

Wollongong Local Planning Panel Assessment Report | 30 November 2021

WLPP No.	Item No.3
DA No.	DA-2021/695
Proposal	Use of two timber decks within the beer garden of Towradgi Beach Hotel
Property	'Towradgi Beach Hotel' 170 Pioneer Road Fairy Meadow - Lot 2001 DP 1102607
Applicant	Oscars Hotels Pty Ltd
Responsible Team	Development Assessment and Certification - City Centre Major Development (AS)
Development cost	Building work completed without consent – value of works to be confirmed
Lodgement date	17 June 2021
Prior WLPP meeting	Nil

ASSESSMENT REPORT AND RECOMMENDATION

Executive Summary

Reason for consideration by Local Planning Panel - Determination

The proposal has been referred to Local Planning Panel for determination pursuant to clause 2.19(1)(a) of the Environmental Planning and Assessment Act 1979. Under Schedule 2 of the Local Planning Panels Direction of 1 March 2018, the proposal is contentious development due to number of submissions.

Proposal

The proposal is for retention and use of two timber decks for seating and dining, located in the beer garden of Towradgi Beach Hotel. The two decks have been constructed without required development consent.

Permissibility

The site is zoned SP3 Tourist pursuant to Wollongong Local Environmental Plan 2009. The proposal is categorised as use of unauthorised structures at a 'pub' and is permissible in the zone with development consent.

Consultation

The proposal was notified in accordance with Council's Notification Policy and received ten submissions which are discussed at section 2.8 of the assessment report.

Main Issues

- Unauthorised construction of the timber decks
- Land and Environment Court action lodged by applicant
 - Class 1 appeals against Council's Development Control Orders NO-2021/177 and NO-2020/376
 - Deemed refusal appeals DA-2021/695 (this application) and DA-2021/693
- Public submissions
- Noise and antisocial behaviour impacts on neighbouring land
- Failure to provide further acoustic monitoring as requested by Council

- Proposed hours of operation

It is Council's view that the Hotel's unauthorised installation of the decks and pergola in the outdoor beer garden and provision of live entertainment have increased the beer garden's useability and attractiveness to patrons, leading to noise disturbance at adjoining or nearby residential properties.

RECOMMENDATION

It is recommended that the application is refused for the reasons contained in Attachment 4.

1 APPLICATION OVERVIEW

The subject development application follows Council's issue on 7 June 2021 of a Development Control Order to demolish two timber decks that were constructed at Towradgi Beach Hotel without the required development consent. The development application seeks Council's consent to use the unauthorised decks (avoiding demolition) and was lodged on 17 June 2021.

In a separate action, the applicant lodged an appeal in the NSW Land and Environment Court seeking Council's Development Control Order (Case no. 2021/00167740) be revoked. Council and the applicant could not reach agreement at a conciliation conference on 27 October 2021, and the Development Control Order appeal will go to a hearing in March 2022.

On 4 November 2021, the applicant commenced proceedings in the NSW Land and Environment Court against Council's deemed refusal of the timber decks development application.

1.1 DETAILED DESCRIPTION OF PROPOSAL

The proposal seeks to retain two timber decks for use by patrons and staff of the Towradgi Beach Hotel. The decks are located in the existing outdoor area/beer garden to the east of the main Hotel building, as shown in Figures 1-3. The decks are each an irregular shape. The 'western deck' is approximately 109.7m² and erected approximately 460mm above the existing floor level of the beer garden. The 'eastern deck' is approximately 63.4m² and elevated approximately 200mm above the existing floor level of the beer garden.

Situated upon the decks are built-in timber bench seating, freestanding timber tables and chairs and beach umbrellas, an elevated large-scale television and mounted speakers. When a DJ is operating, the DJ booth sits upon the western deck underneath the mounted television.

Proposed use of decks

Correspondence from the applicant's planning consultant Design Collaborative dated 11 August 2021 confirmed the proposed use of the decks is:

'The timber decks are used for outdoor seating. The decks are constructed to offer both shaded and open sky areas to patrons that utilises the extensive area of the beer garden. The decks are to provide an alternative seating arrangement for patrons as part of the refurbishment for the Hotel.'

Proposed hours of operation of decks

The proposed hours of operation for the decks is described in the Statement of Environmental Effects (SEE):

- *'There is no change to the approved hours of the Hotel between 5am and 3am the following day, Monday to Saturday, and between 8am and 12 midnight Sunday.'*

Notwithstanding the applicant's claim, these proposed hours represent an increase to the hours of operation for the Hotel as approved under DA-2007/133.

Location of decks

Figure 1 shows the location of the decks. Figures 2 and 3 provide photographs of the decks and furniture.

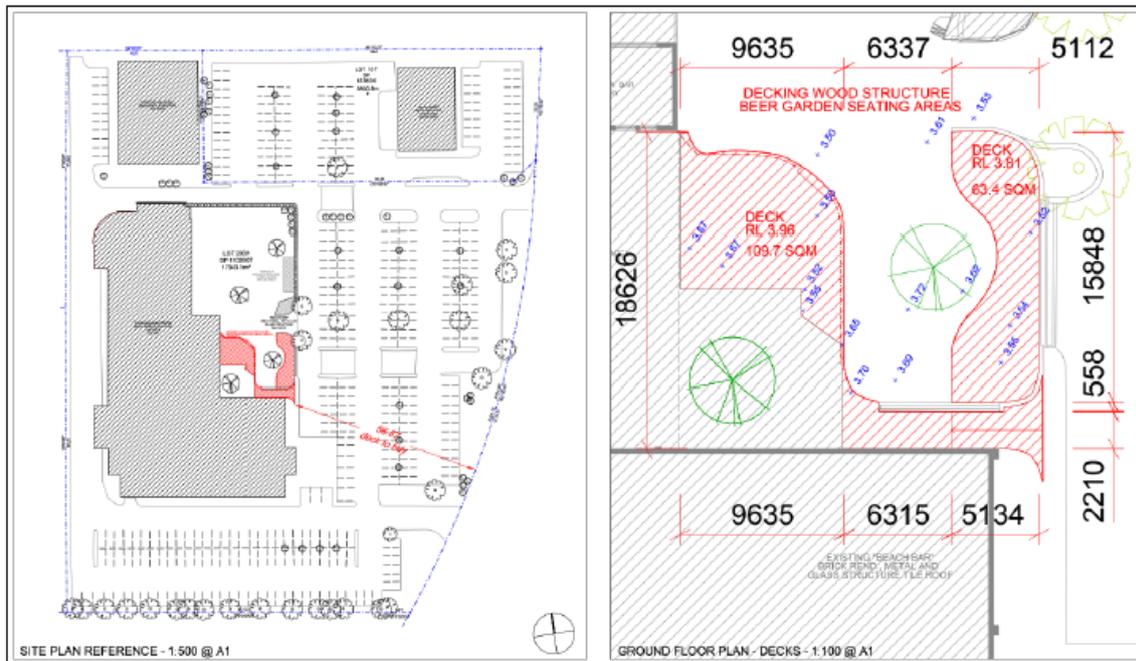


Figure 1: Site Plan and Ground Floor Plan of the timber decks (Source: CMT Architects Australia)

Figure 1: Extract from the applicant's SEE, showing location of the unauthorised decks (in red)



Figure 1: Timber deck that was extended from the existing deck under cover

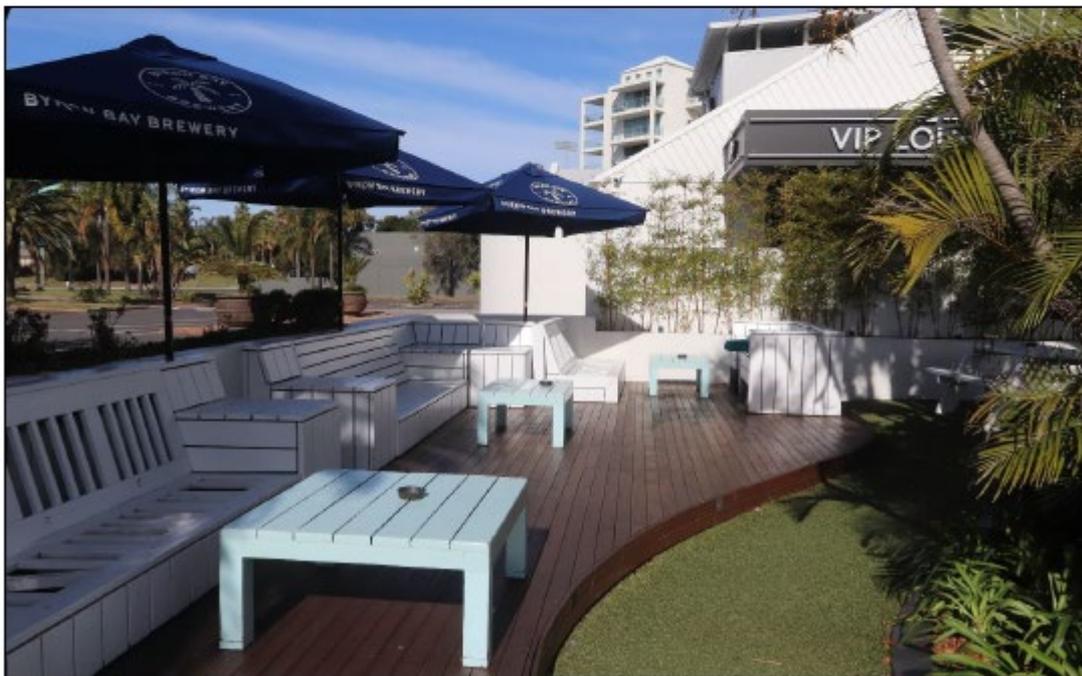


Figure 2: Timber deck along the boundary of the Hotel

Figure 2: Photographs of the decks from applicant's letter dated 11 August 2021 - western deck at top, eastern deck at bottom



Figure 3: Photograph of the western deck outdoor television screen and speakers taken by Council in July 2021. Outdoor DJ booth location is under the television screen.

The decks were constructed in 2020 without the required development consent. Council issued the Development Control Order to demolish the decks following a site inspection which was carried out in response to community complaints about illegal structures being built at the property.

Proposed physical works

The applicant's representative in their letter dated 11 August 2021 confirmed that the noise barrier recommended by their acoustic consultant is **not** proposed to be erected as part of this development application. Similar correspondence in relation to the booth seating pergola indicated it was not proposed to be erected under that application, either.

Potential impacts

As will be discussed further in this report, the proposed retention of the decks and use by patrons of the Hotel gives rise to the following potential impacts:

- Noise generated by people occupying the decks (seated, standing, dancing, food, drinks, talking, singing etc)
- Noise generated by technical equipment located on the western deck
 - DJ booth
 - Giant screen television
 - Speakers
 - Live music performances

- Noise generated by speakers located on the eastern deck
- Equitable access – decks are not accessible to mobility impaired
- Non-compliance with National Construction Code

Council has received a number of complaints from occupants of dwellings near the Hotel regarding noise emanating from the property. These neighbours are located in streets to the north, west and south of the Hotel. The complaints maintain that noise had increased as a result of the renovation of the beer garden, including the unauthorised decks, booth seating pergola and live music/DJ. The refurbished beer garden opened in October 2020.

Council's site inspection following receipt of these complaints identified that the Hotel had erected a giant screen television and approximately 15 speakers in the vicinity of the beer garden. The Hotel had also introduced outdoor entertainment in the beer garden in the form of DJ and live music, with regular weekend music sessions and special events like the rugby league state of origin and an Anzac Day two-up arena.

It is Council's view that the Hotel's unauthorised installation of the decks and pergola in the outdoor beer garden and provision of live entertainment have increased the useability and attractiveness to patrons of area, leading to noise disturbance at adjoining or nearby residential properties.

The Renzo Tonin & Associates L&GNSW Noise Compliance Report

The applicant submitted with the application a 'L&GNSW Noise Compliance Report' prepared by Renzo Tonin & Associates dated 9 June 2021. The report provides analysis of the noise generated by the outdoor area including the timber decks in relation to Liquor and Gaming NSW standard noise condition.

Noise emissions are required to be assessed in terms of the noise limits set out in the standard noise condition as follows:

- *The LA10 noise level emitted from the licensed premises shall not exceed the background noise level in an Octave Band Frequency (31.5Hz-8kHz inclusive) by more than 5dB between 7am and 12 midnight at the boundary of any affected residence; and*
- *The LA10 noise level emitted from the licensed premises shall not exceed the background noise level in an Octave Band Frequency (31.5Hz-8kHz inclusive) between 12 midnight and 7am at the boundary of any affected residence.*

The Tonin report found noise levels emitted from the Hotel's beer garden (where the timber decks are located) did not comply with the LA10 noise limits at residential boundaries to the north and west. The report did not assess residential boundaries at the south, although noise complaints have been received from these properties.

The report revealed that breaches of Liquor & Gaming NSW's standard noise condition was occurring, even in circumstances where the report had been prepared on a late autumn evening that involved merely "background music" rather than live outdoor entertainment.

The report does not enable Council to be confident that:

- The proposed use of the timber decks would comply with Condition 11 of DA-2007/133 (the nuisance noise condition)
- Live entertainment can be provided in the outdoor beer garden by the Hotel within its operating hours (7am-3am the following day, Monday to Saturday, and 7am-midnight Sunday) in a manner that will comply with the Liquor & Gaming NSW Standard Noise Condition and condition 11 of DA-2007/133;

- Recommended noise attenuation (physical works), if carried out, would result in the beer garden complying with the Liquor & Gaming NSW Standard Noise Condition and condition 11 of DA-2007/133;
- An unlimited number of patrons can be permitted in the beer garden and comply with the Liquor & Gaming NSW Standard Noise Condition and condition 11 of DA-2007/133;
- Provision of amplified music through speakers situated in the beer garden can be carried out in a manner that would result in the beer garden complying with the Liquor & Gaming NSW Standard Noise Condition and condition 11 of DA-2007/133;
- A comprehensive assessment of all aspects of operation of the Hotel has been undertaken during peak operations (including Waves nightclub, Beach Bar, O Bar, timber decks, booth seating pergola, live music, play equipment, party buses etc)
- An appropriate assessment of existing background noise at nearby residential receivers has been undertaken; and
- Measurements at residential receivers currently complaining of noise intrusion has been undertaken.

A revised report was requested by Council on 29 July 2021 to address these outstanding concerns.

Council's request for further information dated 29 July 2021

Council wrote to the applicant on 29 July 2021 seeking further information. Whilst a response was received, some matters remain outstanding. Unresolved or unsatisfactory matters include:

- **Acoustic testing in the Tonin report** - The '*L&GNSW Noise Compliance Report*' dated 9 June 2021 prepared by Renzo Tonin and Associates identifies that the use of the outdoor area on the survey date (14 May 2021) exceeds noise levels permitted by the L&GNSW 'Standard Noise Condition. The Tonin survey was conducted in autumn, which is not representative of peak summer months, and yet still exceeded the permitted noise levels.

Additionally, the report did not recognise the apartment building at 5 Grand Court Fairy Meadow (immediately to the south of the Hotel car park) as being a residential receiver for the purpose of carrying out background noise testing and operational noise testing. Complaints about noise generated in the beer garden have been received from residents in this building. The recommendations of the report therefore do not include amelioration measures for residents to the south of the Hotel.

- **Recommendations of the Tonin report** – Council asked the applicant which (if any) of the recommended noise attenuation measures proposed in the Tonin report were proposed in the application. The applicant's planning consultant Design Collaborative advised in their letter dated 11 August 2021 that '*acoustic measures are not proposed as part of this application because this application only relates to the use of the timber decks*'.

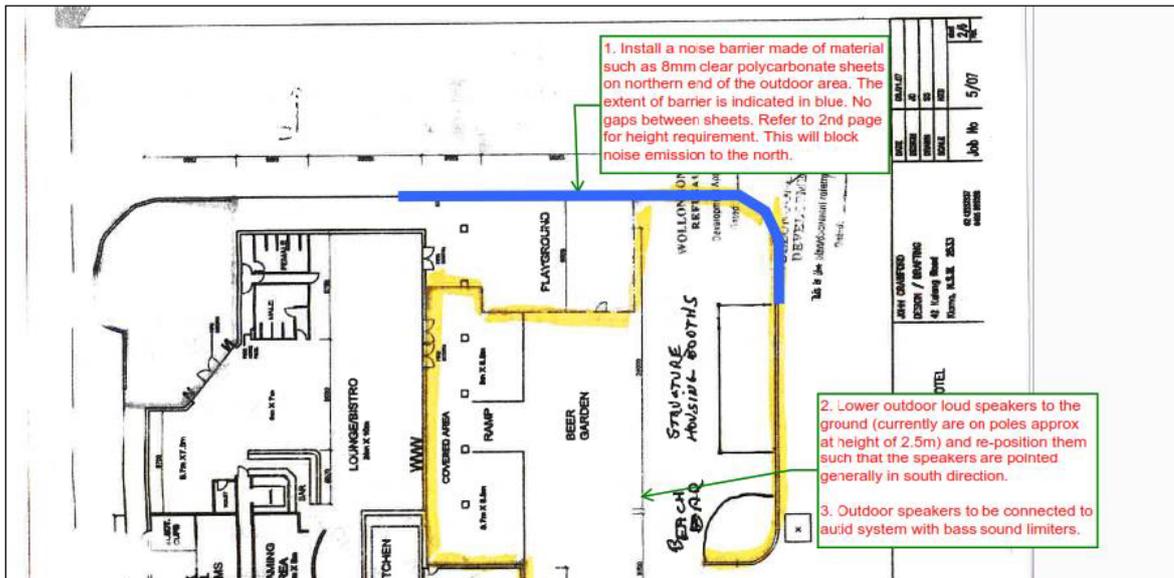


Figure 3 – Acoustic recommendations for the Hotel

Figure 4 Acoustic recommendations from Design Collaborative letter dated 11 August 2021.

- **Speakers in the beer garden** – the Design Collaborative letter dated 11 August 2021 states that three speakers had been removed from the beer garden however it is unclear where these were previously located. It is also unclear whether the remaining beer garden speakers have been lowered and repositioned to face downwards or to the south. It is noted that noise complaints have been received from residential properties to the south, and redirecting speakers to face south may only exacerbate noise intrusion for those residents.

In the absence of a revised acoustic compliance report following reopening of the Hotel in October 2021, it is unclear whether changes to speakers has reduced beer garden noise to a level which complies with the Liquor and Gaming NSW Standard Noise Condition.

- **Maximum dB sound system control** - – the Design Collaborative letter dated 11 August 2021 and a new sound system with a noise limiter ‘had recently been installed’. An undated letter from Pro Sound and Lighting (attachment 3) states that

‘This digital control system allows for time scheduled audio level management and monitoring. Audio levels can be pre-set to not exceed the recommended dB levels as per the license. The system is capable of logging audio levels if required. Levels cannot be overridden to a high level by Hotel staff on site, it is remotely managed by a systems administrator’.

