

# Special Council Assessment Panel Agenda & Reports

**1 March 2018**

## **Our Vision**

*A City which values its heritage, cultural diversity,  
sense of place and natural environment.*

*A progressive City which is prosperous, sustainable  
and socially cohesive, with a strong community spirit.*

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City of  
Norwood  
Payneham  
& St Peters

27 February 2018

**To all Members of the Council Assessment Panel:**

- Mr Terry Mosel (Presiding Member)
- Ms Jenny Newman
- Mr Phil Smith
- Ms Fleur Bowden
- Mr John Minney

**NOTICE OF SPECIAL MEETING**

I wish to advise that pursuant to Section 56A of the *Development Act 1993*, the Special Meeting of the Norwood Payneham & St Peters Council Assessment Panel, will be held in the Mayor's Parlour, Norwood Town Hall, 175 The Parade, Norwood, on:

**Thursday 1 March 2018, commencing at 7.00pm.**

Please advise Jo Kovacev on 8366 4530 or email [jkovacev@npsp.sa.gov.au](mailto:jkovacev@npsp.sa.gov.au) if you are unable to attend this meeting or will be late.

Yours faithfully

Mario Barone  
**CHIEF EXECUTIVE OFFICER**

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City of  
**Norwood  
Payneham  
& St Peters**

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**VENUE**                      Mayors Parlour, Norwood Town Hall

**HOUR**

**PRESENT**

**Panel Members**

**Staff**

**APOLOGIES**              **Mr Phil Smith**

**ABSENT**

- 1.        CONFIRMATION OF THE MINUTES OF THE MEETING OF THE COUNCIL ASSESSMENT  
          PANEL HELD ON 19 FEBRUARY 2018**

**2. STAFF REPORTS**

**2.1 DEVELOPMENT APPLICATION 155/46/2017 – MAYLANDS HOTEL PTY LTD –  
63-67 PHILLIS STREET, MAYLANDS**

<b>DEVELOPMENT APPLICATION:</b>	<b>155/46/2017</b>
<b>APPLICANT:</b>	<b>Maylands Hotel Pty Ltd</b>
<b>SUBJECT SITE:</b>	<b>63-67 Phillis Street, Maylands (Certificate of Title Volume: 5785 Folio: 979)</b>
<b>DESCRIPTION OF DEVELOPMENT:</b>	<b>Alterations and additions to an alfresco courtyard to create a beer garden and alterations to a car parking area.</b>
<b>ZONE:</b>	<b>Local Commercial Zone Norwood, Payneham and St Peters (City) Development Plan (28 April 2016)</b>
<b>PUBLIC NOTIFICATION CATEGORY:</b>	<b>Category 3</b>

**Purpose of Report**

The purpose of this report is to provide information to the Panel in order for a determination to be made on an Application for alterations and additions to an alfresco courtyard to create a beer garden and alterations to a car parking area.

Staff do not have delegated authority to determine the Application, as it was subject to Category 3 notification.

In making its determination, the Panel is required to consider whether, on balance, the proposal is firstly seriously at variance with the Development Plan as a whole. If so, the Application must be refused consent pursuant to Section 35(2) of the Development Act 1993. If not, the Panel must go on to consider whether the proposal sufficiently accords with the Development Plan to merit consent.

It is important to recognise that this Development Application does not (and cannot) deal directly with any changes to the Hotel Licence, which the Applicant would need to apply to Consumer and Business Services (CBS) for, if this Development Application is granted consent. Whilst it is informative to understand how the Applicant intends for the proposed expanded beer garden to be licensed, that would ultimately need to be assessed by CBS. Pursuant to the Liquor Licensing Act, in undertaking their assessment, CBS must consider whether the operation of the licence would be likely to result in undue offence, annoyance, disturbance or inconvenience to people who reside, work or worship in the vicinity of the premises.

**Subject Land and Locality Attributes**

The subject land is the site of the Maylands Hotel, which is located on the corner of Clifton Street and Phillis Street, Maylands. The Hotel comprises an historic two-storey building, with modern additions and car parking to the sides and rear of the original building. The locality is mostly residential, except for the subject Hotel and adjacent Cruickshank Reserve.

