the venue and the inclusion of a sound recording studio at the attic level.

Comment:

The proposal includes a number of acoustic measures to minimise the additional noise generated by the premises as outlined in this report. No change to the existing hours of operation is proposed and the recommended conditions from the NSW Police require that all external entertainment shall cease at 9pm. Council's Environmental Health Officer has reviewed the Acoustic Report prepared in relation to the development and raised no objection to the application, subject to the recommended conditions of consent. The Acoustic Report includes consideration of appropriate patron numbers and 'ambient background music' on the first floor balcony at various times throughout the day and evening.

The acoustic upgrades to the first floor level will also ensure that the noise impacts of live music within the venue do not adversely impact surrounding properties. The nature of the sound recording studio within the attic requires suitable acoustic treatment and as such, this area is not anticipated to result in adverse noise impacts. A further discussion of this matter is completed in this report under D3 Noise.

This matter is not considered to warrant refusal of the application.

- **Bulk and scale, height non-compliance and heritage impact**

Concerns were raised regarding the visual bulk, height non-compliance and heritage impact resulting from the proposed additions (including acoustic screening).

Comment:

The proposed building height breach occurs centrally within the site at the rear of the existing building. The assessment of the applicant's Clause 4.6 variation request finds that the proposal is supportable despite the height non-compliance, as discussed under Clause 4.6 of this report. Council's Heritage Officer has also assessed the application and raised no objection to the proposed development, subject to the recommended conditions of consent.

This matter is not considered to warrant refusal of the application.

- **Patron behaviour**

Concerns were raised regarding the potential for an increase in anti-social behaviour and littering as a result of the development.

Comment:

The proposal, as conditioned, is not anticipated to give rise to increased anti-social behaviour or littering based on the 6% increase in patron numbers. The premises is subject to various security measures as part of the existing liquor license conditions and existing and recommended conditions of consent, including the ongoing provision of security patrols in the vicinity from 8pm Thursday to Sunday.

This matter is not considered to warrant refusal of the application.

- **Visual privacy**

Concerns were raised regarding the potential privacy impacts resulting from the proposed use of the first floor balcony.

Comment:

The first floor balcony remains unchanged as a result of the development, and despite the resulting increase in the intensity of use of this area, sufficient spatial separation to surrounding properties (a minimum of 20m to the nearest residential property) is maintained to mitigate any potential overlooking impacts.

This matter is not considered to warrant refusal of the application.

- **View loss**

Concerns were raised regarding the potential view loss impacts resulting from the development.

Comment:

An assessment of the view loss impacts of the proposal is completed in this report under D7 Views. The impact to views is considered to be negligible.

This matter is not considered to warrant refusal of the application.

- **Comparison to NSW LEC case (No. 10746 of 1997 - Mr John Brisby vs Warringah Council and Leffler Simes Pty Ltd)**

Comment:

Whilst there are similarities between the subject proposal and the development under NSW LEC case No. 10745 of 1997, there are also fundamental differences between the two developments.

Specifically, the 1997 development proposed the use of the first floor as a restaurant, kitchen and function rooms, with the addition of a new manager's residence above the adjoining bottle shop. The 1997 development also proposed an increase of 150 patrons within the first floor restaurant/function rooms and terrace, whereas the subject proposal seeks consent for an additional 50 patrons, with the balance of patrons accommodated within the first floor and attic being offset by a reduction in patrons at the ground floor level. Further, significant works have been carried out in the intervening period to improve the acoustic performance of the premises and reduce noise disturbance to surrounding properties.

This matter is not considered to warrant refusal of the application.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>Supported subject to condition</p> <p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Environmental Health (Industrial)	<p>Supported</p> <p>The proposal to increase capacity, operation and function of an existing hotel is supported. The Acoustic Report provides appropriate measures to use as conditions and prevent noise nuisance.</p>
Environmental Health (Food Premises, Skin Pen.)	<p>Supported subject to condition</p> <p>Modification and addition to kitchen facilities are supported. Standard conditions apply for food premises construction.</p>
NECC (Coast and Catchments)	<p>Supported subject to condition</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> • Supplied plans and reports; • Coastal Management Act 2016; • State Environmental Planning Policy (Coastal Management) 2018 (clauses 13 & 15); and • Relevant LEP and DCP clauses. <p>The application meets the requirements of the relevant Environmental Planning Instruments and policies.</p> <p>The application is supported subject to conditions:</p> <ul style="list-style-type: none"> • Stockpiling materials (during works).
Strategic and Place Planning (Heritage Officer)	<p>Supported subject to condition</p> <p>This application has been referred as relates to a listed heritage item, being Item 174 - Harbord Beach Hotel, 29 Moore Street, Freshwater,</p>

