



DESIGN COLLABORATIVE Pty Limited

ABN 36 002 126 954
ACN 002 126 954

Town Planning and Liquor Licensing
Consultants

www.designcollaborative.com.au

Managing Director

J Lidis
BTP (UNSW)
MPIA

Director

David Rippingill
BEP (WSU)
Juris Doctor (UNE)
RPIA

Consultant

G W Smith
BSurv (QLD)
MCP (MIT)
MPIA (Life Fellow)
MIS Aust
MRTPI
FAPI

3 December 2020

Ref: 191335.5L

General Manager
Northern Beaches Council
PO Box 82
Manly NSW 1655

Dear Sir/Madam,

[Section 4.55\(2\) Modification Application – Amend Condition 6 of DA2019/0987 to permit Service and Consumption of Alcohol in Outdoor Seating Area for Fish and Lemonade](#)

This letter accompanies a modification application (*the Application*) made under s. 4.55(2) of the *Environmental Planning and Assessment Act, 1979 (the EP&A)* for the food and drink premises to be known as Fish and Lemonade (*the Restaurant*).

The Restaurant is located at Shop 15 Manly Wharf, legally described as Lot 1 of Deposited plan 1170245 (*The Subject Site*). This Application seeks to modify condition 6 of DA2019/0987 to permit service and consumption of alcohol within the approved outdoor seating area.

The consumption of alcoholic beverages within outdoor seating area is very common within Manly Wharf, and the Manly area in general. If the condition is permitted to stand, it would be the only licensed premises on Manly Wharf, prohibited from selling and serving liquor to externally seated patrons.

In order to avoid such a condition being imposed, the Applicant offered significant restrictions on the service of liquor. Notwithstanding, the footway prohibition was still sought by the Police and imposed by Council. It is considered its imposition is unreasonable and fails to achieve any positive planning outcome. Instead, it will reduce the enjoyment of Manly Wharf by prohibiting the reasonable use of an outdoor area that will have no adverse impact, as well as confuse and frustrate patrons. It will put the subject premises at an unfair, commercial disadvantage compared to all other Manly Wharf premises for no public benefit.

The condition is recommended for amendment as proposed.

This letter comprises the Statement of Environmental Effects for the Application.

The development as it is proposed to be modified will remain substantially the same as it was originally approved.

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

Site and Surrounding Area

The Restaurant occupies Shop 15 at Manly Wharf, Manly. Manly Wharf is legally described as Lot 1 of DP1170245.

Manly Wharf is located adjacent to the junction of East Esplanade, West Esplanade and Belgrave Street. The size of Manly Wharf is approximately 13,405sqm. The approximate location of The Restaurant is illustrated in figure 1 below in red.

