From: craig smith
Sent: Monday, 1 August 2022 1:29 PM
To: Planning Panels - Northern Beaches
Cc: Council Northernbeaches Mailbox
Subject: Mod2021/0983 (231 Whale Beach Road Whale Beach)
Attachments: 7593-1.1L.pdf

Categories: NBLPP

DEAR CHAIRPERSON AND PANEL MEMBERS OF NORTHERN BEACHES LOCAL PLANNING PANEL,

RE: Mod2021/0983 (231 Whale Beach Road Whale Beach)

We refer to the above mentioned application which you will consider at your meeting this Wednesday, 3 August 2022.

We are sorry to impose on you by forwarding to you this further submission, but we are very concerned about a number of the comments made in the report before you. We therefore felt it necessary to provide the following brief comments

We are the residents and owners and we share a boundary with the approved development site.

We consider that the proposed modified development, contrary to a number of comments in the report, represents a very significant increase in the "density" and intensity compared to the current approved development.

We can also say based on our personal experience that the current proposed modified development, by the significant increases in the patrons and staff numbers, represents a significant intensification compared to the previous café, now recently closed. The proposed modifie4d development is also a signification increase compared to the current approved development.

We accept the current approved development based on a "like for like" philosophy. This includes retaining equivalent patron numbers, size and scope of the previously 'existing' Café and the current approved development.

We strongly oppose the proposed modification to increase the patronage by more than 150% of the 'restaurant' to 188. We deem this to be excessive and not in keeping with the long standing and highly regarded Whale Beach ambience and will result in knock on negative impacts. We cannot see how this could be described as a "small-scale" business as required under the LEP for the Neighbourhood Centre.

The report before you at a number of points relies merely upon the fact that the approved floor space is not changing and therefore claims that the " density" will not change. We strongly do not agree. The density/intensity of use will clearly be significantly increased by the proposed significant expansion in patron and staff numbers. The principle of measuring car parking and traffic generation based on GLA seems remarkable when surely density/intensity should be the key criteria ie more people working and dining in a room means more flow on negative impacts than if that same room had half as many people in it.

Our key concerns and observations are;

- **Noise levels** will increase significantly, contrary to the applicants Acoustic Report. We commissioned Day Design, Acoustic Consultant to conduct a Peer Review of JHA's report and clearly there are multiple discrepancies and misrepresentations. Please refer to the attached report. Further the proposed conditions appear difficult to police and will not adequately resolve the core Noise levels generated by the restaurant. Please see below the Review Conclusion from William Wang Senior Acoustical Engineer, Day Design.

It is my professional opinion that, in its current form, the noise impact from the Section 4.55 (s4.55) Modification Application 2021/0983 for Development Application DA2020/0422 that seeks approval for 'increased the size of the restaurant on the Ground Floor Level (Retail 1) and changed the usage of the retail space on Level 3 to neighbourhood shops' at 231 Whale Beach Road, Whale Beach, NSW has not been adequately assessed and if approved, is likely to cause an adverse impact on the acoustic amenity of the nearby receivers.

A summary of concerns are provided below:

- *There is a discrepancy between the short term attended noise measurements and long term noise monitor of up to 6 dB.*
- *The calculation of the project noise trigger levels is incorrect.*
- *There is no assessment of upper levels of adjoining receivers.*
- *There is significant non-compliance of the outdoor area at 233 Whale Beach Road.*
- *The noise emission from indoor areas has not been assessed with access doors open.*
- *Cumulative noise emission from the indoor and outdoor areas has not been assessed.*

