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Attention Thomas Prosser – Planner By email – council@northernbeaches.nsw.gov.au

**Development Application DA 2020/0468 - Address – 29/31 Moore Road, Freshwater
Alterations and Additions to a Hotel (Modification for more intensive changed use)**

This submission addresses shortcomings in the Development Application DA2020/0468 for Modifications, Alterations and Additions to a Hotel. These shortcomings include inadequate Statement of Environmental Effects (SEE) – misleading description of the proposal, inadequate assessment of potential impacts and, inadequate review of consequences of the alterations and intensified activities.

The Application is part of a series of applications for the premises (creeping development) that have sought to increase and extend the activities within a moderate density residential area and within close proximity to many surrounding residences (homes) without proper consideration of the residential amenity values and impacts on neighbours within the locality. The Applicant has recently acquired the existing use premises and may be keen to Modify its form and use, but should not proceed without property consideration of the residential amenity and community concerns. Early indications are that a remote, city-based property developer wishes to exploit a local business for increased gaming and liquor consumption without respecting interests of the local community and, proposes stepping back from improvements implemented by the previous owner.

The process of the Application during a Covid period of social distancing and when community media (local paper not circulating) has limited community discussion of the application and responses are likely to under-represent community views. Additionally, community views will not be adequately formed where the Application misrepresent the details of the Modifications. On the basis of inadequate (and dishonest) application, the DA should be sent back to the proponent with a request for full description of changes to facilities and usage, and a request for proper assessment which needs to be provided in an amended and compliant application so that proper consideration can be given to the DA by the Community and Council. Failure to do that is likely to breach *Environmental Planning and Assessment Act 1979* (EP&A Act) requirements and leave any positive determination of the application to be subject to challenge in the Land and Environment Court.

It is noted that construction works have commenced at the Hotel from 20 May 2020, to implement works associated with changes indicated in the Application. The legitimacy of timing of commencement of such works and any breach of the EP&A Act should be considered prior to any further consideration of the DA2020/0468.

Reference should be made to the attached detail of concerns (**Attachment A**) as to the basis for finding the DA 2020/0468 inadequate and requiring amendment to fulfil adequacy requirements under the EP&A Act. Should breaches of the EP&A Act be confirmed, then Council must surely dismiss the Application or itself be party to the breach. Council is expected to provide diligent and thorough review of the issues of concern and compliance with EP&A Act requirements.

If any clarification of matters covered by this submission, please do not hesitate to contact me.
Yours Sincerely

- Neighbour to the proposed development

Attachment A – Information setting out neighbour concerns with DA 2020/0468

1. Introduction

I have reviewed the information provided for DA2020/0468 and considered the information in respect of details within it and experiences of the Hotel and operations over many years of living in a neighbouring location. I am not satisfied that the application as made, is an accurate representation of the proposed changes to the Hotel by the new owner and, the likely impacts and believe that it deliberately has been misleading to obtain positive determination without proper consideration of relevant matters. A significant element of the plans shows increased gaming stations not detailed in the SEE and which should not be given any credibility by this application or its determination.

The close residential setting with residences on all sides means that impacts of Harbord Beach Hotel in a residential zone need to be much more carefully considered and, closely controlled relative to other premises such as Hotels in the commercial zones of Manly and Brookvale.

It appears that the Modifications contemplate increased gaming, potentially higher alcohol consumption, leading to increased late night disturbance from the consumption and gaming activities and a new access to Charles Street that was previously closed and removed for the very reasons of disturbance associated with the entry point. The new access would be an additional significant source for noise emissions that has not been adequately assessed (see section 3).

Construction works evident at rear of the Hotel from 20/5/2020, before closing date for submissions, make a mockery of the Development Application (DA) review process and timeframes and indicates presumptions by the applicant of a positive determination of the application or a blatant disregard to the local community and compliance with statutory requirements.

2. Matters of Concern

2.1 – Zoning and Residential Amenity

The Statement of Environmental Effects (SEE) has considered the Statutory Planning Framework under the Warringah Local Environmental Plan 2011 (WLEP) and notes that:

- Hotels/Pubs are a **prohibited development in Zone R2** – Low Density Residential
- Additional permissible uses of WLEP (14), Use of certain land at 29 Moore Road Freshwater, indicates that development for the purposes of pubs is permitted with consent.

