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MEMORANDUM

DATE: 2 August 2022

TO: Northern Beaches Local Planning Panel (NBLPP)

CC: Steve Findlay, Development Assessment Manager

FROM: Anne-Marie Young, Principal Planner

SUBJECT: Item 4.1 - MOD2021/0983 – 231 Whale Beach Road, Whale Beach - Additional Submissions

Dear Panel Members,

The purpose of this supplementary memo is to advise the Panel that three (3) additional submissions have been received since the assessment report was finalised, that raise the following issues:

- Increased capacity, density and use contrary to Whale Beach character and B1 Zone
- Acoustic impacts
- Carparking

(Note: Two of the three submissions are from the residents of No. 233 Whale Beach Road)

Increased Capacity/Density/Use of Retail 1

The submissions state that the capacity of Retail 1 has increased from 64 to 188 and the density/intensity of use will be significantly increased.

The submissions state that the increase in capacity, density and use is out of character with the Whale Beach Locality and contrary to the “*small scale*” business premises envisaged for the B1 Neighbourhood Centre zone.

Response:

This issue is addressed in detail in the assessment report

Acoustic Impacts

A peer review of the applicant’s acoustic report, prepared by Day Design and dated 1 August 2022 has been submitted on behalf of the owners of No. 233 Whale Beach Road, which identifies the following discrepancies and misrepresentations in the JHA Acoustic Report, dated December 2021:

- *A discrepancy between the short-term attended noise measurement 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.*



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- *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*

Response:

The peer review and additional resident submissions have been reviewed by Council's Environmental Health Officer and the following comments are made.

Overall, the submitted documentation does not alter Environmental Health's recommendation of support for the proposed modification, which essentially is seeking a redistribution of patronage numbers for an existing consent to a more appropriate location that will have less impact on the larger number of residential receivers on the higher side of the site.

Environmental Health is of the opinion that the existing attenuation and findings of the report are valid.

Environmental Health finds many of the claims in the peer review report appear baseless and the critique that the dominant background noise, being surf noise, is not being considered as an industrial noise, moves away from the intent of the document as an assessment tool for developments that protect residential amenity.

Any acoustic assessment in support of a development needs to consider the zoning, identify the closest residential receivers and provide intrusiveness and amenity criterion which is driven by readings undertaken and the time period in which noise will be occurring. Once this is established, modelling is imposed based on the built form, with sound power levels from expected noise sources and attenuation controls are applied or there is an argument to demonstrate why no controls are required.

In this regard, the zoning is B1 Neighbourhood Centre, the development is situated in an appropriate zone, residential receivers are identified and new residents formed from the development are adequately attenuated, amenity and intrusiveness criteria are established as per the methodology employed by the EPA Noise Policy for Industry and finally time periods are confined to day and evening periods, which is consistent with other developments of this type and location and modelling attention is proved in the form of controls.

Council's Environmental Health Unit considers that the administrative review of a previous report, without a site visit and independent noise monitoring data, is of little value.

*The only beneficial condition Environmental Health consider is reasonable is an amendment to Condition 74A, to include the scope of the noise measurements in the Plan of Management as detailed below, changes are shown **bold** / *italic*:*

Condition 74A - Plan of Management

A Plan of Management is to be produced for the management of the site and adjacent road reserves identifying:

- i. Consistency with all 'on-going' conditions of consent over the life of the development,



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- ii. Outlining all required maintenance responsibilities for private infrastructure, including water management infrastructure and landscaping, and
- iii. Space management strategies including activity coordination, site cleanliness, rapid repair of vandalism and graffiti, and the maintenance of lighting and landscaping.
- iv. ***Details demonstrating how noise emissions will be manage within the commercial premise in line with the recommendations and findings of Revision A & B of the acoustic reports referenced in Condition 1.***

The Plan of Management is to be submitted to the Principal Certifying Authority prior to the issuance of the occupation certificate.