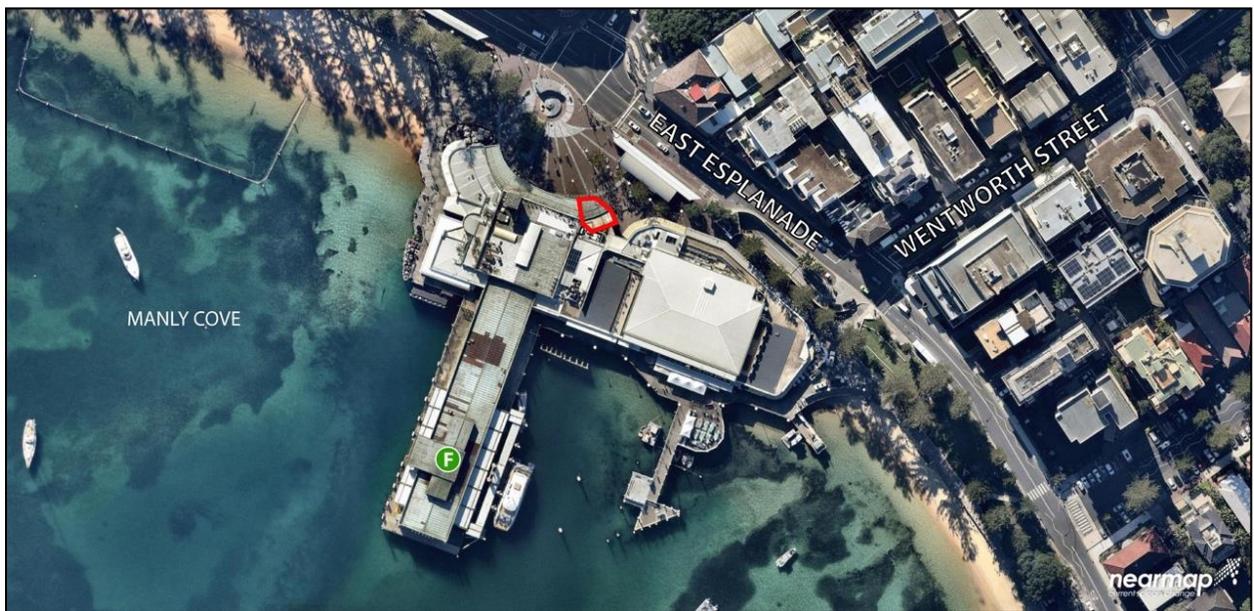


Figure 1: Location of The Restaurant (Source: Nearmap)

Manly Wharf is a passenger terminal wharf and shopping centre. The structure is part one-storey and part two-storey with multiple restaurants and retail tenancies. The food and drink premises ranges from coffee shops to waterfront restaurants alongside retail shops and a supermarket. The majority of licensed food and drink premises such as Hugo's, Guzman Y Gomez, Betty's Burgers, The Bavarian and Manly Wharf Hotel have late trading outdoor seating areas.

The Restaurant is located at the entrance to Manly Wharf and faces Manly Town Square. The Site had been a McDonald's fast food outlet for more than 15 years. However, due to changing local demands, falling revenue forced the business to close.



Figure 2: Location of the Restaurant marked in red (Source: Design Collaborative, July 2019)

The nearest noise sensitive receivers are the residential apartments at 53 East Esplanade (45m east), 43-45 East Esplanade (60m east) and 54 West Esplanade (70m west).

To the immediate north of the Restaurant is the Manly Town Square with the Information Centre and bus stops. Across the junction is a public open space which is also the main thoroughfare to major tourist attractions including The Corso and Manly Beach.

To the eastern side of the Restaurant are a mixture of commercial buildings and mixed use buildings with retail or restaurants at ground level. The buildings fronting East Esplanade between Belgrave Street and Wentworth Street are two to four storeys. Buildings further east are mostly mixed use buildings with retail at ground level and residential above, ranging from three storey walk ups to nine storey buildings. The East Manly Cove Beach is to the east of the Restaurant.

To the western side of the Restaurant is a mixed use development with a restaurant and a few retail shops along West Esplanade and Belgrave Street. Further west are generally medium density residential buildings typical three storeys in height.

To the southern side is the Manly Wharf and the North Harbour.

Manly Wharf is the main entrance as the majority of visitors, workers and residents enters Manly by ferries. The immediate surrounding area is a well-established and world known town centre with numerous food and drinks premises (both licensed and unlicensed), retail stores and various services such as banks, pharmacies, bicycle and surfboard rentals. All surrounding streets have active frontages, and almost all residential dwellings within close proximity of Manly Wharf have commercial uses (restaurants or shops) at ground level.

Relevant Site Planning History

DA5538/92 was lodged on 3 November 1992 for use a McDonald's fast food restaurant.

DA2019/0987 was approved on 10 March 2020 for the use of premises as a licensed restaurant, fitout and signage. The hours of operation are restricted to between 9am and 12 midnight, seven days a week. The Restaurant is limited to 56 patrons with 20 patrons internally and 36 patrons externally.

Condition 6 of **DA 2019/0987** prohibits the service or consumption of liquor in the approved outdoor area. As shown below, the majority of the seating is what would be considered "external". It is noted that the "outdoor area" is also undercover of an existing awning over it.

Proposed Modification

This Application seeks to modify condition 6 of DA2019/0987 to permit service and consumption of alcohol within the approved outdoor area.

Condition 6 of **DA2019/0987** is proposed to be modified as follows. Proposed deleted text is shown in ~~Strike through~~, with changes presented in **bold**.

