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**Sent:** 17/05/2023 1:14:19 PM  
**Subject:** DA2023/0368 Submission  
**Attachments:** Submission to Council DA2023-0368 - SP61679.pdf;

Attention Planning Department,

Please find attached a submission on DA2023/0368 on behalf of the Owners Corporation SP61679.

Could you kindly acknowledge receipt of my letter at your convenience.

Kind regards

Brian O'Connor

Chairman SP61679

## Commercial Strata – SP61679

Pacific Waves

9-15 Central Ave

Manly 2095



17/05/2023

### Submission in support of DA2023/0368

on behalf of the Owners SP61679

No improvements have been made to the commercial courtyard (“the Courtyard”) in 23 years and the area is much in need of a makeover. The Commercial Owners met with the applicant on numerous occasions over many months to fine-tune the plans to ensure that the refurbishment not only meets the needs of the strata into the future but improves the amenity of neighbours.

#### Consultation with Residential Owners

Front and centre of all planning has been a commitment to minimising the impact of the courtyard usage on the Residential Owners. The applicant, upon request of the Commercial Owners, presented the plans to both the Residential Strata Committee and then to all Residents. The applicant and a representative of the Commercial Owners answered all questions raised and attendees expressed their support for the application in principle, as they were satisfied that it was essentially a makeover that would have no real impact on their amenity. **Significantly only about 6 residential owners felt it was important enough to them to attend.** The lodged DA mirrors the proposal made in the presentations.

#### Deliberate campaign by a small group to sabotage the application

It is disappointing that despite the genuine efforts made by the Commercial Owners to consult with Residential Owners and work with them, there has been a level of misinformation and fearmongering perpetrated about this DA by a small group of self-appointed activists, who have historically caused alarm and encouraged objections to any development application made within 30 metres of the site. The commercial strata has been the primary target of this group for 23 years due to its proximity, small size and inclusion in the strata management statement. This small group of activists have never accepted that the building is in a central business district and that both strata are entitled to be there.

Long-standing issues between the two strata came to a head in 2020-2021 and resulted in significant financial adjustments to the allocation of shared costs and a settlement conference which resolved a number of other issues. It is disappointing that the progress made towards working together has been abandoned so recklessly due to the mischief of a few. **The submissions do not reflect concerns over what is actually “in” the DA but what the activists have misled owners into believing is in it.**

#### Fact checking – where residential owners have been misled

*\* For convenience we adopt the numbering of the Residential Strata Committee’s submission*

1. The applicant does not seek to extend the operating hours (ss 4.1.2(b) + 4.3 of SEE).
2. The applicant **does not seek to increase seating capacity** (ss 4.1.2(a) + 4.3 of SEE). There have always been about 100 seats in the courtyard. Each café has a council approved seating capacity. The courtyard is shared by three cafés and each café is responsible for allocating

their seating allowance across their approved internal and external spaces. Previously the courtyard was split into three separate sections. The partitions were removed to allow patrons to sit anywhere in the courtyard and the liquor licence of lot 1 was extended by Liquor and Gaming to cover the entire courtyard. **Residential Owners will benefit if a cap of 100 seats is embedded into the DA approval.**

3. **Each café obtained approval for seating** when its original or amended DA approval was granted in accordance with the available toilets. Any subsequent applications, including additional seating on Sydney Rd was approved by Council. Regardless of the seating capacity of each café the application is for “up to 100 seats in the courtyard only” and what matters is that each café factors their share of the 100 courtyard seats into their total allowance under their DA. **No additional seating is sought.**
4. **Complaints about sound levels in the Courtyard are grossly exaggerated.** Since 2016 there have been only a handful of complaints about noise reported to this committee, mostly isolated incidents which were resolved quickly, and none were prior to 10pm, at which time the courtyard is closed. The café owners advised us that during this period they were not contacted by police or Council except on one occasion, where the café involved was found by Council to be operating within its DA conditions and the complaint was closed. Commercial Owners know the long-term owners of apartments overlooking the courtyard who have reported that they have never experienced noise issues or had complaints from their tenants about noise.
  - In September 2022 the Commercial Strata Committee provided all residents with complaint lines for each of the café so that concerns could be dealt with immediately. We are told that there have been only two residents who have texted and one call to those numbers since September 2022 and each of these was after 10pm (when the courtyard is closed).

The Commercial Committee has reviewed some of the submissions from Residential Owners who make claims about noise and advise Council that **a number of the very emotive complaints about noise (and other unsubstantiated claims) come from people who live on the opposite side of the high residential tower, these are people who could not possibly be impacted by the cafés in any way.** This is indicative of the efforts of the residential activists and the willingness of some to make statements of fact without any personal experience or worse, to make deliberately misleading and inflammatory statements. This is entirely mischievous, and the comments should be disregarded as they are little more than a flagrant attempt to sabotage this very modest application and return to the bullying and controlling behaviour that has caused so much conflict but failed so dismally in the past.