A plan of the subject land and its surrounds is attached (**Attachment A**).

## Background

On 23 November 2007, the Council granted Development Approval to DA 155/270/07 for the creation of additional car parking at 63 Phillis Street in association with the Maylands Hotel. Prior to this time, 63 Phillis Street was occupied by a detached dwelling. A copy of the approved site plan is contained in **Attachment B**.

On 21 April 2008, the Council granted Development Approval to DA 155/905/07, for alterations and additions to the Maylands Hotel, including the creation of a covered 'alfresco courtyard' on the southern side of the Hotel adjacent Phillis Street. The alfresco courtyard replaced car parking spaces 1-4 shown on Attachment B. A low wall separates the alfresco courtyard from the adjacent car parking aisle to the south. There is no barrier separating the alfresco courtyard from Phillis Street. A copy of the approved plan and elevations of the alfresco courtyard is contained in **Attachment C**.

According to Council's records, at some time between 19 September 2007 and 13 February 2008, the Liquor and Gambling Commissioner approved a redefinition of the Hotel Licence, to include a new 'Area 8', corresponding with the area in which the alfresco courtyard was granted Development Approval. Area 8 has a licensed capacity of 40 persons and is not subject to an entertainment consent or extended trading authorisation. A condition was imposed by CBS, stating that "there shall be no speakers or pre-recorded music in Area 8). Accordingly, the area is able to be used by patrons for the consumption of alcohol during regular hotel hours only and neither 'entertainment' (as defined in the Liquor Licensing Act 1997), nor any other form of music is permitted within the area. The Licence Plan shows Area 8 labelled as a 'smokers alfresco courtyard'. A copy of the current Hotel Licence, including the Licence Plan, is contained in **Attachment D**.

## Proposal in Detail

The Applicant proposes to undertake additions and alterations to the alfresco courtyard area, to convert it to a beer garden and associated smoking courtyard. At 122m<sup>2</sup>, the proposed beer garden is approximately double the size of the existing alfresco courtyard. The proposed smoking courtyard is an additional 13m<sup>2</sup> in area.

The beer garden and smoking courtyard are proposed to be fully enclosed on all sides, up to a height of 4.2 metres. A combination of rendered walling, glass infill, corten steel and timber blades is proposed. A retractable awning is proposed to roof the area. Pedestrian access to the beer garden is proposed on the eastern side.

The beer garden is proposed to be operated during the following hours:

Sunday:	11:00am to 10:00pm
Monday to Wednesday	10:00am to 11:00pm
Thursday to Saturday	10:00am to Midnight

Noise limited speakers are proposed in the beer garden, connected to the in-house sound system, as well as a television screen. The Applicant also intends for the area to accommodate live music performances until 9:00pm Sunday to Thursday and 10:00pm Friday and Saturday.

If Development Approval is obtained, the Applicant will need to apply to CBS to have the licensed area of the Hotel redefined to include the beer garden.

Following reforms to the Liquor Licensing Act introduced on 18 December 2017, Licensed venues no longer need consent from Consumer and Business Services to host a range of entertainment, including music. It is understood that the intent of these reforms is to make it easier for businesses to host bands, supporting the live music scene.

However, conditions and approvals imposed on licensed premises by other Acts, such as approvals under the *Development Act 1993*, will not be affected by the changes and will continue to apply.

Accordingly, if the CAP considers that approval of the Development Application should be conditional upon certain parameters regarding entertainment, the CAP should impose those parameters as conditions.

In order to accommodate the proposed beer garden, the existing car park entrance from Phillis Street is proposed to be relocated to the south, resulting in a reduction in car parking capacity of 4 spaces. A split driveway is proposed, to avoid a mature street tree.

A copy of the Development Application is contained in **Attachment E**.

### **Notification**

The proposal has been identified and processed as a Category 3 form of development.