As indicated in the SEE the alterations and additions are only permissible with development consent. Council in its review of the application must consider relevant matters and, in the case of the details provided in the application that indicate potential intensification of gaming function and other aspects that have implications for increased community disturbance, Council should require a Social Impact Statement and full Acoustic assessment (both notably missing from the Application).

Section 1.22 of the WLEP – Aims of the Plan include:

item (d) in relation to residential development, to-- (i) protect and enhance the residential use and amenity of existing residential environments.

Item (e) in relation to non-residential development, to – (i) ensure that non-residential development does not have an adverse effect on the amenity of residential properties and public places,

Item (h) (ii) ensure that the social and economic effects of development are appropriate

The DA does not fully address the development's impacts against WLEP objectives (d), (e) and (h).

The Determining Authority, namely Council is duty bound to adequately consider these WLEP objectives. The DA and SEE have not adequately addressed relevant matters in the SEE and, should be rejected by Council as inadequate.

2.2 – Project Description and associated issues

The documentation accompanying the DA provides various items including plans. The full extent of the changes is not clear from the plans or from the Statement of Environmental Effects (SEE), but several items are of concern from a basic review of material that is available.

- **Charles Street Access** - The access that is proposed to be reinstated on Charles Street side of the Hotel (Figure 2) was previously removed to reduce adverse impacts occurring from that location. Previously, examples of disturbance by patrons leaving the premises arose for the direct exit to Charles Street, a location associated with the gaming area at the rear of the Hotel. (Fig 1 indicates **increase to 30 gaming stations exceeding the current Licensing allowance**). In the past, it appeared that the combination of intoxicated and potentially disgruntled users of gaming machines after having occurred losses, resulted in certain patrons leaving via the old (now removed) Charles Street exit and carrying on with yelling and shouting including obscenities and aggression towards people in the general area. The previous owner made changes that removed that entry point and significantly improved impacts for that location. The two-storey hard stone wall on west side of the Hotel provides no noise mitigation and potentially rebounds noise in that area towards residences located on the western side of Charles Street. Hence this location is not suited to such an exit.
- **Noise emissions from a Charles Street entry** - If a western access to Charles Street were reinstated, then when open, it would allow amplified and crowd noise from the hotel to spill straight out to the surrounding premises and that would weaken/void any mitigation that may have been applied by closing western windows and applying special glazing to the windows. Amplified entertainment can occur in the Hotel without disturbing noise impacts, only if comprehensive noise mitigation is in place (such as closed windows and special glazing and/or other measures). The proposed exit to Charles Street is inconsistent with the required noise mitigation. If auto opening, it would result in intermittent pulses of noise being released to the west. Doors to entertainment area are shown as **fixed open**.
- The proposed Charles Street access also appears to provide **direct street access to the Gaming area** which I and other neighbours believe is not in the community interest and should not be approved by Council for a Hotel in a close residential area.
- The Plans (in the DA) show what appear to be **30 gaming stations** (See extract in Fig 1 below) proposed for the Alterations in very close proximity to the proposed new western entry (D). This appears to be an increase in the extent of gaming at the Hotel, a matter that is evident from the Plan but not evident in the SEE, despite the expectation that the Town Planners preparing the SEE have reviewed the changes and considered them in the SEE. That review is missing and as the change forms part of the alterations and can be associated with impacts, its omission is negligent. If omission is deliberate, then that is more serious. A full Social Impact Statement of the altered design and intensified Premises usage and impacts would be appropriate. Alternatively, any increase in gaming facilities should be removed from the Plan and not supported by the Council determination of material including details of increased gaming. Proper social impact analysis that involves the wider Freshwater community is necessary. Council should not approve the change to the existing usage increase gaming facilities and that may then allow rubber stamping of a subsequent

licencing application. The DA represents an intensification in respect of Gaming beyond the existing Licence provided with the DA Documentation. It is appreciated that the licencing is under a separate Act and is a future action and on that basis, Council should not pre-empt the outcome. The proponent indicates dishonesty by not describing the intention in the SEE.