It is unclear when the digital control system was installed and whether this has reduced beer garden noise to a level which complies with the Liquor and Gaming NSW Standard Noise Condition.

It is also unclear as to what decibel (dB) level the system has/would be set, however it is crucial that a correct level is programmed starting from accurate background noise readings and factoring in all other noise generated by the Hotel.

It is possible that the source of noise responsible for the exceedance observed in the Tonin report was not from music, but from sounds of patrons talking, laughing, singing etc. If that is the case, a technical solution regarding music speaker system levels will not by itself achieve compliance with the Liquor and Gaming NSW Standard Noise Condition and condition 11 of DA-2007/133.

- **Use of live and amplified music** – submissions report hearing live music and amplified/speaker music from their homes. It is likely that the provision of live and or amplified

music encourages more patrons to use the beer garden and timber decks, contributing to off-site noise impacts.

- **Hours of operation** - the applicant initially sought to operate with increased hours Monday to Saturday (commencing at 5am rather than 7am). The applicant was requested to consider having reduced hours for the timber decks to assist with noise compliance, reflecting the views of NSW Police and content of noise complaints. The applicant later confirmed they intend to use the decks the full extent of operating hours permitted by DA-2007/133 (Monday to Saturday 7am-3am the following day and Sunday 8am-midnight).
- **Compliance with Liquor and Gaming NSW Standard Noise Condition** – The applicant has been unable to confirm whether the proposed use of the decks would comply with the Liquor and Gaming NSW Standard Noise Condition. It is unclear what physical attenuation and Hotel operation policies are required to ensure compliance with the Condition.
- **Council’s noise assessment obligations** – After reviewing the Tonin report, Council advised the applicant that Council would undertake acoustic assessment of the decks application in accordance with the NSW EPA Noise Policy for Industry (2017) and NSW Liquor and Gaming Noise Criteria for long term background noise and operational noise. In order for this assessment to occur, a comprehensive report establishing background noise and assessing operational noise from all current, approved and proposed activities is required. These activities include, but are not limited to:
 - Waves nightclub;
 - indoor bistro, sports bar and O Bar;
 - outdoor beer garden, including timber decks, booth seating pergola and Beach Bar;
 - major events like Anzac Day outdoor two up arena;
 - amplified and live music;
 - dancing;
 - party buses;
 - children’s outdoor play area;
 - markets; and
 - Covid-19 requirements for queuing and check in.

The applicant has advised a report will not be provided due to the scope of the proposed development and Covid lockdown/closure of the Hotel. It is noted that without the required report, Council cannot adequately assess the impacts of the proposed use.

1.1 BACKGROUND

No pre-lodgement meeting was held for the proposal. As noted earlier, the development application was lodged in response to Council issuing a Development Control Order to demolish the decks as the structures had been erected without the required development consent.

The Development Control Orders

Council’s instrument NO-2021/177 issued 7 June 2021 to the property owners contained two separate Development Control Orders:

1. Order given as an Order No. 3 under Schedule 5 of the Environmental Planning and Assessment Act 1979 (‘the decks order’), which required the owners to

‘Demolish and remove the unapproved timber decks as shown in Attachment B.’

Attachment B contained two photographs of the decks, and

2. Order given as an Order No. 11 under Schedule 5 of the Environmental Planning and Assessment Act 1979 ('the noise order'), which required the owners to:

'Comply with planning approval DA-2007/133 dated 27 March 2007 by complying with...

Condition 11 – Noise Nuisance

The operation of the licensed premises shall not create nuisance to surrounding residents/property owners by way of noise'.

Applications for development

Applications lodged for development on the land include:

- DA-1974/408: 'Licenced Hotel/Motel' – first consent for erection of a hotel on the site. Council was owner of the land and the proponent leased the land from Council.
- DA-1990/453: 'Alterations and Additions to Existing Hotel and New Liquor Barn' – modified in 1990
- DA-2007/133: 'Continued Use of Existing Hotel including Internal and External Refurbishment' - first nomination of outdoor area as a beer garden on proposed site plan, although no details in SEE or consent as to whether or how this area could be occupied.
- DA-2008/531: 'Use of building as Place of Public Entertainment - Waves Nightclub – increase current capacity' – development application approved under former Place of Public Entertainment (POPE) regime.
- DA-2008/1498 'Use of beer garden and courtyard for outdoor entertainment' - **reasons for refusal** include *'the proposal is expected to produce unacceptable and excessive noise levels to surrounding residents with resultant loss of amenity'* and *'the numerous submissions of objection received in relation to the proposed development are considered valid'*.
- BC-2013/68 Building Certificate 'Towradgi Beach Hotel construction of outdoor beer garden gazebo' – The application relates to the 'Beach Bar', which is a curved bar with overhead pergola situated in the outdoor beer garden and not on the decks that are the subject of DA-2021/695. Structure erected without required consent. **Reason for refusal** is *'Failure to obtain Development Consent for the use of the outdoor beer garden and gazebo bar'*.
- DA-2018/588 'Continued Use of Beach Bar and O Bar' initially refused due to failure to provide required information, then approved on review for a 12 month trial basis (since expired). The application relates to the outdoor 'Beach Bar' and indoor 'O Bar' both constructed without the required development consent. A modification application lodged 2021 seeking to delete condition imposing 12 month trial period is currently under assessment by Council.
- Period 2005-2012: Various development applications for markets and temporary outdoor events.
- BC-2020/134 Building Certificate 'Outdoor Pergola' – Application **refused May 2021**. Relates to covered booth seating of capacity approx. 40 persons in beer garden area erected without the required development consent. The structure is not located on the decks that are the subject of DA-2021/695. The structure is subject to Council's Order NO-2021/177 requiring demolition which has been appealed by the applicant. Development application DA-2020/693 seeking to retain the structure was lodged in June 2021 following issue of Council's Order. **Reason for refusal** include non-compliance with National Construction Code, and failure to obtain development consent.

- BC-2021/58 Building Certificate 'Commercial – Timber Decks' - Applicant lodged deemed refusal appeal 4 November 2021. Relates to the two timber decks that are the subject of DA-2021/695.
- DA-2021/693 'Use of Pergola Structure Within Beer Garden' - Applicant lodged deemed refusal appeal 4 November 2021. Relates to the covered booth seating the subject of refused Building Certificate BC-2020/134.

As detailed in application list above, all of the structures that are the basis of current building certificate, development application, modification application, Development Control Orders and Land and Environment Court appeals were constructed without the required development consent.

Permitted Use of Outdoor Area

The outdoor area which now contains the unauthorised decks was first indicated as within a 'beer garden' in development application DA-2007/133 'Continued Use of Existing Hotel including Internal and External Refurbishment', approved 27 March 2007. No detail was provided in the Statement of Environmental Effects as to the proposed use of the outdoor area, nor was it clarified in conditions of consent. Figure 5 is from the approved floor plan.

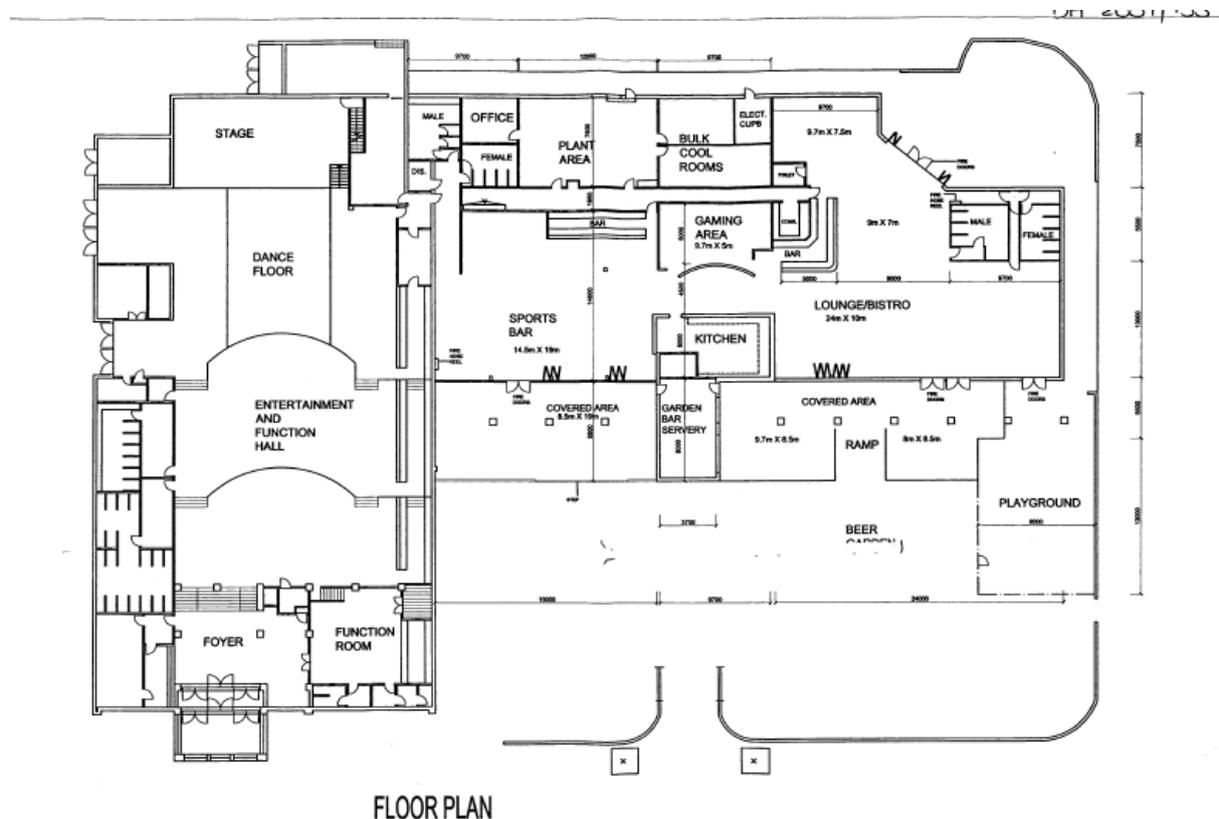


Figure 5: Floor plan approved DA-2007/133, showing 'Beer Garden' in front of entry ramp.

Permitted Hours of Operation

Condition 15 of DA-2007/133 'Continued Use of Existing Hotel including Internal and External Refurbishment' set hours of operation.

15 Restricted Hours of Operation

The hours of operation for the development shall be restricted to Monday to Saturday 7:00am – 3:00am the following morning and Sunday 8:00am to midnight. Any alteration to the approved hours of operation will require separate Council approval.

The application seeks to increase the operating hours Monday to Saturday by starting operation at 5am instead of the approved 7am.

Noise Control Requirements

Condition 11 of DA-2007/133 requires:

11 Noise Nuisance

The operation of the licensed premises shall not create nuisance to surrounding residents/property owners by way of noise.

Council has received a number of complaints from occupants of dwellings near to the Hotel regarding noise emanating from the property since the outdoor decks and booth seating pergola were constructed in late 2020. NSW Police has also received complaints.

Customer service actions

Council has received a number of complaints of illegal structures being erected and noise complaints in relation to operation of the Hotel.

1.2 SITE DESCRIPTION

The site is located at 170 Pioneer Road, Fairy Meadow and the title reference is Lot 2001 DP 1102607.

The site is located on the western side of Pioneer Road, Fairy Meadow, a short distance from the intersection with Carters Lane. It contains an existing hotel, nightclub, bottle shop and 10 motel units associated with the adjoining Leisure Coast Motel.

The existing hotel, subject of this application, is located toward the rear (west) of the site with large car parking areas to the north, east and south of the building.

The site is located within the SP3 Tourist zone and has similarly zoned properties to the north, west and east and some residential zoned properties to the west and south. In some places, residential premises are less than 100m from the Hotel. An apartment building at 25 Carters Lane is situated directly west of the Hotel and residents' open balconies face the 'O Bar' at the rear of the Hotel. An apartment building at 5 Grand Court Fairy Meadow directly adjoins the southern boundary of the Hotel site, and balconies overlook the carpark, Waves nightclub and beer garden. Complaints regarding noise impacts have been received from Edgar Street in the north, Grand Court to the south as well as from unidentified properties.

Property constraints

Council records identify the land as being impacted by the following constraints:

- Acid sulfate soils (ASS) - The unauthorised decks are located in class 3 and 5 ASS areas.
- Flood affected – flood risk precinct classification under review
- Coastal Hazards - Coastal zone. SEPP (Coastal Management) 2018 identifies the site as being located within the Coastal Wetlands buffer/ proximity area for coastal wetlands, the coastal use area and coastal environment area.

1.3 SUBMISSIONS

The application was notified **22 June-6 July 2021** in accordance with Council's Community Participation Plan 2019. Ten submissions were received and the issues identified are discussed below.



Figure 1: Notification map

Table 1: Submissions

Concern	Comment
Decks have been illegally built	<p>Submissions described letting people keep buildings that were erected without permission to be a bad precedent and undermining the integrity of the planning process.</p> <p>The decks required development consent, however, were constructed without consent. Council issued an Order to demolish the unauthorised decks and shortly afterwards, the development application and Building Certificate application were lodged.</p> <p>The applicant then lodged an appeal in the NSW Land and Environment Court seeking the Court revoke Council’s Order to demolish.</p> <p>The applicant has recently lodged an appeal in the Land and Environment Court against Council’s deemed refusal of the Building Certificate and decks development application.</p>
Existing noise impacts from use of beer garden	<p>Submissions referred to noise sources, including:</p> <ul style="list-style-type: none"> • Music – live performances, speakers, bass sounds notable, often playing after midnight • People’s voices – laughing, yelling, talking. • Children playing on play equipment in the beer garden

Concern	Comment
	<p>Neighbours described how noise from the beer garden travels directly up and across to the Bel-Air apartment buildings at 5 Grand Court and into Edgar Street.</p> <p>Submissions indicate noise is experienced in Grand Court, Edgar Street, Carters Lane, Augusta Street and Marlo Street.</p> <p>Neighbours wrote of noise levels being unbearable inside their dwellings, and being unable to have windows open or sit outside because of the noise.</p>
Renzo Tonin report	<p>Submissions refer to the small number of people present in the beer garden on the night of the Tonin survey, compared to regular numbers during summer. This choice of evening (a Friday in May) was said to be not representative of typical peak usage.</p> <p>They note that 50 people resulted in non-compliance with Liquor and Gaming Standard Noise Condition. They described the noise impacts of hundreds of people in the beer garden, as would typically occur on a Friday or Saturday night when trade until 3am is permitted.</p> <p>Submissions described as flawed the methodology which failed to assess noise levels at the apartments located at 5 Grand Court.</p>
Previous complaints to Council, NSW Police, Liquor and Gaming and the Hotel	<p>Submissions detailed making complaints to authorities over several years, however the noise impacts had worsened with construction of the timber decks, booth seating pergola, installation of speaker system and live entertainment.</p>
What mitigation strategies are proposed?	<p>Submissions refer to mitigation strategies that are not adequately identified nor is it demonstrated that reduction of noise will be achieved.</p>
Outdoor sound system	<p>Submissions refer to the outdoor sound system including speakers contributing to noise impacts experienced at residential properties.</p>
Anti-social behaviour	<p>Submissions refer to anti-social behaviour including graffiti, violence, broken glass, party buses, patrons urinating and extensive litter.</p>
Hours of operation	<p>Submissions describe the operating hours permitted in DA-2007/133 as unreasonable with residential properties nearby.</p>
Suggested use of the beer garden	<p>Submissions included suggestions for limitations to the use of the beer garden, including a trial period, no live music, no dancing, speakers removed or used only for quiet background music and notices posted in beer garden advising patrons that no shouting or loud behaviour in the beer garden and car park will be tolerated.</p>

1.4 CONSULTATION

1.4.1 INTERNAL CONSULTATION

Stormwater Engineer

Council's Stormwater Engineer has reviewed the application and noted the constructed decks are situated below RL4.58 metres AHD (the relevant flood planning level which incorporates 1/100 year (RL3.93m), plus 0.5m freeboard plus 0.15m for climate change). Council's Wollongong Development

Control Plan 2009 requires all items situated below RL4.58 likely to result in pollution or be potentially hazardous during a flood event, to be adequately secured or located.

The applicant responded to this requirement during assessment of the booth seating pergola DA-2021/693 by providing correspondence from Aegis Civil and Structural Engineering Asset and Maintenance Management dated 5 August 2021. In it, Aegis concludes the timber decks *'can withstand the forces of floodwater, debris and buoyancy up to and including the PMF plus freeboard being RL 4.58 metres AHD and that the materials used in the decks are flood compatible materials'*.

Building Inspector

Council's Building Officer has considered the timber decks in relation to the booth seating pergola DA-2021/693. The applicant provided an audit report by Accredited Building Certifiers dated 25 August 2021. The audit report concludes that the decking can be brought into compliance with the National Construction Code Building Code of Australia via Performance Requirements or Deemed to Satisfy provisions. The applicant has not advised Council whether the necessary work has been carried out.

Environment Officer

Council's Environment Officer has reviewed the application including the *'L&GNSW Noise Compliance Report'* dated 9 June 2021 prepared by Renzo Tonin and Associates. The Tonin report noted noise levels in May 2021 that exceeded the maximum noise limits permitted by the Liquor and Gaming NSW Standard Noise Condition.

Council's environment officer requested a further acoustic report to allow Council to undertake assessment of the application in accordance with the NSW EPA Noise Policy for Industry (2017) and NSW Liquor and Gaming Noise Criteria for long term background noise and operational noise.

The requested acoustic information has not been provided. In the absence of the required information, and with regard to the noise levels contained in the Tonin report, Council cannot conclude that the proposed retention and use of the timber decks would result in compliance with the Liquor and Gaming NSW Standard Noise Condition and condition 11 of DA-2007/133 (the nuisance noise condition).

1.4.2 EXTERNAL CONSULTATION

None required, however NSW Police have corresponded with Council's Regulation and Enforcement staff in relation to noise complaints which were investigated by the NSW Police to assist Liquor and Gaming NSW with their enquiries into the venue.

NSW Police

In correspondence dated 5 July 2021, NSW Police advise they have directly received noise complaints from residential neighbours, in addition to s.79 disturbance complaints made to Liquor and Gaming NSW which the Police also investigate.

The Police report they have conducted 34 high visibility inspections at the Hotel in the prior three months. They advise that on the venue's busy nights, up to 100 persons can be waiting in line to enter the Hotel. They note that since the introduction of DJs and unauthorised construction of the decks and booth seating pergola, the beer garden area has become extremely popular with patrons.