Eighteen (18) representations were received (all opposed) in response to this notification, copies of which are contained in **Attachment F**. The key issues raised by representors are, in summary:

- noise impacts from additional patrons in the beer garden;
- noise associated with live music within the beer garden;
- noise from the car parking area associated with increased patronage;
- failure of previously constructed walls at the boundary of the car park to address noise;
- noise from the existing hotel;
- noise associated with vehicles leaving the car park, particularly due to moving the access point;
- insufficient car parking;
- impact on loading bay;
- impact on the street tree;
- intensification of the existing use;
- non-compliance with existing conditions;
- incompatible architecture;
- anti-social behaviour / community safety; and
- impact on property values.

The following representors desire to be heard personally by the Development Assessment Panel (DAP):

- *Mr Jonathan Armstrong*
- *Ms Sally Armstrong*
- *Mrs K Jamieson*
- *Mr and Mrs B and G Galipo*
- *Mr Barry Solomon*
- *Ms Isabelle Bullen*
- *Mr Mark Bullen*
- *Mr David Lowden*
- *Ms Tania Hall*
- *Ms Susan Taylor*

Following receipt of a copy of the representations, the applicant invited the representors to attend public meetings at the Hotel. Meetings were held on 23 May and 7 June. It is understood that the meetings were an opportunity for the applicant to further explain the proposal and for representors to ask questions. The second meeting was attended by the applicant's Acoustic Engineer, who was also available to answer any questions of the representors.

The Applicant subsequently provided the Council with a written response to the representations received. A copy of the response, prepared by Mr Greg Vincent of MasterPlan, is attached (**Attachment G**).

A summary of the response is provided below:

- having regard to the advice of Sonus, the proposed trading hours and the limitations on live entertainment, the introduction of speakers and live music within the beer garden will not have an adverse impact on the amenity of the local area in terms of noise impact;

- as the overall capacity of the hotel is not proposed to change, nor are the trading hours proposed to increase, no increase in noise from activity in the car park is expected;
- although not relevant to the current proposal, the applicant has offered to increase the height of fencing at the boundary of the car park to address concerns that the existing fence is inadequate to address existing noise impacts. This offer has been declined by neighbours;
- although not relevant to the current proposal, the applicant is proposing to introduce noise attenuation measures to the designated outdoor smoking area on the eastern side of the Hotel;
- as the overall capacity of the hotel is not proposed to change, nor are the trading hours proposed to increase, no increase in noise from patrons on the street leaving the premises is expected;
- there is a surplus amount of car parking, due to the voluntary conversion of the property at 63 Phillis Street from a dwelling site to car parking in 2008.
- the impact on the loading bay is acceptable, as the loading will continue to occur on site and the applicant is prepared to limit delivery times to 8:00-11:30am and 3:00-5:30pm week days;
- the design of the access driveway has been undertaken in consultation with Council to ensure the street tree is not impacted;
- the applicant is prepared to accept a reduction in the total capacity of the hotel from 400 persons to 360 persons;
- the Hotel has been complying with existing conditions of the Hotel Licence;
- the proposed built form respects and complements the heritage listed Hotel;
- the nature of the proposal does not directly relate to or impact on any existing concerns that have been raised in relation to the operation of the existing Hotel, regarding anti-social behaviour and community safety; and
- property values is not a valid planning consideration.

### **State Agency Consultation**

The *Development Regulations 2008* do not require consultation with State Government Agencies.

### **Discussion**

The subject land is located within the Local Commercial Zone as identified within the Norwood Payneham and St Peters (City) Development Plan. The proposed development is neither a complying nor a non-complying form of development and accordingly is required to be assessed on its merits having regard to all of the relevant provisions of the Development Plan.

The Local Commercial Zone is a zone primarily accommodating local service activities which are compatible with the amenity of the locality, according to Objective 1 of the zone. Unfortunately the Local Commercial Zone provides very little policy guidance for new development. In order to understand the type of development which is envisaged within the zone, it is useful to consider the lists of complying and non-complying development.

