
From: [REDACTED]
Sent: 14/05/2023 4:42:33 PM
To: Council Northernbeaches Mailbox
Subject: Objection Submission: DA2023/0368 - Lot 1 & Lot CP 61679 1/9-15 & 9-15 Central Avenue Manly, NSW 2095
Attachments: Objection to DA2023_0368.pdf;

Attn: Nick England, Planner, Northern Beaches Council.

Dear Mr England,

Please find attached Objection Submission to DA2023/0368

Regards

Mr & Mrs Stow

[REDACTED]

Attn: **Nick England, Planner**
Northern Beaches Council
1 Belgrave Street
Manly, NSW 2095

Mr & Mrs GJ & SB Stow
505/9-15 Central Avenue
Manly, NSW 2095

14th May 2023

OBJECTION: DA2023/0368

Lot 1 & Lot CP SP61679 1/9-15 & 9-15 Central Avenue, Manly

Attn: Nick England, Planner

Dear Mr England,

Please accept this as a full objection to development application DA2023/0368

The application states that it is only applicable to the fit-out and use of the courtyard for seating of 100 patrons with operating hours unchanged. However, the documentation supporting this application in the Northern Beaches Council portal is contradictory to each other in several areas. In addition to the courtyard alterations, the DA is actually seeking the following which are not clearly called out anywhere: 1/approval sought for sole use of the courtyard for a single venue: Insitu 2/ seeks approval for Insitu's change in its licensed boundary area which is currently 1/3 of the courtyard (capacity apx. 25 seats) and 3/ Insitu seeks approval to almost double its current approved venue patronage/seat capacity.

Insitu currently operates in a licensed boundary within a divided covered area of the courtyard; approximately 1/3 of the courtyard total footprint. Their licensed hours for the courtyard, only covers the space of apx 25 seats. 2 other venues have the remainder of the courtyard divided up for their use. One closes at 3pm (Ground Zero) and the 2nd (ex. Fat Joes) is not trading as a public venue.

Some current details on the venues with courtyard access:

The area is a shared common property area between strata owners, not businesses. The outdoor area is currently divided into separate areas for separate use by three separate premises (Shop 1, Shop 2 & Shop 7). Two of the premises Shop 1 (In Situ) and Shop 2 (Ground Zero) have current DA approval to utilize their portions of the courtyard through to 10pm. Only shop 1 (InSitu) has an active Liquor License to use their portion of the courtyard (apx 1/3 of the space). Shop 2, Ground Zero operates as a café and closes at 3pm daily. Shop 7 (formally Jah Bar has never had extended hours approved in the courtyard, they closed a few years back and the Liquor License was cancelled. Another restaurant Tahkio opened for a short time pre-COVID then Fat Joe's Joint opened briefly (note Statement of Environment Effects (SEE) incorrectly refers to this as Shop 6). *Note that this premise now appears to be utilized as a kitchen facility for Shop 1 (InSitu).

Only one business/venue: InSitu (Shop1) currently operates until 10pm under DA684/99 (noting 8 modifications) and utilizes only a 3rd of the courtyard through to 10pm in a single divided area. The SEE states that the “use of the communal commercial courtyard is to remain unchanged...” – this in itself is an inaccurate statement. The lead applicant on this DA is In Situ (shop 1) who intend to combine the entire area for their use, tripling the venue’s outdoor footprint and drastically increasing its outdoor patronage and noise pollution. To note the SEE tries to mislead the reader stating that the courtyard is for multiple businesses, when actually you read the plans, this courtyard is referred to as ‘In Situ Courtyard’ and also called out in the acoustic report as Insitu having sole use.

This DA also seeks to drastically increase InSitu’s overall inside and outside patronage which is currently approved at 100 seats. This new, courtyard DA with sole courtyard patronage for InSitu is proposed 100 seats and is a major increase to their license boundary (which has not been applied for in this DA). There is zero mention in this DA about the overall operational patronage increase to the venue. The SEE states that there is **“no change is proposed to the operation of the existing shop tenancies (indoor and out), current liquor licenses and license boundaries are to remain unchanged as a result of this refurbishment.”** This is an incorrect statement with Insitu venue capacity to almost double.