The NSW Police conclude:

'The Towradgi Beach Hotel has become one of the most popular venues in Wollongong for young people. Loud music and dancing have been occurring on the outside deck and police agree there are a number of large outdoor speakers installed throughout the beer garden. To avoid future disturbance complaints police recommend that the venue not be permitted to play amplified music in the beer garden after 10pm. The venue would still have the ability to play music inside the venue. With the implementation of this strategy the impact on local residents will be significant and the good order of the neighbourhood will be maintained.'

Council adopted this recommendation of NSW Police at the conciliation conference held on 27 October 2021 in relation to the applicant's appeal against Orders to demolish the unauthorised decks, pergola and comply with condition 11 of DA-2007/133. The applicant rejected this recommendation.

2 ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

1.7 Application of Part 7 of Biodiversity Conservation Act 2016 and Part 7A of Fisheries Management Act 1994

This Act has effect subject to the provisions of Part 7 of the Biodiversity Conservation Act 2016 and Part 7A of the Fisheries Management Act 1994 that relate to the operation of this Act in connection with the terrestrial and aquatic environment.

NSW BIODIVERSITY CONSERVATION ACT 2016

Section 1.7 of the Environmental Planning and Assessment Act 1979 (EP&A Act) provides that Act has effect subject to the provisions of Part 7 of the Biodiversity Conservation Act 2016 (BC Act).

Part 7 of the BC Act relates to Biodiversity assessment and approvals under the EP&A Act where it contains additional requirements with respect to assessments, consents and approvals under this Act.

Clause 7.2 of the Biodiversity Conservation Regulation 2017 provides the minimum lot size and area threshold criteria for when the clearing of native vegetation triggers entry of a proposed development into the NSW Biodiversity offsets scheme. For the subject site, entry into the offset scheme would be triggered by clearing of an area greater than 0.25 hectares based upon the minimum lot size of the WLEP 2009 R2 zoned land (i.e. less than 1 hectare minimum lot size).

No native vegetation clearing is proposed, and therefore the application does not trigger the requirement for a biodiversity offset scheme.

2.1 SECTION 4.15(1)(A)(1) ANY ENVIRONMENTAL PLANNING INSTRUMENT

2.1.1 STATE ENVIRONMENTAL PLANNING POLICY NO. 55 – REMEDIATION OF LAND

1. *(1) A consent authority must not consent to the carrying out of any development on land unless—
(a) it has considered whether the land is contaminated, and*

The applicant did not address SEPP 55 in the application. Readily available information including prior land uses, zoning, site inspection, development history and environment officer comments have been accessed during assessment of the application. No records indicate a potential for contamination.

2.1.2 STATE ENVIRONMENTAL PLANNING POLICY (KOALA HABITAT PROTECTION) 2021

The applicant did not address this SEPP in the development application. The State Environmental Planning Policy (Koala Habitat Protection) 2021 applies to the Wollongong Local Government Area, identified as being in the South Coast koala management area.

11 Development assessment process—no approved koala plan of management for land

There is no approved koala plan of management applying to the land and the land has an area of at least 1 hectare (including adjoining land within the same ownership).

Council is required to assess whether the proposed development is likely to have any impact on koalas or koala habitat. Analysis of known koala habitat and sightings indicates the development is likely to have low or no impact on koalas or koala habitat.

2.1.3 STATE ENVIRONMENTAL PLANNING POLICY (COASTAL MANAGEMENT) 2018

The applicant did not address this SEPP in the development application.

5 Land to which Policy applies

This Policy applies to land within the coastal zone, which includes the subject site.

Part 2 Development controls for coastal management areas

The timber decks are located within the coastal wetlands proximity area, coastal environment area and coastal use area as identified by the SEPP.

Division 1 Coastal wetlands and littoral rainforests area

11 Development on land in proximity to coastal wetlands or littoral rainforest

(1) Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:

(a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or

(b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.

Council considers the timber decks to not significantly impact matters in (a) or (b).

Division 3 Coastal environment area

13 Development on land within the coastal environment area

(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:

(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,

(b) coastal environmental values and natural coastal processes,

(c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,

(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,

(e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,

(f) Aboriginal cultural heritage, practices and places,

(g) the use of the surf zone.

(2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

(a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or

(b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or

(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Matters for consideration in clause 13 are satisfactory.

Division 4 Coastal use area

14 Development on land within the coastal use area

(1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:

(a) has considered whether the proposed development is likely to cause an adverse impact on the following:

(i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,

(ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,

(iii) the visual amenity and scenic qualities of the coast, including coastal headlands,

(iv) Aboriginal cultural heritage, practices and places,

(v) cultural and built environment heritage, and

(b) is satisfied that:

(i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or

(ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or

(iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and

(c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Matters for consideration in clause 14 are satisfactory.

Division 5 General

15 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

16 Development in coastal zone generally—coastal management programs to be considered

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

Matters for consideration in clause 15 and 16 are satisfactory.

2.1.4 WOLLONGONG LOCAL ENVIRONMENTAL PLAN 2009

Clause 1.4 Definitions

The existing Towradgi Beach Hotel is categorised as a pub, which falls under parent definition ‘*food and drink premises*’ as defined below. Food and drink premises are permissible in the SP3 Tourist zone with development consent.

pub means licensed premises under the Liquor Act 2007 the principal purpose of which is the retail sale of liquor for consumption on the premises, whether or not the premises include hotel or motel accommodation and whether or not food is sold or entertainment is provided on the premises.

Note: - Pubs are a type of food and drink premises—see the definition of that term in this Dictionary.

Clause 1.8A Savings provision relating to pending development approvals

Not applicable.

Part 2 Permitted or prohibited development

Clause 2.2 – zoning of land to which Plan applies

The zoning map identifies the land as being zoned SP3 Tourist.

Clause 2.3 – Zone objectives and land use table

The objective of the zone are as follows:

Zone SP3 Tourist

1 Objectives of zone

- *To provide for a variety of tourist-oriented development and related uses.*

The proposal is satisfactory with regard to the above objective.

The land use table permits the following uses in the zone.

2 Permitted without consent

Building identification signs; Business identification signs

3 Permitted with consent

Advertising structures; Amusement centres; Aquaculture; Boat building and repair facilities; Boat sheds; Camping grounds; Caravan parks; Cellar door premises; Charter and tourism boating facilities; Centre-based child care facilities; Community facilities; Entertainment facilities; Food and drink premises; Function centres; Information and education facilities; Kiosks; Marinas; Markets; Moorings pens; Moorings; Neighbourhood shops; Recreation areas; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Registered clubs; Respite day care centres; Roads; Tourist and visitor accommodation; Water recreation structures

4 Prohibited

Any development not specified in item 2 or 3

The proposal is categorised as a pub (food and drink premises) as defined above and is permissible in the zone with development consent.

Part 4 Principal development standards

Clause 4.3 Height of buildings

The maximum permitted building height is 9m. The proposed decks are approximately 200-460mm above the existing floor level of the beer garden, being well below the maximum height.

Clause 4.4 Floor Space Ratio

The decks do not constitute 'gross floor area' as defined in WLEP 2009 and therefore no increase to floor space ratio is proposed.

Part 5 Miscellaneous provisions

Clause 5.21 Flood planning

Whilst the floor level of the deck is below the flood planning level, matters for consideration are satisfactory. The application has been reviewed by Council's stormwater engineer, who raised no objection to the proposal.

Part 7 Local provisions – general

Clause 7.1 Public utility infrastructure

The Hotel is currently serviced by electricity, water and sewerage services.

Clause 7.2 Natural resource sensitivity – biodiversity

A small portion of the northern extent of the site is identified as being affected by "Natural Resource Sensitivity – Biodiversity" on the Natural Resource Sensitivity – Biodiversity Map. The works have been carried outside of this area.

Clause 7.5 Acid Sulfate Soils

The proposal is identified as being affected by class 3 and 5 acid sulfate soils. An acid sulfate soils management plan is not required.

2.2 SECTION 4.15(1)(A)(II) ANY PROPOSED INSTRUMENT

Draft Environment SEPP

The Explanation of Intended Effect for the Environment SEPP was on exhibition from 31 October 2017 until the 31 January 2018.

This consolidated SEPP proposes to simplify the planning rules for a number of water catchments, waterways, urban bushland, and Willandra Lakes World Heritage Property.

Changes proposed include consolidating the following seven existing SEPPs:

- State Environmental Planning Policy No. 19 – Bushland in Urban Areas
- State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011
- State Environmental Planning Policy No. 50 – Canal Estate Development
- Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment
- Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No.2-1997)
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

- Willandra Lakes Regional Environmental Plan No. 1 – World Heritage Property.

Changes are also proposed to the Standard Instrument – Principal Local Environmental Plan. Some provisions of the existing policies will be transferred to new Section 9.1 Local Planning Directions where appropriate.

Engagement is now closed and feedback is being considered by the Department.

Draft Remediation of Land SEPP

The Explanation of Intended Effect for the Remediation of Land SEPP and the Managing Land Contamination guidelines were exhibited between 25 January 2018 and 13 April 2018.

The proposed SEPP: provides a state-wide planning framework for the remediation of land requires consent authorities to consider the potential for land to be contaminated when determining development applications clearly lists the remediation works that require development consent introduces certification and operational requirements for remediation works that can be undertaken without development consent.

Engagement is now closed and feedback is being considered by the Department.

Draft Design and Place SEPP

Public exhibition of the Design and Place SEPP Explanation of Intended Effect closed in April 2021.

The Design and Place SEPP will establish principles for the design and assessment of places in urban and regional NSW: PRINCIPLE 1. Design places with beauty and character that people feel proud to belong to PRINCIPLE 2. Design inviting public spaces to support engaged communities PRINCIPLE 3. Design productive and connected places to enable thriving communities PRINCIPLE 4. Design sustainable and greener places for the wellbeing of people and the environment PRINCIPLE 5. Design resilient and diverse places for enduring communities

The draft Design and Place SEPP will go on public exhibition later in 2021 to provide more opportunities for feedback. Supporting guidance and tools, drafts of which will also go on exhibition with the draft SEPP. These guides include revisions to the Apartment Design Guide and improvements to the Building Sustainability Index (BASIX), as well as the proposed Urban Design Guide, and Design Review Guide.

Draft Housing SEPP

Public exhibition of the Housing SEPP Explanation of Intended Effect was exhibited between 29 July and 9 September 2020. The NSW Housing Strategy: Housing 2041 is the NSW Government's plan to meet the State's housing needs over the next 20 years. The Housing SEPP will support delivery on this strategy by driving the development of affordable and diverse housing

The new Housing SEPP will:

- consolidate five existing housing-related SEPPs:
- State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARHSEPP);
- State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004 (Seniors SEPP);
- State Environmental Planning Policy No 70 – Affordable Housing (Revised Schemes) (SEPP 70);
- State Environmental Planning Policy No 21—Caravan Parks; and
- State Environmental Planning Policy No 36—Manufactured Home Estates.
- include the recently made provisions for short term rental accommodation and build-to-rent housing;
- include the recently updated social housing provisions;

- introduce provisions for co-living housing, a form of housing that provides small private rooms (which may or may not include private kitchen and bathroom facilities), offset by access to managed communal spaces;
- incorporate amendments to boarding house and seniors housing provisions
- amend some local environmental plans in relation to secondary dwellings in rural zones, and the permissibility of boarding houses in R2 zones.

The Housing SEPP is intended to be finalised in November 2021.

Draft Fun SEPP

The Draft Fun SEPP is currently on exhibition. Relevant to the subject site are the making permanent of outdoor dining (footpath) related to pubs, controls for temporary events on private land and provisions for food trucks to operate.

2.3 SECTION 4.15(1)(A)(III) ANY DEVELOPMENT CONTROL PLAN

2.3.1 WOLLONGONG DEVELOPMENT CONTROL PLAN 2009

CHAPTER A2 – ECOLOGICALLY SUSTAINABLE DEVELOPMENT

Development controls to improve the sustainability of development throughout Wollongong are integrated into the relevant chapters of this DCP.

CHAPTER D1 – CHARACTER STATEMENTS

Fairy Meadow

The character statement for Fairy Meadow does not specifically relate to Tourist zones or the site.

Desired Future Character

Fairy Meadow has been identified as an emerging major town centre in the Illawarra Regional Strategy and is likely to experience some increased residential densities, particularly in residential precincts within close proximity to Fairy Meadow and Towradgi railway stations and the Fairy Meadow retail and business centre. The development of shop top housing as well as the encouragement of cafes or restaurants within the business centre may strengthen the vitality and vibrancy of the town centre, especially at night-time.

The Fairy Meadow retail and business centre is a planned major town centre and will continue to provide for the daily and weekly needs of the surrounding residential population and workforce. The centre should continue to provide for at least two full-line supermarkets plus a large range of other specialty retail shops and non-retail services including banking, professional services, community and medical services.

Any new retail development should be contained within the existing retail core areas of the town centre, in order to further strengthen the vibrancy and viability of the centre. Special emphasis should be directed towards the development of a more cohesive built form.

There will also be an increased emphasis on employment opportunities within the Enterprise Corridor and Light Industrial zoned lands in Fairy Meadow.

The lower density residential areas in Fairy Meadow are likely to be subject to some replacement of older dwelling stock with larger dwelling-houses. Any new residential building should be sympathetic in design with the surrounding dwellings in terms of housing style and external finishes.

CHAPTER E1: ACCESS FOR PEOPLE WITH A DISABILITY

The two decks are elevated 200mm and 460mm above the existing floor level of the beer garden. Photographs in Figures 2 and 3 show a small step up onto the decks. In their current state, neither deck complies with the National Construction Code / Building Code of Australia.

The applicant submitted a 'NCC Building Code of Australia (BCA) Audit Report' dated 25 August 2021 prepared by Accredited Building Certifiers, in relation to the pergola DA-2021/693. The report assessed both the timber decks and the booth seating pergola.

With reference to the decks, the report notes current non-compliances and identifies works required to meet the requirements of the NCC:

Possible matters to be addressed / clarified to comply with the DTS provisions or via Performance Solution, relate to the following:-

- *Rectification of stairway including but not limited to tread and riser dimensions, slip resistance, handrails, tactile indicators and contrast non slip nosing strips.*
- *Verification of gradients of the ramp, where access for persons with disabilities may be required.*
- *No access for persons with disabilities to the cabana's*
- *Installation of additional exit signage to clarify points of egress from the decking.*

The applicant has not advised Council whether these rectification works have been carried out.

Additionally, the owners are subject to the provisions of the Disability Discrimination Act 1992, which requires equitable and dignified access for all.

CHAPTER E2: CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

Security information including responsible service of alcohol is provided in the Venue Safety Plan dated September 2017 submitted with the application.

Notwithstanding, submissions refer to anti-social behaviour particularly in the car park area.

CHAPTER E3: CAR PARKING, ACCESS, SERVICING/LOADING FACILITIES AND TRAFFIC MANAGEMENT

No further assessment of carparking or traffic generation is required. The application does not reduce the number of on-site parking spaces or increase gross floor area.

CHAPTER E6: LANDSCAPING

No additional landscaping is proposed.

CHAPTER E7: WASTE MANAGEMENT

A Site Waste Minimisation and Management Plan has not been provided.

CHAPTER E13 FLOODPLAIN MANAGEMENT

The site is identified as being located within a flood risk uncategorised precinct. Council's stormwater engineer has reviewed the proposal with respect to the provisions of this chapter and WLEP 2009 and has no objection.

CHAPTER E14 STORMWATER MANAGEMENT

Retention of the unauthorised decks is not expected to affect stormwater disposal. A stormwater drainage plan has not been provided.

CHAPTER E22: SOIL EROSION AND SEDIMENT CONTROL

The construction work has been completed. No new ground works are proposed.

2.3.2 WOLLONGONG CITY WIDE DEVELOPMENT CONTRIBUTIONS PLAN

Contributions are required for works exceeding \$100,000 in capital investment value. The value of the constructed decks has not been confirmed.

2.4 SECTION 4.15(1)(A)(IIIA) ANY PLANNING AGREEMENT THAT HAS BEEN ENTERED INTO UNDER SECTION 7.4, OR ANY DRAFT PLANNING AGREEMENT THAT A DEVELOPER HAS OFFERED TO ENTER INTO UNDER SECTION 7.4

There are no planning agreements entered into or any draft agreement offered to enter into under S7.4 which affect the development.

2.5 SECTION 4.15(A)(IV) THE REGULATIONS (TO THE EXTENT THAT THEY PRESCRIBE MATTERS FOR THE PURPOSES OF THIS PARAGRAPH)

92 What additional matters must a consent authority take into consideration in determining a development application?

The application seeks to retain the decks which are subject to a development control order requiring their demolition.

93 Fire safety and other considerations

Not applicable

94 Consent authority may require buildings to be upgraded

Not required.

2.6 SECTION 4.15(1)(B) THE LIKELY IMPACTS OF DEVELOPMENT

The proposal is considered unacceptable with regard to the likely off-site impacts.

The context and setting of the Hotel includes residential neighbours. Submissions refer to the 'unbearable' impacts experienced in neighbouring homes from activities occurring in the beer garden and other parts of the Hotel.

A number of noise complaints have been made to Council and NSW Police regarding operation of the outdoor area at the Hotel. The applicant has not indicated they intend to modify operations in response to concerns raised in submissions and by Council in its assessment. The applicant has confirmed they would not limit numbers of patrons in the outdoor area. The applicant has advised they would not undertake construction of the children's playground noise barrier recommended by their own acoustic consultant in either this DA or the pergola DA. The applicant has not provided the revised acoustic assessment requested by Council.

Currently, disabled access is not provided to the pergola area and the timber decking includes a raised edge similar to a step. The applicant provided an audit report by Accredited Building Certifiers dated 25 August 2021 for Council's assessment of the pergola DA. The audit report concludes that the decking can be brought into compliance with the National Construction Code Building Code of Australia via Performance Requirements or Deemed to Satisfy provisions. It is unclear whether the necessary work has been carried out.

2.7 SECTION 4.15(1)(C) THE SUITABILITY OF THE SITE FOR THE DEVELOPMENT

Does the proposal fit in the locality?

The existing Hotel is a permissible use on the SP3 Tourist zone. However, the site is surrounded by residential zones to the north, west and south and a number of noise complaints originate from these areas. Submissions refer to stress from hearing music, crowds and vehicles and not being able to sit outdoors or open windows in their homes during the 7am-3am and 8am-midnight opening hours.

Are the site attributes conducive to development?

Having regard to public submissions, it is likely that the proposed use of the timber decks for activities conducted in the beer garden (including eating, dancing and live entertainment) creates unreasonable off-site impacts.

2.8 SECTION 4.15(1)(D) ANY SUBMISSIONS MADE IN ACCORDANCE WITH THIS ACT OR THE REGULATIONS

Ten submissions (objections) have been received and are discussed in section 1.3.

2.9 SECTION 4.15(1)(E) THE PUBLIC INTEREST

Retention and use of the decks by patrons of the Towradgi Beach Hotel is not consistent with the public interest.