Internal Referral Body	Comments
	<p>which is listed in Schedule 5 of <i>Warringah Local Environmental Plan 2011</i>.</p> <p>Details of this heritage item, as contained within the Warringah Heritage Inventory, are:</p> <ul style="list-style-type: none"> • Item I74 - Harbord Beach Hotel, 29 Moore Street, Freshwater. <p><u>Statement of Significance</u> A rare example of an inter-war hotel building which shows influences of the Californian bungalow style. Historically provides evidence of the early development of social & recreational facilities to serve the growing population. Local landmark.</p> <p><u>Physical Description</u> Two storey building with rendered masonry walls. Tiled hipped, jerkin headed & gabled roof. Terrace on first floor supported by arcaded verandah. A number of modifications include surrounding wall, beer garden, bottle shop extension & window modifications.</p> <p>This application is for alterations and additions to the heritage item, being the Harbord Hotel. A change of use is also proposed. The proposed works include:</p> <ul style="list-style-type: none"> • Internal demolition and re-build of level 1 for use as a bar/kitchen/office and amenities. • New paving on 1st floor balcony and the introduction of an acoustic glass barrier, behind the existing 1st floor open balcony (1700mm and 2000mm high); • Replacement of aluminium windows on Moore Road (eastern facade) with timber windows (acoustic glass) matching original window detailing; • New doors onto 1st floor balcony facing north and east; • Fit out and creation of usable space in the existing roof, including raising of the roof of southern wing and addition of a dormer on the western side (to accommodate a lift overrun and stair); • Addition of acoustic glass on perimeter wall on Moore Road corner of Charles Street (200mm higher than existing). <p>The application was accompanied by a Heritage Impact Statement by Weir Phillips Heritage and Planning (dated August 2021), which has been reviewed along with the submitted plans.</p> <p>Heritage raises no objection to the interior changes to the 1st floor and to the balcony. It is agreed that the interiors have been modified over the years and remaining fabric is not exceptional. The reflected ceiling proposal will go some way to ensuring the original hotel room layout is not forgotten, along with the wall nibs shown to be retained</p>

Internal Referral Body	Comments
	<p>on the submitted plans. Replacement of aluminium framed windows on the 1st floor with timber framed acoustic windows, to match original detail, is also supported.</p> <p>Changes to the original roof of the southern wing, to accommodate access to the new attic space is not an ideal outcome for the heritage item. However, an attempt has been made to ensure that the impact on the heritage significance of the building is minimised. It is agreed that keeping the roof pitch the same, retaining the chimney and tiling to match the original roof, all assist in integrating the raised roof with the heritage building and minimising the visual impact of this change. The introduction of a dormer on the western side of this raised roof (to provide height for lift overrun and access) is not ideal, but is a better solution than raising the roof even higher to accommodate these needs. While this introduces an additional, non-original element into the roofscape, it will not be visible as part of the view of the principal elevation of the hotel from Moore Road. The dormer will be visible from Charles Street and from the non-primary public viewpoints (part of the rear view, along with services and plant). Given its location as part of the rear service elevation of the hotel, it is considered that this introduced element into the roofscape will have an acceptable minor impact upon the heritage significance of the building.</p> <p>Another proposed change is the introduction of an acoustic glass barrier on the inside of the 1st floor balcony and also along the length of the perimeter fence on Moore Road and turning the corner to Charles Street. The barrier on the 1st floor balcony is a new addition, however is considered acceptable from a heritage viewpoint as it will be non-reflective, will not obscure the view of the architectural features of the building and is something which can be removed in the future without any damage to original fabric. The acoustic frameless glass barrier on the perimeter fence is replacing an existing, framed barrier, but 200mm taller. From a heritage point of view, a frameless glass barrier would be preferable to the existing framed barrier, as it allows greater visibility of the architecture of the building, when viewed from the public domain. Therefore, heritage has no objections to the acoustic glass barriers proposed for the 1st floor balcony or the perimeter fence, on the basis that they are non-reflective and removable in the future without damaging original building fabric.</p> <p>No objections are raised to the change in use of the 1st floor from hotel accommodation/hotelier residence. It is agreed that these uses are redundant in current times and the most important historical use of this building is its continued use as a hotel, as it has been used since originally built in 1928. The introduction of new, but ancillary uses to the hotel offering, should ensure that the upkeep and maintenance of this heritage item, and its continued use as a hotel can continue into the future. It is considered that an Interpretation Plan should be prepared for this space and implemented to indicate previous uses.</p> <p>The submitted Material Palette has been reviewed and is considered acceptable.</p>

Internal Referral Body	Comments
	<p>In conclusion, no heritage objections are raised to this application, subject to a number of conditions (Photographic Archival Recording and Interpretation Strategy and Plan for 1st floor).</p>
Traffic Engineer	<p>Supported subject to condition</p> <p>The proposed additions have been reviewed along with the associated traffic report. The proposal includes internal changes to the attic space and first floor to provide a recording studio and private bar/lounge area with the conversion of the accommodation level into additional venue space for the operation of the hotel business.</p> <p>The proposal includes an additional provision of parking spaces to increase the numbers from 23 to 31 on site spaces, which based on a patron to space ratio is an improvement and given the nature of the business and location can be supported, with the provision of signage directing patrons to nearby public parking areas to the east of the property away from the adjoining residential properties.</p> <p>The proposed increase in the number of patrons is from 820 to 870 (traffic report proposes 900 total) and up to 62 staff on site in periods of peak trading.</p> <p>The proponent will provide a shuttle bus during peak periods, however the hours of operation are not defined. The operational management plan makes no mention of the shuttle service and needs to be updated to reflect that.</p> <p>The proposed development can be supported on traffic and transport grounds subject to conditions.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>Supported subject to condition</p> <p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.</p> <p>These recommendations will be included as a condition of consent.</p>
NSW Police – Licensing (Clubs, Hotels, Pubs)	<p>Supported subject to condition</p> <p>The application was referred to the NSW Police Licensing Unit, with a number of conditions recommended in relation to the ongoing operation of the premises, should the proposal be approved.</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 (Coastal Management) 2018

