

10th February 2022

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

Attention: The Chairperson - Northern Beaches Local Planning Panel

Dear Chairperson,

**Development Application DA2021/1620
Response to minutes/ Supplementary Statement of Environmental Effects
Alterations and additions to an existing pub (Harbord Hotel)
29 and 31 Moore Road, Freshwater**

Reference is made to the minutes of the Northern Beaches Local Planning Panel (NBLPP) meeting of 15th December 2021 in which the Panel resolved to defer the determination of the application to allow the provision of the following information:

1. *Details of the assumption that the baseline patronage figure for the hotel is 820 patrons, including dimensioned plans showing the number of people per area measured.*
2. *Undertake at least four surveys in the month of January 2022 which document patronage that typifies peak and non-peak patronage of the hotel and the uses that are occurring e.g. live music, functions etc.*
3. *Undertake at least one traffic and parking survey on an evening where there is an event or function being held. The survey shall include the travel modes of the patrons attending.*
4. *An amended acoustic report that addresses all noise generation sources from the operations of the hotel, including the existing use of the ground floor and all outdoor areas. The measurement of noise generated by existing use is to be undertaken on the same night as point number three.*

5. *An amended Plan of Management that addresses the operational requirements of the hotel given the updated specialist reports, particularly the amended noise assessment report and the introduction of live music. The Plan of Management shall include but is not limited to:*
 - *the matters in condition 26 of the assessment report (page 50 of the agenda.*
 - *hours of operation for particular areas*
 - *specific security arrangements e.g. number of bouncers*
 - *details of live music, functions and entertainment, including outdoor areas and the use of PA systems*
 - *management of patron travel, including a dedicated pick up and drop off point.*
6. *Detail how the use of the “recording studio” is ancillary to the pub use.*
7. *Amended plans which clearly indicate and dimension the proposed new work, including additional car parking.*

These minutes anticipated the Harbord Hotel (the Hotel) being capable of operating at a patronage level that typified peak patronage at least 4 times during the Xmas/ New Year/ Australia Day holiday period which is typically the busiest trading period for the Hotel. At the time of the NBLPP meeting the Hotel also anticipated being able to maximise patronage levels during this period.

We note that the publishing of NBLPP meeting minutes coincided with a surge in Covid-19 Omicron variant cases throughout Sydney with the Hotel directly impacted through a quick and significant reduction in patronage and increased Covid positive patrons and staff. This culminated in the premises being closed between 5th and 12th January following an outbreak within the Hotel during a ticketed New Year Day (NYD) event.

Prior to the NYD event the NSW Government restrictions were changed to a maximum of 2 persons per sqm of floor space indoors with unrestricted numbers remaining in outdoor settings. The Hotel's capacity under these restrictions was 350 persons inside and 250 persons outside being a total of 600 patrons with all 600 available tickets sold prior to the event. It is widely accepted that the latest Covid-19 wave had a significant impact on the confidence of patrons and consequently the hospitality industry generally with the public avoiding densely populated settings during this period. This was demonstrated in only 305 patrons ultimately attending the NYE event with the remaining 295 patrons not attending due to the risk of the evolving Covid-19 situation.

As a consequence of the above, there was no ability for the Hotel to reach peak trading capacity as requested by the NBLPP through no fault of their own. That said, additional traffic and parking surveys and acoustic testing was able to occur during January as detailed within this submission with such data providing valuable feedback in relation to the performance of the existing and proposed acoustic attenuation measures and data in relation to the travel modes of patrons.

Such data confirms that the existing and proposed acoustic attenuation measures will ensure compliance with the applicable noise criteria with the additional patron travel mode data aligning with that contained within the original traffic and parking assessment which supported a maximum patron capacity of 900 patrons.

The last 2 years have been extremely difficult for our client in relation to trading capacity and hotel revenue however they have taken the opportunity to use the drop in patron numbers and forced closure periods to undertake significant works to the ground floor area of the existing hotel to bring it up to standard in relation to acoustic performance and to provide an enhanced experience for patrons in terms of amenities and food and beverage offerings. In this regard, they are extremely motivated to secure a consent without further delay such that works can commence on the first floor and attic level additions proposed whilst patron numbers remain low.

It would appear from the Council assessment report and the resultant NBLPP minutes that there is no fundamental concern in relation to the physical works proposed to the existing hotel premises and to that extent my clients are hoping to see a resolution in relation to patron numbers notwithstanding the inability to achieve the peak patron numbers proposed for the reasons outlined.