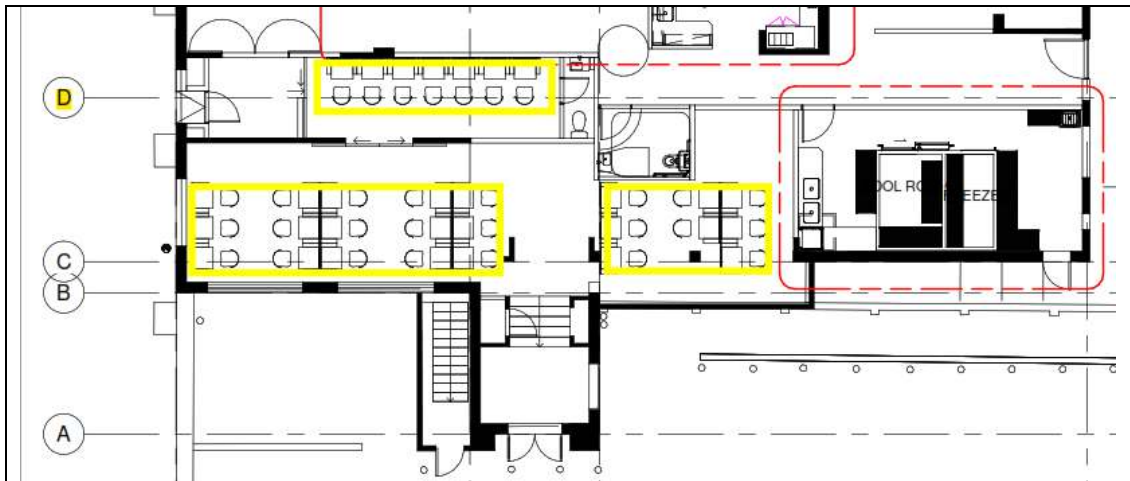
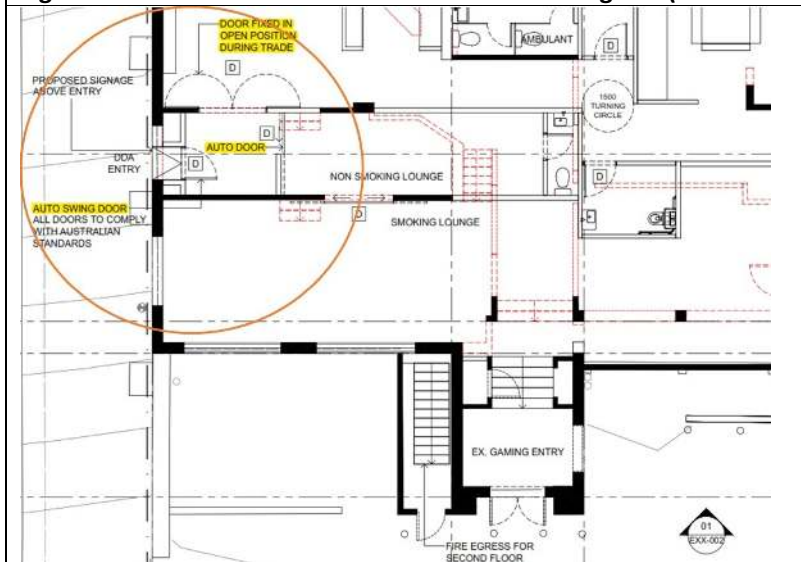


Figure 1 – Extract from Caterbuild Site Plan Drawing 100 (dated 29-04-20) (30 Gaming Stations?)



**Figure 2
Proposed Charles Street Entry**

The arrangement is likely to result in direct noise emissions to Charles Street and neighbouring properties

The Rear entrance should be retained as the main entrance for this part of the Hotel.

Detail of Gaming Stations omitted here?

- It is noted that the changes include alterations to **bathroom facilities**. Given the number of people who leave the Hotel and urinate on neighbouring properties within several blocks of the Hotel, perhaps additional facilities should be incorporated to cater for patron's overfull bladders and reducing unwanted impacts for neighbours. Perhaps instead of Gaming facilities. Also, less Gaming Facilities would allow better access between the Rear entry and Hotel lounge facilities.
- **Front Courtyard areas** – The front courtyard areas have been in use over the last few years and are a pleasant daytime area for patrons, at times with elevated noise but during the daytime this can be more readily accepted. However, for evenings and late night-time, they represent an inadequately mitigated area of noise disturbance. While there is a low height, partial noise barrier on the boundary, it is only partially effective at limiting the spread of noise from that area to neighbouring residences. Loud voices, yelling, any amplified noise or audio equipment can result in intrusive noise for neighbouring properties and is of particular

concern at night-time when neighbours can be trying to sleep, particularly at late hours. My measure of the proportion of the locality that is in sleep mode is gauged by lights being off. The locality shuts down from 10pm onwards. The WLEP objectives include: to ensure that non-residential development does not have an adverse effect on the amenity of residential properties. The later night activities are inconsistent with the WLEP objective.