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

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.*

Comment:

The proposed works are largely within the existing development footprint and are unlikely to cause adverse impacts to the natural environment, coastal processes, water quality, vegetation and headlands, public open space, aboriginal heritage or 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.*

Comment:

The proposal is appropriately designed and sited to avoid unreasonable impacts in relation to the above matters.

As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

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 proposal is unlikely to result in increased risk of coastal hazards on the site or surrounding land.

Warringah Local Environmental Plan 2011

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
4.3 - Height of Buildings	8.5m	10.7m	25.9%	No

Compliance Assessment

Clause	Compliance with Requirements
2.5 Additional permitted uses for particular land	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
5.8 Conversion of fire alarms	Yes
5.10 Heritage conservation	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes
Schedule 5 Environmental heritage	Yes

Detailed Assessment

Zone R2 Low Density Residential

In accordance with the provisions of Clause 2.5 and Schedule 1 of the *Warringah Local Environmental Plan 2011* , development for the purposes of pubs is permitted with consent.

4.6 Exceptions to development standards

Description of non-compliance

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	10.7m
Percentage variation to requirement:	25.9%

Assessment of request to vary a development standard

The following assessment of the variation to Clause 4.3 – Height of Buildings development standard, has taken into consideration the judgements contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

Clause 4.6 Exceptions to development standards:

(1) *The objectives of this clause are as follows:*

(a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*

(b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Comment

Clause 4.3 – Height of Buildings development standard is not expressly excluded from the operation of this clause.

(3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

(a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

(b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

(4) *Development consent must not be granted for development that contravenes a development standard unless:*

(a) *the consent authority is satisfied that:*

(i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

(ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

(b) *the concurrence of the Secretary has been obtained.*

Clause 4.6 (4)(a)(i) (Justification) assessment:

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

Comment

The Applicant's written request (attached to this report as an Appendix) has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Comment

In the matter of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*

(j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicants written request argues, in part:

- *"Sufficient environmental planning grounds exist to justify the height of buildings variation namely the fact that the variation facilitates disabled lift access to the existing attic level of the heritage listed building being the most appropriate location for a lift structure given the heritage significance of the building and its associated fabric.*
- *Whilst the extent of non-compliance could be removed through the introduction of a flat roof form, the complementary and compatible pitched roof form responds appropriately to the heritage listing of the subject property.*
- *I consider the proposal to be of a skilful design which responds appropriately and effectively to the heritage constraints of the site. The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:*
 - *The proposal promotes the orderly and economic use and development of land (1.3(c)).*
 - *The proposal promotes the sustainable management of built and cultural heritage by facilitating disabled lift access to the existing attic level floor space within a characteristically pitched roof form (1.3(f)).*
 - *The development represents good contextually appropriate heritage sensitive design (1.3(g)).*
 - *The building as designed facilitates its proper construction and will ensure the protection of the health and safety of its future occupants (1.3(h))."*

Comment

The applicant has appropriately related these reasons/grounds to the relevant objects prescribed by clause 1.3 of the Act. As such, the applicant's submission is considered to establish sufficient environmental planning grounds to justify the proposed variation to the building height development standard.

Therefore, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

Clause 4.6 (4)(a)(ii) (Public Interest) assessment:

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

Comment

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – ‘Height of buildings’ of the WLEP 2011 are:

(1) The objectives of this clause are as follows:

a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,

Comment

The proposed addition is below the overall ridge height of the existing building and remains compatible with the height and scale of surrounding development, noting the prevalence of dwellings and multiple occupancy developments that exceed the height control.

b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,

Comment

The proposed height breach occurs centrally within the site and behind the existing roof ridge as viewed from the primary (northern) street frontage. The separation provided to the western and southern site boundaries will mitigate the visual bulk of the addition and the proposal maintains a consistent roof form to the existing building. The proposed breach is not considered to result in any unreasonable impacts in relation to views, privacy or solar access.

c) to minimise adverse impact of development on the scenic quality of Warringah’s coastal and bush environments,

Comment

The proposal will not adversely impact the scenic quality of Warringah's coastal and bush environments.

d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities,

Comment

The proposed addition maintains an appropriate visual relationship to the existing building and will not result in adverse visual impact when viewed from nearby public places.