Examples of complying (as of right) forms of development which are able to be undertaken within the zone include electricity sub-station, petrol filling station, service industry, timber yard and warehouse. Examples of non-complying development include all dwelling types, general industry, education establishment, hospital and shops with a gross leasable area exceeding 250m<sup>2</sup>.

Accordingly, it is evident that the Local Commercial Zone is intended to accommodate a disparate range of commercial activities which might typically be found in and around housing, but not including large scale or particularly impactful commercial activities.

As stated by some of the representors, it would not be appropriate to consider the impact of the proposed beer garden simply in terms of the resultant increase in size and capacity of the existing alfresco courtyard. While the area is proposed to roughly double and the capacity to increase by less than double, it is likely that the actual increase in intensity of use of the area resulting from the proposal would be far greater than those increases. Currently the area is largely uncovered and provides very little by way of amenity to attract patrons to use it. In contrast, the proposal is to create a high amenity beer garden environment with entertainment in the form of background music, television and occasional live music. Accordingly, while the

existing area would rarely (if ever) come close to reaching its 40 person capacity, it is much more likely that the proposed beer garden will achieve the proposed 70 person capacity (including smoking courtyard).

At the same time, the existing alfresco courtyard is entirely open, with no form of acoustic protection to prevent noise from patrons using the area from travelling to adjacent residential properties. The proposed beer garden is enclosed up to 4.2m above ground level, providing an acoustic barrier.

City Wide Principle of Development Control 89 states:

*Development proposing music should include noise attenuation measures that achieve the following desired noise levels:*

<b>Noise level assessment location</b>	<b>Desired noise level</b>
<i>Adjacent existing noise sensitive development property boundary</i>	<i>Less than 8 dB above the level of background noise (L90, 15min) in any octave band of the sound spectrum; and Less than 5 dB(A) above the level of background noise (LA90, 15min) for the overall (sum of all octave bands) A-weighted level.</i>
<i>Adjacent land property boundary</i>	<i>Less than 65dB(Lin) at 63Hz and 70dB(Lin) in all other octave bands of the sound spectrum; or Less than 8 dB above the level of background noise (L90, 15min) in any octave band of the sound spectrum and 5 dB(A) overall (sum of all octave bands) A-weighted level.</i>

The applicant has provided a report from Sonus, assessing the noise impacts of the proposal against the Environment Protection (Noise) Policy (also reflected in the Development Plan) and providing recommended treatments to ensure that noise impacts are acceptable. The treatments which have been recommended by Sonus have been incorporated into the proposal and relate to the materials to be used and the method of construction to ensure an air-tight seal. Self-closing doors are recommended into the beer garden and the smoking area.

In order to ensure that music within the beer garden does not result in noise levels at the nearest noise sensitive location exceeding 8 dB above the level of background noise (in any octave band of the sound spectrum), Sonus have calculated the maximum allowable music levels, as measured within the beer garden. Those levels are set out at the bottom of page 9 of the report by Sonus and differ between Saturdays and Sundays between midday and 10:00pm and all other days. The levels differ due to the measured background noise levels being higher on Saturdays and Sundays between midday and 10:00pm.

Sonus have recommended that a sound limiting advice be installed with two present functions; one for typical use and one for weekend use between midday and 10:00pm. Sonus have further recommended that all inputs including performances use the noise limited speaker system.

A copy of the report by Sonus is contained in **Attachment H**.

The report by Sonus was reviewed on behalf of the Council by Bestec. Bestec have advised that the proposed acoustic treatment and sound limiter is acceptable, subject to:

- clarification of the music noise criterion in terms of frequency range and magnitude. The current criterion does not include the 31.5Hz octave band. Either this should be provided, or a condition should be imposed preventing heavy metal, rock or similar genre;
- specification of appropriate device capable of controlling the sound level using to separate pre-sets automatically; and
- proposed number and locations of the speakers, as well as the maximum sound level at 1m from each speaker, in order to achieve the allowable sound level at the measurement location; and

- an acoustic survey being undertaken after adjustment of the sound levels from each speaker and set-up of the sound-limiter.

