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**Sent:** 26/05/2022 12:24:57 PM  
**Subject:** Objection to DA2022/0662 - 1/63-67 The Corso, Manly [BP-BPWSDB.FID1372265]  
**Attachments:** Objection to DA2022-0662.pdf;

Dear sir / madam,

Please find attached our letter of today's date, in objection to development application number DA2022/0662.

Regards,

**STEVEN GRIFFITHS**

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The General Manager  
Northern Beaches Council  
PO Box 82  
Manly NSW 1655

26 May 2022

Your ref DA2022/0662  
Our ref SXG 222930

By Email

Dear Sir,

**Objection to Development Application Number DA2022-0662  
Property: 1/63-67 The Corso, Manly**

We act for Iris Capital, a local landowner and business operator.

Our client objects to the development application number DA2022-0662 (**DA**) lodged with Council and seeking consent for the change of use and fit out of the property identified as Lot 1 in Strata Plan 67337, and known as 1/63-67 The Corso, Manly (**Property**), as a “*live entertainment and general bar*” (**Proposal**).

We require the identify information of our client above to be redacted in any publication or release of this submission to a party outside Council, unless otherwise compelled by law.

The particulars of our client’s objection are set out in the following.

**1. DOCUMENTS**

1.1 In preparing this submission, we have reviewed and considered the documents lodged in support of the DA which are publicly available via the ‘DA Tracking’ section of Council’s website, including:

1.1.1 Survey Plan prepared by Rygate & Company Pty Ltd, dated 21/2/2022 (**Survey**):

- a) Reference Number 79617\_GRD, Sheet 79617\_Rev-A;
- b) Reference Number 79617\_MEZ, Sheet 79617\_Rev-A.

1.1.2 Architectural plans prepared by Grain Architects, dated 1 December 2021, Revision 01 (**Plans**):

- a) Drawing Number DA00 – Cover Sheet, Drawing List & Project Summary;

- b) Drawing Number DA01 – Site Analysis;
  - c) Drawing Number DA02 – Existing / Demolition Plan;
  - d) Drawing Number DA03 – Proposed Ground Floor Plan;
  - e) Drawing Number DA04 – Proposed Mezzanine Level;
  - f) Drawing Number DA08 – Elevations South;
  - g) Drawing Number DA09 – Section 01;
  - h) Drawing Number DA10 – Section 02;
  - i) Drawing Number DA11 – Signage.
- 1.1.3 “Statement of Environmental Effects: Change of use to a pub and live entertainment venue, building works and signage”, prepared by Gyde Consulting dated April 2022 (**SEE**);
- 1.1.4 “Clause 4.6 Request – Floor Space Ratio”, prepared by Gyde Consulting dated April 2022 (**Clause 4.6 Request**);
- 1.1.5 “Plan of Management: Change of use to a pub and live entertainment venue, building works and signage”, prepared by Gyde Consulting, dated April 2022 (**Plan of Management**);
- 1.1.6 “Social Impact Assessment: Change of use to a pub and live entertainment venue”, prepared by Gyde Consulting, dated 14 April 2022 (**SIA**);
- 1.1.7 “Short-Form Heritage Impact Statement – 1/63-67 The Corso, Manly”, prepared by Touring the Past dated 6 April 2022 (**HIS**);
- 1.1.8 Noise Impact Assessment (Document Reference 20211445.1/0812A/R0/RG), prepared by Acoustic Logic dated 8 December 2021 (**Acoustic Report**);
- 1.1.9 Traffic and Parking Assessment, prepared by Transport and Traffic Planning Associates, dated 7 April 2022 (Ref: 091/2022) (**Traffic and Parking Assessment**);
- 1.1.10 Waste Management Plan prepared by Dickens Solutions (Ref – 21324), dated January 2022 (**Waste Management Plan**);
- 1.1.11 “BCA + Access Capability Statement for DA Submission” (Ref: P221\_408), prepared by Design Confidence (Sydney) Pty Ltd, dated 27 January 2022 (**BCA and Access Statement**);
- 1.1.12 Annual Fire Safety Statement, prepared by FLAME Services, dated 04/02/2021).
- 1.2 Submissions herein are made with reference to the information of the Proposal provided in the above documents.