The applicant has failed to demonstrate that the proposed use of the decks would result in compliance with the Liquor and Gaming NSW Standard Noise Condition and condition 11 of DA-2007/133.

Council has received a number of complaints regarding off-site noise impacts on residential properties in the surrounding area.

Council's environmental officer has reviewed the applicant's noise compliance report and notes that the report identified instances where the noise in the beer garden exceeded levels permitted by the Liquor and Gaming NSW Standard Noise Condition. Further acoustic assessment was requested but has not been provided.

3 CONCLUSION

This application has been assessed as unsatisfactory having regard to Section 4.15(1) of the Environmental Planning and Assessment Act 1979, the provisions of Wollongong Local Environmental Plan 2009 and relevant Council DCPs, Codes and Policies.

Significantly, the applicant has failed to demonstrate that use of the unauthorised structures would have acceptable off-site impacts. Submissions to this development application speak of significant noise intrusion experienced by residents to the north, south and west of the timber decks.

The applicant undertook an acoustic assessment which identifies that on the survey day, there were less people in attendance than can be accommodated on the timber decks, and even so, noise emanating from the Hotel exceeded maximum noise limits permitted by NSW Liquor and Gaming.

Despite this exceedance and with awareness of community noise complaints, the applicant has declined to undertake noise attenuation measures recommended by their own acoustic consultant in either this DA or the pergola DA. It is therefore unclear when the measures (for example, construction of the acoustic barrier adjacent the playground) would be carried out, if ever. Furthermore, the applicant has advised they do not intend to limit the number of patrons in the outdoor area.

Council requested the applicant undertake a revised acoustic assessment of both existing background noise and at the Hotel during peak operations to get an understanding of the total acoustic impacts of all the functions of the Hotel. The applicant quite reasonably noted in August 2021 that mandatory closure of the Hotel due to Public Health Orders prevented an operational noise assessment. However, Covid lockdown should not have impacted carrying out of background noise assessments. Moreover, the Hotel reopened on 11 October 2021 and a revised operational assessment has still not been submitted to Council.

The applicant has rejected Council's suggestion that a more reasonable balance might be struck between noise impacts on neighbours and outdoor operations of the Hotel if:

- (a) No live music or performance (including by DJs) is to be conducted at any time within the beer garden, and

- (b) Any music played through a speaker or speakers within or into the beer garden must cease by 10pm every day.

In the absence of a commitment to cease amplified music at 10pm, eliminate live music and reduce operating hours in the outdoor area, Council is not convinced that the application has merit.

The proposal is therefore not considered supportable in its current form.

4 RECOMMENDATION

It is recommended that the development application be refused for the reasons detailed in Attachment 4.

5 ATTACHMENTS

- 1 Aerial photograph
- 2 WLEP zoning map
- 3 Plans including Renzo Tonin and Associates noise compliance report and Statement of Environmental Effects
- 4 Draft reasons for refusal

Attachment 1: Aerial photograph and WLEP 2009 zoning map



Figure 1: Aerial photograph (source WCC 2020)



Figure 2: WLEP 2009 zoning map – SP3 Tourist zone

Notes
 Drawings in this set are not for construction.
 Do not scale from drawings.
 All dimensions to be checked on site prior to commencement of work.
 All discrepancies to be brought to the attention of the Architect.
 Larger scale drawings and written dimensions take preference.
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LEGEND

- DIMENSION
- DIMENSION RELATIVE TO NEW BUILT FORM
- NEW DECKING
- EXISTING FORM
- + 0.00 NATURAL GROUND RLS

Issue	Date	Description	By
A	15.06.21	For Submission	TO

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BIC

Client
Oscars Hotels

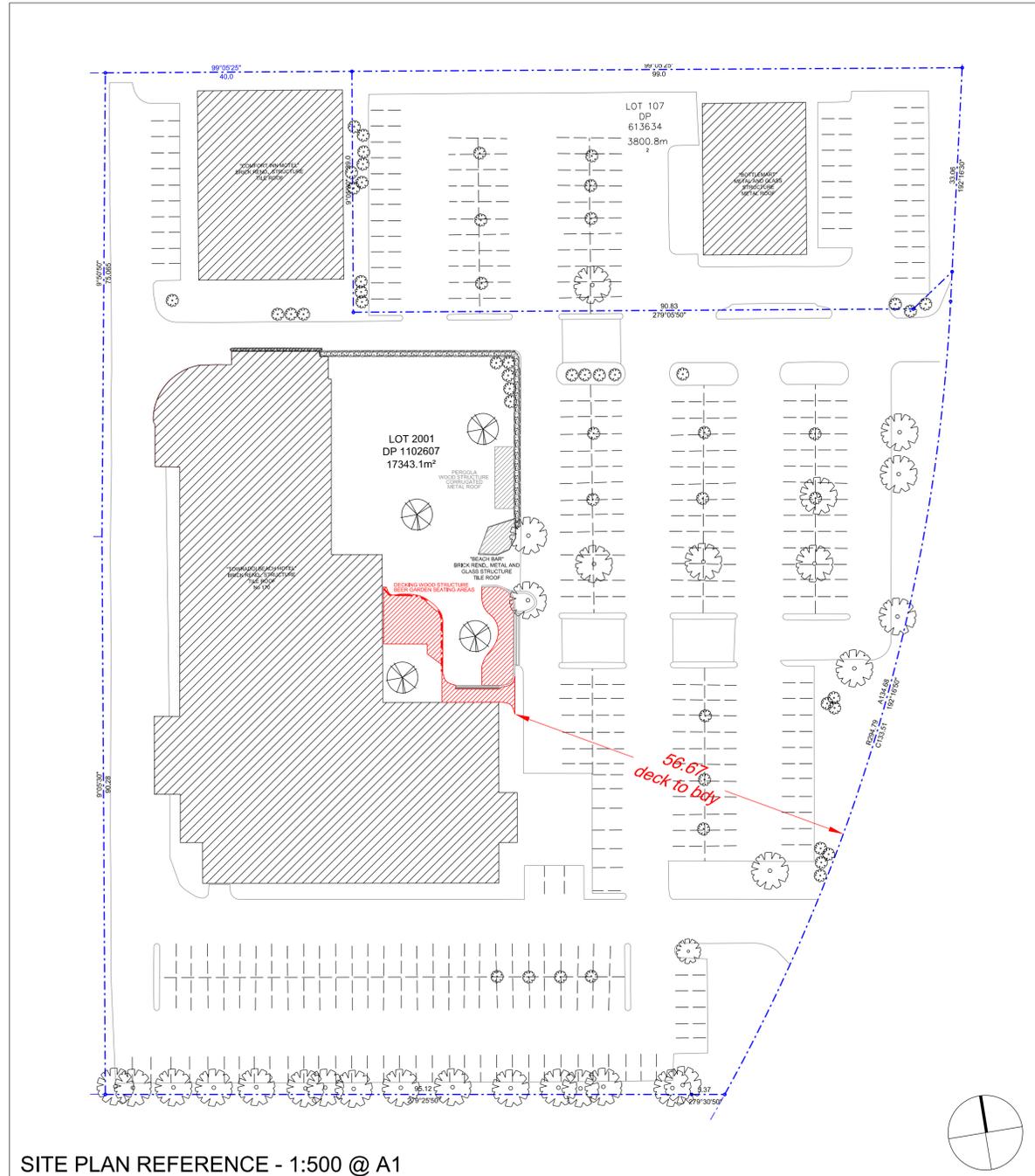
Project
**Towradgi Beach Hotel
 No. 170 Pioneer Rd
 Fairy Meadow NSW 2519**

Drawing Title
BEER GARDEN DECKING

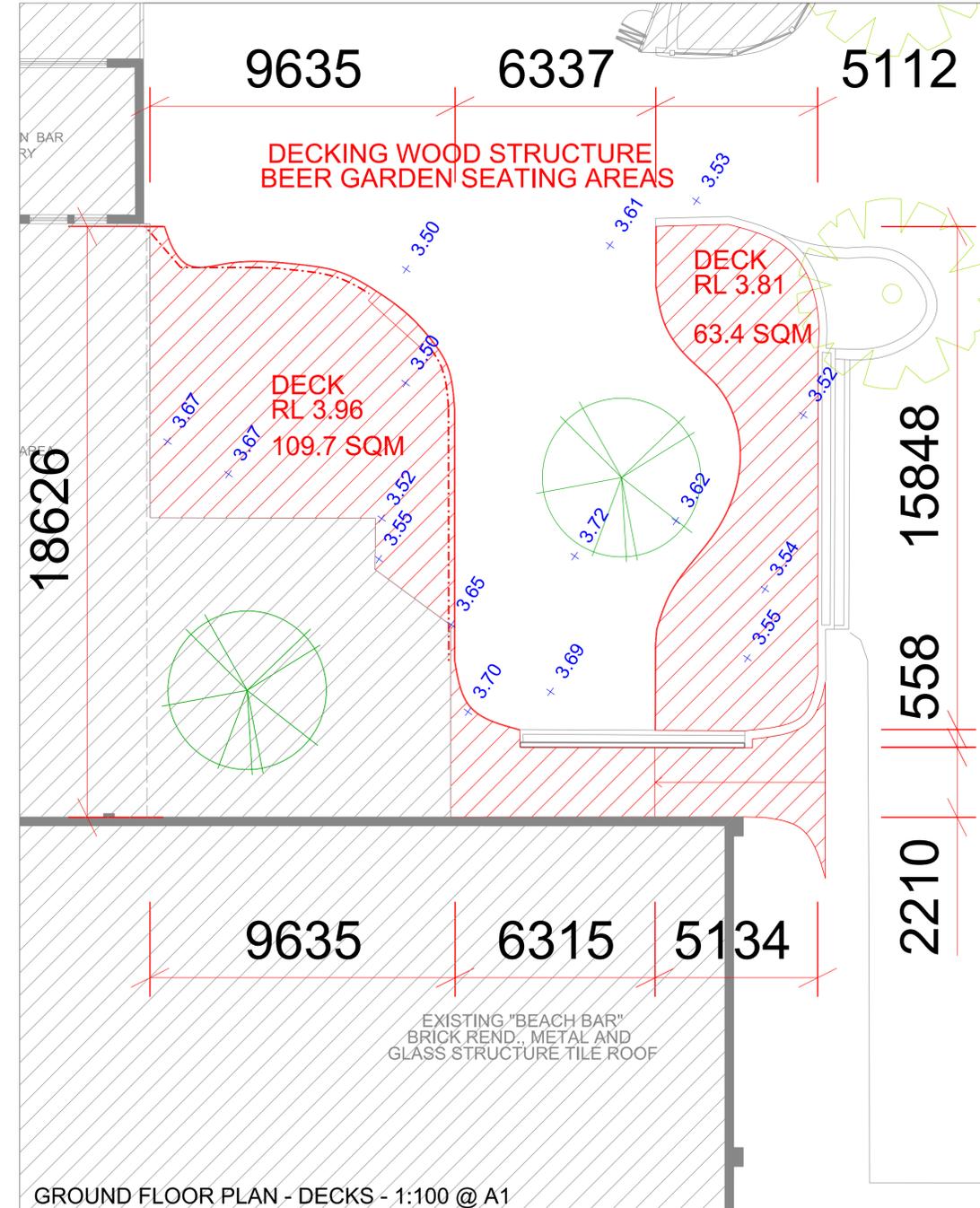
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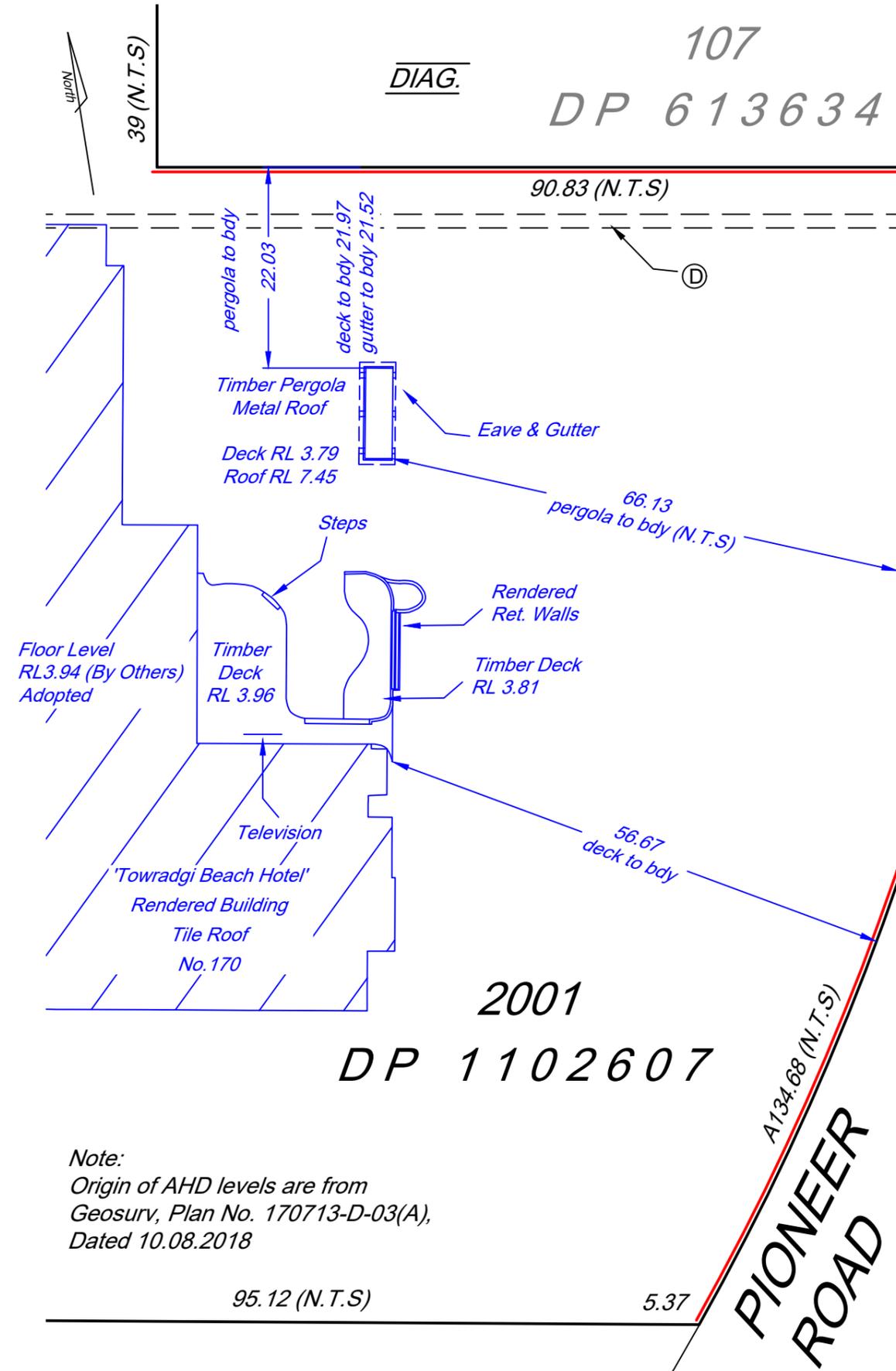
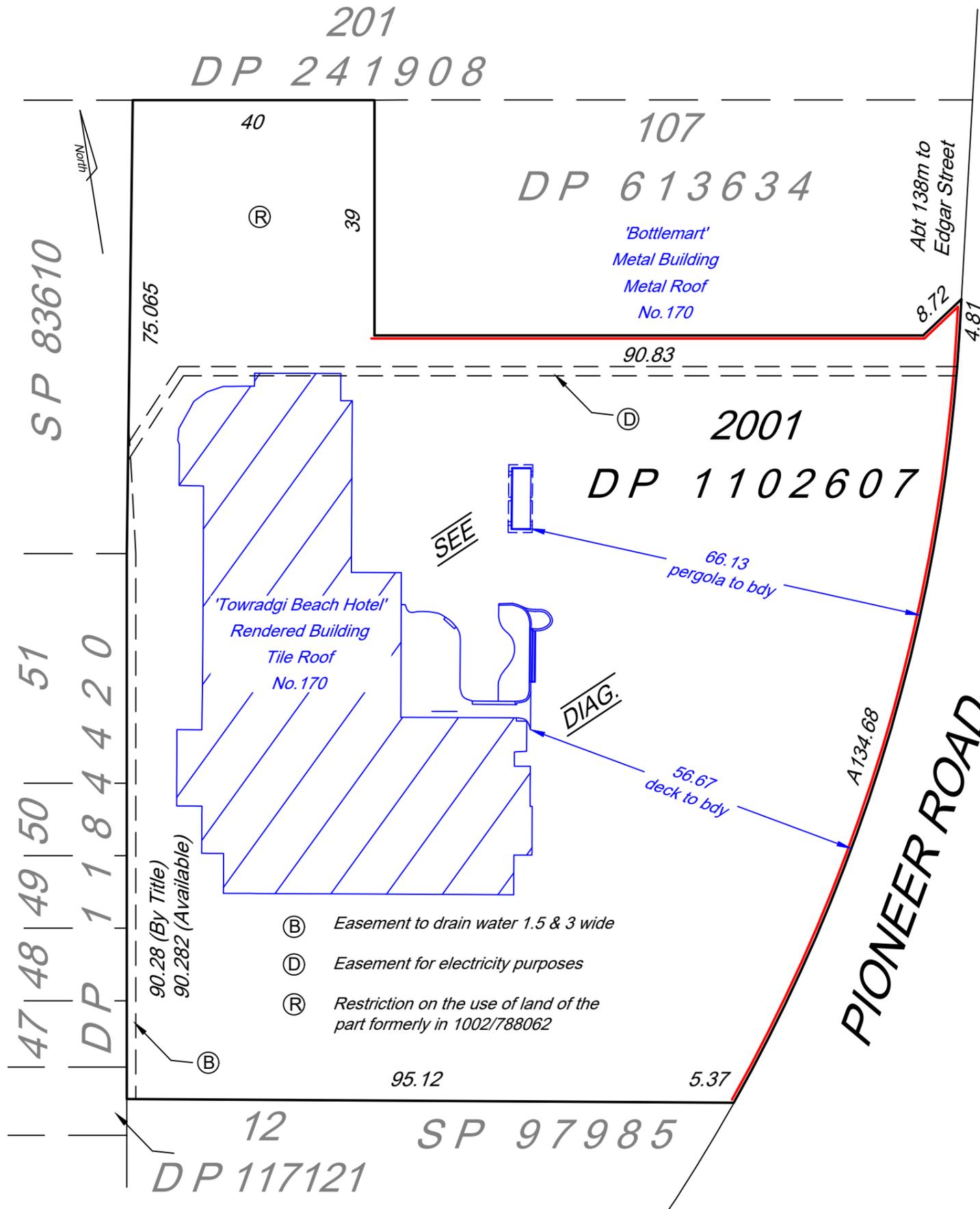
Design Architect: Chris Tsioulos - Reg. No. 5143
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SITE PLAN REFERENCE - 1:500 @ A1



GROUND FLOOR PLAN - DECKS - 1:100 @ A1



Sketch to accompany my report reference...K128755-01...of even date.

