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RE: DA2019/1234 - 0 Wharves And Jetties MANLY NSW 2095

Dear Sir/Madam,

I vehemently object to the DA2019/1234 submitted concerning El Camino & Sake to extend the outdoor seating areas for the following reasons:

1. Increased Noise

By way of background, it appears -

On 19th of July 2018 a Complying Development Certificate was granted for: "First use as a restaurant, along with associated internal fit out for Sake/Fratelli Fresh (maximum 50 seats for patrons)".

On 1 November 2018, a Development Application was approved for, inter alia, a maximum occupancy of 300 patrons in Tenancy 1 (Sake) and 207 patrons in Tenancy 2 (El Camino)

The current proposal also seeks to increase an approved maximum occupancy for the roof terraces of 164 patrons for Tenancy 1 (Sake) and 193 patrons for Tenancy 2 (El Camino). This is in addition to the existing approved occupancy of 300 patrons for Sake and 207 patrons for El Camino at a cost of nearly \$1,000,000.

Objections:

- The plans associated with the submitted DP clearly state the outside seating area for El Camino will increase from 45 on the outdoor front balcony to a total of 238 (current 45 seats plus an additional 193). This is an increase of 528%. This indicates the noise levels will increase in proportion with the number of people and will impact significantly on local residents;
- The current DA Noise Assessment (2010763/2708A/R1/GW) (the "Noise Assessment") was last updated on the 27/8/2010 making it over 9 years old (as per Council's document control register);

Accordingly, the Noise Assessment does not include the current status of the noise levels since the addition of El Camino and Sake to level 1 of the wharf building (it was previously only roof space). Therefore, any noise assessments and predictions of noise emissions contained in this report would appear to be irrelevant in so far as this DA application as it is not based on the current position as they were conducted in 2010;

The Noise Assessment only measured the noise for a 7 day period in August 2010, that is, over the Winter months of very low activity, and does not reflect a true (and outdated) reflection of the current noise levels and also the raised noise levels in the peak summer months when people sit outside;

The Noise Assessment is limited in its scope to the largely commercial properties between The Corso and Wentworth Street as, incorrectly, being a noise receiver location and 'potentially affected properties. -There is no consideration of residential properties including 37-38 and 35-36 East Esplanade which directly overlook the proposed development and will be directly impacted by increased noise levels. Accordingly, the out of date Noise Assessment is erroneous (see photo's under Lighting & Line of Sight);

It appears that no noise measurement readings have been taken since the restaurants opened on level 1 of the wharf building. Accordingly, no true evaluation and forecasted predictions of increased noise levels for additional seating have been made with any accuracy- I draw special attention to noise measurement required regarding 4.2.3 Sleep Arousal and Sleep Disturbance criteria due to the close proximity to residents' bedroom windows at the residential properties at 37-38 East Esplanade, Manly and 35-36 East Esplanade, Manly and 33-34 East Esplanade, Manly;

The operation hours of the proposed development conflict with the opening hours listed on their websites and therefore the time of day readings are not representative of the operational hours of the venues;

The conclusion in section 9 of the Noise Assessment regarding external noise emissions compliance, considering the above points, is therefore inaccurate and/or misleading. Accordingly, the 'acoustic assessment' and 'conclusion' contained in the Statement of Environmental Effects is also invalid for the above reason;

As far as I am aware, Reports submitted to Council in support of a Development Application, must be no more than 3 months old at the time the Application is lodged with Council. The Noise Assessment is over 8.5 years out of date and should therefore be excluded as being irrelevant;

I query the legislative compliance of the Noise Assessment as it is in no way representative of the current position;

- There have been multiple complaints to the local Police about noise from El Camino (from inside) since its opening. Adding additional capacity to El Camino of 193 (increasing numbers from 207 to 400) will also significantly increase the inside noise levels from 10.00 pm onward until closing time (1.00 am at weekends) as people move indoors. There has been no mention or consideration made of this in any Reports filed in support of the Development Application and/or as legally required. The noise 'emissions' will not stop at 10.00 pm;
- This is a family residential area. Many residents are elderly, and many have young children and babies who are particularly concerned about any increased noise levels from the Wharf Bar, El Camino, Sake and East Esplanade Park over and above the already high and often unbearable levels. Many residents in the busy spring and summer months already have to have all their windows closed and cannot use their outside areas in the afternoon and evenings due to excessive noise. Consideration needs to be given to the consolidated noise levels contributed to by multiple venues and their cumulative impact to local residents.