- **Road Safety** – We challenge the report's comment on Public Safety, quote p23 *"it is not anticipated that the patron capacity of Retail 1 will have unreasonable impacts on public safety / interest".* We back onto and get a clear view of Surf Road and associated activity, every day hundreds of people walk up/down Surf Rd (in summer this is thousands of people). Currently the pedestrian footpath stops half way down the road people are forced to walk on the road. Motor Vehicles drive up/down the road where there's a blind bend (90 degree plus) as you approach the proposed restaurant site. At the upper end of Surf Rd where it meets Whale Beach Rd turning left is very difficult due to the exaggerated steepness. Every day we hear vehicles struggling, tyres spinning – its dangerous! Proposed Flow on impacts re delivery and garbage trucks will only compound the problem. We respectfully admit that residents such as ourselves have a very deep knowledge of the traffic and parking situation in the immediate locality. We consider that the report before you does not identify the key concerns relating to traffic and parking situation and to add a significant increase in such levels will significantly increase such impacts.
- **Parking –** We reference a comment in the report p24 *"on balance the demand for parking is not dissimilar to that associated with the existing building"* We cannot accept this claim at maximum proposed patronage and staff (of 188 v's max. 70 existing) this will have material impact on parking usage. This is a gross misutilisation of a public assets for private commercial gain . On the issue of parking, the parking surveys appear to have been only undertaken on 2 days, in the month of September alone. How could this be a representative sample?

We are not anti-development and am comfortable with the approved plans, this includes a café/restaurant permitting 70 people (staff/patrons). With some reluctance, we also accept the extended trading hours, up from what we have been use to with the Café ie 7am to 3pm.

We earnestly request that you visit the subject site and drive around the immediate locality, if you are not already familiar with the neighbourhood.

We are, again, not anti-development and we accept the approved development, but we consider that to propose significant expansion is not consistent with the neighbourhood character and is not responsive to the nature of the winding road, lack of foot path near the subject site and the high level of on street parking for a number of months during the yea, particularly during summer.

Many thanks for your courtesy and time.

Regards
Kate & Craig Smith

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Mr Craig Smith
Whale Beach NSW 2107

1 August, 2022
Refer: 7593-1.1L

Attention: Mr Craig Smith
Telephone: **Email:**

Dear Sir,

231 WHALE BEACH ROAD, WHALE BEACH - ACOUSTIC REPORT

ACOUSTIC PEER REVIEW

Day Design has been engaged by Mr Craig Smith to peer review an Acoustic Report prepared on behalf of the applicant to support the Section 4.55 (s4.55) Modification Application 2021/0983 for Development Application DA2020/0422 that seeks approval to *'increase the size of the restaurant on the Ground Floor Level (Retail 1) and change the usage of the retail space on Level 3 to neighbourhood shops'* at 231 Whale Beach Road, Whale Beach, NSW (the Site).

Mr Craig Smith is the owner of a residential dwelling located along the eastern boundary of 231 Whale Beach Road, Whale Beach, NSW. Mr Smith is concerned that the proposal will cause loss of acoustic amenity should the s4.55 be approved. Of particular concern, relating to acoustics, is the proposed increase in patron numbers to Retail 1; being:

- 140 indoor patrons (increased by 96);
- 30 outdoor patrons (increased by 10);
- 18 staff (increased by 12).

The Site is known as 231 Whale Beach Road, Whale Beach, being Lot B in DP 316404.

An Acoustic Report has been prepared by JHA Engineers dated 7 December 2021 in support of the s4.55, which carries out an assessment *'to determine whether the relevant criteria can be achieved and, where applicable, comment on noise control measures required to achieve compliance with the relevant noise level criteria'* to the potentially affected nearby receivers – inclusive of 233 Whale Beach Road, Whale Beach, NSW.

The following reports and drawings have formed part of my review:

- **Acoustic Report**, titled *Acoustic Report for Development Application, Retail 1, 231 Whale Beach Road, Whale Beach*, Project No: *190351*, prepared by JHA, dated 7 December 2021;
- **Acoustic Report**, titled *Acoustic Report for Development Application, 231 Whale Beach Road, Whale Beach*, Project No: *190351*, prepared by JHA, dated 5 February 2020;

- **Architectural Drawing,** Ground Floor Plan, Revision X, prepared by Richard Cole Architecture, for project 1609 "231 Whale Beach Road, Whale Beach, NSW, dated 9 December 2021.

I did not speak to any employee of JHA to seek further information, during my review. I have not visited the Site. I have carried out all assumptions based on the acoustic data provided in the Acoustic Report, dated 7 December 2021.

The scope of this peer review is to provide comments on the methodology, calculations, recommendations and conclusions. I have used the *Association of Australasian Acoustical Consultants 'Guideline for Report Writing', Appendix 1 'Environmental Impact/Planning Studies'* as a guide for details that should have been provided in the acoustic report.