A copy of the report by Bestec is contained in **Attachment I**.

In response to the comments from Bestec, Sonus have advised:

- the music levels established in the assessment are very restrictive and will inherently limit the genre which can be accommodated. In addition, the speakers would not generate sound at the 31.5Hz octave band. However, as requested a level has been allocated for that octave band;
- a specific noise-limiting device has not yet been selected. The applicant wishes for a condition of consent to be imposed, requiring submission of this detail to Council at a later stage.
- the final speaker system design has not yet been undertaken. The applicant wishes for a condition of consent to be imposed, requiring submission of this detail to Council at a later stage;
- a post commissioning test of the installation by an acoustic engineer is supported, to ensure the music levels are met and maintained. The tests would measure both within the beer garden and the nearest residential boundary and utilise a repetitive music track with wide and representative bass, melody and lyric content.

A copy of the response by Sonus is contained in **Attachment J**.

Based on the advice of the two acoustic experts, music within the proposed beer garden will not generate noise impacts in excess of those contemplated in City Wide Principle of Development Control 89.

Other sources of noise impact which some representors have suggested would result from the proposal include:

- noise from additional people occupying the beer garden;
- noise from vehicles leaving the car park; and
- noise from patrons leaving the venue.

In relation to the noise of additional people occupying the beer garden, Sonus have advised that a prediction of patron noise has been based on measurements at a number of similar licensed venues. Acoustic design recommendations have been made by Sonus based on those patron noise predictions, to achieve the noise level of no more than 8 dB above the level of background noise at the nearest noise sensitive location.

In relation to noise from vehicles leaving the car park and patrons leaving the site, these impacts are not considered relevant to the assessment, since the overall patron capacity of the Hotel is not proposed to change. Whilst the proposal may result in a short or long term increase in patronage at the Hotel within the maximum overall patron limit, so too could any number of other changes to operations at the Hotel which would not require Development Approval.

It is, however, relevant to consider the potential impact of the proposed relocation of the vehicular access point further to the south. The proposed egress point is approximately 1.5 metres from the southern boundary of the site, which is the boundary of an adjacent dwelling at 61 Phillis Street. The driveway which provides vehicular access to the dwelling at 61 Phillis Street is a common driveway serving four dwellings and is located approximately 12 metres south of the boundary with the Hotel. Therefore, vehicles leaving the Hotel carpark are not likely to result in any conflict with vehicle movements associated with the adjacent dwellings.

With respect to noise impacts from the vehicles using the relocated driveway, the existing Hotel carpark is directly adjacent to the dwelling at 61 Phillis Street, as is an aisle within the carpark. Changing the vehicle egress point is therefore not likely to have any appreciable impact on noise experienced at 61 Phillis Street, nor elsewhere along Phillis Street.

As no change to the overall licensed capacity of the Hotel is proposed, the Application does not result in a higher car parking demand. The Applicant has suggested that the proposal results in a reduction in car parking of 2 spaces. Comparing the car park layout which was approved via DA's 155/270/07 and 155/905/07 and the proposed car parking layout, the reduction is 4 spaces. Regardless, it is considered reasonable for a small reduction in spaces to occur, considering that the property at 63 Phillis Street was

converted to car parking ten years ago and the resultant car parking was surplus to any obligations under the *Development Act 1993*.

With respect to the impact of the proposed beer garden on the heritage listed Hotel, the Application was referred to the Council's Heritage Advisor, David Brown. Mr Brown has advised that the beer garden is in general an acceptable proposal. In particular, Mr Brown considers there is a reasonable recess between the old building and the new addition and that the height, bulk and scale of the addition is acceptable, as it is subservient to the main hotel building. Mr Brown considers that the mix of materials is appropriate given the contemporary design approach which has been taken.

Having regard to the advice of Mr Brown and considering the impact of the proposal on the streetscape more generally, the proposal is considered to make a positive contribution to the character of the area.