Patron numbers have a direct impact on the financial viability of the works undertaken to date within the ground floor area of the Hotel and those proposed by the current application in circumstances where the Hotel was purchased without any restriction on patron numbers other than those prescribed through compliance with the BCA in terms of egress widths and bathroom facilities. The patron surveys clearly demonstrate that the pub relies on increase patronage over weekend, holiday and special event days to maintain its financial viability with patron numbers mid-week significantly less due to the nature of the use.

An option available to the NBLPP is to grant development consent to the application with a patron capacity of 870 persons as recommended by Council staff for a trial period of 12 months after which patron numbers will default to a maximum of 800 unless a modification application is submitted to Council for consideration prior to the expiration of the trial period. We note that the default patron capacity is 100 patrons less than that supported in the original traffic and parking report.

The trial period will facilitate an assessment in relation to the acceptability the proposed peak patron numbers in relation to acoustic and traffic/parking performance outcomes and enable the approved Plan of Management to be tested in relation to the operational characteristics of the development including the complaints reporting resolution mechanism.

We believe that such outcome would facilitate the orderly and economic use and development of the land without further delay and would provide an appropriate opportunity for the proposed peak patron numbers to be tested. This is the mechanism frequently adopted by the Land and Environment Court in relation to patron numbers and associated acoustic and parking implications relating to Licensed premises.

We respond to the particulars contained within the minutes of the NBLPP meeting as follows:

1. *Details of the assumption that the baseline patronage figure for the hotel is 820 patrons, including dimensioned plans showing the number of people per area measured.*

Response: As detailed in our email to Council of 15th December 2021, the existing Liquor Licenses does not impose a restriction on patron numbers. Advice received from Trevor R Howse, dated 29th August 2021, identified a maximum capacity for the existing building, based on BCA compliant egress widths and toilet facilities, of 570 persons within the building and 250 persons external to the building (beer garden) being a total of 820 persons on the premises. A copy of the current liquor licence and advice from Trevor R Howse are at Attachments 1 and 2.

This report was used to inform the patron numbers identified within the traffic and parking report and which form a component of the current application. The proposed first floor additions will enable the same number of patrons to be spread out across a larger area within the premises with the additional sanitary facilities and car parking proposed as a component of the applicant facilitating an additional 50 patrons on-site facilitating a total maximum venue population of 870.

The accompanying plan (Attachment 3) shows the overall distribution of the 820 patrons within the existing ground floor area of the premises reflecting a patron capacity of 1.24 patrons per square metres of publicly accessible floor space.

2. *Undertake at least four surveys in the month of January 2022 which document patronage that typifies peak and non-peak patronage of the hotel and the uses that are occurring e.g. live music, functions etc.*

Response: In accordance with this requirement, patron number surveys were undertaken by Colston Budd Rogers & Kaffes Pty Limited (the traffic consultant) on 1st, 18th, 26th and 31st January 2022 with such surveys incorporating a NYD event for which 600 tickets were pre-sold being the Covid-19 restricted 2 person per sqm capacity. Unfortunately, only 305 guests ultimately attended with the remaining 295 guests not attending the event due to the risk of the evolving Covid-19 situation. The additional traffic and parking surveys are contained within the report prepared by the traffic consultant at Attachment 4.

In this regard, the 4 patron surveys undertaken during the month of January 2022 certainly did not typify the peak and nonpeak patronage of the hotel due to the risk of the evolving Covid-19 situation.

3. *Undertake at least one traffic and parking survey on an evening where there is an event or function being held. The survey shall include the travel modes of the patrons attending.*

Response: Additional traffic and parking surveys were undertaken on 1 January 2022 coinciding with a ticketed NYD event which such surveys contained within the report prepared by the traffic consultant at Attachment 4. Although patron numbers were significantly less than the 600 pre-sold tickets such event provided comparative data in relation to patron travel modes.

The additional patron travel mode data aligned with that contained within the original traffic and parking assessment report which supported a maximum patron capacity of 900 patrons.

4. *An amended acoustic report that addresses all noise generation sources from the operations of the hotel, including the existing use of the ground floor and all outdoor areas. The measurement of noise generated by existing use is to be undertaken on the same night as point number three.*

The accompanying Acoustic Compliance Report (the acoustic report) prepared by AKA Acoustics details the acoustic performance of the premises during the NYD event. We note that a peak capacity of 200 patrons within the front courtyard was reached approximately 4:55pm during the event being reflective of the 250 patrons anticipated within the front courtyard area by the subject application. This report is at Attachment 5.