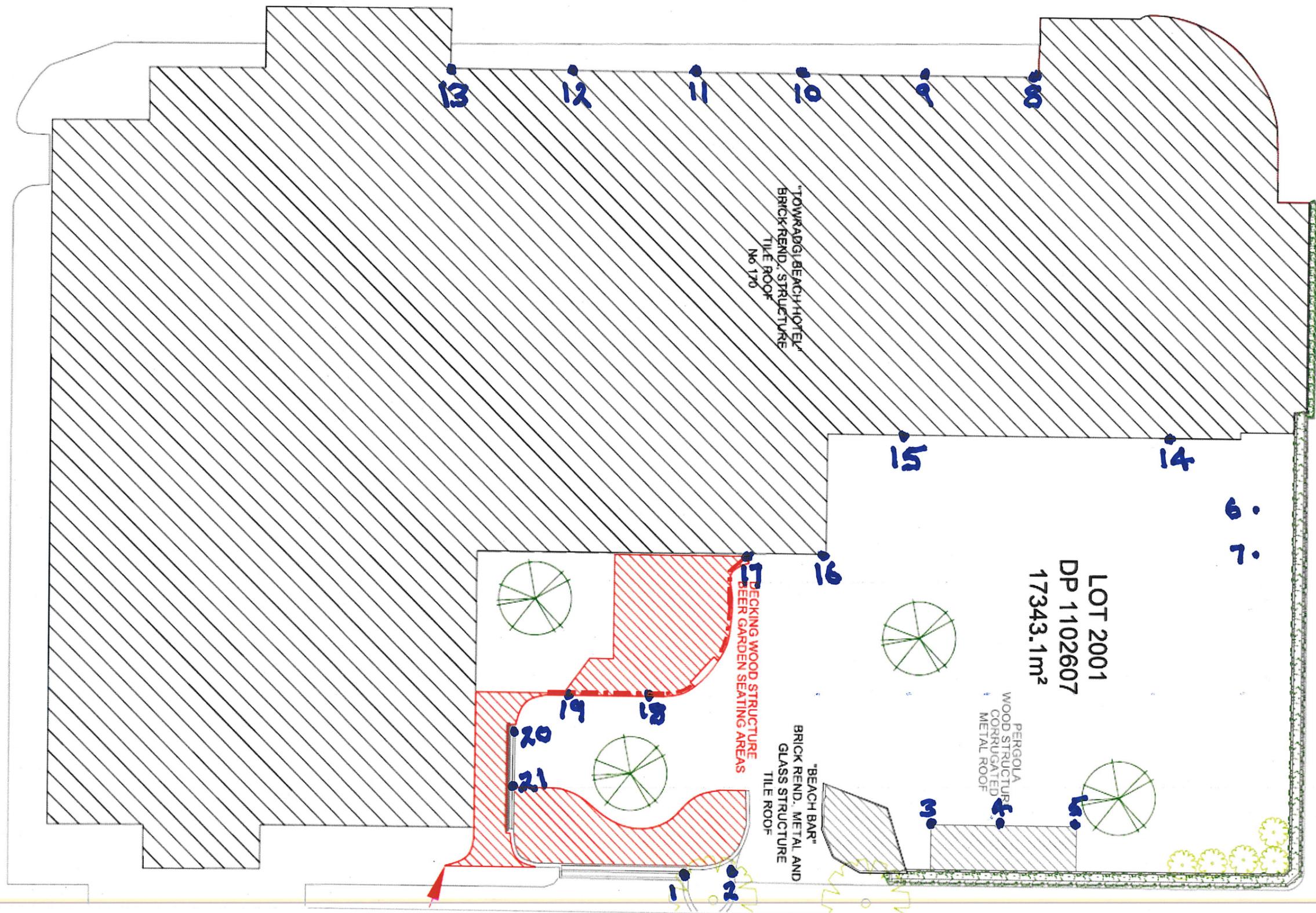
B. Price

Date...01.06.2021

Registered Land Surveyor
for ALLEN PRICE & SCARRATTS PTY LTD



Liability limited by a scheme approved under Professional Standards Legislation



Speakers.

Note: All speakers connected to the new audio system with noise limiter



STATEMENT OF ENVIRONMENTAL EFFECTS

TOWRADGI BEACH HOTEL USE AND WORKS FOR TIMBER DECKS

170 PIONEER ROAD, FAIRY MEADOW NSW 2519

JUNE 2021 / 119785.8S

DESIGN
COLLABORATIVE





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Statement of Environmental Effects

Prepared for Wollongong Council

For use and to regularise works for the two
timber decks within the Beergarden of Towradgi
Beach Hotel

At

170 Pioneer Road, Fairy Meadow NSW 2519

Prepared By

Design Collaborative Pty Ltd

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Version History				
Issue	Date	Description	Prepared	Checked
119785.8S	June 2021	First Revision	DT	JL



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Annexures			
Annexure No.	Title	Prepared by	Date
1.	Notice of Intention to give a Development Control Order	Wollongong City Council	14 May 2021
2.	Legal Correspondence	Hatzis Cusack Lawyers	24 May 2021
3.	Liquor Licence LIQH400106866	Liquor & Gaming NSW	18 June 2019
4.	Site Plan BIC 1.00 issue A	CMT Architects Australia	15 June 2021
	Beer Garden Decking BIC 2.00 Issue A	CMT Architects Australia	15 June 2021
5.	Survey	Geosurv Pty Ltd	10 August 2018
6.	Survey	Allen Price & Scarratts Pty Ltd	1 June 2021
7.	Plan of Management	Applicant	February 2021
8.	Venue Safety Plan	Applicant	September 2017
9.	Acoustic Report	Renzo Tonin	9 June 2021

1. Introduction and Executive Summary

This Statement of Environmental Effects accompanies a Development Application to seek consent for the use and to regularise works for two decks located within the beer garden of the Towradgi Beach Hotel (*The Hotel*) located at 170 Pioneer Road, Fairy Meadow NSW 2519 (*the Subject Site*).

The Development Application is lodged in response to the Notice of Intention to give a Development Control Order dated 14 May 2021 (**Annexure 1**) that requires Oscars Hotel (*the Applicant*) to demolish and remove two timber decks located within the beer garden of the Hotel. A Notice of Intention to issue a Development Control Order (**NO-2021/177 – Annexure 2**) dated 14 May 2021 was issued to the Applicant regarding the use of the timber decks and use of the Beergarden as an entertaining area.

It is noted that the Hotel has consent for use as a hotel under DA 2007/133. The provision of entertainment, including live entertainment, is considered part of the normal activities of a hotel. There is no longer a need to obtain an approval for a Place of Public Entertainment, also commonly known as PoPE, after the amendments were made to the Environmental Planning and Assessment Act and Local Government Act in 2009.

On 24 May 2021, the Applicant's lawyer submitted a letter (**Annexure 2**) stating the Applicant's intention to lodge a Development Application and a Building Information Certificate application for the use of the timber decks, and requesting that no Development Control Order is issued until such applications are lodged with Council and determined.

The Hotel consists of three purpose-built commercial buildings, being the main hotel, a drive-in takeaway liquor store and motel accommodation. All of the buildings operate under the same Hotel Liquor Licence (**Annexure 3**) and share parking facilities.

The main hotel is a single storey building that consists of various bar and lounge areas, beer garden, gaming room, bistro area and a children's playground. The subject timber decks are located within the beer garden as illustrated in the Plans (**Annexure 4**) and the Survey (**Annexure 5**).

The takeaway liquor store, also known as a bottle mart, is a single storey liquor store with a drive through facility.

The motel, also known as Comfort Inn, is a single storey building with 11 accommodation rooms.

There is no proposed operational change as part of the Application. The Hotel's operation will remain subject to the Plan of Management (**Annexure 7**), Venue Safety Plan (**Annexure 8**) and Liquor Licence (**Annexure 3**).

Summary of the Subject Site

The Subject Site is located at 170 Pioneer Road, Fairy Meadow, legally known as Lot 107 of DP613634 and Lot 2001 of DP1102607, with a total area of 21 143.90sqm.

The Subject Site is owned and operated by Oscars Hotel.

The Subject Site is located 400m west of Towradgi Beach, and 4.5km north east of the Wollongong CBD.



A detailed overview of the site and surrounding area is presented in Section 2 of this Statement.

Summary of Proposed Works

Detailed architectural drawings of the existing timber decks have been prepared by CMT Architects Australia (**Annexure 4**) to accompany the Application and reproduced below.

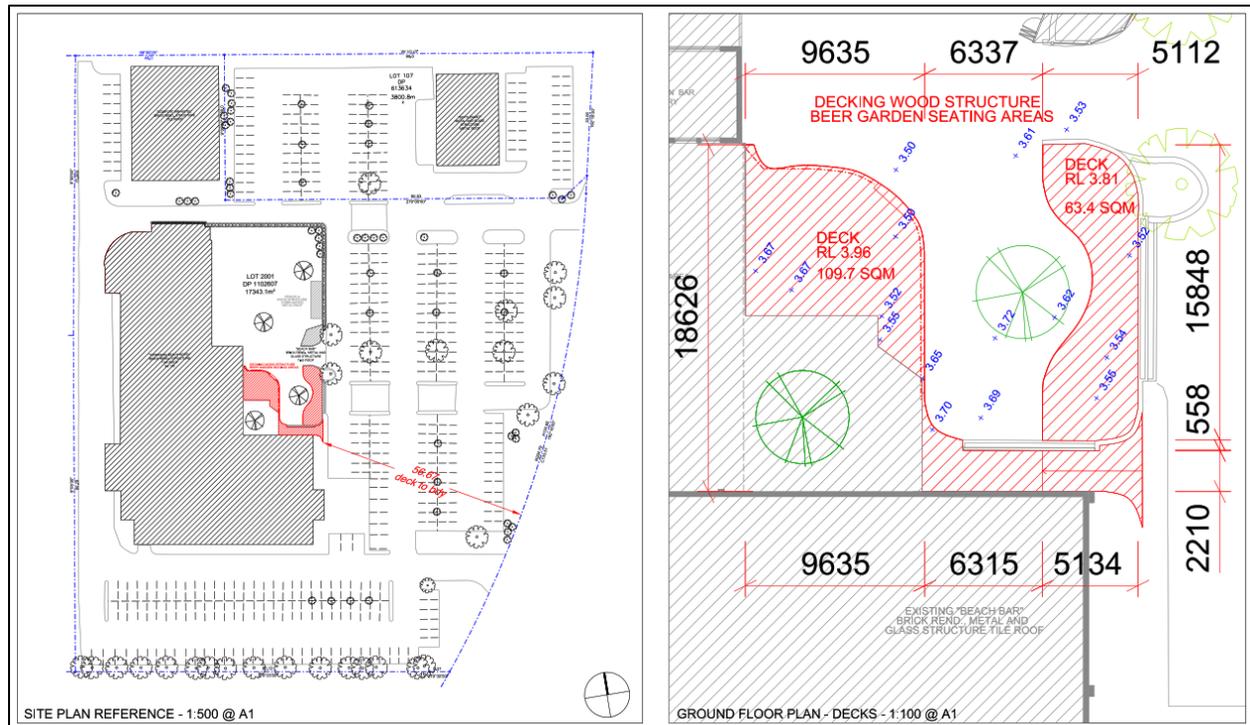


Figure 1: Site Plan and Ground Floor Plan of the timber decks (Source: CMT Architects Australia)

Section 3 of this Statement provides further details regarding the works proposed as part of the Application.

Summary of Planning Assessment

Section 4 and 5 of this Statement undertake an assessment of the Application as required using the heads of consideration under section 4.15(1) of the *Environmental Planning and Assessment Act 1979 (the EP&A Act)*.

The Application is unlikely to have any adverse impact on surrounding area. The timber decks provide alternative seating for different groups to utilise during their stay at the Hotel.

The Application will have no additional adverse acoustic impact on the operational component of the Hotel, as the trading hours and capacity of the Hotel remains unchanged. The Acoustic Report (**Annexure 8**) demonstrates that that the courtyard is capable of complying with relevant acoustic criteria subject to implementation of the acoustic recommendations. There is no intensification or change of use from a **pub**. The Application will have no impact on the existing access, traffic and parking of the Hotel.

Key Benefits



The Application is in the public interest as the timber decks will enhance the amenity of the Hotel, creating a sustainable, welcoming and comfortable space for social gathering within the beer garden for existing patrons.

This Statement concludes that there are no sound town planning reasons why development consent should not be granted to the Application as proposed.

2. Site and Surrounding Area

2.1 The Site

The Subject Site is located at 170 Pioneer Road, Fairy Meadows. The Subject Site is legally described as Lot 107 of DP613634 and Lot 2001 of DP1102607.

The Subject Site is a total of 2.15 hectare in size across the two titles. Lot 107 of DP 613634 has a site area of 3800.80 sqm, and Lot 2001 of DP1102607 has a site area of 1.734 hectares.

The combined lots have a 174m frontage to Pioneer Road.

The nearest noise sensitive receivers are the residential dwellings adjacent to the Hotel boundary at 25 Carters Lane and along Grand Crescent.

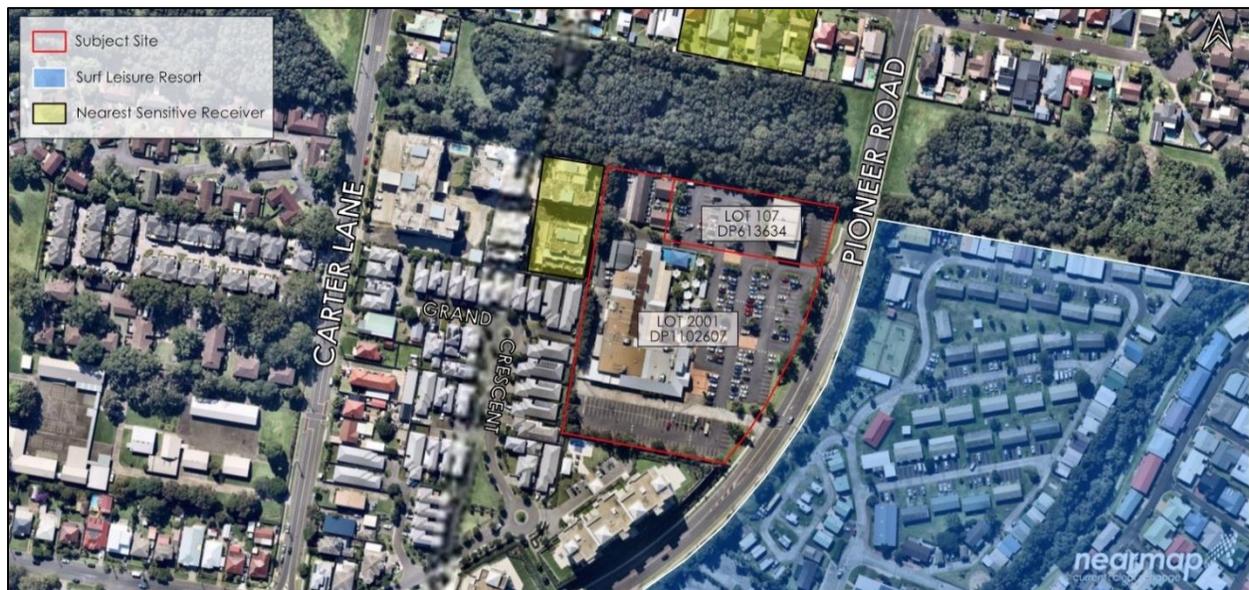


Figure 2: Location of the Subject Site (Source: nearmap)

The Hotel consists of three purpose-built commercial buildings, being the main hotel, a takeaway liquor store and motel accommodation. All buildings operate under the same Hotel Liquor Licence (**Annexure 5**) and share the parking facilities.

The main hotel is a single storey building that consists of various bar and lounge areas, beer garden, gaming room, bistro area and a children's playground. The subject decks are located within the beer garden as illustrated in the Plans (**Annexure 6**) and in the Figure below.

The takeaway liquor store, also known as a bottle mart, is a single storey liquor store with drive through facility.

The motel, also known as Comfort Inn Towradgi Beach, is a single storey building with 11 accommodation rooms.



Figure 3: Location of the Subject Site (Source: nearmap)



Figure 4: View of the smaller deck from Beergarden (Source: Design Collaborative)



Figure 5: View of the larger deck extended from Beergarden (Source: Design Collaborative)

2.1.1 Relevant Site Planning History

DA-2007/133 was approved on 27 March 2007 for the continued use of existing hotel including internal and external refurbishment. The hours of operation are restricted to between Monday to Saturday 7am and 3am the following day and between 8am and 12 midnight Sunday.

DA-2008/1498 was refused on 23 February 2009 for the use of the beergarden and courtyard for outdoor entertainment.

A Notice of Intention to give a Development Control Order (**NO-2021/177 – Annexure 2**) dated 14 May 2021 was issued to the Applicant regarding the use of the timber decks and use of the Beergarden as an entertaining area.

2.1.2 Surrounding Area

The Subject Site is located within Fairy Meadow within close proximity to the Towradgi Beach, which is approximately 400m to the east.

The land uses in the surrounding area consist of a mixture of short-term accommodation, public open space and residential land use.

To the immediate north of the Subject Site is a strip of public open space immediately adjacent the northern boundary. The public open space is mostly bushland and covered with mature trees except for narrow pathways along the sides.

To the immediate east of the Subject Site and across Pioneer Road is Wollongong Surf Leisure Resort that occupies over 11 hectares of land of short-term accommodation and facilities such as function centres, pools, golf complex, basketball and tennis courts.

To the immediate south of the Subject Site adjacent to the site boundary is a seven storey residential building.

To the immediate west of the Subject Site, adjacent to the site boundary is a row of low density residential dwellings.



Figure 6: View of residential building to the south of the Hotel (Source: Design Collaborative)



Figure 7: View of the adjacent residential buildings to the west of the Hotel (Source: Design Collaborative)

2.2.1 Public Transport and Parking

The nearest Railway Station is approximately 600m from the Subject Site.

The nearest bus stop is approximately 200m from the Hotel, serviced by route 3 and 8 that runs between Wollongong Station as labelled in the figure below.

Parking is available on-site for Hotel patrons and staff parking.