Zone objectives

The underlying objectives of the R2 Low Density Residential zone are:

- **To provide for the housing needs of the community within a low density residential environment.**

Comment

This objective is not applicable as the existing use of the site as a pub is permissible subject to Clause 2.5 of WLEP.

- **To enable other land uses that provide facilities or services to meet the day to day needs of residents.**

Comment

The proposed height variation enables disabled access to the attic level of the development,

which is available for use by residents.

It is considered that the development satisfies this objective.

- ***To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.***

Comment

The proposed height variation occurs within the existing development footprint and will not alter the existing landscape setting of the site.

It is considered that the development satisfies this objective.

Conclusion

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone.

Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning & Infrastructure, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the Local Planning Panel.

5.10 Heritage conservation

Council's Heritage Officer has assessed the proposal and raised no objection to the development, subject to conditions.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	7.9m	N/A	No
B3 Side Boundary Envelope	5m	East: Within envelope	N/A	Yes
B5 Side Boundary Setbacks	0.9m	East: 13m	N/A	Yes
		South: Nil (carpark)	N/A	No (existing)
B7 Front Boundary Setbacks	North: 6.5m	Nil (No change to existing)	N/A	No (existing)
	West: 3.5m	Nil (No change to existing)	N/A	No (existing)
D1 Landscaped Open Space (LOS)	40%	Nil (No change to	N/A	No

and Bushland Setting		existing)		(existing)
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***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
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
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
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of non-compliance

The proposed maximum wall height of 7.9m is non-compliant with the 7.2m control.

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- ***To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.***

Comment:

The proposed wall height breaches relate to the additions to the southern wing of the building. The extent of the non-compliance is relatively minor and adequate separation from the street frontages and adjoining properties is maintained to mitigate the associated visual impact.

- ***To ensure development is generally beneath the existing tree canopy level.***

Comment:

The development remains generally beneath the surrounding tree canopy level.

- ***To provide a reasonable sharing of views to and from public and private properties.***

Comment:

The proposal will not result in any unreasonable view impacts.

- ***To minimise the impact of development on adjoining or nearby properties.***

Comment:

The non-compliant walls are located centrally within the development site and will not adversely impact surrounding properties.

- ***To ensure that development responds to site topography and to discourage excavation of the natural landform.***

Comment:

The proposal responds appropriately to the site topography.

- ***To provide sufficient scope for innovative roof pitch and variation in roof design.***

Comment:

The proposed roof form is designed to be compatible with the existing roof of the heritage-listed building.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the control. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

B5 Side Boundary Setbacks

The existing non-compliant southern setback remains unchanged.

B7 Front Boundary Setbacks

The existing non-compliant setbacks to the northern and western frontages remain unchanged.

C2 Traffic, Access and Safety

Council's Traffic Officer has assessed the proposal and raised no objections to the development, subject to the recommended conditions of consent.

C3 Parking Facilities

The *Warringah Development Control Plan 2011* does not include specific numerical car parking requirements in relation to pubs. As such, Council's Traffic Officer has based the assessment of the ratio of additional car parking provision to the proposed increase in patron numbers.

The proposal includes an increase in patron numbers from 820 to 870, and up to 62 staff during peak trading period and increased parking provision of 23 to 31 spaces, resulting in an improved patron to parking ratio in comparison to the existing situation. The proposal also includes the operation of a shuttle bus service during peak periods and conditions of consent are recommended in this regard.

Based on these considerations, Council's Traffic Officer raises no objection to the proposed, subject to conditions.

D1 Landscaped Open Space and Bushland Setting

The site does not contain any existing landscaped area.

D3 Noise

The proposal incorporates a number of new and upgraded acoustic measures as part of the development, as detailed in the plans and Acoustic Report. The acoustic works are summarised as follows:

- Replace and upgrade existing ground floor entry stair and balcony acoustic glazing
- New acoustic glazing to the first floor balcony
- New acoustic doors to the first floor internal entry and northern balcony door
- New air-lock door to the eastern side of the first floor balcony
- Replace existing first floor windows with acoustic glazing
- New acoustic panels to the underside of the first floor balcony eave
- New acoustic insulation to first floor and attic ceilings
- Installation of a noise limiter system at the first floor level to limit amplified equipment when windows are open

The Acoustic Report prepared also includes recommendations regarding the capacity and operating hours of the first floor balcony and use of an outdoor PA system.

Council's Environmental Health Officer has reviewed the proposal, including the Acoustic Report, and considers appropriate measures are included to prevent noise nuisance. As such, the proposal is supportable in relation to noise impacts, subject to the recommended conditions of consent.

D7 Views

Merit consideration

The development is considered against the underlying Objectives of the Control as follows:

- *To allow for the reasonable sharing of views.*

Comment:

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, are applied to the proposal.

1. Nature of the views affected

"The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured".

Comment to Principle 1:

Two submissions received from units at 32 Undercliff Road raised concerns in relation to view loss as a result of the proposed addition to the southern wing of the building. The affected views are filtered water views over the existing southern roof, being interrupted by vegetation to the east of the subject site. As such, the affected views are partial views.