The Commercial Owners support the application that no live music be allowed in the courtyard but that low background music “at a low and controlled setting to encourage conversation” be allowed. Interestingly it seems that residents believe that no music has ever been allowed in the courtyard. The reality is that music has been played through a speaker in the courtyard for the past three years, in compliance with the licence agreements. The very fact that residents aren’t aware of this is testimony to the fact that it is not an issue in dispute in this application. Currently the question of live music is a decision for the Commercial Owners. **Residential Owners will have the benefit of embedding a condition excluding live music into the DA approval.**

5. The application makes it patently clear that **only seated dining is sought** and that no “bar” area for standing drinking is proposed (s 4.1.1(d) of SEE). The new “service area” or “servery”

is intended only for waiters to compile orders. The Commercial Owners support the inclusion of a condition that the service of food and alcohol be limited to “seated dining only”. Currently this is a decision for the Commercial Owners. **Residential Owners will benefit from having a “seated dining only” condition embedded into the DA approval.**

6. The two substantive changes in the DA are included at the request of the Commercial (and endorsement of Residential) Owners and not the business operator/applicant:
  - i. The new boundary wall is pursuant to an existing agreement between the Residential and Commercial Owners to remove the existing wall which was built without Council approval and to rebuild it on the boundary. Council advised that the wall must be demolished but an extension of time was given to submit this DA. **Owners will be faced with no wall at all, or a new wall in the position of the present application.**
  - ii. The high planting above the basement carpark ramp (NW corner) **must be removed** to fix the failed water membrane and the serious water damage that has arisen. This will happen with or without the DA approval. **Approval of the DA will ensure that significant planting and other measures to minimise noise, in accordance with the professional acoustic report, will be embedded into the DA approval.**

**The acoustic report was conducted by a qualified acoustic engineer.** The testing for the acoustic report took place over 3-4 weeks and objectively assessed the actual noise generated from the cafés and the level of background noise that exists, eg the fountain, air conditioning towers etc. The testing took place via a direct line to the nearest receiver (residence), each receiver located on the internal side of any foliage. **The proposition that the foliage interfered with the testing or gave a false result is false.** Only once the actual level of sound was established could it be determined what measures were necessary to control, absorb and reduce sound to acceptable levels.

While some planting will be removed regardless of the DA being approved, the proposed replacement planting, extensive timber pergolas, proposed vines over the pergolas, two bushy trees, service area, storage room, high wall, soft furnishings and the thick glass awning along the western wall will create significant sound minimisation, much more than presently exists. **Owners will benefit from knowing that up-to-date standards have been applied specifically to the courtyard area and embedded into the DA approval.**

**B. The awnings are for the sole purpose of protecting patrons from rain.** They are not sound proofing measures required in the acoustic report. The sound reduction measures outlined in the report are standalone and will ensure compliance without any consideration of the awnings.

The courtyard is a venue for outdoor dining. Enclosing the awning defeats the purpose of the dining experience offered and compromises the significant investment planned for the courtyard. Closing the awning at 9 pm is not a requirement for acoustic compliance and is totally rejected by the Commercial Owners.

**\* Commercial strata submission on variation to awning plan:**

Three awnings of different heights are proposed to cover the courtyard. A low awning is proposed in the central courtyard just outside lots 2 and 5. The Commercial Strata requests that this is changed so that the high awnings abut the building and cascade down towards the boundary with the residential strata.

The Pacific Waves building is located in an entertainment precinct and in the past 18 months Commercial Owners have consistently expressed a desire to work “with” Residential Owners to address their concerns. The Commercial Owners have introduced several measures to introduce greater rigour into the oversight of businesses within the strata and ensure operators are considerate of neighbours. The draft licence agreements, pending DA approval, have incorporated many new provisions intended to empower the Commercial Owners to enforce the DA conditions, and includes the power to suspend or revoke the contract for breaches of DA conditions. The tightening up of these contracts is solely to improve the amenity for residents.

### **The DA seeks little more than a prettying up of the courtyard**

*Section 1.1 of the Statement of Environmental Effects (“SEE”) states “The use of the communal commercial courtyard is to remain unchanged, with the capacity restricted to 100 patrons and operation limited to between 8.00 am and 10.00 pm only (in line with current approvals).”*

**The Commercial Owners fully support the proposed DA, subject to the minor alteration requested in respect of the central awning.**

Yours sincerely



**Brian O'Connor**  
**Chairman,**  
**on behalf of the Owners Corporation**  
**Commercial Strata Pacific Waves Building SP61679**