## 2. BACKGROUND

### 2.1 The Property is:

- 2.1.1 Part of the wider site that is located within the *Zone B2 Local Centre* pursuant to the Land Zoning Map of the *Manly Local Environmental Plan 2013 (MLEP)*;
- 2.1.2 Identified as part of an item of local heritage significance under Schedule 5 and the Heritage Map of the MLEP, being part of heritage item number 1106 ‘*Group of commercial buildings*’;
- 2.1.3 Lot 1 of a three lot strata subdivision of the building occupying the site and is currently occupied and used as an art gallery at ground floor level and as backpackers’ accommodation on upper floors (**Lot 3**).

2.2 Lot 3 is the subject of development consent granted by Council under development application number DA2019-1398 for “*Alterations and additions to an existing building to facilitate shop top housing containing 12 apartments including the construction of a pergola and lift overrun to the roof terrace*” (**Lot 3 Consent**).

2.3 On 1 March 2022, a development application DA2022-0275 for “*alterations and additions to commercial development – use of premises as a restaurant and signage*” was lodged with Council (**Prior DA**). The Prior DA was subsequently withdrawn on 9 March 2022.

2.4 On 4 May 2022, the DA was lodged with Council.

## 3. OBJECTIONS

3.1 Our client’s objections are set out in the following.

### Inappropriate development in the context

3.2 Council is required by section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979 (EPA Act)* to consider the *suitability of the site for the development*.

3.3 Our client acknowledges that the Property is zoned *B2 Local Centre* pursuant to the MLEP, and that within this zone, developments of the nature of the Proposal may be permitted with consent.

3.4 However, that a type of development is permissible with consent in the relevant zone does not necessitate that development consent must be, or should be, granted. A thorough assessment of the appropriateness of such a proposed development must still be undertaken and, if found to be unacceptable, consent should not be granted.

3.5 The Proposal fails to adequately address the objectives of zone *B2 Local Centre* in the MLEP. In particular the Proposal does not *minimise conflict between land uses in the zone ... and ensure amenity for the people who live in the local centre in relation to noise, odour, delivery of materials and use of machinery*.

3.6 The Proposal will have a significant detrimental impact on the locality in terms of noise and social impacts and is, in our submission, incompatible with the existing and approved uses of the subject building.

- 3.7 We also submit that such conflicts of use cannot be managed by conditions as such would create an ongoing enforcement issue for Council.
- 3.8 Further, the Proposal fails to comply with the *Manly Development Control Plan 2013 (DCP)*, particularly Parts 3.1, 4.2 and 5.1 (discussed further below).
- 3.9 It is therefore submitted that:
- 3.9.1 The Proposal is an incompatible land use in this context and the Property is better suited to lower-impact commercial/retail uses, such as the current use of the Property (**retail premises**, art gallery);
- 3.9.2 Active ground floor uses, for a vibrant local centre in Manly along The Corso can be achieved through lower-impact commercial/retail uses, such as the current use of the Property;
- 3.9.3 The Proposal is a type, due to its nature and operational characteristics, that is not compatible with the amenity of the residential accommodation above it at Lot 3;
- 3.9.4 The SEE and SIA accentuate a lack of built form impacts on amenity, but fails to satisfactorily address amenity impacts resulting from the nature and operations of the Proposal.
- 3.10 Our client says that in this context the Property is unsuitable to accommodate the Proposal due to conflicts with other existing and approved uses and due to the detrimental impacts, which have not been satisfactorily addressed by the Applicant.