Evenings are times when most residents in the Freshwater Basin are relaxing in their homes and can expect to be undisturbed by elevated intrusive noise from the Hotel or its activities including late night disturbance from patrons leaving. The Hotel's internal activities have particular mitigation, but external activities are inadequately addressed in regards to noise mitigation. There are times in the evenings, when the noise from the Front Courtyard areas is louder than my Television set and further attention is required by Hotel Management to reducing noise emissions from the external areas. Usage to as late as midnight seems inconsistent with controls for other parts of the Hotel and given the close proximity to residences, controls should be strengthened, or the areas not used after say 9pm or 10pm. The open gate for access to Charles Street allows noise from the Courtyard to flow directly to the Street and neighbouring properties. A simple solution is to close the access gate from sunset (entry would then be via stairs at front or level rear access). Similarly, all windows for the Hotel should be closed at sunset and not 9pm, as is currently the case.

- **Access to the Hotel** – Given the above matters and night-time noise impacts, it would be appropriate that the Hotel has only two main night time access points for entry and exit and that they have security linked to those. The existing Front and Rear access appear to be the most suitable entry and exits. The side door to Charles Street northern courtyard should be closed at night (for noise mitigation from an area where patrons congregate outside, similar to mitigation of closing windows on western wall). The reinstatement of previously removed access to Charles Street should not be approved. Large masonry walls either side of Charles Street (2 and 3 stories high) propagate/reverberate noise off the walls and impact surrounding residences. The Rear Access should have direct access to and from the main Hotel area and provide for disability access to and from rear carpark and if needed, allow for ambulance officers to access the Hotel from the rear entry and car park. Access from the rear appears straightforward given the slight difference in levels and ease with which a safe disability access ramp could be provided at the entry. It would pass through an area where designs indicate increased gaming. Proper access to and from the rear entry has much more merit than increased gaming facilities that should not be indicated as approved under this DA as no Social Impact Statement has been provided. It could have been provided, but the Application in the SEE, has been silent on the aspect of increased gaming and it must not be sanctioned by the application.
- **Midnight closing** – Despite the close residential surroundings it is surprising that operations continue to midnight. This is beyond the time that most neighbours have turned in and are trying to sleep. Previous concerns have been raised where noise and disturbance extends beyond 12 midnight to as late as 12.30am (Figure 3.1). Further attention and, as necessary, controls may be needed to ensure that disturbance to the neighbouring residential area goes no later than midnight. Wind down of activities prior to midnight is a logical solution.
- **Designated parking for Taxis and Patron's Bus** - A regular problem is also the lack of a Taxi Zone at night around the Hotel at peak times, leading to double parking and even taxis picking up patrons in the roundabout at intersection of Charles Street and Moore Road. Consideration could be given to night-time Taxi area at the rear entry (perhaps with covered area for patrons to quietly wait for transport) A night-time Taxi rank at front steps could also

be considered but would have more impact on Moore Road neighbours than the more sheltered rear entry. Use of these points on Friday to Sunday nights would facilitate patrons leaving the premises with less noise impacts, late at night. Residences to the south are set back further than on the northern side and have less potential for impact.

It would be appreciated by neighbours if security can ensure that no opened glass bottles or glasses are taken out of the Hotel as these turn up along surrounding streets and a proportion of these are broken and represent a danger to people walking to the beach, often bare footed.

There are still examples where patrons leaving are clearly excessively intoxicated – having difficulty walking or involved in domestic arguments with elevated noise. While examples of this have reduced over time, there are still instances and continual vigilance is required to Responsible Service requirements. Instances of aggression, abuse, yelling are recurrent examples of patron's over consumption and resultant disturbance, reduces neighbour's tolerance of the Hotel's late-night activities.