6. Service of Alcohol

In addition to compliance with the requirements contained within the Plan of Management dated 1 February 2020 and prepared by Liquor Advisory Services, the following measures are to be implemented throughout operation of The Restaurant:

~~(a) That alcohol not be consumed or supplied in the outdoor area.~~

(b) Alcohol may only be ~~serve~~**d** and consumed whilst the patron is seated ~~within the internal area of The Restaurant.~~

(c) **No open containers containing alcohol may be removed from The Restaurant. Resealed bottles of wine purchased to be consumed with a meal may be removed if resealed.** ~~No alcohol, drinks, glasses or vessels are to be taken from the licensed area.~~

~~(d) Staff are to ensure that patrons do not enter the outdoor area with alcohol.~~

Council's internal referrals raised no issue with the availability of liquor at the subject site.

The only concern regarding the availability of liquor, was raised by NSW Police.

All of the premises adjoining the proposed premises are permitted to sell liquor. As per the below photos.





Figure 3: Outdoor seating areas for Betty's Burgers (left) and Bavarian (right) (Source: Design Collaborative, July 2019)

Outdoor seating areas for Betty's Burgers and Bavarian are shown in Figure 4 above. Guzman Y Gomez is shown in Figure 5 below.



Figure 4: Outdoor seating areas for Guzman Y Gomez (Source: Paul Kelly Design, December 2019)

The Police did not cite any particular issue with the availability of liquor in the outdoor areas of the subject premises.

Having regard to the existing, established character of the Manly Wharf dining precinct the proposed operation of the outdoor seating area is entirely consistent with the intended operation of this area. The proposed Plan of Management and compliance with the Liquor Act, 2007 will ensure no adverse impacts would arise.



Figure 5: Fish & Lemonade (Source: Fish & Lemonade, November 2020)



Figure 6: Proposed barriers for Fish & Lemonade (Source: Fish & Lemonade, November 2020)

Environmental Assessment

This section undertakes an assessment of the Application using the heads of consideration as required under s. 4.55 (2) of the EP&A Act. The following environmental planning instrument and development control plan are relevant;

- *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (the SREP);*
- *State Environmental Planning Policy (Coastal Management) 2018; and*

- *Manly Development Control Plan 2013 (the DCP)*

The *Manly Local Environmental Plan 2013* does not apply as The Restaurant is located outside of the land identified on the Land Application Map.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (SREP)

The use as a licensed restaurant and a takeaway food and drink premises is permissible under clause 18(2) of the SREP.

The aim of the SREP is to ensure that catchment, foreshores, waterways and islands of Sydney Harbour are recognised, protected, enhanced and maintained, to ensure healthy, sustainable environment on land and water, to achieve a high quality and ecologically sustainable urban environment, to encourage a culturally rich and vibrant place for people, and to ensure accessibility to and along Sydney Harbour and its foreshores.

The proposed modifications do not affect the previously assessed compliance with the controls.

State Environmental Planning Policy (Coastal Management) 2018

The application to permit sales of liquor in the outdoor area, consistent with all other licensed premises in Manly Wharf, will have no effect on the kinds of impacts required to be assessed under this environmental planning instrument. The approval will continue to comply with those provisions, as previously assessed.

Manly Local Environmental Plan 2013 (The LEP)