2. Lighting & Line of Sight

- There has been no consideration in any of the Reports submitted with the DA application regarding the impact from the elevated views of El Camino from local residential properties which will impact on their privacy and quiet peace and enjoyment of their homes;
- There are concerns in the plans submitted by SGB Group about the proposed lighting affecting the residential flats including coloured festoon lighting over the entire roof space, direction bright spotlights and under counter LED lighting on the area facing East Esplanade walk. The wharf bar outside seating area on the ground floor is only lit from inside (see night photo in table below);
- The excessive over development of this site will have a direct impact on many residents' line of sight to their current water view and peace and enjoyment;
- The entire proposed roof top development will be fully in view from all the residential flats and therefore we question why the design, if it is a restaurant, and not a bar, as the proposals would reasonably indicate, includes:
 - A car on the roof
 - Two permanent concrete ping pong tables
 - External metal awnings
 - Numerous large tall shade umbrellas

These proposals are in no way in keeping with the heritage look, feel and use of the wharf;

- The extension of El Camino and the associated noise and lighting impacts are expected to negatively affect the value of the residential properties immediately overlooking the venue - the submitted Statement of Environmental Effects Report (12 Sept 2019) clearly states in section 4.15(B) page 9 that "Works relating to El Camino will be visible from the north, east and west due to their location on the buildings corner"

3. Development Proposal

- The counter area and side seats around the outside of the roof area facing East Esplanade Walk at El Camino will look directly into the residential flats at 37-38 East Esplanade impacting residents' privacy;
- Whilst I do not propose to dwell on the fact that a previous DA was sent to affected properties for comment after the works had been completed, however, I do query how work already been permitted to start with the installation of flooring in advance of the planning proposal outcome? (See above photo 37-38 East Esplanade - View from front of building flat on 6th floor) is this not in breach of planning processes? There appears to be an obvious assumption by the owners that this controversial application will be successful;
- Why was this significant extension and capacity increase not part of the original planning proposal when there was obvious intent of a 2nd and 3rd phase proposal within a short time period? Ostensibly, the original application was deliberately deceptive or, at best, misleading;
- Are there plans to change this venue again? On the original development proposals stated a Manly fine dining experience, El Camino was mis-represented on plans as Fratelli Fresh which attracts a different demographic of clientele (less noise and drunken behaviour) and would be far less visually intrusive. Arguably, there would have been significantly more initial opposition

if El Camino had been proposed

4. Capacity & Licensing

- The proposed DA proposes an additional capacity of 193 for El Camino but the seating shown in the plans is for significantly less. People don't stand to eat at a restaurant. There is no proposal to seat the additional 193 people on the submitted plans. Will the capacity for 'standing' in the outside area be prohibited? This indicates this outside area is intended, in truth, as a bar area, not a restaurant, and will have a significant impact on the associated noise and privacy levels;
- Sake and El Camino are separately licensed venues, so I query why the DA is a joint application? - It is not unreasonable to assume that this may indicate a deliberate intent to make the DA more difficult to refuse as the issues associated with El Camino do not occur at the fine dining Sake Restaurant;
- The notice of the proposed development is only displayed on the door of Sake not on El Camino. Again, this appears that the owners are trying to draw attention away from the excessive noise and privacy issues associated with the proposed extension of El Camino. There is a decided lack of transparency with the DA and associated Noise Assessment;
- Local residents have expressed concern as to compliance with the current licensing status of El Camino and, in particular, whether El Camino is operating as a restaurant and not a bar as there are constant cheap deals involving alcohol with one food side order for a whole table and drink all evening. Other recent/active deals as advertised online involve small amounts of food and timed all you can drink sessions These concerns can only be exacerbated by the current DA; "Deal" boards outside El Camino clearly demonstrate this.

5. Submitted Management Plan

- No complaints/incident log has been provided by the Council, Police or El Camino or made available to the public for review. It is not unreasonable to request this information be made available, as part of the submitted documents supporting for this DA proposal and before the deadline for submission close. If this request is declined, I will be submitting an access request to the incident/complaint register under the FOI Act. It would appear misleading information has been provided in the in the Statement of Environmental Effects report (developed by Planning Lab) in section 4.15(B), which states the venue has not received any noise complaints nor been subject to police action since opening in November 2018. This statement would appear to be false and deceptive as I understand there have been numerous calls and complaints to the local Police, your Council and Office of Liquor and Gaming (sections 79's) regarding noise and non RSA Compliance from a number of residents on numerous occasions since the venue opened. This statement be retracted from the report, with an explanation, and the true facts on the scale of the noise complaints be included in the updated Report;
- With regards to the submitted Management Plan lodged in support of the DA there are numerous statements that require further details of the actual actions plans in place. Many items appear to be simply unverified assumptions. Given, the level of current issues and apparent misrepresentations, I have no confidence or faith in the Owner's or Licensee's willingness, ability or otherwise to manage excessive noise, drunken behaviour and associated

unsociable (late night) behaviour of patrons leaving El Camino: In particular, -

Part 3 - The Site - hours of operation in the Management Plan contradict the opening hours listed publically on the website ;

Part 5 - The Locality - the opening hours of the Wharf Bar are deceptive - the outside deck closes at 9pm and the outside area at 10pm (not 1am on Saturdays and midnight on other days)

Part 7 - Amenity of Neighbourhood

(2) what reasonable (new) measures will be taken to prevent patrons leaving the premises from disturbing the neighbourhood? These are not outlined

(3) how will the business be conducted as to not interfere or materially affect the amenity of the neighbourhood by the emission of noise etc.