Following a detailed review of the aforementioned documents, I offer the following professional opinions in response to the above Acoustic Report:

1. page 4 (of 24), Section 1.0, no comment.

2. page 5 (of 24), Section 2.0, Table 1, list of nearby sensitive receivers. No notes on which receivers have multiple levels.

3. page 6 (of 24), Section 3.0, noted short term attended measurements.

   page 7 (of 24), Section 3.0, noted location M4 was dominated by road traffic noise and location M1 to M3 dominated by surf noise from the Pacific Ocean.

   The spectrum noise level data has been provided in Table 2. The octave band frequency values in Table 2 do not sum to the overall dBA noise level., highlighted below in a red box. The data in Table 2 should be corrected.

Location	Date and Time	Parameter	Sound Pressure Level, dB re 20μPa									
			Overall dB(A)	Octave Band Centre Frequency, Hz								
				31.5	63	125	250	500	1k	2k	4k	8k
M1	16/01/2020 2:33pm – 2:48pm	$L_{90,15min}$	52	56	59	59	53	48	46	43	41	53
		$L_{eq,15min}$	59	63	64	68	57	53	52	50	50	61
		$L_{10,15min}$	59	65	65	64	58	54	53	51	50	64
M2	16/01/2020 2:50pm – 3:05pm	$L_{90,15min}$	52	56	58	59	54	47	45	43	41	51
		$L_{eq,15min}$	55	62	63	62	56	50	48	46	44	56
		$L_{10,15min}$	56	64	65	64	58	51	50	49	46	58
M3	16/01/2020 3:10pm – 3:25pm	$L_{90,15min}$	52	56	57	58	53	49	46	44	41	59
		$L_{eq,15min}$	58	63	64	62	58	54	53	50	48	66
		$L_{10,15min}$	60	65	64	63	59	55	55	52	48	70
M4	16/01/2020 3:27pm – 3:42pm	$L_{90,15min}$	52	53	53	54	52	52	47	42	36	44
		$L_{eq,15min}$	61	61	62	60	58	57	57	54	48	50
		$L_{10,15min}$	63	62	62	62	61	58	59	55	49	52

Table 2: Results of short-term noise monitoring.

4. page 7 (of 24), Section 3.3, details unattended noise monitoring was carried out in one location on the site (noted as L1 in the acoustic report). Background noise levels of L_{90} 57 dBA were measured during the daytime, L_{90} 58 dBA during the evening and L_{90} 57 dBA at night as shown in Table 3.

   This is in contradiction to Table 2, where short term noise measurements were carried out and measured a background noise level of L_{90} 52 dBA. Reviewing the graph for Thursday 16 January 2020 (page 24 of the report) the long term noise monitor was measuring between L_{90} 57 and 58 dBA at the same time as the short term attended noise monitoring (including M3, directly next to the long term noise monitor).

   There is a potentially up to 6 dB discrepancy between the attended noise measurements and the long term noise monitor in the Acoustic Report.

   Further clarification is required.

5. page 8 (of 24), details the long term unattended monitoring values. There is contra.

6. page 9 (of 24), Section 4.0, references the relevant standards and guidelines.

7. page 10 (of 24), Section 4.0, Figure 2, 'Noise Logger Position' noted as being on, or close to the midpoint of the eastern boundary of the Site with building structures to the north, east, south and west.

8. page 11 (of 24), Table 4 details the intrusiveness criteria. The Noise Policy for Industry states in Section 2.3 "... *in determining project noise trigger levels for a particular development, it is generally recommended that the project intrusiveness noise level for evening be set at no greater than the project intrusiveness noise level for daytime.*"

   In this case, the evening RBL should be set to 57 dBA (not 58 dBA). The corresponding evening intrusiveness criteria would be 62 dBA.

9. page 11 (of 24), Table 5 details the amenity criteria. A footnote is included stating "As per NSW NPI, where existing background noise levels are significantly higher than recommended amenity levels (and are unlikely to change in future – in this instance, the site is in close proximity to the Pacific Ocean), the amenity criteria has been increased by 10 dB.