Reason: To ensure the on-going management of the site over the life of the development.

Carparking and Road Safety

The submissions states that the approved capacity (70 patrons) compared to the proposed capacity (188 patrons) will have material impacts on the availability of parking in the area, and that the use of public parking for private gain is unacceptable.

The submission references the judgement of the following Land and Environment Court case *Presbyterian Church (NSW) Property Trust v Woollahra Municipal Council* (2014) NSWLEC 1218 (Scotts Church) which states, in paragraph 94 that:

“on one hand, the mere fact that the proposal meets the requirements of a Development Control Plan does not automatically mean that Development Consent will be granted. However, on the other hand, if a proposal does not meet a Development Control Plan’s requirement, the Court may still grant consent, in appropriate cases, given a proper and genuine consideration of the Development Control Plan and having considered all other matters that are relevant under S79C of the Act”.

The submissions state that the RMS Guideline requires restaurants to have carparking provision of 15 spaces per 100sqm GFA or 1 per 3 seats.

The submissions also describe road and pedestrian safety issues with Surf Road due to blind spots, steepness, and the lack of a complete footpath. Concern is raised in the submission in respect to a significant increase in these impacts because of the increased intensity of use of the site as a result of an increase in patron/staff capacity.

Response:

Carparking

As detailed in the Assessment Report, Clause B6.3 of the P21 DCP sets out the car parking requirements for proposed development types. Carparking for restaurants and cafes, is calculated on the Gross Lettable Area (GLA), namely 1 space per 30sqm GLA as opposed to patron numbers.

It is noted that while Mr Moody does not raise an issue with the DCP carparking rate, he refers to the restaurant parking rate quoted in the *RMS Guide to Traffic Generating Development* which suggests



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that parking should be provided at the greater of 15 spaces per 100m² of gross floor area or 1 space per 3 seats.

For the modification proposal being considered, this would equate to a requirement for 57 parking spaces, however, the RMS Guide also states that *“the parking provision recommended above is desirable, but must take into account parking available in adjacent parking areas, including on-street, and its time of usage”*.

Parking surveys undertaken in support of the *Traffic and Parking Impact Assessment* undertaken with regard to REV2021/0034, found significant levels of spare parking capacity on-street and within the Whale Beach carpark, at all times during the proposed hours of operation of the restaurant.

Customers are permitted to park in the public car park provided the relevant parking restrictions are complied with and access/parking for emergency services is not restricted.

Despite the above, Council’s DCP parking rates are the criteria used to assess the development and the modification application makes no change to the required parking rates under the DCP.

The case law referred to in Mr Moody’s submission is noted, and it is agreed that compliance with the carparking rates in the DCP is not an automatic approval. The subject application has considered all other matters that are relevant under Section 4.15 of the EPA Act, 1979, including the issues raised in the public submissions in respect of parking, road/pedestrian safety, acoustic and operational impacts.

Road and Pedestrian Safety

The approved building has increased setbacks to both Whale Beach Road and Surf Road compared to the existing building. Furthermore, the approved development includes public domain upgrades, including a footpath to connect the Whale Beach public car park to the development, so that pedestrians will be able to walk safely between the beach carpark and the development site in the event that parking is unavailable on site.

Conditions are also included in the original consent requiring the installation and maintenance of a pedestrian warning system.

Traffic safety issues have been raised in relation to the gradient of Surf Road where it meets Whale Beach Road. This is unchanged by the proposed modification application and is an existing situation related to the natural topography of the location.

In summary, the subject modification has been reviewed by Council’s Transport Manager who also confirms that there will be no additional road safety issues as a result of the modification of Condition 99 to increase the capacity of Retail 1.

Recommendation:

- A. That the Panel note the three (3) additional submissions.
- B. The review of the additional submissions does not alter the recommendation attached to the Assessment Report.



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- C. That the Panel amend Condition 74A *Plan of Management* as detailed in the relevant section of this supplementary memo.