

Memo

Development Assessment

To: Northern Beaches Local Planning Panel (NBLPP)

Cc: Peter Robinson
Executive Manager, Development Assessment

From: Maxwell Duncan
Principal Planner

Date: 18 March 2025

Subject: 80 Undercliff Road, Freshwater

Record Number: 2025/193035

Dear Panel,

The purpose of this memo is to inform the Panel that additional information has been provided by the applicant, requesting amendments to conditions recommended by Council. The applicant seeks to amend Condition 20, 23 and 27.

Additionally, two additional submissions have been lodged, one in support and one in objection to Council recommended conditions.

- 1 submission in support – James Griffin MP
- 1 submission in objection – Tom Oates (71 Undercliff Road, Freshwater)

The submission against the proposal seeks amendments to conditions 23, 24, 28 and 29.

Note: The conditions amended by applicant and objector are highlighted in green for clarity.

APPLICANT - ADDITIONAL INFORMATION

The applicant seeks to amend the following recommended conditions:

Current:

Condition 10. Access Path – Undercliff Road

No approval is given for the proposed pedestrian path to Undercliff Road, identified in the Accessibility Review report (Prepared by City Plan, dated 11 July 2024).

Details demonstrating compliance are to be provided to the Certifier prior to the issue of the Construction Certificate.

Reason: Owner's consent has not been provided by Council.

Proposed

Condition 10. Access Path – Undercliff Road

No approval is given for the proposed pedestrian path to Undercliff Road, identified in the Accessibility Review report (Prepared by City Plan, dated 11 July 2024).

Details demonstrating compliance are to be provided to the Certifier prior to the issue of the Construction Certificate. **A separate application under Section 138 of the Roads Act 1993 is required to seek authorisation to construct the access crossover.**

Details demonstrating compliance are to be provided to the Certifier prior to the issue of the Construction Certificate.

Reason: Owner's consent has not been provided by Council.

Current:

Condition 23. Undercliff Entrance

The existing entranceway/gate fronting Undercliff Road is not to be used by restaurant patrons for access.

Reason: In order to maintain privacy to the adjoining / nearby property.

Proposed

Condition 23. Undercliff Entrance

*The existing entranceway/gate fronting Undercliff Road **may only be used for wheelchair access by restaurant patrons.***

Reason: In order to maintain privacy to the adjoining / nearby property.

Comment: The proposed changes to conditions 10. (Access Path – Undercliff Road) and 23. (Undercliff Entrance) are not supported. Insufficient information has been provided on the architectural plans to show the extent of the path or demonstrate how the accessible path would comply with relevant standards.

The proposed accessible footpath in Undercliff Rd would require removal of vegetation in the road verge. While there is no unreasonable amenity impacts on adjoining properties that would result from the Undercliff Road entrance gate being utilised for wheelchair access, concern is raised regarding the overall suitability of a secondary entrance being utilised for wheelchair access. The proposed accessible pathway in the road verge does not connect to any footpaths which lead to any parking and this would necessitate any person utilising this entrance to travel a minimum 20 metres along the road carriageway to the closest street parking space. The main entrance to the restaurant is from the north of the site, which adjoins Moore Rd carpark which contains 2 dedicated mobility parking spaces and a reasonable path of travel to the entrance.



Image 1 – subject site distance to parking from proposed entrances



Image 2 – Undercliff Road – path of travel to proposed footpath

27. Hours of Operation

Current recommended:

27. Hours of Operation

The hours of operation are to be restricted to:

- Sunday to Thursday: 10:00am - 10:00pm
- Friday and Saturday - 10:00am - 12:00am

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons are to be outside, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

Reason: Information to ensure that amenity of the surrounding locality is maintained.

Proposed:

27. Hours of Operation

The hours of operation are to be restricted to:

- Sunday to Thursday: 10:00am - **11:00pm**
- Friday and Saturday - 10:00am - 12:00am

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons are to be outside, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

Reason: Information to ensure that amenity of the surrounding locality is maintained.

Comment: The applicant proposes to maintain the existing hours of operation from the recommended conditioned 10:00pm to 11:00pm from Sunday to Thursday. Whilst the current hours were originally approved in 1980, the current application seeks an increase in the number of patrons from 80 to 130 in conjunction with the 2007 approval for a kiosk on site, which has approval for 36 on site patrons (until 9pm). The cumulative impact on adjoining residential development is not deemed reasonable, and provides little respite noting the site adjoins the R2 Low Density Residential zone.