   The Noise Policy for Industry state in Section 2.4 states *"Where the resultant project amenity noise level is 10 dB or more lower than the existing industrial noise level. In this case the project amenity noise levels can be set at 10 dB below existing industrial noise levels if it can be demonstrated that existing industrial noise levels are unlikely to reduce over time."*

   In this case, the ambient noise level is dominated by surf noise, not industrial noise. The Noise Policy for Industry also has an example for areas of high traffic noise where industrial noise source would be rendered inaudible, even though it exceeds the project amenity noise level. *"In such cases the project amenity noise level may be derived from the LAeq, period(traffic) minus 15 dB(A)."*

In my opinion surf noise can not be equated to industry noise. Surf noise is comparable to road traffic noise, in that it is generally always present, noting that there are often periods of highs and lulls.

The resulting amenity noise levels for this area are therefore as follows:

Day Period 64 – 15 + 3 = 52 dBA

Evening Period 61 – 15 + 3 = 49 dBA

Night Period 60 – 15 + 3 = 48 dBA.

10. page 12 (of 24), Table 6 outlines the Project Noise Trigger Levels. Based on the above (Paragraph 9 and 10), the noise criteria should be updated as follows.

Indicative Noise Amenity Area	**Period**	**Intrusiveness Criterion, $L_{eq,\ 15\ min}$ dB(A)**	**Amenity Criterion, $L_{eq,\ 15\ min}$ dB(A)**
Residential Receiver	Day (7 am to 6 pm)	**62**	**52**
	Evening (6 pm to 10 pm)	**62**	**49**
	Night (10 pm to 7 am)	**62**	**48**
Commercial	When in use	-	**63**
Passive Recreation (RE1)	When in use	-	**48**

11. page 12 (of 24), Section 4.5 outlines the NSW Liquor and Gaming noise condition. It is stated the development is proposed to operate from 7 am to 10 pm, and as such the evening time criterion is included. The daytime background noise level, however, is lower, and therefore more stringent, and should be used for the assessment.

The resultant criteria should therefore be as shown below. This is dependent on Table 2 being updated.

Description	**dBA**	**Sound Pressure Levels (dB) at Octave Band Centre Frequencies (Hz)**								
		31.5	**63**	**125**	**250**	**500**	**1k**	**2k**	**4k**	**8k**
Background Noise Level (Day)	**57**	61	64	64	58	53	51	48	46	58
Daytime Noise Criteria (7 am – 6 pm)	**62**	66	69	69	63	58	56	53	51	63
Background Noise Level (Evening)	**58**	62	65	65	59	54	52	49	47	59
Evening Noise Criteria (6 pm – 10 pm)	**63**	67	70	70	64	59	57	54	52	64

12. page 13 (of 24), Section 5.0, outlines the main sources of noise, being patrons and staff and mechanical plant. Second paragraph, third dot point states *"Lowest measured background noise levels at the nearest noise sensitive receiver have been used to provide a worst-case scenario."*

13. page 13 (of 24), Figure 4, outlines the locations for indoor and outdoor areas of Retail 1 in context with the surrounding receivers. Upper levels of receivers have not been identified.

14. page 14 (of 24), outlines the noise modelling scenario being assessed, including patron numbers, ratio of patrons talking, no background music, sound barrier walls to the southern boundary being 1.8 metre high and all windows of the indoor seating area kept closed.

15. Page 15 (of 24), Table 9, assesses the outdoor seating area to 229 Whale Beach Road. Included in the calculation is a barrier attenuation from the 1.8 metre noise wall.

    This is assumed to represent an assessment at the ground floor level. This needs to be clarified.

    There is no assessment for the upper levels of the receiver, which have potential to overlook the 1.8 metre noise wall, rendering the wall ineffective.

    The upper levels of the receiver need to be assessed and provided to determine compliance at all levels of the building.

    The calculations need to be assessed during the more stringent daytime period with a noise criteria of 62 dBA.

16. Page 15 (of 24), Table 10, assesses the outdoor seating area to 233 Whale Beach Road.

    The values in Table 10 do not sum to the result (3 dB less). For example, at 500 Hz, the calculation shows 89 – 25 = 61 dB. The result should be 64 dB.