3. Inadequate Noise Assessment

The Acoustic (Noise) Assessment that accompanies the assessment is inadequate for the purpose of the DA. It provides very little useful data, Three 15-minute measurements at 3 locations around the Hotel. Obtained between 9 and 10pm in non-representative circumstances and not providing adequate assessment for the types of impacts arising from the current development or as varied under the proposed changes for the Application. The SEE refers to an acoustic report that references glazing and mechanical plant, but these are only part of the impacts of the modifications, the remaining areas, have been inadequately assessed.

The true acoustic locality ambient environment during the recent Covid period, when the Hotel has not been operating has been wonderful. Being a residential area, many people are asleep by 10pm (evident by lack of lighting for residences after 10pm – see Figure 3.1 that has indicative experience of noise and neighbourhood shutdown) and in many cases those resident families need to be up early, to go to work and school, and a quiet night-time environment has been demonstrated in multiple assessments as conducive to good health and well-being. The Hotel's noise assessment does not fully consider these values and lacks review of all elements of the Hotel operation that are contrary to achieving acceptable residential amenity. Being re-awoken around midnight by crowds leaving is significant disturbance. Like the SEE, which has a proponent biased presentation, the Acoustic assessment is limited in scope, a scope that may have been determined by the consultant, the company commissioned for the SEE, or the proponent. The token assessment would not meet a serious test of adequacy for the purposes of assessment of the modification under the EP&A Act and a determining authority that accepts it will be negligent and complicit in the DA process failings.

The Noise Assessment does not address all parts of the development that are subject to change:

- **Does not address changes to reinstate a previously removed access to Charles Street** that will, under the proposal, have direct noise emissions from an area of amplified entertainment up to 100 dBA to a location in Charles Street, close to 8 residential homes on western side of Charles Street. As stated on plans, the doors between the area of amplified music and the proposed Charles Street Entry will be **“FIXED IN OPEN POSITION DURING TRADE”**. The adjacent Auto Door to Charles Street will emit loud pulses of noise each time the Auto Door opens in total conflict to the purpose of closure of windows and glazing of windows on Hotel western side facing Charles Street. The access point was previously removed because of adverse consequences of the access (from the gaming area) and is not

considered at all necessary or desirable for the surrounding amenity. All access to the Hotel can be properly served by the Front and Rear access points with appropriate controls.

- **Does not adequately address changes proposed for northern courtyard and usage** – Usage of the northern courtyard already results in disturbance inconsistent with the WLEP objectives. The usage needs to be more clearly defined as it is an external area that can have late noise emissions to neighbouring properties and where noise levels need to be rigorously controlled so as not to be intrusive for neighbours. What activities are permitted here that will not adversely impact neighbour's amenity? What are the latest times that such activities can be permitted to avoid adverse impacts on neighbour's amenity? It would be reasonable to say that: the Gate to Charles Street remains closed after sunset, no amplified sound systems are used on the courtyard and, that patrons are required not to yell and shout so that the noise from the courtyard is not intrusive to neighbours. Additional noise attenuation could also be included, such as rubberised paints on internal walls of courtyard to limit noise propagation from the area as well as better acoustic screening and ensuring it is applied from sunset. Alternatively, use of the courtyard could be limited to say 10pm as the surest way to confirm that light-night usage will not disturb the neighbourhood amenity.
- **Does not consider impacts of patrons leaving the Premises late at night** and including through the proposed reinstated access. Lack of consideration of the night-time noise sources from exuberant alcohol fuelled patrons exiting into an otherwise quiet residential area where people are trying to sleep, negates the ability of Council to consider the proposal for the western access and draws neighbour's attention to the fact that current impacts are already disturbing. The location's close proximity to many residential homes is unsuitable to late night large crowd exodus due to surrounding hard surfacing and projection of noise to neighbouring residences. Rigorous controls are required to avoid the impact and address the WLEP objectives for residential amenity (Section 2.1).