(4) how will the immediate vicinity in front of the premises be kept clean - it has not been and there is often vomit and glass on the public pathway in the early mornings from the night before especially on Saturday and Sunday mornings. This has a huge impact on local residents with dogs and children. Drunken patrons urinate and vomit in the grounds of 35-36 & 37-38 East Esplanade Manly generally after closing times.

Part 8 - Complaints - what phone number will be displayed for making complaints? What hours will it be answered? Currently no one answers the phone in the evening when noise is affecting local residents;

Part 9 - Noise

(1) "offensive Noise" in the Protection of the Environments Act 1997 mainly relates to vehicle and machine generated noise. The premises controlling this noise does not extend to the control of the noise of patrons in a licensed premise. The - submitted Management Plan is defective and needs to explicitly include that any noise emitted will also not contravene the Liquor Act 2007 for it to have the necessary relevance;

(2) sound levels within indoor areas should be contained to agreed levels and there should also clear plans as to how this noise will be prevented from travelling to outside areas where music is stated as 'not permitted'. Point (6) infers that windows facing towards residential dwellings (East Esplanade) can be open until 10pm which would allow significant transfer of noise from internal to external areas, potentially causing noise/music issues for residents. Please provide details;

Part 10 - Behaviour of Patrons & RSA

(1c) who will the professional staff be and what training is even possible to ensure patrons will now leave quickly and quietly unlike in the past?

(5c) what will change in the Owners/Licensee's current training/policies to ensure intoxicated patrons are not served? This is not currently the case and has been witnessed first hand;

(5h) if this is a restaurant as has been approved, and not a bar, which has not been approved, why is it stated that 'food will be available from the premises or nearby outlets 'on request' whenever alcohol is available' as a restaurant patrons must order food in order to be served alcohol. Kindly advise why this does not occur and what compliance actions has been taken by the Council. If Council has taken no action, please explain the reasons in detail including, if any, any alternative and/or additional reporting bodies.

Part 18 - Operation of the Premises

(1a) by not allowing any intoxicated person to remain on the premises, how will Council

manage their removal from the local vicinity and ensure they leave the venue quietly? If Council is applying RSA why are there intoxicated patrons being removed onto the public pavement outside the venue where they cause a public nuisance?

(1d) how does Council intend to ensure patrons leave the premises quietly and in an orderly fashion. Does the Owner/Licensee's obligations cease as the drunken patrons step onto the pavement outside El Camino?

6. Other

- There is no information as to how the Owner/Licensee actively controls the use and distribution in its premises of illegal substances;
- What controls will be put in place by the council to monitor/police the East Esplanade park area after closing time when drunk El Camino patrons move to this area to sit and carry on drinking bottled beers taken out of El Camino in pockets and bags (11pm - 4 am)?
- It is reasonable to assume, that with additional capacity, there will be a correlation in the increase of antisocial behaviour in the immediate vicinity which will need to be proactively managed by the relevant authorities. What are Council's proposals? Who will bear the cost associated with Council's proposals and/or proposals of the Police and efforts regarding enforcement? Has Council consulted with the Police over the proposed DA?
- How will the venue and the Council stop intoxicated patrons as they exit the venue urinating and vomiting on the walls and in the grounds of nearby residential properties and pathways. Has Council consulted with Police to have regular patrols and if so, what agreement has been reached and is part of any proposed approval to the DA include the costs of both Council and the Police in policing the commercial venture?
- What are Council's proposals to monitor overall number of persons in the premises and ensure everyone is 'assigned a seat' is too late as they are already in the venue, what are your plans to eject patrons if the capacity has been exceeded at the ground floor entrance and there are no seats available in the interior or outside area (total 400)?
- the number of seats on the plans for outside at El Camino do not add up to requested capacity of 193. Will Council enforce the 193 capacity, or will it ensure that everyone has a seat (in which case the capacity on the submitted DA should be amended)? How will Council ensure that no more than 193 are in the outside area at any time, as according to the plans, there is no clear capacity control area between the inside and outside areas?

I look forward to Council's response regarding the next actions regarding the submitted documents (listed on the website) for this DA which appear to be largely irrelevant and non-compliant.

Thank you, in advance, for taking the above concerns and issues into consideration

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