    An exceedance is noted at 500 Hz (2 dB exceedance) as being negligible. However, with a 3 dB discrepancy, this would lead to a 5 dB exceedance (criteria of 59 dB at 500 Hz, resultant level of 64 dB).

    The assessment also uses the evening criteria, which is 1 dB higher than the daytime. The overall exceedance at 500 Hz would therefore be 6 dB.

17. Page 16 (of 24), Table 11, assesses the outdoor seating area to 24 The Strand.

    The values in Table 11 do not sum to the result (3 dB less). For example, at 500 Hz, the calculation shows 89 – 34 = 47 dB. The result should be 50 dB.

    The assessment also uses the evening criteria, which is 1 dB higher than the daytime. The more stringent daytime criteria should be used.

18. page 16 (of 24), Section 5.1.2 assesses the indoor seating area. The report anticipates no noticeable impact on the adjoining receivers. Only the receiver at 24 The Strand has been assessed.

The adjoining receivers at 229 Whale Beach Road and 233 Whale Beach Road should also be assessed with respect to the indoor dining area.

19. page 17 (of 24), Table 14 calculates the level of noise from the indoor area to 24 The Strand. The values in each octave band frequency in Table 14 do not sum to the overall dBA noise level. However, based on my own noise modelling, the calculated result is approximate.

20. The Acoustic Report does not consider how patrons will gain access to the indoor area of Retail 1 with the assessment carried out with external openings being closed to achieve the project specific trigger levels.

21. The Acoustic Report does not consider the cumulative impact of the outdoor area and indoor area on the surrounding receivers.

22. page 18 (of 24), Section 5.2 states mechanical plant noise emission has been previously assessed in the acoustic report for the entire building. This is detailed in the Acoustic Report prepared by JHA dated 5 February 2020. The same errors in determining the project noise trigger levels carry over. The project noise trigger level should be as in Paragraph 11 of this report.

23. The previous Acoustic Report prepared by JHA dated 5 February 2020 states mechanical plant has yet to be selected. This should form part of the condition of consent, with noise from mechanical plant to be selected, assessed and acoustically designed prior to the issue of a Construction Certificate to ensure the project noise trigger levels are met.

24. page 19 (of 24), Section 6.0 of the Acoustic Report summarises the noise assessment and recommends approval of the proposal. Based on the findings above my professional opinion is that the noise assessment has not been adequately assessed.

25. pages 20 to 24 (of 24), details the long term ambient noise monitoring.

Conclusion

It is my professional opinion that, in its current form, the noise impact from the Section 4.55 (s4.55) Modification Application 2021/0983 for Development Application DA2020/0422 that seeks approval for '*increased the size of the restaurant on the Ground Floor Level (Retail 1) and changed the usage of the retail space on Level 3 to neighbourhood shops*' at 231 Whale Beach Road, Whale Beach, NSW has not been adequately assessed and if approved, is likely to cause an adverse impact on the acoustic amenity of the nearby receivers.

A summary of concerns are provided below:

- There is a discrepancy between the short term attended noise measurements and long term noise monitor of up to 6 dB.
- The calculation of the project noise trigger levels is incorrect.
- There is no assessment of upper levels of adjoining receivers.
- There is significant non-compliance of the outdoor area at 233 Whale Beach Road.
- The noise emission from indoor areas has not been assessed with access doors open.
- Cumulative noise emission from the indoor and outdoor areas has not been assessed.

[redacted]

William Wang, BE (Mechatronics), MIEAust, MAAS
Senior Acoustical Engineer
for and on behalf of Day Design Pty Ltd

AAAC MEMBERSHIP

Day Design Pty Ltd is a member company of the Association of Australasian Acoustical Consultants, and the work herein reported has been performed in accordance with the terms of membership.

The undersigned hereby certifies that this Report has been checked and approved in accordance with our Quality Management System.

[redacted]

Date: 1/8/22

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Curriculum Vitae

William Wang

William Wang is a Senior Acoustical Engineer at Day Design Pty Ltd. William has valuable knowledge and experience in the assessment of environmental noise, mechanical services noise, architectural acoustics and transportation noise control.

