

6 December 2019

General Manager

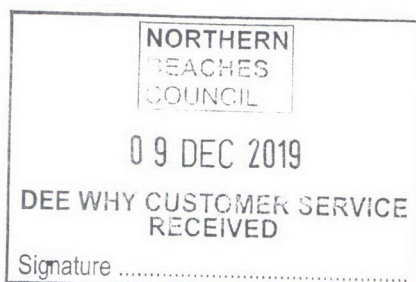
Northern Beaches Council

PO Box 82

MANLY NSW 1655

Attention: Mr Tony Collier

Dear Sir



CONFIRMATION



Re: Objection to (DA) DA2019/1234 - Manly Wharf, Manly

This letter is written on behalf of the Good For Manly Association. It sets out our objection to a development application (DA) proposing alterations and additions to facilitate outdoor seating and an increase to the capacity of two restaurants (Sake and El Camino), located on the upper level of Manly Wharf (the site).

The two restaurants which this DA relates to, and their approved operating conditions (as approved by DA2018/1418) are outlined below:

- Sake: Maximum capacity 300 patrons:
- El Camino: Maximum capacity 207 patrons:
- Both restaurants currently operate between:
 - 8.00am to 11.00pm Monday to Saturday and 8.00am to 10.00pm Sunday
 - Extended hours on a trial basis of 8.00am to 1.00am the following day Friday and Saturday and 8.00am to Midnight on Sunday.
 - Outdoor close 10.00pm on all days.

The proposal the subject of this application seeks to increase the capacity of the two restaurants, by providing two new outdoor areas as follows:

- Sake: Maximum capacity **464 patrons** (an increase of 164 patrons or an increase of 55%)
- El Camino: Maximum capacity **400 patrons** (an increase of 193 patrons or an increase of 93%)

Both new outdoor areas will cease trading at 10.00pm each night.

SUBMISSION

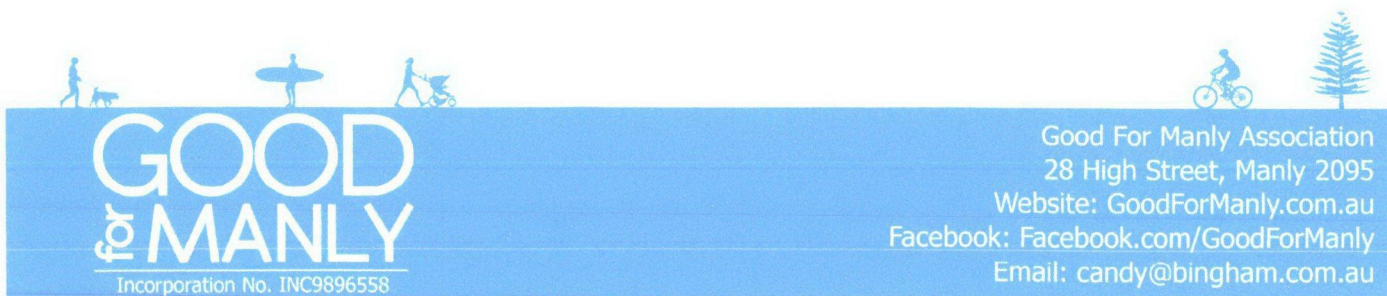
Preparation of this submission follows a review of the exhibited DA material and a site visit.

Good For Manly object to DA2019/1234 for the following reasons:

A. THE PROPOSED DEVELOPMENT IS INCONSISTENT WITH THE OBJECTIVES OF ZONE W2 ENVIRONMENT PROTECTION

The subject property is located within the Sydney Harbour Catchment therefore the provisions of Sydney Harbour Regional Environmental Plan (Sydney Harbour Catchment) 2005 (**Sydney Harbour SREP**) apply to this development.

The subject site is located in Zone W2 Environmental Protection.



Zone objectives

Pursuant to the land use table at cl. 17 of Sydney Harbour SREP, the objectives of Zone W2 Environment Protection are:

- to protect the natural and cultural values of waters in this zone,
- to prevent damage or the possibility of longer term detrimental impacts to the natural and cultural values of waters in this zone and adjoining foreshores,
- to give preference to enhancing and rehabilitating the natural and cultural values of waters in this zone and adjoining foreshores,
- to provide for the long-term management of the natural and cultural values of waters in this zone and adjoining foreshores.