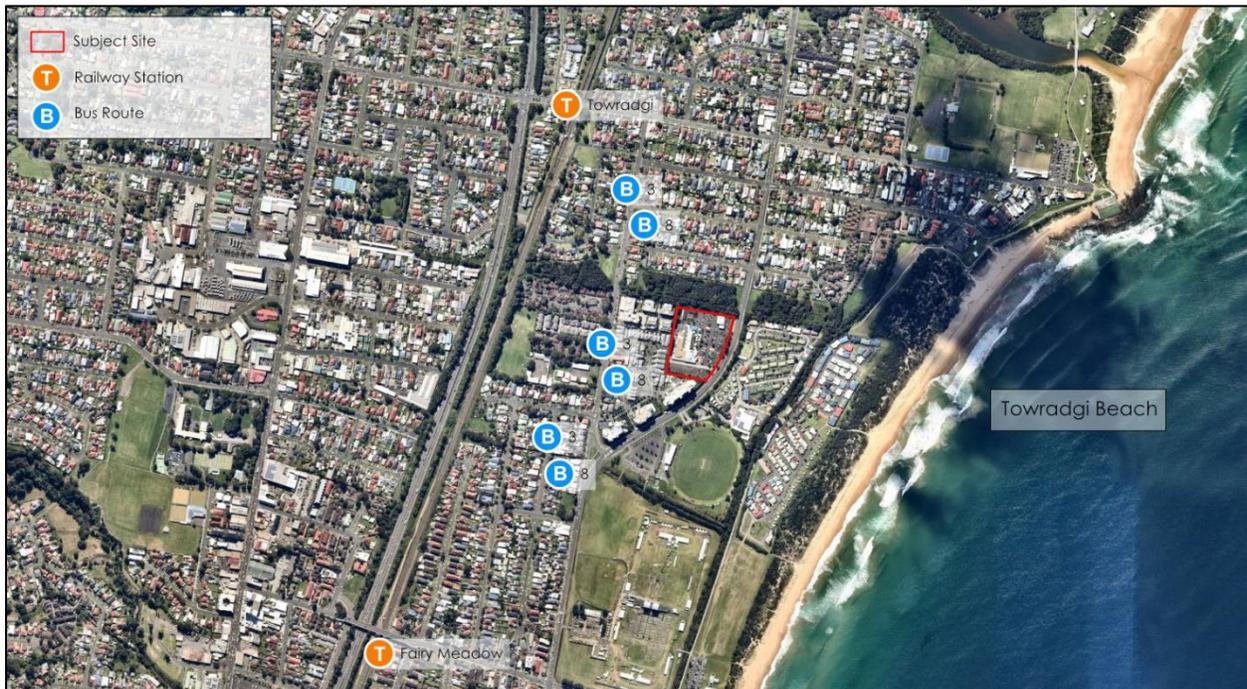


Figure 8 - Subject Site & Surrounds (Source: Design Collaborative, base map: nearmap)

2.2 LEP Mapping

Under Wollongong Local Environmental Plan 2009 (*the LEP*), the Subject Site is zoned 'SP3 Tourist'. There is no restriction on the floor space ratio. The Subject Site is not a heritage item nor within a heritage conservation area.

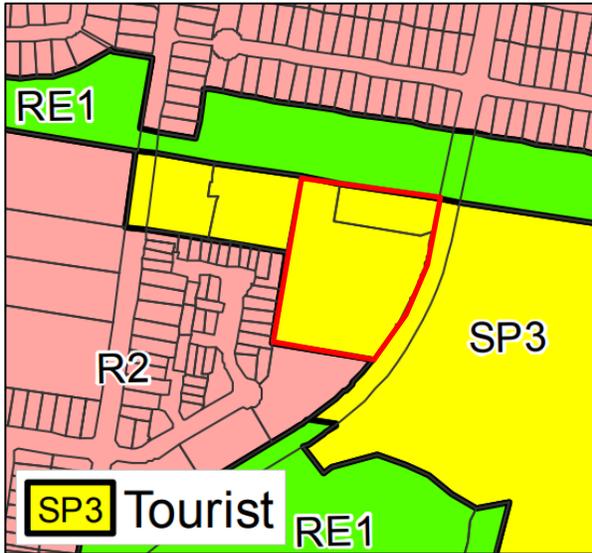


Figure 9 – Zoning Map

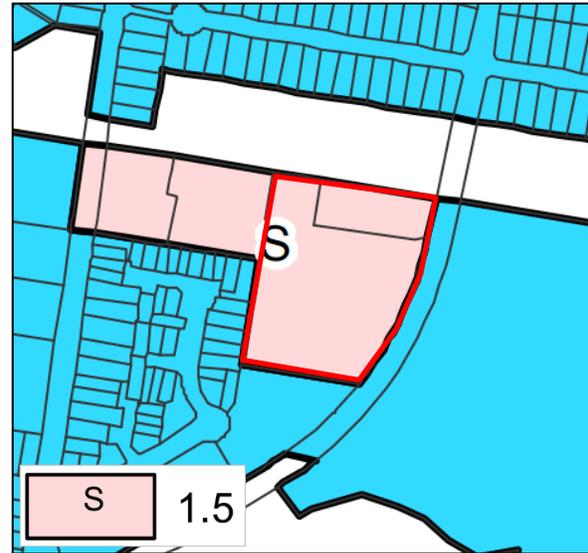


Figure 10 – Floor Space Ratio Map



Figure 11 – Heritage Map

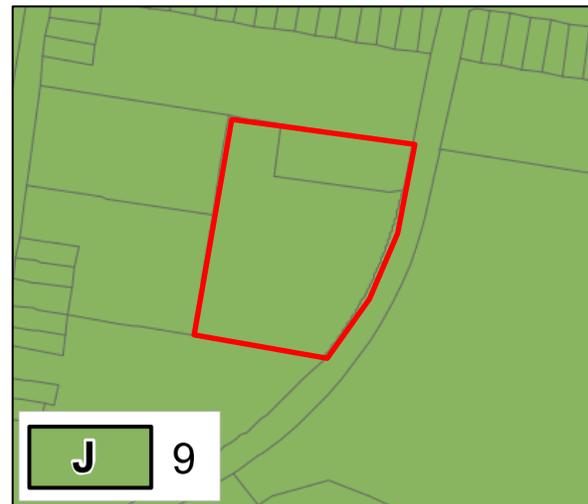


Figure 12 – Height of Building Map

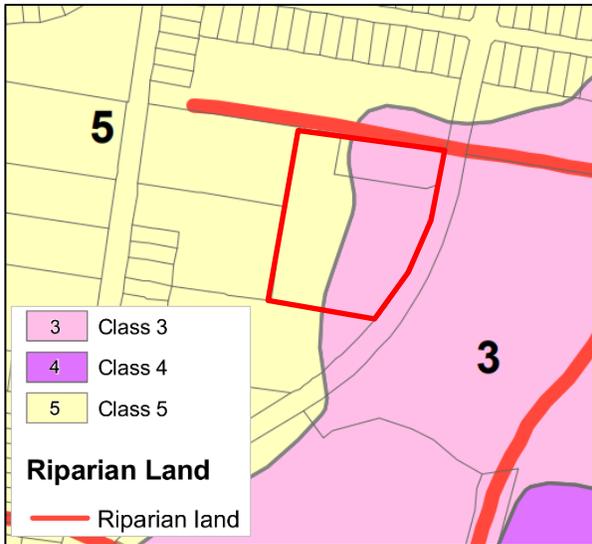


Figure 13 – Acid Sulfate Soils

Table 1 – LEP Mapping Summary	
Planning Layer	Subject Site
Zoning	SP3 Tourist
Floor Space Ratio	1.5:1
Heritage	Not a Heritage Item nor within a Heritage Conservation Area
Height of Building	9m
Acid Sulfate Soils	Part Class 3, Part Class 5

2.3 Regional Context

The location of the Subject Site within its regional context is shown in the figure below. The Subject Site is located approximately 600m from Towradgi Railway Station and 1km from Fairy Meadow Railway Station. The Wollongong CBD is approximately 4.5km west of the Subject Site.

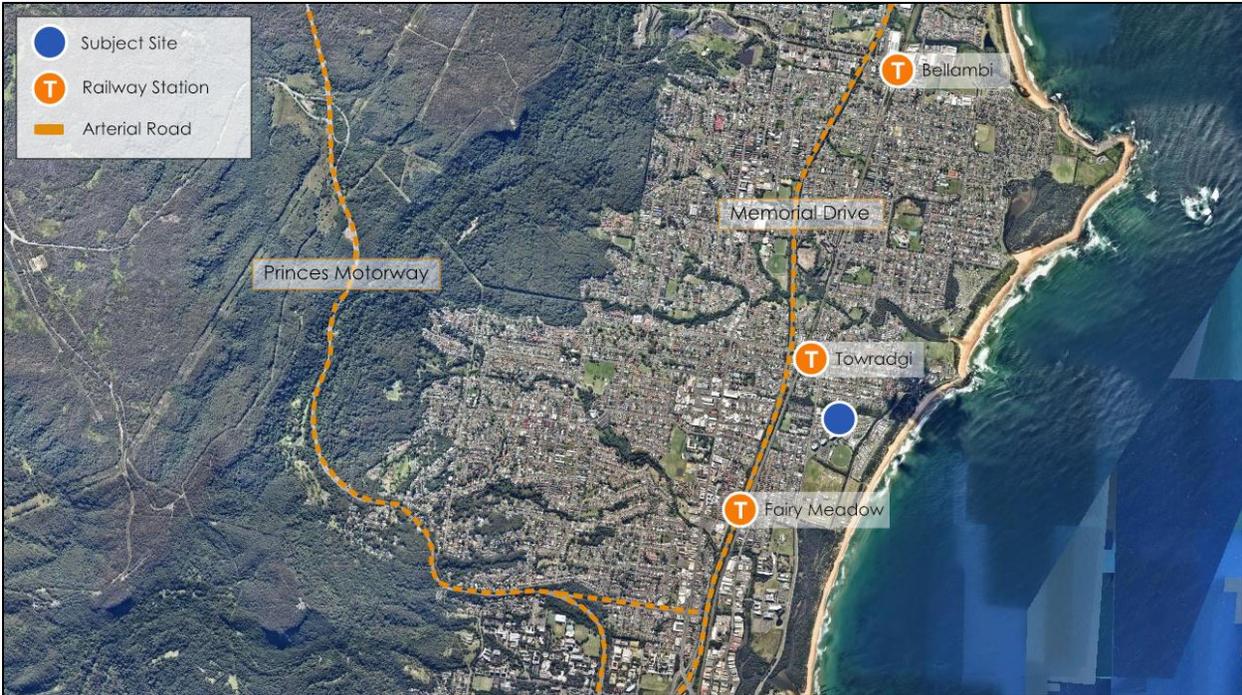


Figure 14 - Regional Context (Source: Design Collaborative, basemap: nearmap April 2021)

3. The Application

The Application seeks consent to use and regularise the works for the timber decks within the beergarden of Towradgi Beach Hotel located at 170 Pioneer Road, Fairy Meadow. The timber decks are located within Lot 2001 of DP1102607.

The Hotel consists of three purpose-built commercial buildings, being the main hotel, a takeaway liquor store and motel accommodation. All buildings operate under the same Hotel Liquor Licence (**Annexure 5**) and share the parking facilities.

The main hotel is a single storey building that consists of various bar and lounge areas, beer garden, gaming room, bistro area and a children’s playground.

3.1 Proposed Works

The Application seeks consent to use and regularise works for the timber decks within the beergarden.

The timber decks are located within the beer garden of the Hotel as illustrated in the Plans (**Annexure 6**) and reproduced below.

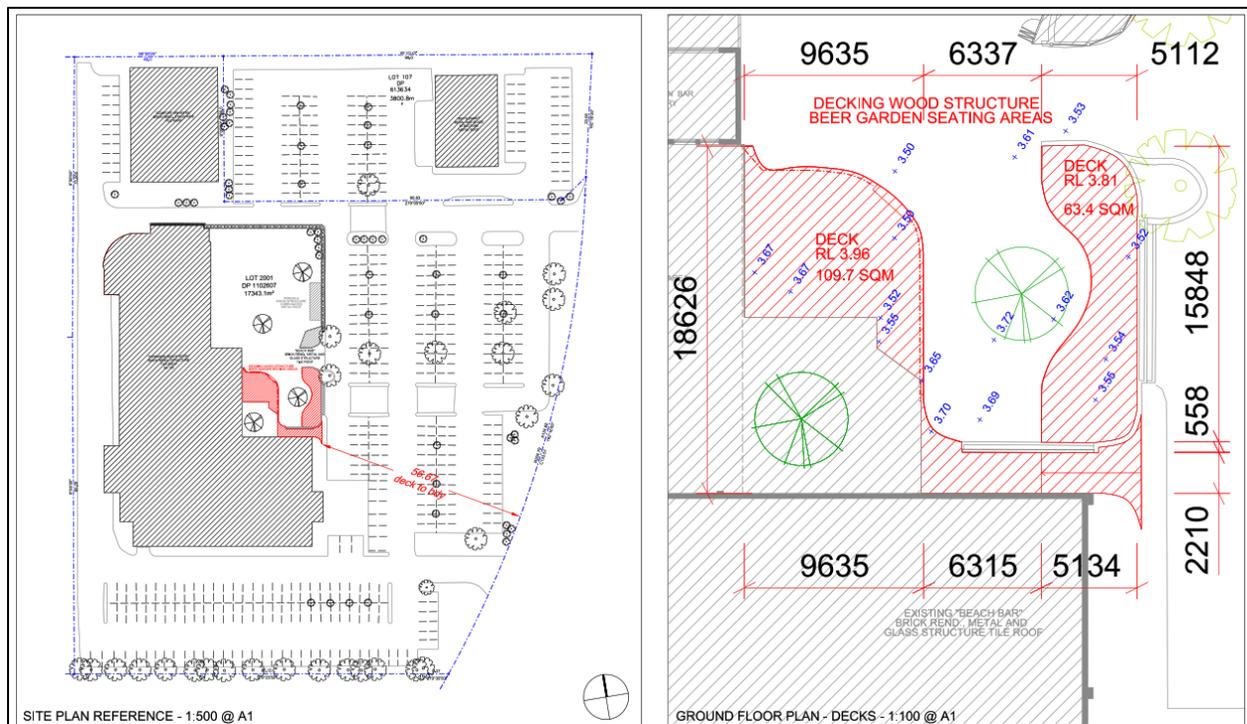


Figure 15: Site Plan and Ground Floor Plan of Subject Decks (Source: CMT Architects Australia)

3.2 No operational change

The Application seeks to regularise the use and works only and no operational change is proposed.

There is no proposed operational change as part of the Application. The existing hours of operation for the Hotel are between 5am and 3am Monday to Saturday, and between 8am and 12 midnight Sunday, as listed on the Hotel Liquor Licence (**Annexure 3**).

The Hotel's operation will remain subject to the Plan of Management (**Annexure 7**), Venue Safety Plan (**Annexure 8**) and Liquor Licence (**Annexure 3**).

3.3 No Consent required for Entertainment

The Development Application is lodged in response to a Notice of Intention to give a Development Control Order (**NO-2021/177 – Annexure 2**) dated 14 May 2021 which was issued to the Applicant regarding the use of the timber decks and use of the Beergarden as an entertaining area.

It is noted that the Hotel has consent for use as a hotel under DA 2007/133. The provision of entertainment, including live entertainment, is considered part of the normal activities of a hotel. There is no longer a need to obtain an approval for a Place of Public Entertainment, also commonly known as a PoPE, after amendments were made to the *Environmental Planning and Assessment Act* and *Local Government Act* in 2009.

The Acoustic Report (**Annexure 8**) demonstrates that the operation of the beergarden is capable of complying with relevant acoustic criteria subject to implementation of acoustic treatment as follows:

- Sound absorptive materials over reflective surfaces,
- Noise screening around the kid's playground and the northern end of the beer garden, and
- Repositioning of the outdoor speakers.

3.4 Development Summary

The key statistics for the proposed development are summarised as follows.

Table 2 – Development Statistics		
Element	Existing	Proposed
Land Use	Pub	Pub
Site Area	21143.90 sqm	21143.90 sqm
Amenities	Hotel <ul style="list-style-type: none"> • Various Bars and Lounge Areas • Bistro & Kitchen • Beergarden • Sports Bar & TAB • Gaming Room • Children's Playground • Night Club 	Hotel <ul style="list-style-type: none"> • Various Bars and Lounge Areas • Bistro & Kitchen • Beergarden • Sports Bar & TAB • Gaming Room • Children's Playground • Night Club

	Motel Bottle Shop	Motel Bottle Shop
Hours of Operation	Monday to Saturday 5am – 3am the following day Sunday 8am – 12 midnight	Monday to Saturday 5am – 3am the following day Sunday 8am – 12 midnight
Patron Capacity	No Change	No Change

4. Statutory Planning Assessment

This section undertakes an assessment of the Application using the heads of consideration as required under s. 4.15(1) of the *EP&A Act*.

4.1 Environmental Planning Instruments

4.1.1 Wollongong Local Environmental Plan 2009

Part 2 Permitted or prohibited development

The Subject Site is zoned 'SP3 Tourist'. In this zone, the use as a **pub** is permitted with consent under the umbrella of **food and drink premises**; viz:

<p>3 Permitted with consent</p> <p>Advertising structures; Amusement centres; Aquaculture; Boat building and repair facilities; Boat sheds; Camping grounds; Caravan parks; Cellar door premises; Charter and tourism boating facilities; Centre-based child care facilities; Community facilities; Entertainment facilities; Food and drink premises; Function centres; Information and education facilities; Kiosks; Marinas; Markets; Moorings pens; Moorings; Neighbourhood shops; Recreation areas; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Registered clubs; Respite day care centres; Roads; Tourist and visitor accommodation; Water recreation structures</p> <p>4 Prohibited</p> <p>Any development not specified in item 2 or 3</p>

Figure 16 - Permitted and Prohibited Uses for SP3 Tourist zone (Source: The LEP)

The use of the **pub** satisfies the objectives of the SP3 zone in that it continues to provide for a variety of tourist-oriented development and related uses.

The Application will continue to operate as a **pub** that offers various facilities to tourists and residents, consisting of a pub offering numerous indoor and outdoor seating areas, bottle shop and motel accommodation within the 2.11 hectare lot in close proximity to Towradgi Beach.

Part 4 – Principal Development Standards

Standard	LEP	Proposed	Complies
4.3 Height of building	9m	There is no change to the height of the building.	✓
4.4 Floor Space Ratio	1.5: 1	There is no change to the FSR of the building.	✓

Part 5 – Miscellaneous Provisions

The Subject Site is not a heritage item or located within a Heritage Conservation Area.

4.2 Draft Planning Agreement

There is no draft Environmental Planning Instrument relevant to the Subject Site or to the proposed development.

4.3 Development Control Plan

The Development Control Plan relevant to the Application is limited to *Wollongong Development Control Plan 2009 (the DCP)*.

4.3.1 Wollongong Development Control Plan 2009

A summary of that assessment is shown in the table below. The assessment demonstrates that the Application generally complies with the relevant objectives of the DCP. Where the Application deviates from the DCP, those variations are addressed below.