#### Anti-Social Behaviour

- 3.11 Objective 2 of 4.2.5.6 of the DCP requires Council to consider whether the following objectives are met:
- To regulate the activities and design of late night venues to minimize late night disturbances to the public and promote Manly as a safe place for all the community late at night such that:*
- *Frontages to public spaces must be designed to minimize conflict between customers within the establishments and public using the public spaces;*
  - *The applicant demonstrate...that the premises will not detract from the safety and security of the Entertainment Precinct and as a place which is appropriate for families; and*
  - *Obligations of any current Accord are addressed in minimizing anti-social behaviour and adverse effects of excessive alcohol consumption.*
- 3.12 Our client says that the Proposal does not minimise conflict between customers within the establishment and public using the public spaces for the following reasons:
- 3.12.1 The Property is located in close proximity to several other licensed premises, such that the locality will suffer from an over-proliferation of such uses were the Proposal to be carried out.
- 3.12.2 With such uses come the risk of anti-social behaviour and the loss of a diversity of uses that is sought in the B2 Local Centre zone.

- 3.12.3 The SIA states that night-time assault on weekend nights in public spaces such as roads/street/footpaths, particularly when in proximity to a licensed premises, is of a “significant” level in Manly when compared with other Sydney areas. However, this significant risk is increased by the Proposal particularly given the proposed operational details (including the excessive number of patrons to be accommodated by the Proposal, up to 534 patrons).
- 3.12.4 The SIA proposes that certain measures can mitigate this anti-social behaviour, including *‘having in place reporting and recording mechanisms for violent behaviour or incidents’* and *‘adopting strategies to eradicate incidents of sexual harassment and violence’*. These strategies are response-based measures rather than prevention measures, and as such, fail to adequately address the objective.
- 3.12.5 The proposed hours of operation are between 7.00am and 3.00am. This is inconsistent with paragraph (b) of the DCP at 4.2.5.6 which states that the maximum hours of operation are:
- (i) Hotels and Nightclubs: from 5.00am up to 2.00am (next day) and with a restricted entry policy for Nightclubs are 12:30am; and
  - (ii) Restaurants & Food Outlets: from 5.00am up to 1.00am (next day).
- 3.12.6 The Proposal will create a *‘physical end point for the queuing area’* (Plan of Management, paragraph 7.6) so as to enable free pedestrian movement. However, this is likely to create a less orderly gathering of patrons within the public domain, waiting to enter the premises.
- 3.13 Our client says that the Proposal does not demonstrate that the premises will not detract from the safety and security of the Entertainment Precinct and as a place which is appropriate for families, for the following reasons:
- 3.13.1 As stated above, the Proposal increases the risk of night-time assault, which is already at a significant level.
- 3.13.2 The Proposal fails to address how it will maintain the safety and security of the Entertainment Precinct, particularly in consideration of families.
- 3.13.3 The Proposal will see to accommodate large crowds and operate between 7.00am and 3.00am, which is contrary to the DCP at 4.2.5.6(b), and which increases the risk of anti-social behaviour.
- 3.14 Our client says that the Proposal does not minimise the risk of significant anti-social behaviour and the adverse effects of excessive alcohol consumption, for the following reasons:
- 3.14.1 The Proposal does not demonstrate that the premises will not detract from the safety and security of the Entertainment Precinct. To the contrary, the SIA states that *“there are likely to be noise and safety issues that may result from the proposed development...”*.
- 3.14.2 The Proposal does not minimise anti-social behaviour and the adverse effects of excessive alcohol consumptions, but instead adds to the number of licensed premises in the area, and to the risk of non-domestic assault occurring which is already high when compared to other Sydney areas (SIA).

- 3.14.3 The Proposal will increase the risk of anti-social behaviour, particularly during an already 'high risk' time of day.
- 3.14.4 The Plan of Management fails to adequately provide for the prevention and mitigation of anti-social behaviour, but rather suggests "informing people about the associated harms" of alcohol consumption.