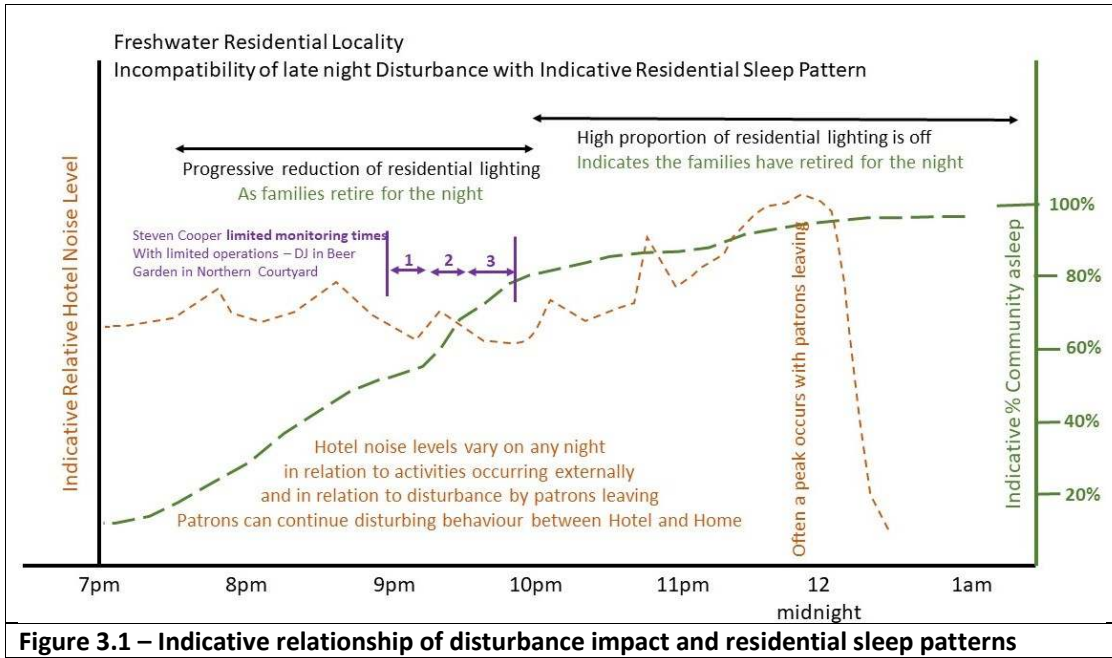
The Noise Assessment is a token assessment that was undertaken with incomplete analysis which demonstrates indifference to the neighbouring residential community and indicates excessive haste to renovate, increase gaming and potentially intensify liquor consumption activities, outcomes that are not in the interest of the local residential community and which need thorough assessment that is lacking in the DA and prevents positive determination of the current application.

While reference is made to previous noise assessments, at least one of the Acoustic Group previous noise assessments for the Hotel was identified as being misleading due to the apparent manipulation of operational levels (not necessarily by the Acoustic Group) to indicate lower Hotel noise levels than were representative of normal operations and those at the time of monitoring. While this may not be the case for this assessment, it is, as the report indicates, a limited assessment and, the references to previous assessments are for different circumstances, they are not confirmed as reliable or relevant and, the current assessment has not assessed all impacts for this proposal.

Steven Cooper in his report indicates that noise from licensed premises is permitted to be audible inside dwellings before midnight. This is entirely at odds with the WLEP Objectives and duty of a responsible determining authority to consider sleep disturbance for the surrounding residential community. It requires review of applicable noise criteria for the premises. Even the after-midnight period is associated with disturbance that is audible in residences and requires better control.

Figure 3.1 provides a schematic that gives some context to the actual circumstances for late night noise and disturbance in the context of residential sleep behaviour and regular patterns of noise experienced by neighbours from Hotel activities. Steven Cooper's monitoring is only for 15 minute

intervals at 3 locations for a mid-evening timeframe that was not representative of normal circumstances and had other deficiencies rendering it useless for the purpose of the Application.



4. Conclusions

The considerations in this submission address matters not properly represented by the DA and its associated documentation, either due to incompetence or deliberate intention to mislead. I have not had the resources available to me that the proponent appears to have, but even with a brief review of the supplied material, the DA has been demonstrated to be wholly inadequate in respect of the EP&A Act requirements and, Council should not reach a positive determination on such an inadequate Application. The Application is typical of a low level of environmental assessment, biased by the proponent interests and is potentially deliberately misleading and dismissive of genuine impacts, for the purpose of obtaining positive determination of the DA. Council as the determining authority should not allow itself to be party to misrepresentation and an inadequate application.

- All references to increased gaming should be removed from any documentation accompanying the Application
- The Charles Street Access should be rejected
- Greater attention should be given to facilitation of entry and exit from the rear of the Hotel including for disabled access and for ambulance officers if required.
- Disabled parking should be included in the rear carpark.
- Attention should be given to stronger controls on late night noise and disturbance
- The Northern Courtyard has limited noise mitigation controls and night time use should be restricted to avoid inappropriate impacts on surrounding residential amenity

Consideration of the inadequate DA material and inappropriate alterations leads me to suggest that Council, as the responsible Determining Authority should respond generally as set out in Table 4.1.

