

**From:** "Mark Brisby" [REDACTED]  
**Sent:** 11/10/2021 4:57 PM  
**To:** "Adam Croft" <adam.croft@northernbeaches.nsw.gov.au>; "Council Northernbeaches Mailbox" <Council.Northernbeaches@northernbeaches.nsw.gov.au>  
**Subject:** DA 2021/1620  
**Attachments:** Harbord Hotel DA 2021.docx

Adam;

Good afternoon. Please find attached a submission in response to the subject application.

Could you please acknowledge receipt.

If you require anything further please do not hesitate to contact myself.

Thanks

Mark Brisby

1/33 Moore road

Freshwater NSW 2096

**DA 2021 1620 – 29 AND 31 MOORE ROAD**  
**FRESHWATER**

Alterations and additions to an existing pub (Harbord Hotel)

I refer to the subject Development Application for additions to the Harbord Hotel.

Perusal of the notification map indicates that only the adjoining neighbours were notified of the proposal.

The Hotel is a significant venue in the community and the narrow notification by Council has led to a lack of awareness of the subject application.

It is noted that a small sign only has been posted on one of the walls of the Hotel, which is currently closed.

The proposed intensification of an existing use will have an enormous impact on the community not just the adjoining neighbours.

Increase in noise generated, anti-social behaviour, traffic, parking and impacts on resident's privacy are matters that the community should be made aware of.

It should not be up to local residents to carry out their own notification of other impacted properties.

This lack of awareness does not allow affected residents to review the application and make submissions.

It is recommended that: -

1. Council re advertise the DA to a broader range of the local community with an extended notification period of 28 days.

2. Council hold a public meeting during the extended exhibition period. The applicant could be offered the opportunity to make a presentation.

This would allow residents to ask questions of both the applicant and the Council staff.

It is believed this will increase the communities confidence in the assessment process and provide Council staff with a comprehensive response to the development application.

Please could you advise if the Local Planning Panel will determine the application?

It would be appreciated if you could provide a positive response to the resident's request.

### **HISTORY**

It is important for Council to note that the same proposal was rejected by the Land and Environment Court 20 years ago.

The current application in fact is more intense, proposes even more floor space and a greater number of patrons.

The application neither acknowledges nor addresses the issues determined by the LEC in 1998.

The impacts of the increased use of the existing hotel including but not limited to traffic, parking and noise were significant factors in the court's decision.

Reference is made to LEC 10746 of 1997.

I refer to LEC determination P17 last paragraph states as follows;

**“ The deficiency in parking is of sufficient severity to warrant refusal of the application ... ”**

**“The lack of space to accommodate the additional parking clearly suggests an overdevelopment of the site ”.**

### **LOCAL ENVIRONMENTAL PLAN (LEP)**

The subject property is an existing use situated within a low-density residential zone.

The history and evolution of the then Warringah LEP reveals;

1. The hotel was originally a non-complying existing use
2. Became a special use and
3. Finally rezoned for its current specific purpose.

This current specific purpose is ***“ Local Corner Pub ”***.

It is clear that the Council’s intention was to allow the existing use as a local corner pub to continue in harmony with the surrounding low-density residential area not to allow the creation of a destination venue not in keeping with the character of the surrounding area.

The application proposes a third story containing a commercial recording studio.

The SOEE states that this will be available for hire by third parties with equipment provided by the Hotel.

There is no doubt that this is a prohibited use in the current LEP.

The surrounding and adjoining area consists of low-density residential housing and there is no transition from the hotel site.

The hotel is in the immediate proximity of existing housing.

The current LEP allows the use of a local neighbourhood corner pub with licensee accommodation. This is acknowledged in the Statement of Environmental Effects {SOEE}.

The most recent development consent in 2020 approved an intensification that has affectively changed the use of the property from that of a local corner pub to that of a destination venue with live bands, movie nights, promotional events with commercial products promotion.

This recent upgrade has moved the hotel to more of an outdoor venue with a major emphasis on the two beer gardens fronting Moore Road.

Further evidence that the subject hotel no longer meets the permissible use criteria or objectives of the LEP.

The beer garden is being used as a Cafe from 7am each day.