Further cl. 17(2) of Sydney Harbour SREP states that:

Except as otherwise provided by this plan, the consent authority must not grant development consent to any development unless satisfied that it is consistent with the aims of this plan and the objectives of the zone in which it is proposed to be carried out.

The Statement of Environmental Effects (SEE) prepared by Planning Lab dated 12 September 2019 states the following:

The proposal does not cause inconsistency with the objectives of the W2 Environmental Protection zone

This statement is incorrect, the proposal must demonstrate that it is consistent with the aims of the plan and the objectives of the zone. Not that it does not cause inconsistency.

The scale and intensity of the existing and proposed activities on the site are not considered to be compatible with or consistent with the objectives of the W2 Environmental Protection Zone. Rather the proposed new outdoor areas and associated increase in patron capacity does not protect and enhance the natural and cultural values of waters in this zone, nor does it prevent damage to the natural and cultural values of the waters and adjoining foreshores.

The detrimental impact of the proposed development by way of noise intrusion, and heritage and visual impacts on the waterway and adjoining foreshore areas is significant (as detailed below at Points C- D). As such the proposal has failed to demonstrate that it is consistent with the site's W2 Environmental Protection Zoning, and therefore should not be supported.

B. THE PROPOSED DEVELOPMENT WILL HAVE A SIGNIFICANTLY ADVERSE NOISE IMPACT ON THE RESIDENTS SURROUNDING MANLY WHARF

The ground of this objection is that the proposal will have an egregious noise impact on surrounding residential properties and is in serious breach of the following performance criterion for a Landscape Character Type 8 area under the Sydney Harbour Foreshores and Waterways Area Development Control Plan, namely "design and mitigation measures are provided to minimise noise and amenity impacts between incompatible land uses".

The subject site, Manly Wharf, extends in a generally southerly direction from the foreshore, over the waters of Manly Cove, and is within a direct line of sight from the numerous adjacent and nearby houses and flats in East Esplanade, Cove Avenue, West Esplanade and Commonwealth Parade. These residences are particularly susceptible to noise from the roof of the wharf, given the well-known propensity for sound to travel unimpeded over open water.



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The proposal makes no attempt to take any design or mitigation measures to minimise or even reduce the noise caused by patrons in parties of 4, 6, 8 or even more on the proposed dining terraces. Voice levels rise significantly with larger groups of diners as the evening progresses and alcohol is consumed. El Camino restaurant, in particular, actively encourages noisy behaviour of its patrons with the drinking of Margarita cocktails and the wearing of funny hats.

The noise assessment report by Acoustic Logic can only be described as a sham. It is clearly a pro forma report justifying noise from a generic restaurant without any real attempt to assess the impacts of this particular DA.

The report claims the only affected neighbouring properties are the mixed use buildings immediately across East Esplanade, to the north of the subject premises. These properties are affected, but they are not the only ones. The report totally ignores the residences across the waters of Manly Cove in the streets mentioned above.

The background noise levels used on p7 of the report are inappropriate as those levels are inflated by the noise of ferries, which is a low-frequency, non-intrusive noise which local residents quickly get used to and ignore. The noise of alcohol-fuelled party-goers is high-frequency and intrusive.

The classification of the affected residences as "Urban" on p9 for acceptable noise levels is incorrect. The houses and flats in the streets affected across the water are clearly suburban in character and entitled to a higher level of acoustic amenity.

As regards music noise, p11 of the report claims that the assessment is based on the "worst case situation", namely "background music within restaurants" of up to 70 dB(A). Clearly the report's author has not made any measurement of actual music noise from El Camino, which is well above that level.

As to patron noise, the report refers at p11 to "typical patron noise" of 77dB(A), based on "1 in 2 people talking at any one time". That is clearly not an appropriate standard when, as in El Camino, you have numerous people shouting and singing simultaneously.

The report refers at p11 to "noise attenuation treatments recommended in Section 7." However, Section 7 refers to traffic noise, a clear indication that the report is merely a "cut and paste" of a standard restaurant noise report.

There is a recommended treatment in Section 8 of the report. This calls for penetrations in the ceiling to be sealed, despite the outdoor terraces having, of course, no ceilings. Clearly the report is a self-serving fiction designed to justify the proposal without any attempt at a genuine, objective assessment.