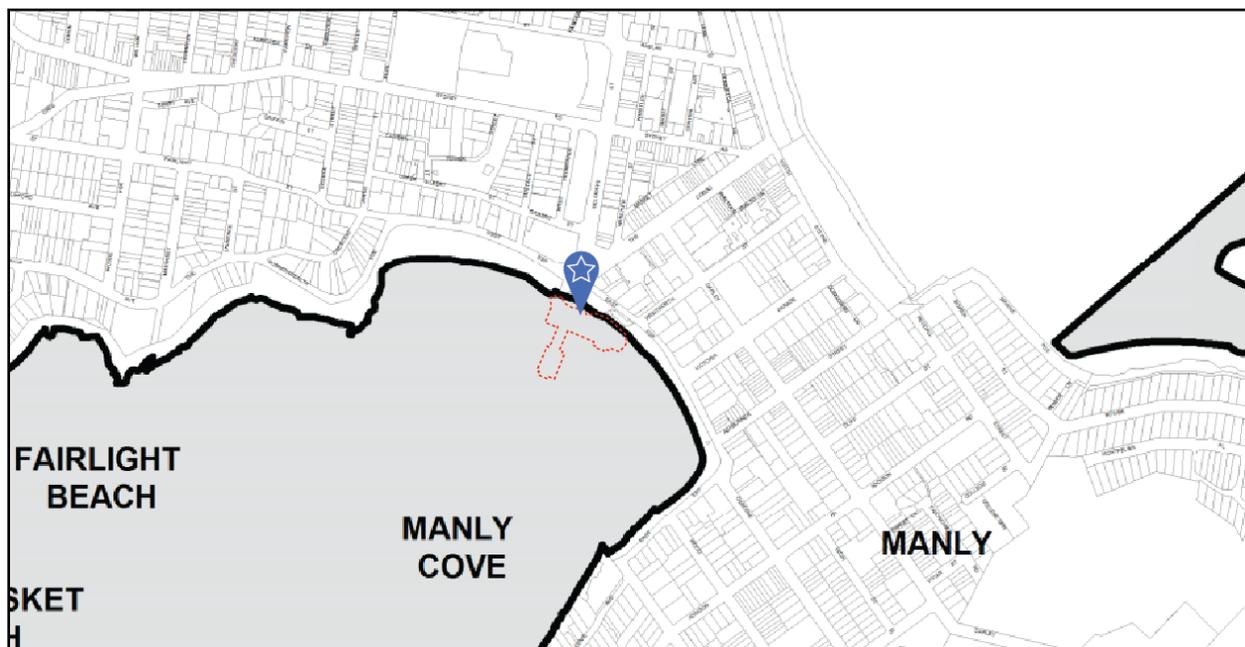


Figure 7: Land Application Map (Source: Manly LEP 2013)

While the subject site is outside the area to which the Manly LEP 2012 applies, it should be noted that the modification complies with the aims of the LEP.

The use as a food and drink premises is compatible with the surrounding use and is desirable within the transport hub that has the highest foot traffic within Manly being the entry point for most tourists. The design of the Restaurant including the façade and mechanical plants respects and conserves the State Heritage Item.

Clause 5.10 - Heritage Conservation

Under Schedule 5 of the LEP, Manly Wharf is located at East and West Esplanades (opposite the Corso, Harbour side) is listed as item I145 and is of state heritage significance.

Due to the nature of this modification, there is no foreseeable impact that this Application will have upon the surrounding heritage site.

Draft Environmental Planning Instruments

There is no Draft Environmental Planning Instrument applicable to this Application

Manly Development Control Plan (the DCP)

Control 1.7 Aims and Objectives of this Plan

The objective of this plan is to encourage development that contributes to the quality of Manly streetscapes and townscapes, and to ensure that the development has considered the community needs, positively responds to the qualities of the site, heritage and character of the surrounding area.

The Application complies with the controls in that the use as a food and drinks premises is compatible with surrounding land uses. No work is proposed as part of the Application.

Control 3.4.2.3 Acoustic Privacy (Noise Nuisance)

The control is to ensure that noise impacts are considered for the Application. An acoustic report was not previously considered necessary due to the high levels of activity and background noise levels during the hours proposed.

In addition to the above, the Restaurant has a capacity of 36 patrons within the outdoor seating area. It is not considered that permitting that approved number of patrons to consume a single wine or beer would affect acoustic volumes, and so there would be no increased acoustic impact as a result of the application.

Planning Agreement

There is no Planning Agreement that has been entered into under Section 7.4, nor is there any Draft Planning Agreement that the applicant is offering to enter under Section 7.4

There is no matter prescribed by the Regulations relevant to the subject site or Application.

The Public Interest

The application is considered to be in the public interest. There is no obvious benefit to preventing patrons from consuming a wine or beer with their meal, in an outdoor area versus the internal



area. The application will remove what will be an obvious point of contention with prospective patrons and permit the Restaurant to operate on a level commercial playing field as the existing premises.

In this regard it is relevant to note that no public submissions were made to Council when the Application was first lodged and notified to the public as a licensed restaurant. This demonstrates that there were no public concerns for consumption of alcoholic beverages within the Restaurant.

Conclusion

As demonstrated above, the Application is consistent with the Council's relevant planning controls and policies.

The Statement demonstrates the Application's compliance with the relevant legislation and is highly unlikely to be have any unacceptable adverse impact arising from the Application.

In addition, the use of the Restaurant is subject to the approved Plan of Management that has listed detailed mitigation measures to monitor patron behaviour and ensure that the operation of the Restaurant does not have any detrimental adverse impact to the surrounding land uses.

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

Should you have any questions please do not hesitate to contact the writer.

Regards,

DESIGN COLLABORATIVE PTY LTD



David Rippingill

Director