ADDITIONAL SUBMISSION

An additional submission has been received from Tom Oates (71 Undercliff Road, Freshwater). The submission requests changes to Conditions 23. Undercliff Entrance, Condition 24. Noise Management and Condition 28. Commercial Waste Collection. The submission also proposes the addition of new condition "No use of attic or Garden room".

Current:

Condition 23. Undercliff Entrance

The existing entranceway/gate fronting Undercliff Road is not to be used by restaurant patrons for access.

Reason: In order to maintain privacy to the adjoining / nearby property.

Proposed:**Condition 23. Undercliff Entrance**

*The existing entranceway/gate fronting Undercliff Road is not to be used by ~~restaurant patrons~~ for **any** access.*

*Reason: In order to maintain privacy to the adjoining / nearby property **and to keep the (no parking) turning bay in Undercliff Road safe and clear of loading and unloading vehicles.***

Comment: The proposed amendment to the condition is not supported, as staff may still access the site from this frontage. Staff entering and exiting the site from this entrance will not be of unreasonable frequency and their conduct can be controlled by management to ensure there are no unreasonable impacts on adjoining residential properties.

Current:**Condition 24. Noise Management**

The restaurant is to be operated in accordance with the following:

- Any amplified music (assumed to be vocal and acoustic) must be restricted during the hours of 10:00am and 10:00pm. Noise levels to be limited to 90 dBA Sound Power Level (or equal to 73 dBA @ 3m) when measured as a sound pressure level.
- Background music is assumed to be 65 dBA for dining areas, all measured as a sound pressure level.
- All doors and windows are to remain shut after 10:00pm and not opened before 7:00am and anytime amplified music is used. Low level background music is permitted to be played with windows open.
- Removal of glass or waste should be done internally and must not be externally of the premises after 8:00pm and before 7:00am.
- Signs must be displayed at all exits reminding patrons to be mindful of noise when leaving the premise.
- A revised Plan of Management (PoM) is to be prepared based on the following conditioned amendments:
 - Amended Operating Hours
 - Amplified and background music requirements Opening of windows
 - A contact number must be displayed for the purposes of receiving any complaints if they arrive.
 - A copy of Pom to be available on restaurant's webpage.

The PoM should be sent to Council and approved prior to operating under this consent. The PoM is to reviewed regularly to ensure any required updated proposed for approval by Council.

Reason: To maintain reasonable levels of amenity to residential neighbouring properties.

Proposed:

The restaurant is to be operated in accordance with the following:

- Any amplified music (**vocal, acoustic, DJ, etc** ~~assumed to be vocal and acoustic~~) must be **limited to, and** restricted during the hours of 10:00am and 10:00pm. Noise levels to be limited to 90 dBA Sound Power Level (or equal to 73 dBA @ 3m) when measured as a sound pressure level. **No amplified music outside.**
- Background music is assumed to be 65 dBA for dining areas, all measured as a sound pressure level.
- All doors and windows are to remain shut after 10:00pm and not opened before 7:00am and anytime amplified music is used. Low level background music is permitted to be played with windows open.
- Removal of glass or waste should be done internally and must not be externally of the premises after 8:00pm and before 7:00am.
- Signs must be displayed at all exits reminding patrons to be mindful of noise when leaving the premise.
- A revised Plan of Management (PoM) is to be prepared based on the following conditioned amendments:
 - Amended Operating Hours
 - Amplified and background music requirements Opening of windows
 - A contact number must be displayed for the purposes of receiving any complaints if they arrive.
 - A copy of Pom to be available on restaurant's webpage.

The PoM should be sent to Council and approved prior to operating under this consent. The PoM is to reviewed regularly to ensure any required updated proposed for approval by Council.

Reason: To maintain reasonable levels of amenity to residential neighbouring properties, **including limiting amplified music (including DJ, etc) to indoors and to between 10am and 10pm.**

Comment: The submission proposes to restrict the use of amplified music to indoor areas only. The application proposes this, with background music to be allowed for outdoor areas only. To ensure certainty the condition has been amended as proposed in the submission. The amended condition will also note that background music may still be played outdoors.