Photo 1. Available views from 5/32 Undercliff Road. Source: realestate.com



Photo 2. Available views from 8/32 Undercliff Road. Source: realestate.com

2. What part of the affected property are the views obtained

“The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic”.

Comment to Principle 2:

The affected views are available from the lower levels of the building and are obtained across multiple side boundaries. The views are available from a standing or sitting position, depending on the elevation of the unit.

3. Extent of impact

“The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating”.

Comment to Principle 3:

The proposal will block a small proportion of the available views that are already obscured by the existing roof and vegetation beyond the site to the east. Given the distance between the available views and the receiving property and the limited value of the affected views in comparison to the unobstructed water views that will be retained, the extent of the impact is considered to be negligible.

4. Reasonableness of the proposal that is causing the impact

“The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.”

Comment to Principle 4:

The impact to views arises as a result of the non-compliant proposed roof height of the southern wing. However, based on the partial nature of the affected views, their vulnerability and limited value, the proposed impact is considered to be acceptable.

- *To encourage innovative design solutions to improve the urban environment.*

Comment:

The proposed works are appropriately designed to maintain the heritage value of the existing building.

- *To ensure existing canopy trees have priority over views.*

Comment:

The proposal will not adversely impact canopy trees.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the control. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

D8 Privacy

The proposal will result in an increase in the intensity of use of the first floor balcony. The balcony area itself remains unchanged and adequate physical separation is maintained to surrounding properties to the north, west, east and south-east, mitigating any overlooking impacts associated with the use of the balcony.

D9 Building Bulk

The proposed 1.54m increase to the wall height of the southern wing is not anticipated to result in

unreasonable additional bulk, noting the separation to the adjoining properties and the public domain.

E10 Landslip Risk

The site is mapped as Landslip Risk Areas A & B. No geotechnical investigation is considered necessary based on the nature of the proposed works.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect 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 2021

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2021.

A monetary contribution of \$28,365 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,836,473.

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

Council is / is not satisfied that:

1) The Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

- a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
- b) There are sufficient environmental planning grounds to justify the contravention.

2) The proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

The application seeks consent for alterations and additions to the existing pub, including the change of use of the first floor area to accommodate a bar/function area and a new recording studio at the attic level.

The key planning issues considered within the assessment are the compatibility of the development with the surrounding area, the resulting traffic, parking and noise impacts, and the visual impact of the proposed additions that breach the building height control.

130 submissions were received in relation to the development - 101 in objection and 29 in support. The concerns raised in the submissions are addressed within the report.

Assessment of the application against the Warringah LEP and DCP finds that the development is suitable in the context of the site, and is recommended for approval.

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building development standard pursuant to clause 4.6 of the WLEP 2011 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2021/1620 for Alterations and additions to an existing pub (Harbord Hotel) on land at Lot 13 DP 7022, 31 Moore Road, FRESHWATER, Lot 1 DP 7022, 29 Moore Road, FRESHWATER, Lot 2 DP 7022, 29 Moore Road, FRESHWATER, Lot 3 DP 7022, 29 Moore Road, FRESHWATER, Lot 4 DP 7022, 29 Moore Road, FRESHWATER, Lot 5 DP 7022, 29 Moore Road, FRESHWATER, 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-D00-011 - Ground Floor - General Arrangement Plan	Rev. B, 28 July 2021	Alexander & Co.
DA-A01-011 - First Floor - General Arrangement Plan	Rev. B, 28 July 2021	Alexander & Co.
DA-A02-011 - Upper Floor - General Arrangement Plan	Rev. B, 28 July 2021	Alexander & Co.
DA-DXX-011 - Site & Roof - Proposed Plan	Rev. B, 28 July 2021	Alexander & Co.
DA-EXX-011 - External Elevations 01	Rev. B, 28 July 2021	Alexander & Co.
DA-EXX-021 - External Elevations 02	Rev. B, 28 July 2021	Alexander & Co.
DA-FXX-011 - Section 01	Rev. B, 28 July 2021	Alexander & Co.
DA-FXX-021 - Section 02	Rev. B, 28 July 2021	Alexander & Co.
DA-FXX-031 - Section 03	Rev. B, 28 July 2021	Alexander & Co.
DA-FXX-041 - Section 04	Rev. B, 28 July 2021	Alexander & Co.
MX-011 - Material Palette	Rev. A, 31 May 2021	Alexander & Co.

Reports / Documentation – All recommendations and requirements contained within:

Report No. / Page No. / Section No.	Dated	Prepared By
Acoustics Report	27 July 2021	AKA Acoustics

Accessibility Report	Issue 2, 30 May 2021	Trevor R Howse
Heritage Impact Statement	August 2021	Weir Phillips Heritage and Planning
Traffic and Parking Report	20 April 2021	Colston Budd Rogers & Kafes Ptf Ltd
Plan of Management	August 2021	Harbord Hotel
Operational Waste Management Plan	Revision B, 7 June 2021	Elephants Foot Recycling Solutions

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

c) The development is to be undertaken generally in accordance with the following:

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. **Compliance with Other Department, Authority or Service Requirements**

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Response Ausgrid Referral	20 October 2021
NSW Police Licensing Unit	NSW Police Referral Response	22 November 2021

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website www.northernbeaches.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

3. **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.