William manages a wide variety of projects including the acoustical design of schools, churches, substations, residential developments and mechanical systems. He manages and provides training to staff in acoustic measurement and noise control design.

William is competent in the measurement, assessment and in the design of noise control of such projects, which often require his reports to submitted to regulatory authorities for approval. He regularly operates acoustical instrumentation including noise and vibration metres and analyses the data during the course of his work.

William has carried out several noise and vibration investigations of residential buildings across Sydney with regards to "cracking noise".

Qualifications:

Bachelor of Engineering (Mechatronics)
University of New South Wales (2007)

Memberships:

Member – Institution of Engineers Australia

Member – Australian Acoustical Society

Professional Experience:

August 2014 - Present
Senior Acoustical Engineer
Day Design Pty Ltd

May 2009 – July 2014
Consulting Acoustical Engineer
Day Design Pty Ltd

February 2007 – April 2009
Acoustical Engineer
Day Design Pty Ltd

A short overview of the nature of **Mr Wang's professional experience** is provided below:

Churches and Places of Worship:	St Anthony and St Paul Coptic Orthodox Church, Guildford, Holy Trinity Anglican Church, Dulwich Hill, Happy Science, Lane Cove, Gracepoint Presbyterian Church, Lidcombe, The Salvation Army, Auburn and Parramatta among others.
Schools and Child Care Centres:	Schools located at Oran Park, Gledswood Hills, Edmondson Park, Spring Farm, Lake Cathie, Schofields, Cabramatta, Malabar, Point Clare and East Gosford. TAFE Mt Druitt, TAFE Ryde and TAFE Miller. Child Care Centres located at St Leonards, Turramurra, Toukley, Summer Hill, Currans Hill, Botany, Birrong, Miranda, Ryde, Meadowbank, Engadine, Parramatta, Prestons, Ashfield and Mortdale.
Hotels/Clubs	Lansdowne Hotel at Chippendale, Unicorn Hotel at Paddington, White Cockatoo Hotel at Petersham, Sydney Park Hotel at Newtown, Wests Ashfield, AKA Nightclub at Sutherland, Club Five Dock, Auburn Hotel, Wentworthville Hotel, Billabong Hotel, Merrylands and South Sydney Leagues Club at Redfern.
Occupational Noise:	Mounties at Mt Pritchard, Sydney Water Waste Water Treatment Plant at Malabar and Cronulla, Custom Coaches at Villawood, Sleepmaker at Warwick Farm, Vinidex Tubemakers at Smithfield, King Gee at Bellambi, and Austral Precast at Wetherill Park.
Traffic Noise:	Road and rail traffic noise affecting: Elizabeth Hills, Willowdale, Leppington, Riverstone and Jordan Springs residential developments, high rise residential apartments in Castle Hill, Parramatta, Mascot, Botany, Hillsdale, Hornsby and Meadowbank.
Aircraft Noise:	Assessment of aircraft noise intrusion from Bankstown, Richmond and Sydney Airports. Design and compliance for residential developments in Condell Park, Georges Hall, Mascot, Botany, Marrickville, St. Peters, Eastlakes, Newtown, Horsley Park, Richmond and South Windsor.
Environmental Noise:	Various Zone and Transmission Substations for Endeavour Energy and Ausgrid, Harris Farm Lindfield and Leichhardt, Children's Court, Surry Hills, Flight Simulator, Mascot, Winmalee WWTP, Woolworths Ermington, Gosford Police Station, Flower Power Taren Point and Mascot, Marsden Park, UFC Gyms Gregory Hills, Parramatta, Castle Hill, Rockdale and Campbelltown, The Biggest Loser, Dural, Alvaro Transport, Prestons and MCAS, Jamisontown.
Architectural Acoustics:	Parliament House, Sydney, Downing Centre and John Maddison Tower, Sydney, Department of Communities and Justice, Liverpool, Gosford, Batemans Bay and Newcastle, Hotel Ravesis, Bondi Beach, Sport and Recreational Hall, Berry,
Impact Sound Insulation:	Impact Sound Insulation design and testing in residential buildings across Highgate Millers Point, World Tower Sydney, Surry Hills, Kirribilli, Chatswood, McMahons Point, St Ives, Vaucluse, among others.