Part & Section	Chapter	Compliance
Chapter A1	Introduction	✓
Chapter C12	Outdoor Restaurants and Footpath Trading (Street Vending) Activities	N/A
Chapter D1	Character Statements	✓

Chapter E2	Crime Prevention through Environmental Design	✓
Chapter E3	Car Parking, Access, Servicing/Loading Facilities and Traffic Management	✓
Chapter E7	Waste Management	✓

Section 4.15(3A) of the *EP&A Act* requires a consent authority to apply DCP provisions flexibly and allow reasonable alternative solutions that achieve the objects of those standards.

Part A Introduction

The Application satisfies the objectives of the DCP. The use of the pub will continue to respond positively to the qualities of the site and the character of the surrounding locality, and is of a high design standard. The Application is consistent with the desired future character for the area, and does not have any adverse impact on the high scenic and aesthetic value. The Application also contributes to safe and liveable environments.

Part C12 – Outdoor Restaurant and Footpath Trading (Street Vending) Activities

Chapter C12 of the DCP provides objectives and performance criteria for outdoor restaurants and outdoor trading activities on or over public road reserve areas including footpaths, malls and other public domain areas.

The outdoor seating areas of the Hotel are located within private property therefore not on or over public road reserve areas. This chapter is therefore not relevant to the Application.

Part D1 – Character Statements

The Hotel is located within Fairy Meadow. Fairy Meadow is an emerging major town centre in the Illawarra Regional Strategy, and has a range of housing forms that ranges from detached dwelling houses to mixed use buildings within the retail and business centre.

The Hotel is located outside of the business centre strip concentrated on both sides of the Princes Highway between Cambridge Avenue, Daisy Street and Guest Avenue.

The Application is consistent with the existing and future character of Fairy Meadow and will continue to maintain the vitality and vibrancy especially at night time, servicing the visitors, workers and local residents.

Part E2 – Crime Prevention through Environmental Design

Chapter E2 of the DCP seeks to promote the creation of safer places through environmental design in the planning, design and management of development.

The Application seeks consent to regularise the use and works for the timber decks within the Hotel beergarden.



The Application will have no adverse impact to the existing lighting, natural surveillance and sightlines. The decks will be adequately lit at night and will not impede on existing sightlines. Patrons of the beergarden will provide natural surveillance over the decks, while the CCTV and security guards will provide formal surveillance to the decks as part of the Hotel.

Part E3 – Car Parking, Access, Servicing/Loading Facilities and Traffic Management

The key objectives of E3 of the DCP is to ensure that there are adequate and safe vehicular access to sites, sufficient parking spaces and adequate access for servicing vehicles.

The Application will have no impact on the existing parking and will maintain access for service vehicles.

Part E7 – Waste Management

The key objective of E7 is waste minimisation, management and recycling for all developments within the city.

The use of the decks will give rise to no additional waste as there is no change to the patron capacity and trading hours of the Hotel.

All waste of the Hotel will continue to be managed and recycled where possible by existing waste contractors.

4.4 Any Planning Agreement or Draft Planning Agreement

There is no Planning Agreement that has been entered into under s. 7.4 of the EP&A Act, nor is there any Draft Planning Agreement that the applicant is offering to enter.

4.5 The Regulations

There is understood to be no matter prescribed by the Regulations relevant to the Subject Site or to the proposed development.

5. Assessment of Key Planning Matters

5.1 Likely Impacts

5.1.1 Context & Setting

The Applicant seeks development consent for the use and to regularise the works for the timber decks within the beergarden at Towradgi Beach Hotel, located at the 170 Pioneer Road, Fairy Meadow.

There is no change to the approved hours and capacity of the Hotel. The approved hours of the Hotel are between 5am and 3am the following day Monday to Saturday, and between 8am and 12 midnight Sunday.

5.1.4 Social Impact

The Application is unlikely to have any adverse social impact on the local community by providing an improved venue for users to socialise in a popular tourist area.

It is in the public interest to provide a modern, high quality food and drink premises that caters for all age groups within the community.

5.2 Suitability of the Site

The Subject Site has been used as a pub for an extended period of time. The Application demonstrates that it is capable of complying with all relevant building standards, subject to the implementation of the various consultant report recommendations. The site is therefore suitable for the development proposed.

5.3 Any Submissions Made

Public consultation is expected to be carried out by Council on the submitted development application and accompanying documentation during the standard neighbour notification and advertising process. Any submissions received as a result are for the Council's consideration in its assessment of the application against applicable Plans and Policies.

5.4 Public Interest

The Application is considered to be in the public interest as it improves the amenity of a longstanding food and drink premises. The Hotel contributes to the viability of the local community and is consistent with Council controls.

The Application will continue to provide long term employment opportunities and service the surrounding workforce, residents and visitors through the provision of a facility with high-quality food and drink offering.

Continued implementation of the management measures contained within the existing Plan of Management ensures that the Application is not likely to have detrimental social impacts.

6. Conclusion

This Statement accompanies an application to seek consent for the use and to regularise works for the timber deck structure within the Beergarden of the Towradgi Beach Hotel at 170 Pioneer Road, Fairy Meadow.

There is no change to the approved hours of the Hotel between 5am and 3am the following day, Monday to Saturday, and between 8am and 12 midnight Sunday.

There is no proposed change to the capacity of the Hotel.

As demonstrated above in this Statement, the Application is consistent with the objectives and development standards of Council's relevant Statutory and Policy planning controls,

Moreover, the environmental assessment in this Statement demonstrates that there will be no unacceptable adverse impact on the amenity of the surrounding area as a consequence of the Application.

The Application will continue to provide employment opportunities and service the surrounding workforce, residents and visitors through an improved facility with food and drink offering.

Under these circumstances, the Application is considered to be acceptable with regard to all relevant town planning and environmental issues.

It is therefore concluded that there are no valid town planning reasons why development consent should not be granted to the Application as proposed.

TOWRADGI BEACH HOTEL - 170 PIONEER ROAD, TOWRADGI

L&GNSW Noise Compliance Report

9 June 2021

Towradgi Beach Hotel

TM099-01F02 L&GNSW Noise Compliance Report (r3)

Document details

Detail	Reference
Doc reference:	TM099-01F02 L&GNSW Noise Compliance Report (r3)
Prepared for:	Towradgi Beach Hotel
Address:	Level 6 Bayside Tower 376 Bay Street Brighton-Le-Sands NSW 2216
Attention:	Michael Anagnostou

Document control

Date	Revision history	Non-issued revision	Issued revision	Prepared	Instructed	Reviewed / Authorised
31.05.2021	Draft report	0		T. Wong		T. Wong
05.06.2021	Finalise report		1	T. Wong		T. Wong
07.06.2021	Update table & figure reference error in Section 3. Update of comment in Section 8.		2	T. Wong		T. Wong
09.06.2021	Update report (Figure 1 and Table 3) as per Client's comments		3	T. Wong		T. Wong

File Path: R:\AssocSydProjects\TM051-TM100\TM099 tw 170 Pioneer Rd, Towradgi\1 Docs\TM099-01F02 L&GNSW Noise Compliance Report (r3).docx

Important Disclaimers:

The work presented in this document was carried out in accordance with the Renzo Tonin & Associates Quality Assurance System, which is based on Australian/New Zealand Standard AS/NZS ISO 9001.

This document is issued subject to review and authorisation by the suitably qualified and experienced person named in the last column above. If no name appears, this document shall be considered as preliminary or draft only and no reliance shall be placed upon it other than for information to be verified later.

This document is prepared for the particular requirements of our Client referred to above in the 'Document details' which are based on a specific brief with limitations as agreed with the Client. It is not intended for and should not be relied upon by a third party and no responsibility is undertaken to any third party without prior consent provided by Renzo Tonin & Associates. The information herein should not be reproduced, presented or reviewed except in full. Prior to passing on to a third party, the Client is to fully inform the third party of the specific brief and limitations associated with the commission.

In preparing this report, we have relied upon, and presumed accurate, any information (or confirmation of the absence thereof) provided by the Client and/or from other sources. Except as otherwise stated in the report, we have not attempted to verify the accuracy or completeness of any such information. If the information is subsequently determined to be false, inaccurate or incomplete then it is possible that our observations and conclusions as expressed in this report may change.

We have derived data in this report from information sourced from the Client (if any) and/or available in the public domain at the time or times outlined in this report. The passage of time, manifestation of latent conditions or impacts of future events may require further examination and re-evaluation of the data, findings, observations and conclusions expressed in this report.

We have prepared this report in accordance with the usual care and thoroughness of the consulting profession, for the sole purpose described above and by reference to applicable standards, guidelines, procedures and practices at the date of issue of this report. For the reasons outlined above, however, no other warranty or guarantee, whether expressed or implied, is made as to the data, observations and findings expressed in this report, to the extent permitted by law.

The information contained herein is for the purpose of acoustics only. No claims are made and no liability is accepted in respect of design and construction issues falling outside of the specialist field of acoustics engineering including and not limited to structural integrity, fire rating, architectural buildability and fit-for-purpose, waterproofing and the like. Supplementary professional advice should be sought in respect of these issues.

External cladding disclaimer: No claims are made and no liability is accepted in respect of any external wall and/or roof systems (eg facade / cladding materials, insulation etc) that are: (a) not compliant with or do not conform to any relevant non-acoustic legislation, regulation, standard, instructions or Building Codes; or (b) installed, applied, specified or utilised in such a manner that is not compliant with or does not conform to any relevant non-acoustic legislation, regulation, standard, instructions or Building Codes.

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1 Introduction

Renzo Tonin & Associates was engaged to measure noise emanated from the normal operation of the outdoor entertainment area of the Towradgi Beach Hotel at the nearest residential boundaries and assess the recorded levels to L&GNSW noise criteria before and after mid-night.

The work documented in this report was carried out in accordance with the Renzo Tonin & Associates Quality Assurance System, which is based on Australian Standard / NZS ISO 9001. Appendix A contains a glossary of acoustic terms used in this report.

2 Site Description

The Towradgi Beach Hotel is located at 170 Pioneer Road, Towradgi and comprise of a single storey building with an outdoor entertainment area on north-east corner facing the premise's on-grade parking. The outdoor area is approximately 1650m² consists of covered seating area, beer garden, covered playground for kids, semi-enclosed dining booth, and features a beach bar, TV screen, a sound system for background music. Figure 1 below show layout of outdoor entertainment area.



Figure 1: Towradgi Beach Hotel Outdoor Area

3 Nearest Residences & Assessment Locations

The nearest residential neighbours that are potentially affected activities and events in the outdoor area of the premises has been identified and are outlined in Table 1 and shown in Figure 2 below.

Table 1: Nearest Residences

Receiver ID	Address	Description
R1	33-41 Edgar Street, Towradgi	Single and double storey houses located approximately 115m north of the outdoor area across an on-grade carpark and nature reserve. On southern boundaries of the properties is continuous 1.8m solid fence separating rear of the properties and nature reserve.
R2	19 Carters Lane, Towradgi	Four storey residential flats located behind the Towradgi Beach Hotel approximately 40m west of the outdoor area

Assessment locations for the nearest receptors and representative background noise levels are summarised in Table 2 and shown in Figure 2 below.

Table 2: Measurement Locations

ID	Measurement Locations	Measurement Type
L1	Rear of 39 Edgar Street, Towradgi on nature reserve side the boundary fence. Measurement microphone is 1.5m off ground and 1m from the fence and is 114m north of the subject outdoor area.	Noise emission from activities in the subject outdoor area.
L2	Footpath in front of 41 Edgar Street, Towradgi. Measurement microphone is 1.5m off the ground and 3.5m from any walls and solid fences.	Representative background noise in absence of noise emitted from subject premises
L3	Behind the apartment blocks at back of 19 Carters Lane, Towradgi on the hotel side of the boundary fence. Measurement microphone is 1.5m off the ground and 3m the boundary fence and any walls.	Noise emission from activities in the subject outdoor area.
L4	Internal driveway between apartments blocks at 19 Carters Lane, Towradgi. Measurement microphone is 1.5m off the ground and 3.5m from any walls and solid fences and is 37m west of the outdoor area.	Representative background noise in absence of noise emitted from subject premises

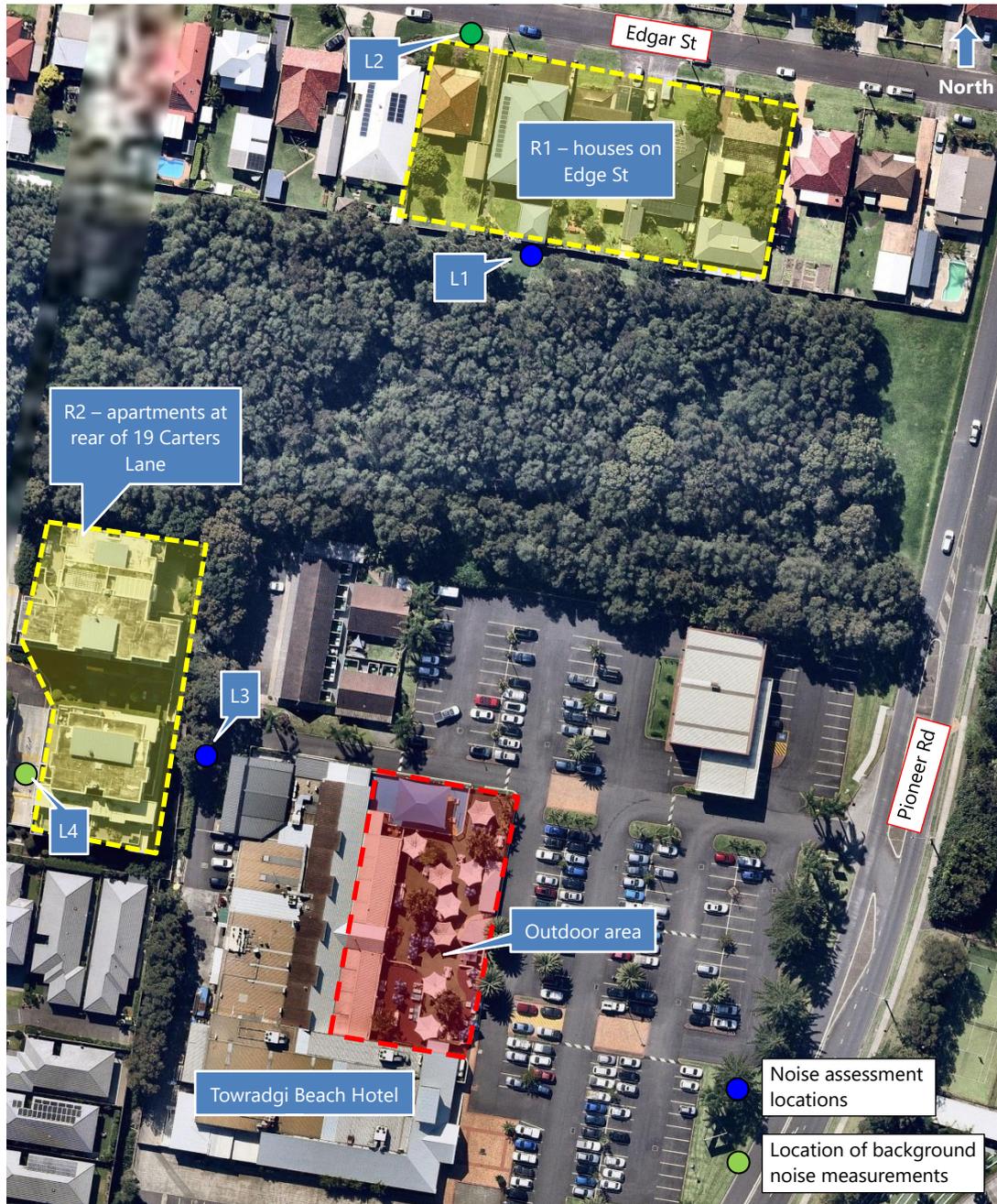


Figure 2: Nearest Affected Residences and Assessment Locations

4 Acoustic Criteria

4.1 Liquor & Gaming NSW

Noise emissions from licensed premises in NSW, such as restaurants, bars and clubs, should aim to comply with the standard noise criteria set by the L&GNSW. The L&GNSW, through the Liquor Act 2007, is the regulatory authority that deals with noise pollution issues pertaining to licensed premises. The L&GNSW criteria apply to noise emission associated with activities from the licensed area of the premises, including music and patron noise but excludes mechanical plant.

Noise emissions are assessed in terms of the noise limits set out in the L&GNSW's 'Standard Noise Condition' which states as follows:

"The LA10 noise level emitted from the licensed premises shall not exceed the background noise level in an Octave Band Centre Frequency (31.5Hz – 8kHz inclusive) by more than 5dB between 7:00am and 12:00 midnight at the boundary of any affected residence.*

The LA10 noise level emitted from the licensed premises shall not exceed the background noise level in an Octave Band Centre Frequency (31.5Hz – 8kHz inclusive) between 12:00 midnight and 7:00am at the boundary of any affected residence.*

Notwithstanding compliance with the above, the noise from the licensed premises shall not be audible within any habitable room in any residential premises between the hours of 12:00 midnight and 7:00am.

Interior noise levels which still exceed safe hearing levels are in no way supported or condoned by the Liquor Administration Board.

This is a minimum standard. In some instances, the Board may specify a time earlier than midnight in respect of the above condition.

**For the purposes of this condition, the LA10 can be taken as the average maximum deflection of the noise emission from the licensed premises."*

The L&GNSW standard condition for noise emission from a licensed premises can be summarised as follows.

For operations before midnight,

- L_{A10} (from premises) \leq Background noise level in absence of premises (L_{A90}) + 5 dB from 31.5Hz to 8kHz, and

For operations after midnight,

- L_{A10} (from premises) \leq Background noise level in absence of premises (L_{A90}) + 0 dB from 31.5Hz to 8kHz

5 Details of Noise Measurements

5.1 Methodology

The external noise surveys were carried out generally in accordance with Australian Standard AS1055-1997.

The following procedure was used:

Noise measurements of L_{Aeq} , L_{A90} , and L_{A10} over 5minute to 15min periods at each assessment locations were undertaken during the night peak hour period, immediately before and after with the mid-night.

Background noise levels of L_{Aeq} , L_{A90} , and L_{A10} were conducted for each assessment period at locations that are not impacted by activities from subject premises and is representative of normal acoustic environment surrounding the residential receivers.

5.2 Instrumentation

NTi Audio XL2 precision sound level meters were used to measure statistical noise levels. The meter complies with Australian Standard 1259.2-1990 "Acoustics - Sound Level Meters" and is designated as a Type 1 instrument having accuracy suitable for field and laboratory use.

The calibration of the meter was checked in the field immediately before and after the noise measurements using a Brüel & Kjær Type 4231 calibrator and no drift in calibration was observed.

5.3 Measurement Time, Patron Levels and Activities

Noise measurements were conducted at each assessment location on a typical Friday evening on 14/05/2021. The noise survey periods, number of patrons and activities observed in the outdoor area are summarised in Table 3 below.