### Noise Impacts

- 3.15 The Proposal seeks hours of operation between 7:00am and 3:00am, seven days per week, and a capacity of 534 patrons at any one time.
- 3.16 Clause 6.21 of the MLEP relates to the noise impacts of licensed premises. Council must consider the impact of *any noise nuisance likely to be generated by the proposed development on residential accommodation in the vicinity of the proposed development*.
  - 3.16.1 The SIA looks at the acoustic impacts on the backpacker accommodation within the building as the 'closest internal receiver'. The SIA states that "*the main source of noise affecting these receivers will be from transmission through the general bar ceiling/hostel floor*".
  - 3.16.2 The SIA also acknowledges that the approved future residential development of Lot 3, under the Lot 3 Consent, has not been taken into account in the Acoustic Report. This is a significant failing of the DA.
  - 3.16.3 The Acoustic Report suggests that "remain quiet" reminder signs placed outside the venue for when patrons depart, particularly after 10.00pm, will mitigate the noise that carries to Lot 3.
  - 3.16.4 However, this is not a practical and bona fide means of regulating noise made by large groups of (potentially intoxicated) patrons.
  - 3.16.5 The Plan of Management is also inadequate in addressing the noise nuisance to be generated by the Proposal on residential accommodation in the vicinity of the proposed development (including any future residential use of the building approved under the Lot 3 Consent).
  - 3.16.6 Rather, the Plan of Management simply:
    - (i) Provides measures that are claimed to minimise sound travelling outside the Property (but does not address noise impacts on Lot 3); and
    - (ii) States large crowds will be asked to provide contact information – having the result of large crowds loitering in the area and exacerbating adverse noise impacts.
- 3.17 Therefore, our client says that the noise impacts of the Proposal on adjoining developments, including existing and approved residential accommodation, are unsatisfactory and have not been adequately considered or addressed in the DA.
- 3.18 In our submission, the Proposal is incompatible and irreconcilable with the Lot 3 Consent in terms of noise and so, if the Applicant pursues the DA and Council

contemplates granting consent (which our client says it should not), any consent should be conditional on the surrender of the Lot 3 Consent.

### Floor Space Ratio

- 3.19 Our client says that the Clause 4.6 Request is inadequate as it is confused as to which development standard it seeks to vary. At various parts it refers to a proposed variation to the height of building development standard and a proposed variation to the FSR development standard. In this regard, it must be considered incompetent.
- 3.20 The Clause 4.6 Request states that the FSR which is applicable to the Property is 2.50:1, and the Proposal would result in an FSR of 2.56:1. This is as a result of the proposed additional floor area in the mezzanine level.
- 3.21 The Proposal fails to meet the objectives set out at clause 4.4 of the MLEP, in particular clause 4.4(1)(d) which requires that adverse environmental impacts on the use or enjoyment of adjoining land and the public domain be minimised.
- 3.21.1 The Clause 4.6 Request states that '*the proposed additional GFA is located within the existing building envelope and will not impact on the enjoyment of adjoining lands*'.
- 3.21.2 The additional gross floor area, which causes the breach of the FSR development standard, is aimed at maximising patron numbers.
- 3.21.3 The excessive proposed patron numbers are a primary contributor, in our submission, to the unacceptable noise impacts of the proposal on the locality and, particularly, on Lot 3.
- 3.22 The increase in FSR as requested in the Clause 4.6 Request will fail to '*minimise conflict between land uses in the zone...and ensure amenity for the people who live in the local centre in relation to noise, odour, delivery of materials and use of machinery*', and is therefore inconsistent with the objectives of *B2 Local Centre* zone.
- 3.22.1 The increase in FSR will increase the acoustic impacts on Lot 3, given that Lot 3 is directly above the proposed addition to the mezzanine level.
- 3.23 For the above reasons, our client says that the Clause 4.6 Request should not be upheld by Council.