The effect on neighbouring residences, particularly of El Camino, will be profoundly disturbing and distressing. The application should be refused.

C. THE PROPOSED DEVELOPMENT WILL ADVERSELY AFFECT THE VISUAL QUALITY OF MANLY WHARF, AND SYDNEY HARBOUR

Manly Wharf is listed on the NSW State Heritage Register under the NSW Heritage Act 1977. Manly Wharf is also listed as a local heritage item within Manly Local Environment Plan 2013.



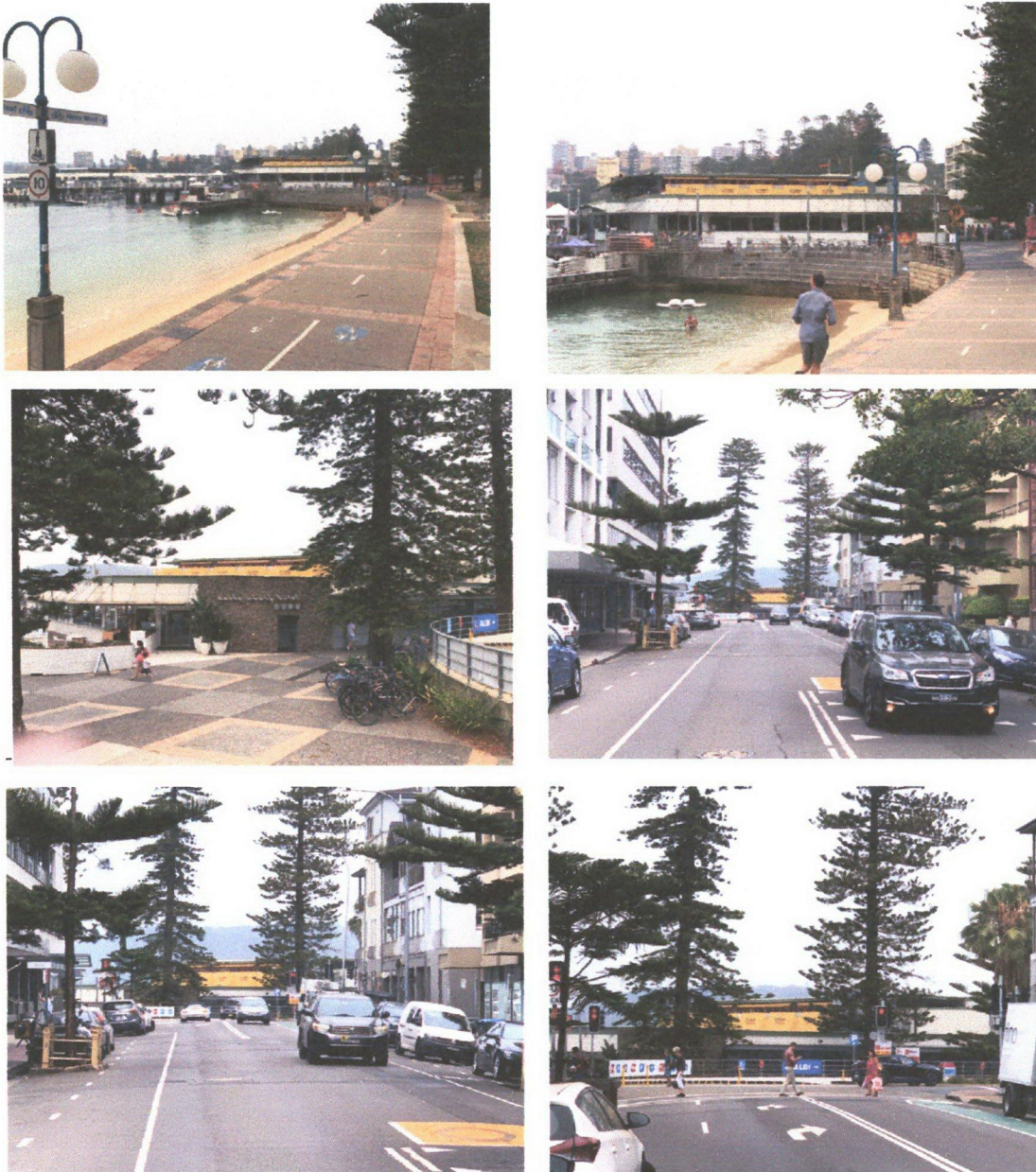


Figure 1 - Existing El Camino Restaurant

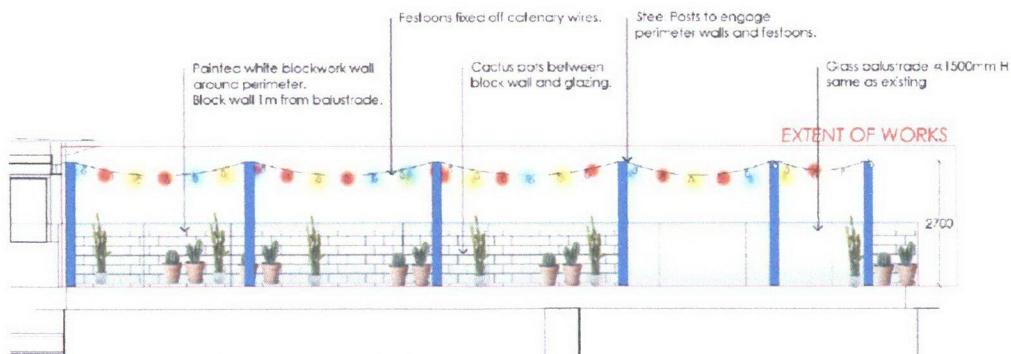


Figure 2 - Proposed materials and finishes for El Camino Restaurant



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As shown at **Figure 1**, the existing restaurant "El Camino" is highly visible from the north, east and south due to its location on the building's corner. At present the restaurant comprises a bright yellow wall to the eastern and northern facade at the upper level. This existing colour scheme is completely out of keeping with the rest of the Wharf, and its harbour setting. It also detracts from the heritage significance of the state and locally listed item.

Whilst the existing colour scheme cannot be changed, the proposal the subject of this application wishes to further intensify the "fiesta" theme by providing brightly coloured shade structures and festoon lighting (brightly coloured string lights across the proposed outdoor area), as shown at **Figure 2**.

The proposed use and intensification of this area of the roof, and proposed materials and finishes in such a highly visible location is not acceptable. It is garish and detracting from the scenic qualities of the Sydney Harbour, and also the significance of the heritage item itself. Light pollution as a result of these new outdoor areas, has also not been addressed anywhere in the documentation. The impact this has on local residents and also the local penguin population needs to be considered as well..

D. THE CUMULATIVE IMPACT OF THE PROPOSED DEVELOPMENT IN ASSOCIATION WITH THE EXISTING RESTAURANT USES HAS NOT BEEN ADDRESSED