No Development Consent exists for this use. The operation involves cleaners arriving at 5am to prepare the beer garden. Moving tables and chairs creating noise disturbance.

Café staff arrive from 5.30am parking their vehicles in the street, banging doors, juggling coffee cups, preparing the coffee machine and talking.

All this disturbance to the residents after they have endured the Hotels use until 1am the previous night.

This is a general erosion of the intended use of the premises as Local Corner Pub to that of a destination venue better suited to a Mixed Use, Commercial or Business Zone.

It now mirrors the Wharf Bar located in the Commercial CBD of Manly.

It is clearly an overdevelopment of the site as determined by the Land & Environment Court.

#### **Clause 4.6**

Height limits are a development standard of the LEP. Clause 4.6 exists to allow a variation of a development standard where compliance is considered unnecessary.

The applicant must be able to demonstrate that the non-compliance with the subject standard will result in a "better planning outcome".

The SOEE relies on the fact solely that the breach in height limit will be below the existing ridge - line and not viewed from the front of the building.

Further to this, the breach in height limit is required so as to provide DDA access to the proposed prohibited use {commercial recording studio} located on the third floor.

The clause 4.6 clearly fails to demonstrate a better planning outcome as it solely exists to facilitate a prohibited use.

#### **ACOUSTICS**

A review of the AKA acoustics report submitted with the development application reveals that it is only a review of third party consultant's reports.

In fact it pre-empt's solutions rather than assess the noise impacts. Refer to page 3 - Scope of Works.

The report identifies locations that have not included any of the adjoining residents to the east of the hotel.

The report is too simplistic in its assessment and fails to adequately address the noise impacts from the increased intensification of a venue involving live music and a major increase in patrons to a part of the building that has always been reserved and used for passive accommodation.

It is strongly suggested that Council engage a suitably qualified acoustic engineer to peer review the acoustic report and not rely on assessment by its environmental health staff who are not qualified to assess such a complex entertainment venue with multiple areas providing live music, other entertainment and large crowds of intoxicated patrons.

The assessment of the outdoor areas – 1<sup>st</sup> floor balcony and existing beer gardens requires specialist knowledge and experience.

On a practical level the venue generates excessive noise as a result of music, crowd noise and the open space nature of the current beer gardens.

Any proposal, which involves external loudspeakers and up to 100 people on the first floor balcony will generate unacceptable noise impacts on surrounding residents.

The proposal to manage this noise via 1.7 metre high clear acoustic barriers attached to the heritage façade and balustrades of the hotel is unsuitable.

Noise generated in such an elevated structure as the first floor balcony cannot be contained within the venue.

We urge Council to seek a peer review of the Acoustic Report.

### **PRIVACY**

We along with the other residents have lived in harmony with the Hotel for over 60 years as the first floor has always been used for the licensee's accommodation.

Local residents and the former Hotel licensee enjoyed a good working relationship and the situation existed to every one's benefit.

The proposal to use the first floor including the extensive balcony of the Hotel as an entertainment venue is a departure from the long-standing use as passive accommodation.

The Hotel's first floor area looks directly into our property. This includes the front & back yards, bedrooms, front balcony and entrance stairs.

While the first floor of the Hotel is used as residence privacy is not a factor.

Council in its assessment must consider the impacts of having 100 people consuming alcohol on the balcony up to midnight 7 days a week looking directly into our and other resident's homes.



The existing ground floor beer gardens currently look directly into our property.

We endure a lack of privacy when entering and exiting our home at all times.

A previous approval DA Mod 2015/0215 Condition no 7 required the Hotel to install opaque glass around the beer garden to address the privacy.

Despite this condition it has never been complied with nor enforced by the Council.

Council must acknowledge this is a low-density residential zone.

### **ANTI – SOCIAL BEHAVIUR**

The SOEE states that the intention of the proposal is to increase the existing capacity by only 50 patrons.

It is difficult to believe that an increase in the floor space of the venue will be limited to this number.

The change of use resulting in the overdevelopment of the site will in no doubt attract a younger crowd seeking live entertainment and a party atmosphere.

This will only further exacerbate the amount of anti social behaviour currently being experienced by residents.