Please also take note of Insitu’s current Plan of Management which already has strict NSW Gaming & Liquor restrictions to patrons with their temporary license for street front seating:

Insitu’s Plan of Management: <https://www.onegov.nsw.gov.au/publicregister/#/publicregisterdetails/1-11D5-1415> includes ‘Temporary outdoor dining’ strict guidelines of patron capacity: *“...The licensee must not increase the patron capacity which applied to the licensed premises before this approval was granted. iv. Despite any other trading hours on the license, trading hours in the alfresco dining area may not exceed 10pm Monday to Sunday. v. This temporary change to boundary will automatically lapse on 31 December 2023 and may be revoked earlier by Liquor & Gaming NSW. vi. The licensee may sell alcohol from the indoor area of the premises to patrons using the temporary outdoor dining area provided that the Licensee ensures drinks are only consumed within the licensed areas.”*

The acoustic report supporting this application has been undertaken during misleading conditions. Currently 2 local businesses Guardian Childcare (4-10 Sydney Road) and the Hotel Steyne (75 The Corso) are in breach of their own DA consent acoustic and noise conditions (see below), adding to an inaccurate background noise level. Neither of the proposed awnings are fit for purpose to adequately provide the appropriate levels of acoustic attenuation to protect surrounding residences. Added to this the introduction of storage and servery/bar which are not acoustically cladded will further add to noise bouncing up and out of the courtyard into surrounding residences. Lastly, removal of 3-4 metre height foliage is a further loss to noise absorption and should not be removed. It’s disappointing to see that noise pollution has not been reviewed in the NBC Environmental Health response and we request that this is revisited. We also request that the current acoustic report be rejected.

By comparison, other neighbouring sites to Pacific Waves have varying noise, acoustic and Plan of Management conditions to ensure residents aren’t impacted by noise pollution. This new DA should not be an exception to the rule and must align with other venues and sites:

1/ 4-10 Sydney Road – Guardian Childcare Centre within the same proximity to Pacific Waves residents as this site/DA. It operates until 6pm and has a Plan of Management which only allows them to use their outdoor play area for only 2 hours in the morning and 2 hours in the afternoon with a 2-hour break between outdoor use time. There is also a restriction on the number of children in the outdoor area at any one time: maximum 25 children at any one time. Added to this Guardian Childcare are currently in breach of their MOD2019/0399 acoustic conditions which include requirements for full acoustic baffling and attenuation to their roof. Council have issued Penalty Infringement Notices and the acoustic works are now taking place through May & June ’23 to install the required acoustic protection. The acoustic report included in this Courtyard DA has recorded sound level whilst 4-

10 Sydney Road has been in breach of their noise conditions, thus invalidates the Insitu acoustic report and recommendations supporting this Courtyard DA.

2/ 75 The Corso, Hotel Steyne. Several conditions exist for this venue to protect surrounding residents; including DA350/2011 which states that all outdoor terraces must be closed by 10pm – note these terraces are not directly adjacent to surrounding residences (unlike this Courtyard DA), but face out to The Corso and Beachfront, thus are apx 20 metres away and not facing residences (unlike this Courtyard DA). In addition, DA91/2011 which pertains to the open-air courtyard of The Hotel Steyne had structural acoustic attenuation conditions and an ongoing condition for inclusion in their Plan of Management that: “The ongoing management of the premises must be in full accordance with the Protection of the environment Operations Act, 1997. Including but not limited to: Noise arising from patrons must not be audible within any habitable room of any neighbouring residential premises at any time. Noise arising from music, live entertainment or other such amplified sound must not be audible within any habitable room of any neighbouring residential premises at any time. Currently The Hotel Steyne is in breach of their courtyard noise conditions and this is being dealt with by NSW Liquor & Gaming, Northern Beaches Council and NSW Police. Again, the acoustic report included in this Courtyard DA has recorded sound levels whilst the Hotel Steyne has been in breach of their noise conditions, thus invalidates the Insitu acoustic report and recommendations pertaining to this Courtyard DA.