Table 4.1 – Suggested outcomes of Determination for a Wholly inadequate application

| Detail of DA Aspect | Suggested Council Response based on poorly assessed impacts and inadequate controls in DA |
|---|--|
| DA Adequacy | Reject the DA and seek a revised DA with full proposal details, comprehensive assessment and full explanation of controls. |
| Reject any details of increased Gaming to 30 Stations – Even if not the approval Authority for those, the DA should not show them as subject to the DA. | Seek revision of drawing to remove increased gaming stations from DA Plan or seek a Social Impact Statement with an updated SEE and associated documents. Amend design to exclude additional gaming stations. Any Social Impact Assessment should be undertaken in consultation with the Freshwater Basin residential community. Any determination should record and document that it does not permit increased gaming as part of the determination. |
| DA does not distinguish changes to dining versus liquor service areas. | Seek details from the proponent as to how usage is proposed to change in respect to proportions of liquor service versus dining facilities and on the basis of the proponent advice, link that to any determination and disturbance and controls as relevant to potential impacts of such changes. |
| Not allow the re-instatement of access to Charles Street (previously removed due to disturbance and to reduce impacts at that location) | Reject the proposal to reinstate a removed access from Charles Street, as this is a retrograde measure that will increase noise impacts and disturbance and was previously closed for that reason. Determination should ensure no access to be allowed to and from Charles Street and, no potential for noise to emanate from the premises to the west at night. |
| Rear access – One of two main entries, include disabled access | Ensure that the Rear Access is a main entry and exit point to the Premises allowing for patrons access as well as ambulance officer and disability access via rear entry direct from rear parking area and include disabled parking space(s) in rear car park |
| Northern Courtyard | Seek more details of usage and adequate impact assessment in the context of proposed noise controls. Condition any Consent appropriately where existing and proposed controls are inadequate to address the likely noise impacts and disturbances for surrounding residences. |
| Access – Patrons leaving late at night – Ensure Conditions address control of late-night disturbance and ensure no noise or disturbance impacts after midnight. | Improve pickup of late-night patrons by having Taxis and Bus and arrange pick up from rear car park – A covered waiting area at the rear entry could be provided adjacent the southern wall of the building within the Car Park and Hotel driveway (recommended as one-way, west to east). No neighbour disturbance should extend past midnight. |
| Bathroom capacity | To reduce frequency of patrons urinating on neighbouring properties, increase bathroom facilities within the Hotel refurbishments |

In closing, it seems strange that the series of applications for the Hotel represent a series of modifications and yet there appears to be no consideration of the starting point and the extent of change that has occurred over time.

In making this submission, I do not object to the Hotel activity and like many in the community accept its presence, provided that it conducts a well-managed venue that takes responsibility for its impacts and does not treat the local community dismissively, as appears the case in the poorly prepared and misleading DA.

I, like other neighbours that I have recently communicated with, look forward to:

- a more transparent and honest approach to the Hotel activities by the new owner
- diligent management of activities by the new owner to properly manage impacts for the surrounding residential community consistent with the WLEP objectives.
- Compliance with WLEP objectives for a close residential community and the Hotel's non-residential development impacts within the residential area

I am not aware of another Hotel or Club development in the locality that is so closely embedded within a surrounding residential area.

- Harbord Diggers redevelopment – significant buffer to neighbouring residential development – redevelopment there increased meal facilities and seems to have a lesser focus on bars and gaming relative to the extent of the property
- Manly Hotels are within a Commercial Zone and have lesser direct impacts on residences
- Brookvale Hotel is within a Commercial area and has less direct impacts on residences

Harbord Beach Hotel, being deeply entrenched in a close residential area warrants more rigorous controls on disturbance than those other facilities. Accordingly, the Application by the remotely located Property Investor should not be summarily reviewed and approved but properly assessed in terms of increased intensity of gaming and addition of new sources of disturbance. The Modification in its current form is not suitable and the Application has not adequately assessed the impacts.

DA 2020/0468 is not in the Community interest and should, in current form be rejected, or subject to more detailed assessment and review and only obtain consent in conjunction with appropriate and effective control measures.