The cumulative impact of the proposal in connection with the existing two restaurants (Sake and El Camino) has not been considered or addressed. The proposal will increase the capacity of both venues by 357 patrons, or an increase of 70%. This is a significant increase in the intensification of the existing uses, and as a result the cumulative impacts of the proposal must be considered.

The cumulative impact of existing uses at Manly Wharf has also not been considered or addressed within the DA documentation. Manly Wharf contains numerous licensed venues and the existing uses carried out on the site already have a very significant impact on nearby residential properties in particular the Manly Wharf Bar Hotel and the Bavarian (by way of intrusive noise impacts from the use of the outdoor areas).

E. INCORRECT, INCOMPLETE AND MISLEADING DA INFORMATION IS PROVIDED FRUSTRATING A PROPER ASSESSMENT OF THE DA AND PROVIDING INADEQUATE CERTAINTY

A review of the DA documentation identified the following incorrect, inconsistent and incomplete information:

- i) A detailed Site Plan and Site Analysis Plan have not been provided, which shows the location of the proposed development and its relationship with residential dwellings in the immediate area. The ability to carry out a proper assessment of the DA is therefore limited, by way of noise and visual privacy impacts.
- ii) The SEE prepared by Planning Lab dated 12 September 2019 is inadequate:
 - a. The SEE incorrectly states that the proposal does not cause inconsistency with the site's W2 Environment Protection Zoning. This is incorrect, in accordance with cl 17(2) the proposal must demonstrate that it is consistent with the aims of the plan and the objectives of the zone. Not that it does not cause inconsistency.
 - b. The SEE, consistently relies on the assessment of the previous restaurant approvals for the site as a way to justify this application's merit. This is incorrect and misleading. This is a new application, relating to two new outdoor areas within the wharf, with a significant increase in intensity proposed. The merit of the previous restaurant applications relating to the use of site (indoors only) have no bearing or impact on this application. Given this, the SEE has failed to accurately describe the proposal, and carryout a detailed assessment of the proposal the subject of this application.