### Proposed Signage

- 3.24 The Proposal includes the erection of a large, illuminated guitar (5.2 metres wide, by and 9.6 metres high). This sign is proposed to be attached to the ground within the public domain and awning of the existing building, and extending above the existing parapet.
- 3.25 The Proposal requires a privatisation of the public domain adjoining the Property for its own advertising purposes. We assume Council has not given consent for this and such would create an undesirable precedent were it to be approved.
- 3.26 It also fails to satisfy the Schedule 5 Assessment Criteria of the *State Environmental Planning Policy (Industry and Employment) 2021 (Industry and Employment SEPP)*, as well as the objectives and controls of the DCP.



- 3.27 The proposed sign would have an adverse impact both on the Manly Town Centre, and the Property's street presentation. The Proposal fails to address the objectives set out at 4.4.3 of the DCP, in particular:
- 3.27.1 The Proposal detracts from the iconic streetscape of The Corso, and is disharmonious with the existing and adjoining buildings and their surroundings.
  - 3.27.2 The Proposal does not minimise visual impact, but rather creates excessive and unnecessary signage, which is in addition to a proposed business identification sign which is almost 6 metres wide.
  - 3.27.3 The Proposal fails to design a sign which is integral to the architectural style and finishes of the building, adopting a "tack on" appearance, which projects well beyond the frontage and awning of the Property (4.4.3.1(d)). Signs which are above the awning height are not allowed (4.4.3.3(c)).
  - 3.27.4 The Property is part of a heritage item under the MLEP, and the proposed sign would detract from the significance and original form of the building, which remains above ground level.
  - 3.27.5 Signage should complement the building not dominate it.
  - 3.27.6 The HIA fails to demonstrate how the Proposal meets the controls of 4.4.3.2 of the DCP.
- 3.28 The proposed sign adversely impacts Lot 3, and the Proposal fails to consider and assess these adverse impacts, as it will:
- 3.28.1 Be illuminated during the proposed hours of operation, being 7.00am to 3.00am;
  - 3.28.2 Protrude above the existing awning, directly facing the existing windows of lodgings in Lot 3; and
  - 3.28.3 The size, illumination, obtrusiveness and unsympathetic design is inconsistent with the DCP, in particular with 4.4.3.1(e) and (h).

### Heritage

- 3.29 As noted above, the Property is part of a heritage item (*I106 'Group of commercial buildings'*) under the MLEP, the original building having been originally built in 1935.
- 3.30 Further, the Property is located within the Manly Town Centre Heritage Conservation Area (**HCA**). The physical elements of the "*intact promenade quality of The Corso and its turn of the century streetscape, as well as key built elements such as hotels, and remaining original commercial and small scale residential buildings*" continue to reflect the HCA, as stated in the HIA.
- 3.31 The HIA states that the Property would "*likely satisfy the requisite threshold for historical significance*", and that the Proposal would optimally reinstate the original shopfront. This is despite significant works to alter the appearance and internal fabric of the existing building.

- 3.32 Further, the HIA acknowledges that the proposed signage could be “*out of keeping with the desired character of the heritage group*”.
- 3.33 The Proposal fails to adequately consider the relevant controls of the DCP, including paragraph 3.2, 4.2.5 and 5.1, in its assessment of the heritage impacts.
- 3.34 For these reasons, our client says that the Proposal is an unsympathetic and detrimental addition to the HCA and is therefore inconsistent with clause 5.10 of the MLEP.

#### **4. CONCLUSION**

- 4.1 For the reasons set out above, our client says that the DA is unsatisfactory.
- 4.2 The DA is not supported by sufficient information and the Proposal will have significant detrimental impacts on the other uses of the subject building and the wider locality.
- 4.3 Therefore, our client invites Council to refuse the DA.

If you have any questions or wish to discuss the above objections, please contact us.

Yours faithfully

**Bartier Perry Lawyers**



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