4. **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) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) 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.
- (d) 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.
- (e) 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.
- (f) 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.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) 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.
- (k) 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.

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$28,364.73 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of \$2,836,472.76.

The monetary contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate whichever occurs first, or prior to the issue of the Subdivision Certificate where no Construction Certificate is required. If the monetary contribution (total or in part) remains unpaid after the financial quarter that the development consent is issued, the amount unpaid (whether it be the full cash contribution or part thereof) will be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index. If this situation applies, the cash contribution payable for this development will be the total unpaid monetary contribution as adjusted.

The proponent shall provide to the Certifying Authority written evidence (receipt/s) from Council that the total monetary contribution has been paid.

The Northern Beaches Section 7.12 Contributions Plan 2021 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

This fee must be paid prior to the issue of the Construction Certificate. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.

6. Security Bond

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required 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, and 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).

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

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

7. Photographic Archival Record

A photographic archival record is to be made of all components of the building affected by the proposed works (including interiors and exteriors and their setting), generally in accordance with the guidelines issued by the Heritage NSW. This should include all areas of the 1st floor (internal and external) and the external appearance and setting of the building when viewed from Moore Road and Charles Street.

This record must be submitted to Council's Heritage Advisor for approval prior to commencement of any demolition or works on-site.

The photographic record should be made using digital technology, and should include:

- Location of property, date of survey and author of survey;
- A site plan at a scale of 1:200 showing all structures and major landscape elements;
- Floor plans of any buildings at a scale of 1:100;
- Photographs which document the site, cross-referenced in accordance with recognised archival recording practice to catalogue sheets. The extent of documentation will depend on the nature of the item.

Reason: To provide an archival photographic record of the site, including any buildings and landscape elements, prior to any works.

8. Car Parking Standards

The driveway/access ramp grades, access and car parking facilities must comply with the Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking. The dimensions of car parking bays and aisle widths in the car park are to comply with Australian/New Zealand Standard for Off-Street Parking AS/NZS 2890.1-2004.

Details demonstrating compliance with this condition are to be submitted to the Certifying Authority prior to the issue of a construction certificate.

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicles.

9. **Vehicular Swept Paths**

Vehicular manoeuvring paths must be provided to demonstrate all vehicles can enter or depart the site in a forward direction without encroaching on required car parking spaces. The drawings must be compliant with Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking.

Details demonstrating compliance with this condition must be submitted to the Certifying Authority prior to the issue of the construction Certificate.

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicles.

10. **Construction Traffic Management Plan**

As a result of the site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) and report shall be prepared by an RMS accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to issue of any Construction Certificate.

. Truck movements must be agreed with Council's Traffic Engineer prior to submission of the CTMP.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- Make provision for all construction materials to be stored on site, at all times
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Seven (7) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and

consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site

- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent
- Proposed protection for Council and adjoining properties
- The location and operation of any on site crane

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.

11. **Waste and Service Vehicle Access (12.5 Heavy Rigid Vehicle)**

Access to the on-site loading bay area including ramp grades, transitions and height clearance shall be designed for safe forward in and forward out access of a 12.5m HRV delivery truck, as a minimum requirement. The height clearance required is 4.5m, measured from the surface level to any overhead structures such as pipes. Swept path diagrams must include details of the road including, kerb line, line marking, signs, traffic devices, power poles, other structures and neighbouring driveways. Plans showing the ramp grades, transitions and height clearance and swept path diagrams of 12.5m delivery vehicle shall be submitted to and approved by the Certifying Authority prior to the issue of the Construction Certificate.

Reason: to ensure adequate service vehicle access.

12. **Boundary Identification Survey**

A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

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

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

13. **Building Code of Australia Report (Class 2-9)**

A 'Building Code of Australia (BCA) Assessment Report' / 'Fire Audit Report' from an appropriately qualified Registered Certifier* will need to be submitted with the Construction Certificate application addressing the following:

The report is to detail the extent to which the existing building (relevant affected parts) does or does not comply with the deemed-to satisfy provisions of Sections C, D, E and F of the Building Code of Australia. The report is to also provide recommendations with respect to the existing building / works required to ensure that the specified measures and facilities contained in the existing building, including any modifications to be made by the proposed development are appropriate for its intended use.

*To be regarded as an "appropriately qualified registered certifier" the certifier must hold the relevant level of accreditation that would enable the certifier to issue a construction certificate for the subject building.

The 'Building Code of Australia (BCA) Assessment Report' / 'Fire Audit Report' is to be submitted to the Certifying Authority with the Construction Certificate application.

Reason: To ensure adequate provision is made for Health, Amenity, access and Fire safety for building occupant health and safety

14. **Building Code of Australia Access**

Access and facilities to and within the building are to be provided for Persons with a Disability and are to comply with the Building Code of Australia and AS 1428.1. The "Design Specification – Accessibility" report prepared by Trevor R Howse Pty Ltd dated 30/5/2021 is to be taken into consideration as part of the assessment of the Construction Certificate. Details are to be provided to the Certifying Authority prior to the issue of the Construction Certificate and be implemented prior to occupation of the building.