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- c. The SEE incorrectly assesses the proposal against the provisions of Manly Development Control Plan 1996 which was replaced by Manly Development Control Plan 2013
- iii) No details have been provided in relation to pack-up procedures for either of the outdoor areas and whether this is to occur within the specified hours of operation, or after close. If pack-up is to occur after close (in addition to cleaning), then there is the potential for further noise disturbance later than 10.00pm. This has not been considered or assessed.
- iv) No details have been provided in relation to the outdoor areas once they close at 10.00pm, and the 164 patrons at Sake and 193 patrons at El Camino can no longer occupy the outdoor areas. The Plan of Management states these patrons will be moved inside, once the outdoor seating area is closed. However, what happens when both premises are at capacity internally? Will these patrons be required to leave the premises? Again this has not been considered or addressed.
- v) No details have been provided as to whether these new outdoor areas will operate as restaurants with alcohol only served to seated patrons with the provision of food, or if these new outdoor areas, will effectively operate as outdoor bars. Given their large size and layout it can be assumed that these spaces will be used primarily for drinking, with dining to occur within the indoor areas.
- vi) No details have been provided regarding how management will oversee patron capacity. Given the large size of these outdoor terraces, the likelihood of the venues exceeding their capacity is high given the nature of the use, its proposed layout and its location. Again this has not been considered or addressed.
- vii) Given the above, the Plan of Management is inadequate to ensure that the proposed premises are managed responsibly.
- viii) As set out above, the Acoustic Report is a sham, pro-forma document and not a genuine, objective noise assessment.

F. THE PROPOSED DEVELOPMENT IS NOT IN THE PUBLIC INTEREST

The assessment of a development's merits requires consideration of the public interest under section 79C of the *Environmental Planning and Assessment Act 1979 (EPA Act)*. Weighing up the private good against the public good is part of that consideration.

As detailed within this submission and summarised below, the proposed development is not in the public interest and as a result does not set a good precedent for development in the area:

- i) The application is deficient in terms of merit and the veracity of information provided
- ii) High intensity, commercial uses of the type proposed should be located in the B2 Local Centre Zone (Manly Corso). Locating such uses in a sensitive foreshore setting, in a highly exposed location is contrary to the public interest
- iii) The proposed development, in association with existing restaurants and bars on the site, further privatises and commercialises an important piece of public infrastructure. Given the significant role it plays in transporting residents, workers and tourists in the area, any further intensification will significantly strain the already run-down facility by way of inadequate public toilet facilities, garbage areas, bike storage area, car parking, noise impacts, visual impacts and light pollution
- iv) As addressed at Points B and C, the proposed development results in significant detrimental acoustic privacy impacts and visual impacts- 7



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- v) The application does not provide adequate certainty to the public as it includes incorrect, incomplete and misleading information. A proper assessment of the DA cannot be undertaken and the impacts cannot be properly understood. This uncertainty is not in the public's interest and does not set a good precedent for development in the area.


CONCLUSION

For the following reasons, DA2019/1234 should be refused consent:

- A. The proposed development is inconsistent with the objectives of Zone W2 Environment Protection
- B. The proposed development will have a significantly adverse noise impact for the residents in the area. The proposal would not only result in an intensification of the use of Manly Wharf, but would further expose residents in the area to additional noise from a licensed premise, which is predicted to exceed levels nominated by Liquor and Gaming NSW.
- C. The proposed development will adversely affect the visual quality of Manly Wharf, and its foreshore setting. The proposed expansion of the restaurants out on to the remaining roof space, is visually detracting from both the streetscape and the waterway. The proposed materials and finishes are also highly detracting from the heritage significance of the locally and State listed item
- D. The cumulative impact of the proposed development in association with existing uses at Manly Wharf has not been addressed
- E. Incorrect, incomplete and misleading DA information is provided frustrating a proper assessment of the DA and providing inadequate certainty
- F. The proposed development is not in the public interest.

We trust that Council will properly consider this objection in its assessment of the DA.

Yours sincerely,


Stephen Breckenridge

Secretary

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