3/ Manly Corso busking noise pollution. Buskers in The Corso Manly are restricted to performing for no more than 45 minutes. Busking is only permitted between the hours of: - 10:00am and 5:00pm 7 days per week (Eastern Standard Time) - 10:00am and 7:00pm 7 days per week (Summer Daylight Saving Period). Amplification is permitted only by battery power and must be kept to a reasonable volume and consideration given to the surrounds and residents. Mains voltage is prohibited at all times. Excessive amplification is prohibited and will not be tolerated. The Corso Manly is apx 20-30 meters from Pacific Waves residences (unlike this Courtyard DA which is 3 meters). Pacific Waves residents should continue to be protected in a similar way.

Over the year's residents in the Pacific Waves building (9-15 Central Avenue, Manly, NSW 2095) have been inundated with noise issues from the InSitu outdoor courtyard area (operating in only 3rd of courtyard) and access to the shared bathroom facilities. Northern Beaches Council Compliance are very aware of the issues related to the venue. Even as recent as this weekend (Saturday 13th May 2023), the noise from Insitu patronage outside their 'area' of the courtyard was deafening (apx 25 people). Currently this noise is purely from people talking so loud, shouting and high pitch screams and laughter. Note, there is no music currently approved within the courtyard; this noise pollution would only be further enhanced with the addition of music, every patron talking and shouting even louder over the volume of the music. Allowing Insitu to have 100 outside seats in the courtyard would be a noise pollution disaster for residents of Pacific Waves residents. Current state of 25 people outside until 10pm without acoustic protection is already excessive noise pollution.

Allowing this DA to go ahead to allow InSitu to triple their outdoor footprint will be an absolute nightmare for the residents in Pacific Waves. The addition of outdoor speakers, triple the patrons and zero acoustic treatments or protection to the outdoor area is ludicrous; zero thought has been given to residents less than 3 meters from this site. Plus, the addition of an outdoor bar will further exacerbate the situation in area that currently only allows outside patronage with table and food service.

Given the noise restrictions and acoustic conditions placed on other venues and areas surrounding this site; the proposed DA does not come anywhere close to aligning and protecting neighbouring residents.

I do hope this DA is automatically rejected. If, however any consideration is given for this DA, at minimum we request the following ongoing conditions to be included in any approval.

1. No outdoor music/sound system
2. Acoustic attenuation must be applied to walls, roof and all roof trusses. A full acoustic report including the full attenuation details must be included to support the DA and be included in the ongoing conditions. Similar to the acoustic attenuation being installed at Guardian Childcare or a full retractable acoustic roof which closes from 5pm.
3. Outdoor area to close at 5:00pm Sunday to Thursday (Eastern Standard Time) and 7:00pm Sunday to Thursday (Summer Daylight Saving Period). 10:00pm closure only on Friday & Saturdays. This closure includes restricting the use of all outdoor facilities including access to the new proposed servery and cool room.
4. Table service with food only in the courtyard; no outside bar installed.
5. The same ongoing condition as per the Hotel Steyne Courtyard to be applied:
The ongoing management of the premises must be in full accordance with the Protection of the environment Operations Act, 1997. Including but not limited to:
 - Noise arising from patrons must not be audible within any habitable room of any neighbouring residential premises at any time.
 - Noise arising from music, live entertainment or other such amplified sound must not be audible within any habitable room of any neighbouring residential premises at any time.
6. The same ongoing condition as per the Hotel Steyne Courtyard to be applied:
A Plan of Management, as approved by Northern Beaches Council (NBC) must provide a section dedicated to the ongoing management and operation of the outdoor courtyard (including the above noise conditions). The Plan of Management is to be submitted to NBC prior to the issue of the Occupation Certificate.
7. New courtyard exit door is only for emergencies and is not a new public entrance to the venue.
8. All venues that have any door opening into the courtyard must be acoustic glass or another acoustic property. To protect sound leakage into the courtyard after the closure of the courtyard each day.
9. Garden bed foliage to remain at 3 to 4 metres.

Once again, we object to this application for redevelopment of the Pacific Waves courtyard and expansion of the Insitu venue patronage and licensing boundaries in full. We request that Northern Beaches Council reject this application in respect to noise pollution and detrimental impacts to Pacific Waves residences.

Regards

Mr & Mrs Stow,

505/9-15 Central Avenue, Manly, NSW 2095