Table 3: Measurement Time, Patron Numbers & Activities

Survey Periods	Outdoor Area Patron Numbers	Activities/Noise Sources
7:30pm to 10:30pm Friday peak hour 2021	40 to 50 including 4-5 kids in play area	Dining, drinking, and socialising. Patron conversations and laughter, kids shouting, people talking in car park as they leave the premises, noises generated from dining/drinking activities eg. clattering of plates, clinking sounds of glass and cutlery, furniture movements etc. Background music and vocals from TV and sound system.
11pm to Mid-night	25 to 30	Drinking and socialising. Patron conversations. Background music and vocals from TV and sound system.
Mid-night to 12:30am	20 to 25	Drinking and socialising. Patron conversations. Background music and vocals from TV and sound system.

5.4 Ambient Condition of Testing

Weather conditions were fine with some cloud cover. A light breeze was observed on the measurements locations however results were not affected. The maximum wind speed recorded was no greater than 1m/s.

At each assessment locations (L1 & L3) the following background noises were observed.

- Intermittent traffic noise from surrounding roads particularly before 10pm
- Insect noises and occasional rattling of leaves

At location L3 on western boundary of site, mechanical and refrigeration plant noise from the subject premises was also audible.

6 Measured Noise Levels & Observations

The results of the noise survey made at each monitoring location are presented in Table 4 in below.

Table 4: Measurement Results and Observations

Loc	Time	Noise Descrip- -tor	Overall dB(A)	Measured Noise Levels in Octave Band Frequency Hz									Observations
				31.5	63	125	250	500	1k	2k	4k	8k	
Receiver R1 - Edgar Street Residences													
L1	8:49pm 14/05/21	L _{eq}	51	56	56	50	45	48	48	41	31	23	Kids shouting and music from outdoor area of the subject premises was audible.
		L ₁₀	53	57	58	51	46	49	50	43	33	25	
		L ₉₀	47	52	51	46	42	45	44	36	26	18	
L1	8:54pm	L _{eq}	51	56	56	51	45	47	48	41	31	22	
		L ₁₀	53	58	58	52	46	49	50	43	33	25	
		L ₉₀	47	52	51	45	41	44	44	36	25	17	
L1	9:00pm	L _{eq}	49	55	54	49	44	46	46	39	29	20	
		L ₁₀	50	56	56	50	44	47	47	40	30	21	
		L ₉₀	46	51	50	45	40	43	43	35	25	16	
L1	11:30pm	L _{eq}	43	54	54	46	39	40	39	32	26	21	Music from outdoor area is barely audible. Children shouting was heard after around 10-10:30pm
		L ₁₀	44	55	55	48	40	41	41	34	26	21	
		L ₉₀	39	49	47	41	36	37	36	28	19	15	
L1	12:23am 15/05/21	L _{eq}	40	52	50	46	37	38	36	29	20	16	Music from outdoor area is barely audible
		L ₁₀	42	53	51	47	38	39	38	32	22	16	
		L ₉₀	37	48	46	42	34	36	33	24	17	15	
L2	9:12pm	L _{eq}	46	62	55	48	43	42	43	37	31	25	Noises from subject premises not audible. Normal suburban night background noise consisting of distant intermittent traffic and insect noises.
		L ₁₀	47	56	57	50	44	42	43	37	32	26	
		L ₉₀	45	53	52	45	41	41	41	36	29	22	
L2	11:07pm	L _{eq}	42	55	48	43	40	39	39	33	25	20	
		L ₁₀	43	57	49	44	41	39	40	34	28	22	
		L ₉₀	39	44	43	39	37	36	35	29	19	16	
L2	12:02am 15/05/21	L _{eq}	42	48	47	43	41	41	38	31	21	17	
		L ₁₀	44	50	49	45	43	41	40	33	23	17	
		L ₉₀	36	43	42	39	36	34	32	24	15	15	
Receivers R2 - Carters Lane Residences													
L3	7:42pm 14/05/21	L _{eq}	50	53	53	51	48	46	44	42	40	39	Kids shouting and loud conversations in car park of the subject premises was audible. Constant mechanical plant noise from premises was audible.
		L ₁₀	51	55	56	52	49	46	46	44	41	40	
		L ₉₀	47	46	48	46	45	42	41	38	36	38	
L3	9:30pm	L _{eq}	50	56	55	52	47	46	46	43	40	36	
		L ₁₀	52	57	57	52	47	46	47	44	41	38	
		L ₉₀	46	50	51	48	45	43	42	37	32	27	

Loc	Time	Noise Descriptor	Overall dB(A)	Measured Noise Levels in Octave Band Frequency Hz									Observations
				31.5	63	125	250	500	1k	2k	4k	8k	
L3	10:19pm	L _{eq}	48	52	53	52	48	46	43	39	35	31	
		L ₁₀	50	54	54	52	48	47	44	40	38	34	
		L ₉₀	46	48	50	48	46	43	41	36	29	21	
L3	11pm	L _{eq}	47	52	52	50	48	44	43	38	35	30	Kids shouting was heard after 10-10:30pm. Constant mechanical plant noise from premises was audible.
		L ₁₀	48	53	53	51	48	44	43	39	37	33	
		L ₉₀	45	48	49	48	46	42	40	35	30	22	
L3	12:21am 15/05/21	L _{eq}	47	54	52	51	48	44	42	37	30	22	Constant mechanical plant noise from premises was audible.
		L ₁₀	48	54	53	52	48	45	42	38	31	24	
		L ₉₀	44	48	49	48	46	42	39	34	26	18	
L4	8:17pm	L _{eq}	48	51	51	49	48	46	44	39	32	28	Patron and mechanical plant noise from subject premises not audible. Normal suburban night background noise consisting of distant intermittent traffic and insect noises.
		L ₁₀	49	53	53	50	49	46	44	39	34	30	
		L ₉₀	46	45	47	45	45	44	42	36	28	21	
L4	11:18pm	L _{eq}	46	62	53	49	46	44	40	36	31	26	
		L ₁₀	46	50	51	49	46	44	41	37	32	27	
		L ₉₀	43	45	46	45	44	42	38	33	25	18	
L4	12:21am 15/05/21	L _{eq}	44	48	49	47	46	43	39	34	27	23	
		L ₁₀	45	50	50	48	46	43	39	34	27	22	
		L ₉₀	43	45	46	45	44	41	37	32	23	16	

7 Assessment of Measured Noise Levels

The measured background noise levels (L90) at locations L2 and L4 are used to determine the noise emission limits for the subject premises for operating before and after midnight in accordance with the L&GNSW standard noise criteria. Measured L10 noise levels from the premises at the northern and western residential boundaries (Locations L1 and L3) are assessed against the established L&GNSW noise goals and presented in Table 5 below.

Table 5: Assessment of Results

Assessment Location	Time	Description	Measured Noise Levels in Octave Band Frequency Hz								
			31.5	63	125	250	500	1k	2k	4k	8k
L1 – Southern boundary of residential Receivers R1 (Edgar St)	8:49pm 14/05/21	L10 Noise Levels (Contribution)	51	52	45	42	48	49	42	27	16
		Noise Limit before midnight	58	57	50	46	46	46	41	34	27
		Comply?	Yes	Yes	Yes	Yes	No	No	No	Yes	Yes
		Exceedance in dB						2	3	1	
	8:54pm	L10 Noise Levels (Contribution)	54	52	48	42	48	49	42	27	16
		Noise Limit before midnight	58	57	50	46	46	46	41	34	27
		Comply?	Yes	Yes	Yes	Yes	No	No	No	Yes	Yes
		Exceedance in dB						2	3	1	
	9pm	L10 Noise Levels (Contribution)	40	47	34	28	46	45	37	22	16
		Noise Limit before midnight	58	57	50	46	46	46	41	34	27
		Comply?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
		Exceedance in dB	Nil								
	11:31pm	L10 Noise Levels (Contribution)	47	54	46	31	37	34	24	18	12
		Noise Limit before midnight	49	48	44	42	41	40	34	24	21
		Comply?	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes
		Exceedance in dB		6	2						
12:23am 15/05/21	L10 Noise Levels (Contribution)	50 ¹	47	43	33	31	30	23	13	7	
	Noise Limit after midnight	43	42	39	36	34	32	24	15	15	
	Comply?	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes	
	Exceedance in dB	7 ¹	5	4							
L3 – East boundary of	7:42pm	L10 Noise Levels (Contribution)	51 ¹	52	48	40	36	40	42	40	40

Assessment Location	Time	Description	Measured Noise Levels in Octave Band Frequency Hz								
			31.5	63	125	250	500	1k	2k	4k	8k
residential receivers R2 (Carters Lane)		Noise Limit before midnight	50	52	50	50	49	47	41	33	26
		Comply?	No	No	No	Yes	Yes	Yes	No	No	No
		Exceedance in dB	1 ¹						1	7	14
	9:30pm	L10 Noise Levels (Contribution)	55 ¹	55	48	39	36	44	43	40	38
		Noise Limit before midnight	50	52	50	50	49	47	41	33	26
		Comply?	No	No	Yes	Yes	Yes	Yes	No	No	No
		Exceedance in dB	5 ¹	3					2	7	12
	10:19pm	L10 Noise Levels (Contribution)	48	49	48	39	39	34	33	36	32
		Noise Limit before midnight	50	52	50	50	49	47	41	33	26
		Comply?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No
		Exceedance in dB								3	6
	11pm	L10 Noise Levels (Contribution)	50	49	43	44	38	39	37	38	34
		Noise Limit before midnight	50	51	50	49	47	43	38	30	23
		Comply?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No
		Exceedance in dB								8	11
	12:05am 15/05/21	L10 Noise Levels (Contribution)	52 ¹	50	50	44	41	39	36	29	20
	Noise Limit after midnight	45	46	45	44	41	37	32	23	16	
	Comply?	No	No	No	Yes	Yes	No	No	No	No	
	Exceedance in dB	7 ¹	4	5			2	4	6	4	

Notes:

1. Below threshold of hearing at 31.5Hz (Refer to Figure 2.9 of Engineering Noise Control – Theory & Practice - by David Bies & Colin Hansen 3rd Edition) and thus exceedance is deemed insignificant

8 Conclusion

Our assessment has found noise levels emitted from the outdoor entertainment area of the Towradgi Beach Hotel did not comply with L&GNSW L_{A10} noise limits at nearest residential boundaries to the north and west.

Exceedance of up to 6dB was found at boundary of the northern residences (33 to 41 Edgar Street) and it was primarily due to children shouting whilst playing in the outdoor play area during peak trading hours and bass components of music emitted from the beer garden.

Exceedance of up to 14dB was found at boundary of the west residences (19 Carters Lane) and it was primarily due to the mechanical and refrigeration plant equipment located at rear of the Towradgi Beach Hotel. Noise emission from the mechanical plant is governed by EPA Noise Policy for Industry and not relevant to L&GNSW standard noise condition.

The level of L_{A10} noise exceedance at the Edgar Street residential boundaries are significant however can be addressed by implementing acoustic treatment to the outdoor area such as sound absorptive materials over reflective surfaces, noise screening around the kid's playground and to the northern end of the beer garden, repositioning of the outdoor loudspeakers.

APPENDIX A Glossary of terminology

The following is a brief description of the technical terms used to describe noise to assist in understanding the technical issues presented.

Adverse weather	Weather effects that enhance noise (that is, wind and temperature inversions) that occur at a site for a significant period of time (that is, wind occurring more than 30% of the time in any assessment period in any season and/or temperature inversions occurring more than 30% of the nights in winter).																																															
Ambient noise	The all-encompassing noise associated within a given environment at a given time, usually composed of sound from all sources near and far.																																															
Assessment period	The period in a day over which assessments are made.																																															
Assessment Point	A point at which noise measurements are taken or estimated. A point at which noise measurements are taken or estimated.																																															
Background noise	Background noise is the term used to describe the underlying level of noise present in the ambient noise, measured in the absence of the noise under investigation, when extraneous noise is removed. It is described as the average of the minimum noise levels measured on a sound level meter and is measured statistically as the A-weighted noise level exceeded for ninety percent of a sample period. This is represented as the L90 noise level (see below).																																															
Decibel [dB]	<p>The units that sound is measured in. The following are examples of the decibel readings of common sounds in our daytime environment:</p> <table border="0"> <tr> <td>threshold of hearing</td> <td>0 dB</td> <td>The faintest sound we can hear</td> </tr> <tr> <td></td> <td>10 dB</td> <td>Human breathing</td> </tr> <tr> <td>almost silent</td> <td>20 dB</td> <td></td> </tr> <tr> <td></td> <td>30 dB</td> <td>Quiet bedroom or in a quiet national park location</td> </tr> <tr> <td>generally quiet</td> <td>40 dB</td> <td>Library</td> </tr> <tr> <td></td> <td>50 dB</td> <td>Typical office space or ambience in the city at night</td> </tr> <tr> <td>moderately loud</td> <td>60 dB</td> <td>CBD mall at lunch time</td> </tr> <tr> <td></td> <td>70 dB</td> <td>The sound of a car passing on the street</td> </tr> <tr> <td>loud</td> <td>80 dB</td> <td>Loud music played at home</td> </tr> <tr> <td></td> <td>90 dB</td> <td>The sound of a truck passing on the street</td> </tr> <tr> <td>very loud</td> <td>100 dB</td> <td>Indoor rock band concert</td> </tr> <tr> <td></td> <td>110 dB</td> <td>Operating a chainsaw or jackhammer</td> </tr> <tr> <td>extremely loud</td> <td>120 dB</td> <td>Jet plane take-off at 100m away</td> </tr> <tr> <td>threshold of pain</td> <td>130 dB</td> <td></td> </tr> <tr> <td></td> <td>140 dB</td> <td>Military jet take-off at 25m away</td> </tr> </table>			threshold of hearing	0 dB	The faintest sound we can hear		10 dB	Human breathing	almost silent	20 dB			30 dB	Quiet bedroom or in a quiet national park location	generally quiet	40 dB	Library		50 dB	Typical office space or ambience in the city at night	moderately loud	60 dB	CBD mall at lunch time		70 dB	The sound of a car passing on the street	loud	80 dB	Loud music played at home		90 dB	The sound of a truck passing on the street	very loud	100 dB	Indoor rock band concert		110 dB	Operating a chainsaw or jackhammer	extremely loud	120 dB	Jet plane take-off at 100m away	threshold of pain	130 dB			140 dB	Military jet take-off at 25m away
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dB(A)	A-weighted decibels. The A- weighting noise filter simulates the response of the human ear at relatively low levels, where the ear is not as effective in hearing low frequency sounds as it is in hearing high frequency sounds. That is, low frequency sounds of the same dB level are not heard as loud as high frequency sounds. The sound level meter replicates the human response of the ear by using an electronic filter which is called the "A" filter. A sound level measured with this filter switched on is denoted as dB(A). Practically all noise is measured using the A filter.																																															
dB(C)	C-weighted decibels. The C-weighting noise filter simulates the response of the human ear at relatively high levels, where the human ear is nearly equally effective at hearing from mid-low frequency (63Hz) to mid-high frequency (4kHz), but is less effective outside these frequencies.																																															

Frequency	Frequency is synonymous to pitch. Sounds have a pitch which is peculiar to the nature of the sound generator. For example, the sound of a tiny bell has a high pitch and the sound of a bass drum has a low pitch. Frequency or pitch can be measured on a scale in units of Hertz or Hz.
Impulsive noise	Having a high peak of short duration or a sequence of such peaks. A sequence of impulses in rapid succession is termed repetitive impulsive noise.
Intermittent noise	The level suddenly drops to that of the background noise several times during the period of observation. The time during which the noise remains at levels different from that of the ambient is one second or more.
L _{Max}	The maximum sound pressure level measured over a given period.
L _{Min}	The minimum sound pressure level measured over a given period.
L ₁	The sound pressure level that is exceeded for 1% of the time for which the given sound is measured.
L ₁₀	The sound pressure level that is exceeded for 10% of the time for which the given sound is measured.
L ₉₀	The level of noise exceeded for 90% of the time. The bottom 10% of the sample is the L90 noise level expressed in units of dB(A).
L _{eq}	The "equivalent noise level" is the summation of noise events and integrated over a selected period of time.
Reflection	Sound wave changed in direction of propagation due to a solid object obscuring its path.
SEL	Sound Exposure Level (SEL) is the constant sound level which, if maintained for a period of 1 second would have the same acoustic energy as the measured noise event. SEL noise measurements are useful as they can be converted to obtain Leq sound levels over any period of time and can be used for predicting noise at various locations.
Sound	A fluctuation of air pressure which is propagated as a wave through air.
Sound absorption	The ability of a material to absorb sound energy through its conversion into thermal energy.
Sound level meter	An instrument consisting of a microphone, amplifier and indicating device, having a declared performance and designed to measure sound pressure levels.
Sound pressure level	The level of noise, usually expressed in decibels, as measured by a standard sound level meter with a microphone.
Sound power level	Ten times the logarithm to the base 10 of the ratio of the sound power of the source to the reference sound power.
Tonal noise	Containing a prominent frequency and characterised by a definite pitch.

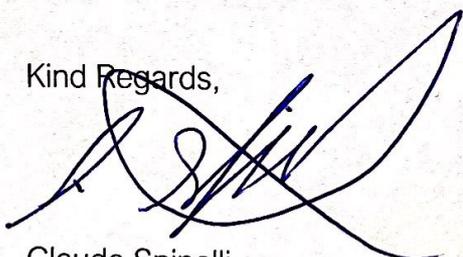
Re. Towadgi Beach Hotel noise compliance.

A recent upgrade to the audio control system to the Towadgi Beach Hotel was carried out.

This digital control system allows for time scheduled audio level management and monitoring. Audio levels can be pre-set to not exceed the recommended db levels as per the license.

This system is capable of logging audio levels if required. Levels cannot be overridden to a high level by Hotel staff on site, it is remotely managed by a systems administrator.

Kind Regards,



Claude Spinelli

Pro Sound and Lighting

Attachment 4: Draft Reasons for Refusal

- 1 Pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development would have an adverse impact upon neighbouring land with respect to noise intrusion and antisocial behaviour.
- 2 Pursuant to the provisions of Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979 it is considered that the site is unsuitable for the proposed retention and use of the timber decks having regard to the proximity of the decks to residential properties.
- 3 Pursuant to the provisions of Section 4.15(1)(d) of the Environmental Planning and Assessment Act 1979, it is considered that matters raised in submissions indicate the proposed development would create unreasonable amenity impacts to neighbouring properties if carried out as proposed.
- 4 Pursuant to the provisions of Section 4.15 (1)(e) of the Environmental Planning and Assessment Act 1979 it is considered that in the circumstances of the case, approval of the development would set an undesirable precedent for similar inappropriate development and is therefore not in the public interest.