### Summary

The proposal is for a beer garden on the southern side of the Hotel, adjacent to Phillis Street, replacing a smaller alfresco courtyard. The beer garden is intended to accommodate up to 70 patrons (including an associated smokers court), with live and recorded music played through noise-limited speakers. Acoustic advice has been received, advising that noise from the beer garden will accord with the noise criteria contained in the Development Plan.

A range of noise and patron behaviour issues have been raised by representors which, although legitimate in their own right, do not relate to the development proposal, but rather the existing operations of the hotel.

The proposed addition is considered to relate positively to the heritage listed Hotel and make a positive contribution to the streetscape.

Proposed changes to the carpark configuration and entrance/egress points are not considered to result in any appreciable impacts on amenity within the locality. A small reduction in car parking numbers is considered acceptable as the proposal does not increase car parking demand of the Hotel and the number of car parking spaces provided at the Hotel was significantly increased ten years ago.

On balance, the proposal is not considered to be seriously at variance with the Development Plan and sufficiently accords with the Development Plan to merit consent.

### RECOMMENDATION

That having regard to the relevant provisions of the Norwood, Payneham and St Peters (City) Development Plan and pursuant to Section 33(1) of the *Development Act 1993*, Development Plan Consent be **granted** to Development Application No 155/46/2017 by Maylands Hotel Pty Ltd, for alterations and additions to an alfresco courtyard to create a beer garden and alterations to a car parking area on the land located at 63-67 Phillis Street, Maylands, subject to the following notes and conditions:

#### Relevant Plans

Pursuant to Section 44 (2) and (3) of the *Development Act 1993* and except where varied by a Condition specified hereunder, it is required that the development be undertaken, used, maintained and operated in accordance with the following:

1. the letter from Carlo Panozzo to Graeme Gibson dated 31 January 2017;
2. the plans by Folland Panozzo Architects:
  - a. SK01, Issue E;
  - b. SK02, Issue D;
  - c. SK03, Issue D; and
  - d. SK04, Issue B;
3. the recommendations contained in the acoustic report by Sonus, dated February 2017; and
4. the letter from Greg Vincent to Mark Thomson, dated 30 October 2017.

Conditions

1. The trading hours of the beer garden shall be limited to:
  - Sunday 11:00am to 10:00pm
  - Monday to Wednesday 10:00am to 11:00pm
  - Thursday to Saturday 10:00am to midnight
  
2. Live entertainment within the beer garden shall be limited to:
  - Sunday to Thursday until 9:00pm
  - Friday and Saturday until 10:00pm
  
3. The music level from the final speaker arrangement shall be measured by a suitably qualified acoustic engineer to confirm a noise limiting device maintains the following maximum sound pressure levels (LA10,15min) at the measurement location shown in the acoustic report by Sonus, dated February 2017:

Time of day	Noise Level (dB(A)) by Octave Band Centre Frequency (Hz)								Total Noise level dB(A)
	31.5	63	125	250	500	1000	2000	4000	
Allowable (LA10) levels at all times other than Saturday and Sunday between midday and 10pm	40	32	44	51	54	53	51	42	59
Allowable (LA10) levels Saturday and Sunday	49	42	50	57	60	61	60	51	66

4. Final details of the noise limiting device and the number and location of speakers shall be provided to the reasonable satisfaction of the Council, prior to commencement of operation of the beer garden.
  
5. A sound system commissioning acoustic survey shall be undertaken at the nearest residences after adjustment of the sound levels from each speaker and the sound limiter has been set up. The following information shall be provided:
  - Time of the test
  - Sound levels measured at the reference point inside the beer garden (Area 8) against the sound levels measured at the nearest residential boundary for each measurement.
  - the measurement points at the nearest residential boundary.
  - type of music played during the commissioning survey.
  
6. The acoustic treatments recommended by Sonus, numbered 1-5 on pages 6 and 7 of the report by Sonus, dated February 2017, shall be completed to the reasonable satisfaction of the Council, prior to operation of the beer garden.

3. **OTHER BUSINESS**  
(Of an urgent nature only)
4. **CONFIDENTIAL REPORTS**  
Nil
5. **CLOSURE**