Reason: To ensure adequate provision is made for access to and within the building for Persons with a disability.

15. **Interpretation Strategy and Plan**

An Interpretation Strategy and Plan for the 1st floor of the hotel, is to be prepared by a suitably qualified heritage professional. The Plan should outline how this interpretation will be incorporated into the adaptive re-use of the 1st floor. This must be submitted to Council's Heritage Advisor for approval, prior to the commencement of any works on-site and implemented prior to completion of works.

Reason: To ensure that the historical use of the 1st floor of the hotel is interpreted as part of its adaptive re-use.

16. **Plans of Kitchen Design, construction and fit out**

Prior to any Construction Certificate (CC) being issued, detailed plans that demonstrate compliance with Standard 3.2.3 of the Australian and New Zealand Food Standards Code, the

Food Act 2003 and Australian Standard AS 4674 'Design, construction and fit out of food premises', must be submitted to and approved by the Certifying Authority. These plans are to be prepared by a suitably qualified person.

The plans must detail adequate provision for storage including separate storage of food, equipment, chemicals and personal belongings.

Reason: To ensure that the food premises complies with the design construction and fit-out requirements.

17. **Mechanical Ventilation Plans**

Where Mechanical ventilation is required to be installed in the food premises detailed plans must be submitted to and approved by the Certifying Authority that demonstrate compliance with the following:

- Australian Standard (AS) 1668.2 "The use of ventilation and air-conditioning in buildings - Mechanical ventilation in buildings"; and
- Any external exhaust discharge must be above the roofline and discharged in a manner that is not likely to cause an amenity impact.

These plans are to be prepared by a suitably qualified person.

Reason: To ensure that the installed mechanical ventilation complies with the requirements of the Australian Standard 1668.2 and to prevent amenity impacts.

18. **Acoustic design incorporated into plans**

All design components detailed in Section 4, and actions listed in Section 5.2 of the acoustic report prepared by AKA Acoustics and AKA Music Pty. Ltd. dated 27 July 2021 (Reference R-054HBH210717.4) respectively, must be, implemented into the plans, and conducted prior to issuing the Construction Certificate in order to achieve compliance with noted conditions of this consent.

Details demonstrating these actions and design are to be submitted to the satisfaction of the Principal Certifying Authority.

Reason: To prevent noise nuisance for the surrounding area.

19. **Compliance with Standards**

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

(Note: At the time of determination the following (but not limited to) Australian Standards applied:

- (a) AS2601.2001 - Demolition of Structures**
- (b) AS4361.2 - Guide to lead paint management - Residential and commercial buildings**
- (c) AS4282:1997 Control of the Obtrusive Effects of Outdoor Lighting**

- (d) AS 4373 - 2007 'Pruning of amenity trees' (Note: if approval is granted) **
- (e) AS 4970 - 2009 'Protection of trees on development sites**
- (f) AS/NZS 2890.1:2004 Parking facilities - Off-street car parking**
- (g) AS 2890.2 - 2002 Parking facilities - Off-street commercial vehicle facilities**
- (h) AS 2890.3 - 1993 Parking facilities - Bicycle parking facilities**
- (i) AS 2890.5 - 1993 Parking facilities - On-street parking**
- (j) AS/NZS 2890.6 - 2009 Parking facilities - Off-street parking for people with disabilities**
- (k) AS 1742 Set - 2010 Manual of uniform traffic control devices Set**
- (l) AS 1428.1 – 2009* Design for access and mobility - General requirements for access – New building work**
- (m) AS 1428.2 – 1992*, Design for access and mobility - Enhanced and additional requirements - Buildings and facilities**

*Note: The Australian Human Rights Commission provides useful information and a guide relating to building accessibility entitled "the good the bad and the ugly: Design and construction for access". This information is available on the Australian Human Rights Commission website [www.hreoc.gov.au/disability rights /buildings/good.htm](http://www.hreoc.gov.au/disability%20rights%20/buildings/good.htm). <www.hreoc.gov.au/disability%20rights%20/buildings/good.htm>

**Note: the listed Australian Standards is not exhaustive and it is the responsibility of the applicant and the Certifying Authority to ensure compliance with this condition and that the relevant Australian Standards are adhered to.)

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. (DACPLC02)

20. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development.

21. **Waste Management Plan**

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan.

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 THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

22. **Work Zones and Permits**

Prior to commencement of the associated works, the applicant shall obtain a Work Zone Permit

where it is proposed to reserve an area of road pavement for the parking of vehicles associated with a construction site.

A separate application is required with a Traffic Management Plan for standing of construction vehicles in a trafficable lane and a Roads and Maritime Services Work Zone Permit shall be obtained for State Roads.

Reason: To ensure Work zones are monitored and installed correctly.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

23. **Implementation of Construction Traffic Management Plan**

All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to Council on request.