Current:

Condition 28. Commercial Waste Collection

Waste and recyclable material, generated by this premises, must not be collected between the hours of 10pm and 6am on any day.

Reason: To protect the acoustic amenity of surrounding properties

Proposed:

Condition 28. Commercial Waste Collection

Waste and recyclable material, generated by this premises, must not be collected between the hours of 10pm and **7am** on any day **except Sunday then not before 09:00am.**

Reason: To protect the acoustic amenity of surrounding properties **and for consistency with following Pilu liquor licence condition:**

“Undertake that licensee or permit holder will make every endeavour to ensure that bottles, garbage or refuse is collected from the premises not before 07:00 am on any day except Sunday then not before 09:00 am”

Comment: The suggested hours for waste collection are considered reasonable given the close proximity of residential dwellings and the regular requirement for waste collection.

New Condition - Unauthorised works

“29. No use of Attic or Garden Room

No approval is given for the use of the (unauthorised) attic or (unauthorised) garden room or the use of other unauthorised building work prior to the conclusion of the investigation by the building control team (compliance) and the issue of a construction certificate.

Reason: To prevent the use of unauthorised building work and to ensure adequate provision is made for Health, Amenity, Access & Fire Safety for building occupant health & safety.”

Comment: The application proposes use of the site only. Any enforcement action that may result from the building control team investigation, is subject to a separation application. The condition is not endorsed to be included as part of the final conditions of consent, if the application is to be approved.

CONCLUSION

The applicant has proposed 3 amendments to conditions relating to the access and operation of the restaurant. The 3 amendments were considered, however not supported for the reasons detailed above. In summary

- The proposed access to Undercliff Road cannot be supported as it does not provide appropriate wheelchair access to and from the site.
- Insufficient information has been provided to justify the restaurant operating beyond 10pm Sunday – Thursday.

In order to address outstanding accessibility issues, a new condition is imposed to prior to Construction Certificate, to enable alternate accessibility solution is put in place, which will allow for access from the front gate (North side) to the internal restaurant. The solution will have regard to heritage advice and be subject to Executive Manager (Development Assessment) approval.

Two of the four proposed conditions changes requested in the objection to the proposal are not supported, with the exception of a minor change to the wording of Condition No. 24 and the restriction on hours for waste collection.

RECOMMENDATION

The following changes to the conditions contained in the assessment report:

- Add Condition **Accessibility Solution** to read as follows:

Access to and within the internal restaurant from the north-eastern entry gate is to be provided for Persons with a Disability and is to comply with the Building Code of Australia and AS 1428.1.

Any accessible works is to complement the heritage significance of the subject site.

The applicant is to submit amended plans and relevant documentation to the satisfaction of Executive Manager Development Assessment prior to the issue of a Construction Certificate:

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

- Amend Condition **24. Noise Management** to read as follows:

The restaurant is to be operated in accordance with the following:

- Any amplified music (**vocal, acoustic, DJ, etc**) must be **limited to, and** restricted during the hours of 10:00am and 10:00pm. Noise levels to be limited to 90 dBA Sound Power Level (or equal to 73 dBA @ 3m) when measured as a sound pressure level. **No amplified music outside.**
- Background music is assumed to be 65 dBA for dining areas, all measured as a sound pressure level.
- All doors and windows are to remain shut after 10:00pm and not opened before 7:00am and anytime amplified music is used. Low level background music is permitted to be played with windows open.
- Removal of glass or waste should be done internally and must not be externally of the premises after 8:00pm and before 7:00am.
- Signs must be displayed at all exits reminding patrons to be mindful of noise when leaving the premise.
- A revised Plan of Management (PoM) is to be prepared based on the following conditioned amendments:
 - Amended Operating Hours
 - Amplified and background music requirements Opening of windows
 - A contact number must be displayed for the purposes of receiving any complaints if they arrive.
 - A copy of Pom to be available on restaurant's webpage.

The PoM should be sent to Council and approved prior to operating under this consent. The PoM is to reviewed regularly to ensure any required updated proposed for approval by Council.

Reason: To maintain reasonable levels of amenity to residential neighbouring properties.

- Amend Condition **28. Commercial Waste Collection**

Waste and recyclable material, generated by this premises, must not be collected between the hours of 10pm and 7am on any day except Sunday then not before 09:00am.

Reason: To protect the acoustic amenity of surrounding residential properties