Residents on a nightly basis experience behaviour from intoxicated patrons such as urination on private properties, abusive language, fighting etc.

Groups wait in resident's driveways for Uber/Taxi services with no action from Hotel security contrary to the requirements of their liquor licence.

Each morning nearby properties are littered with empty bottles, rubbish and other unsavoury items as a result of patrons leaving the area.

Liquor licence conditions require the Hotel to clean up the area first thing each morning. This is never done.

Current development consents and liquor licence conditions have attempted to address the issue of the anti social behaviour through conditions requiring action by hotel security staff.

These conditions are rarely complied with by Hotel management nor enforced by the Council.

The proposed increase in patronage involving the "*party crowd*" will further erode the residential amenity of the residents.

Council must acknowledge this is a low - density residential zone.

### **PARKING**

The Land & Environment Court in 1998 rejected this proposal stating the deficiency of parking demonstrated that it was an over development of the site.

The current application fails to address the parking issue.

It proposes 8 new spaces but does not indicate their location.

The existing car park has 25 spaces and is available to the public.

The close proximity to the beach means these spaces are taken from 7am in the morning and are rarely available for the Hotel patrons.

It is not possible to provide any further parking on the site and street parking is non - existent.

The Council is currently rigidly applying the DCP controls for Parking in the Freshwater Village.

I refer to the approvals for the recent major developments in Lawrence street and Albert road along with restaurant/shop fit outs associated with those developments.

As stated by the LEC parking is a fundamental planning control in a development.

Having regard to this factor alone Council should reject the application.

### **Heritage**

The existing Hotel was built in 1928 and is a listed Heritage item. This is acknowledged in the application, which is supported by a report from Heritage consultants Weir Phillips Heritage and Planning.

They conclude the following;

- 1. Based on the above it is considered that the proposed works will have a minimal and acceptable impact on the significance of the Harbord Beach Hotel. The proposed works will have no impact on the historic, aesthetic, social significance of the building and its landmark qualities.*

A review of the proposed plans indicates that in attempt to deal with the excessive noise 1.7m high acoustic barriers are to be attached to the Heritage listed balustrade on the first floor.

The consultants review does not address the acoustic barriers proposed to be attached to the balustrade.

How the heritage consultant can ignore this aspect and conclude that 1.7m high glass acoustic barriers attached to heritage balustrade has no impact is difficult to fathom.

The report states that the proposed alterations will have no impact on the historic significance of the building.

Yet from every angle this intrusion {1.7m acoustic barriers} will be viewed from Moore road, Charles street and the beach front.

I highly doubt that such structures where around in 1928 and they will completely destroy the heritage significance and value of the building.

If this is acceptable to Council they must remove the building from its Local Heritage Register and notify the Heritage office NSW of the decision.

### **Conclusion**

The subject Development Application is the same proposal that was lodged with the former Warringah Council in 1997.

While Council issued development consent at the time this was later overturned on appeal by the Land & Environment Court.

The LEC overwhelmingly concluded that it was an overdevelopment of the site.

The current application has failed to acknowledge the previous Development Application nor addressed the issues raised by the LEC.

In brief we have outlined a significant number of factors that fail the requirements of the Local Environmental Plan {LEP} and the Environmental Planning & Assessment Act {EP&A Act}.

1. It does not meet the objectives or intentions of the LEP in that it is not a Local Corner Pub.
2. Proposes a prohibited use under the LEP – commercial recording studio.
3. Does not address the adjoining residential zone {LEP}.
4. The clause 4.6 fails the test of creating a better planning outcome, as it exists only to facilitate a prohibited use.
5. Does not provide adequate car parking for the use of the site.
6. Does not address the impacts of noise adequately. A peer review of the applicants acoustic report should be carried out by a suitably qualified engineer.
7. The proposed use of the first floor as an entertainment venue including the balcony will have a detrimental affect on the privacy of local residents.
8. The proposed alterations will have a negative impact and are not in keeping with a Heritage Listed Building.
9. The overdevelopment of the site will result in a significant increase in anti-social behaviour.

We urge Council to refuse the application.

Mr Mark & Mrs Colleen Brisby  
1/33 Moore road  
Freshwater NSW 2096.