Reason: To ensure compliance of the developer/builder in adhering to the Construction Traffic Management procedures agreed and are held liable to the conditions of consent.

24. **Ongoing Management**

The applicant shall be responsible in ensuring that the road reserve remains in a serviceable state during the course of the demolition and building works.

Reason: To ensure public safety.

25. **Stockpiling materials**

During construction, all material associated with works is to be contained at source, covered and must be within the construction area. All material is to be removed off site and disposed of according to local regulations. The property is to be kept clean and any building debris removed as frequently as required to ensure no debris enters receiving waters.

Reason: To ensure pollution control measures are effective to protect the aquatic habitats within receiving waters throughout the construction period.

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

26. **Plan of Management**

An amended Plan of Management (POM) is required to be submitted to, and approved by the Executive Manager Development Assessments, detailing the operation of the development. The POM shall be available on the pub's website, and shall include, but not be limited to the following:

- Vehicle access and egress.
- Through-site circulation of vehicle movements.
- Management of car parking areas.
- Operation of the Shuttle Bus between the premises, Manly CBD and other locations as

- required, including timetable or frequency of service.
- The location and content of directional signage.
- Complaints management - A dedicated phone number for complaints must be provided, which must be separate to any other number for table bookings, enquiries etc. The phone must be operational/answered for at least 2 hours following closing times. A register must be kept of all complaints and actions, and proposed changes to the POM as a result, and must be available to Council upon request.
- Noise management.
- Truck delivery times and methods of control to manage the sequencing of the loading docks.
- Waste management.

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

Reason: To ensure that the development operates with minimum disruption to the surrounding area.

27. **Kitchen Design, Construction and Fit-out of Food Premises Certification**

Prior to the issuing of any interim / final occupation certificate, certification is to be provided to the Principal Certifying Authority by a suitably qualified person demonstrating that the design, construction and fit out of food premises kitchen is compliant with the requirements of AS 4674 Design, construction and fit out of food premises.

Reason: To ensure that the kitchen complies with Australian Standard design requirements.

28. **Mechanical Ventilation certification**

Where Mechanical ventilation is required to be installed in the food premises it must comply with Australian Standard (AS) 1668.2 "The use of ventilation and air-conditioning in buildings - Mechanical ventilation in buildings" prior to any Occupation Certificate (OC) being issued.

Certification is to be provided to the Principal Certifying Authority by a suitably qualified person that the mechanical ventilation complies with the above requirements.

Reason: To ensure that the installed mechanical ventilation complies with the requirements of the Australian Standard 1668.2.

29. **Acoustic Assessment**

Prior to any occupation certificate being issued, a further acoustic assessment is to be undertaken by a qualified and experienced person(s) to confirm compliance with Section 4, and Section 5.2 of the acoustic report prepared by AKA Acoustics and AKA Music Pty. Ltd. dated 27 July 2021 (Reference R-054HBH210717.4).

Any recommendations made by the consultant must be implemented prior to issuing the Occupation Certificate, in order to achieve compliance with noted conditions of this consent. The updated acoustic assessment is to be submitted to the PCA for certification.

Reason: To protect the acoustic amenity of neighbouring properties (DACHPFPOC6)

30. **Fire Safety Matters**

At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and the NSW Fire Brigade.

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

Each year the Owners must send to the Council and the NSW Fire Brigade an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement under Part 9 Division 4 & 5 of the Environmental Planning and Assessment Regulation 2000.

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

31. **Vehicle Parking**

The car parking area shown on the approved drawings must be used for vehicle parking only. Loading and unloading of vehicles and delivery of goods to the land must be carried out within the site. Any loading or unloading of materials of potential environmental damage must be appropriately banded with adequate spill response equipment in place to ensure nil runoff from the site.

Reason: To ensure the safety and amenity of the general public using public streets, and to ensure the protection of the environment from spillage of materials.

32. **Sight lines within carparks**

The required sight lines to pedestrians and other vehicles in and around the carpark and entrance(s) are not to be obstructed by landscaping or signage.

Reason: To maintain unobstructed sight distance for motorists.

33. **Compliance with the Plan of Management**

The requirements of the Plan of Management must be followed in perpetuity.

Reason: To ensure operations of the premises are maintained in an appropriate manner in perpetuity. (DACHPGOG5)

34. **Audibility of Amplified Music**

Noise caused by the operation of amplified music must not be audible beyond the boundary of any residence between the hours of 10 pm to 8 am on any day.

Reason: to prevent noise nuisance to surrounding residents. (DACHPGOG5)

35. **Patron Numbers**

The number of patrons within the venue shall be limited to a maximum of 870 at any time.

Reason: To ensure that the operation of the premises is consistent with the proposed development.

36. **Provision of Shuttle Bus for patrons**

The applicant/operator is to provide a shuttle bus service between the subject premises, Manly CBD and other locations as required, operating in line with the amended Plan of Management. The shuttle service is to operate during operating hours as follows:

- Monday to Friday - 4 pm to Close
- Saturday, Sunday and Public Holidays - 11 am to Close

Reason: To provide an additional transport option for patrons to offset the lack of on site parking.