We note that the acoustic report contains a number of suggested mitigation strategies to ensure compliance with the applicable noise criteria with such strategies already proposed as a component of the subject application. No objection is raised to a suitably worded condition requiring compliance with the recommendations contained within the acoustic report it being noted that compliance with the strategies and recommendations contained within such report has been referenced in the updated Plan of Management (PoM).

5. *An amended Plan of Management that addresses the operational requirements of the hotel given the updated specialist reports, particularly the amended noise assessment report and the introduction of live music. The Plan of Management shall include but is not limited to:*

- *the matters in condition 26 of the assessment report (page 50 of the agenda.*
- *hours of operation for particular areas*
- *specific security arrangements e.g. number of bouncers*
- *details of live music, functions and entertainment, including outdoor areas and the use of PA systems*
- *management of patron travel, including a dedicated pick up and drop off point.*

Response: This submission is accompanied by an updated PoM dated January 2022 which addresses the matters identified in condition 26 of the Council assessment report and the additional matters outlined above. A copy of this plan of management is at Attachment 6. We note that in relation to a dedicated pick up and drop off point an application is currently being prepared for consideration by the Northern Beaches Council Traffic Committee seeking a dedicated patron pick up and drop off area adjacent to the Charles Street frontage.

6. *Detail how the use of the “recording studio” is ancillary to the pub use.*

Response: The application proposes alterations, additions and the fit out of the existing attic level of the building to accommodate bar/function and recording studio floor space and associated amenities. The equipment contained within the proposed recording studio will be supplied by the Hotel with this space able to be hired out for casual use by local recording artists who, like the balance of the patrons within the premises, will be able to take advantage of available food and beverage offerings. This space is no different to other spaces within the premises available for casual hiring by patrons of the Hotel.

Planning Circular PS 13-001 prepared by New South Wales Planning and Infrastructure provides assistance as to how to categorise development. It indicates that an ancillary uses a use that is subordinate or subservient to the dominant purpose.

In this regard, we note that the recording studio and associated audio desk have a small and constrained floor area representing approximately 20% of the total attic level floor space with access to these facilities only available through the main entrances and circulation spaces of the Hotel during the normal operating hours of the premises. Patrons occupying the attic level bar and lounge are able to watch and listen to musicians utilising the recording studio consistent with that which currently occurs in the existing Hotel premises when live music is offered.

Accordingly, such use is appropriately described as subordinate or subservient to the dominant purpose, ancillary and incidental to the existing hotel/pub use and therefore permissible with consent.

7. *Amended plans which clearly indicate and dimension the proposed new work, including additional car parking.*

Response: We have reviewed the Architectural plans and associated detailing in relation to the nomination of proposed new works including the additional car parking spaces proposed. We note that demolition plan DA-A01-001(B) clearly depicts the extent of demolition works proposed at first floor level and the building fabric proposed for retention.

In relation to proposed works we note that First Floor plan DA-D01-011(B) and Upper Floor plan DA-D02-011 depict the proposed internal works which are all located within the existing building footprint with the exception of the proposed additions to accommodate the stair and lift access to the upper level. The various gridlines are clearly dimensioned and provide sufficient reference to obtain a clear understanding as to the internal layout and function of the spaces proposed. We note that final design detailing of the proposed works will be provided at Construction Certificate stage, as is ordinarily the case, to ensure compliance with the relevant provisions of the BCA. In relation to car parking, this submission is accompanied by an amended site plan which clearly nominates the location and dimension of the 8 additional car parking spaces proposed.

This response clearly demonstrates the concerted effort made by our client and its consultant team to satisfy the minutes of the NBLPP notwithstanding the exceptionally challenging circumstances arising as a consequence of the latest Covid-19 Omicron variant wave. Under such circumstances we trust that this response document provides the panel members with the necessary comfort to endorse the recommendation for approval of the application by Council staff subject to a trial period in the terms as outlined.

Should the NBLPP have any residual concerns in relation to the application we would respectfully request an opportunity to discuss such concerns with the panel members prior to the determination of the application given the significant financial implications associated with any further delay in relation to the favourable determination of the application.

Please do not hesitate to contact me to discuss any aspect of this submission.

Yours sincerely

Boston Blyth Fleming Town Planners

A handwritten signature in black ink, appearing to read 'Greg Boston', with a stylized flourish at the end.

Greg Boston

B Urb & Reg Plan (UNE) MPIA

B Env Hlth (UWS)

Director